

**For Native American Attorneys,
NNABA Groundbreaking Study
Reveals Devastating Lack
of Inclusion in the
Legal Profession at Large**

By Mary Smith

This year marks the 40th anniversary of the Federal Bar Association's Indian Law Conference. The theme is 40 Years Strong: The Indian Self-Determination Era Strengthening Tribal Sovereignty. While tribal sovereignty has been strengthened over time, the status and inclusion of Native American attorneys remain challenging at best, particularly in the legal profession at large.

In 2014, there were a number of firsts for Native American attorneys. Hon. Diane Humetewa became the first Native American woman in our nation's history to become a federal judge. Keith Harper became the first Native American to achieve the rank of ambassador by becoming the U.S. representative to the United Nations Human Rights Council. These achievements are certainly monumental. What stands out, however, is that before 2014, the legal profession had never formally studied the perceptions, experiences, and career trajectories of Native American attorneys.

To raise the visibility of Native American attorneys in the legal profession at large, to effectuate lasting reforms in the legal community, and to help build a better pipeline to law school, the National Native American Bar Association (NNABA) conducted the first-of-its-kind study of Native American attorneys.¹ NNABA enlisted Dr. Arin Reeves from Nextions to conduct the research. This study is entitled "The Pursuit of Inclusion: An In-Depth Exploration of the Experiences and Perspectives of Native American Attorneys in the Legal Profession."

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 hopefully 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.

Summary of Findings and Overarching Conclusion

There were four key areas of findings that emerged from this comprehensive study:

1. The extraordinary complexities and challenges of identifying and living as a Native American lawyer.
2. The unique pipeline challenges faced by Native American lawyers.
3. The particular professional development opportunities and challenges faced by Native American lawyers.
4. The specific personal satisfaction, inclusion, and alienation experienced by Native American lawyers in the legal profession.

One predominant conclusion from this research is that traditional diversity and inclusion programs are simply not working for Native American attorneys. The research paints a vivid picture of an entire group of attorneys systemically excluded from diversity and inclusion efforts.

Research Methodology and Strategy

Native Americans comprise approximately 0.2 percent—or number about 2,640—of the more than 1.2 million attorneys in the United States.² To have a statistically significant sample, the goal was to achieve at least 20 percent participation in the survey instrument that was developed for the study. When the survey closed, 527 Na-

"It does not require many words to speak the truth."

—Chief Joseph, Nez Perce

"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 someone says 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

tive American attorneys, or about 20 percent of the entire Native American attorney population in the United States, had responded.³ Survey participants were asked about their decision to attend law school, their career experiences, and their decisions to stay or leave the legal profession. Of the 527 survey respondents, women comprised about 57 percent and men about 43 percent.

In addition to the quantitative data provided by the survey responses, the research was supplemented with a focus group of more than 10 Native American attorneys that consisted of a facilitated discussion lead by Reeves and 54 one-on-one confidential telephone interviews with 23 men and 31 women. The telephone interviews were conducted between May and July 2014. During the telephone interviews, the attorneys were asked to elaborate on their legal careers and their experiences as Native Americans in the legal profession.

Demographics of Survey Respondents

According to the 2010 Census, 5.1 million persons identified as American Indian or Alaska Native, either alone or in combination with one or more other races.⁴ Between 2000 and 2010, the American Indian and Alaska Native population increased twice as fast as the total U.S. population, growing by 1.1 million, or 27 percent.⁵

The Native American population in the United States is a young population. The median age for Native Americans is 30.8, compared with a median age of 37.5 for the U.S. population as a whole.⁶ Not surprisingly then, Gen X (born between 1965 and 1980) and Gen Y (born after 1980) made up the majority of the respondents to the survey. Gen X represented almost 50 percent of the respondents, and Gen Y made up almost 15 percent. Persons born before 1946, referred to as traditionalists, represented 4.59 percent, and baby boomers (born between 1946 and 1964) made up approximately 33 percent.

The overwhelming majority of respondents (68.78 percent) were between the ages of 25 to 34 when they graduated from law school, and about 13 percent were between the ages of 35 to 44 when they graduated. The average age at law school graduation for the respondents was about three to five years older than the general law school population.

Corresponding to the younger ages of the survey respondents than the legal profession as a whole, about 43 percent of respondents had practiced fewer than 10 years, with about 20 percent having practiced fewer than five years and about 22 percent having practiced between six and 10 years. Rounding out the responses, about 17 percent had practiced 11 to 15 years; about 12 percent had practiced from 16 to 20 years, and almost 28 percent had practiced for more than 21 years.

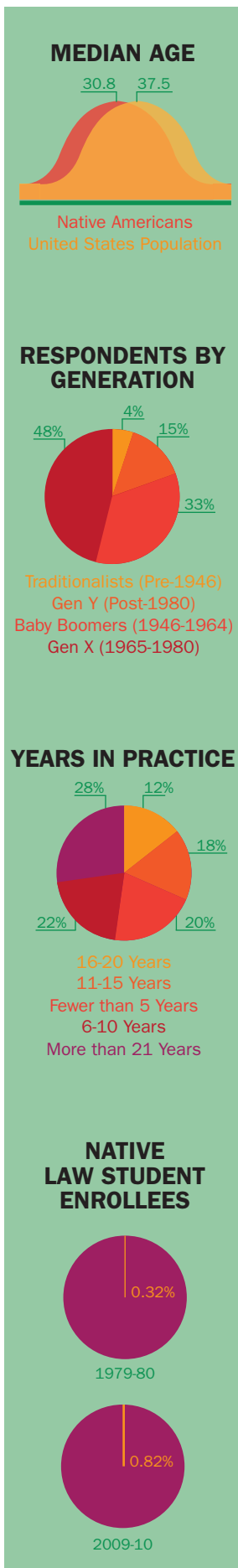
One marked statistic from the study is that the overwhelming majority of respondents had either primary or shared responsibility for child care. Approximately 30 percent of respondents had primary responsibility for children, and almost 40 percent had shared responsibility, totaling about 70 percent of all respondents to the survey.

Complexity of Simply Being an Indian

A general definition of an Indian can be found in the *Smithsonian Handbook of North American Indians*.⁷ There are three components; the individual would (1) have ancestors who were in America before the arrival of Europeans, (2) be recognized by the community where he lives or where he originally is from as an Indian, and (3) hold himself out to be Indian.

The social stigma and discrimination that may flow from holding oneself out to be Indian can cause some people who are Indian to not identify themselves as Indians in professional settings. In fact, 6.87 percent of the participants in the survey stated that they do not identify themselves as Indian in their workplace.

Native Americans are considered a racial and ethnic minority for cultural and census purposes. Yet, unlike other racial/ethnic minority groups in



the United States, “being an Indian” often involves other criteria, such as being an enrolled member of a federally recognized tribe to validating blood quantum requirements. In addition to determining that Native American is a racial classification, the U.S. Supreme Court has declared that there is a political status to being a Native American.⁸ These types of criteria, e.g., tribal membership, stand in sharp contrast to the ways in which other racial and ethnic minorities are defined and create unique challenges in understanding who is Native American and how progress is measured for this group.

Pipeline into Law School

As the report so aptly notes, “The seeds for the experiences of Native American attorneys today were sown many generations ago. 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 our legal profession in spite of the focused attention on diversity and inclusion in the profession since the 1970s.” Data from the American Bar Association indicate that while the growth of Native American law student enrollees per year has increased from 392 in 1979–80 to 1,273 in 2009–10, the percentage of Native Americans in relation to the overall law student population remains miniscule—from 0.32 percent in 1979–80 to 0.82 percent in 2009–10.⁹

In relation to the overall population of Native Americans, the statistics demonstrate that there are insufficient numbers of Native American attorneys. Professor G. William Rice, co-director of the Native American Law Center in Tulsa, Oklahoma, recently remarked, “You really can’t practice law in this state without running into an Indian issue,” he said. “We’re still on the rise in enrollment because we need more Indian attorneys. Figure that we’ve got 39 federally recognized tribes in the state alone, and give each of them a judge, a prosecutor and public defender. ... There’s only 50-60 people who are members of the Indian law section of the Oklahoma Bar Association. We’re way, way, way shy of the number of attorneys who are competent practitioners of Indian law.”¹⁰

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 means that an applicant to law school, even though he or she has no factual basis to claim being Native American, nevertheless checks the Native American box on the law school application in the hope of receiving some sort of preferential treatment.¹¹

Motivations for a Law School Education

The reasons the respondents decided to attend law school differed significantly from the motivations of the general lawyer population. The Law School Survey of Student Engagement generally identifies the desire to have a challenging and rewarding career and financial security as two primary reasons to attend law school.

In contrast, the survey respondents chose to attend law school for reasons that are unique to Native Americans. When asked about their motivation to attend law school, the respondents were more likely to report that they wanted to give back to their tribe, fight for justice for Native Americans, and work for the betterment of Indian people than they were to report wanting a rewarding career for themselves or seeking financial security.

Information and Support Systems for a Law School Education

Once Native American students are motivated to consider law school and the legal profession as viable career choices, they then have to have access to information and support systems to succeed. When asked to identify factors that influenced them to attend law school, 37 percent of respondents reported that connections made and/or information received through family members and friends was an important factor, followed by 22 percent who reported that connections made and/or information received through tribal networks was an influential factor.

Respondents also noted the Pre-Law Summer Institute (PLSI), active service in the military, and a feeling of destiny or spiritual guidance led them to the law. Of the 30 percent of 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.

When asked about barriers to attending and succeeding in law school, the primary barriers cited by the attorneys in this study were financing law school (application costs, LSAT preparation costs, tuition costs, and room/board costs), making informed decisions about the best law schools to attend, 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 needed to be successful.

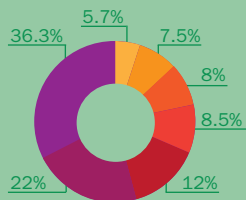
Workplaces and Practice Settings

Given that a large number of the survey respondents indicated that they wanted to serve their tribe or help protect tribal sovereignty, it is not surprising that these motivations influenced where the respondents ultimately practiced. More

FACTORS LEADING TO LAW SCHOOL ENROLLMENT

- 37%** Connections via Family and Friends
- 22%** Connections via Tribal Networks
- 21%** Connections via Legal Professionals

PRACTICE SETTINGS



- Private Firm: More than 50 Attorneys
- Solo Practitioner
- Public/Nonprofit
- Federal Government
- Private Firm: Fewer than 50 Attorneys
- Tribal Sector
- Other

MOST COMMON PRACTICE AREAS

- 64%** Federal or Tribal Indian Law
- 31%** Administrative/Regulatory Law
- 27%** Civil Law
- 21%** General Litigation
- 19%** Family Law
- 16%** Environmental Law
- 16%** Corporate Law
- 14%** Labor/Employment Law
- 11%** Appellate Litigation

than 20 percent of respondents practiced in the tribal sector. The next five predominant practice settings were: (1) about 12 percent as attorneys in private law firms with fewer than 50 attorneys, (2) about 8.5 percent as attorneys in the federal government, (3) about 8 percent in the public/non-profit sector, (4) about 7.5 percent as solo practitioners, and (5) only about 5.7 percent in private law firms with more than 501 attorneys.

Practice Areas

The overwhelming majority reported focusing on Indian law. In terms of practice areas, survey respondents were permitted to select all areas in which they practiced, so the ultimate percentages in this area total more than 100 percent. Given the motivations for attending law school and the approximately 20 percent of respondents who practiced in a tribal setting, the largest three practice areas were federal Indian law (64 percent), Indian law (64 percent), and tribal law (59 percent).¹²

After the three top areas relating to Indian law, the following practice areas were also identified by more than 10 percent of respondents: administrative/regulatory law (31 percent), civil law (27 percent), general litigation (21 percent), family law (19 percent), environmental law (16 percent), corporate law (16 percent), labor/employment law (14 percent), and appellate litigation (11 percent).

Pressures and Motivations to Practice Indian Law

While many would have suspected that large numbers of Native American attorneys' practices focus on Indian law, the research results confirm this suspicion resoundingly. This research attempted to identify the motivations for Native Americans to attend law school, and the research did reveal some common narratives, such as giving back to one's tribe and working toward improving the condition of Indian people.

The research also revealed some unique pressures for Native Americans to practice Indian law, both from within the Native American community and from non-Natives. The majority of survey respondents described their choice to practice Indian law as voluntary and deliberate. However, survey respondents did reveal some pressure to return to their tribe to practice or to practice Indian law.

For respondents practicing in firms with multiple practice areas, several reported that even when they expressed a desire to practice in other non-Indian law areas, their employers would pressure them to contribute to the Indian law practice. Some respondents noted that the only jobs for which they were recruited were jobs related to In-

dian law either in the federal government, tribes, or law firms with an Indian law practice.

Overall Satisfaction as a Lawyer

In direct response to a survey question, the majority of respondents stated that they were satisfied with their careers. Of interest, those who were most satisfied with their careers were those working in the tribal sector, and the least satisfied were those working for the government or law firms.

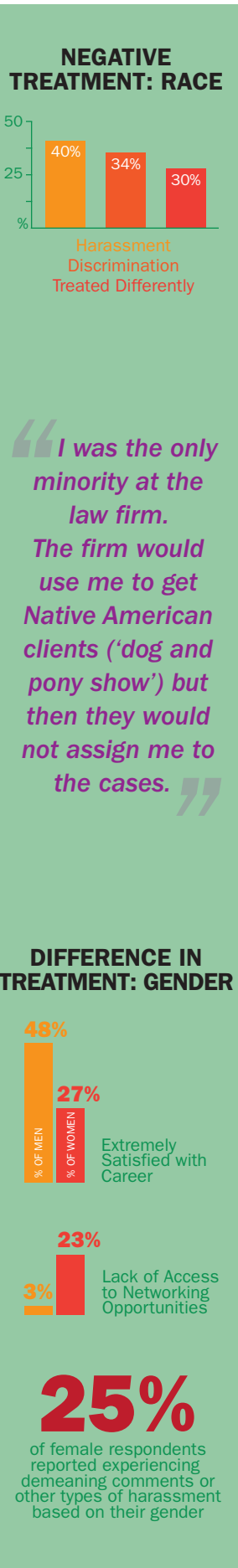
Even though there was overall satisfaction by attorneys working for tribes, some respondents did express that tribal politics, heavy workloads, and frustration with making a difference tempered the satisfaction. As for dissatisfaction in law firms, one respondent summarized his frustration: “Working 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 ... leading me to conclude that employment as an attorney in Indian law was not the best way to be an advocate.” Men were significantly more likely to report being “extremely satisfied” with their careers (48 percent) than their female colleagues (27 percent).

Experiencing the Profession

Some of the results of the study are disturbing. Although the overall satisfaction rate was generally high, 40 percent of respondents reported experiencing demeaning comments or other types of harassment based on their race, ethnicity, and/or tribal affiliation. Similarly, about 34 percent reporting experiencing discrimination, and 30 percent reported that they felt that they had been treated differently from their peers because of their race, ethnicity, and/or tribal affiliation. These numbers are intolerably high and indicate the experiential challenges faced by Native lawyers.

Experiences of Women Native American Attorneys

The study demonstrates a profound differential between the experiences of women and men, often in devastating terms. Men were significantly more likely to report being “extremely satisfied” with their careers (48 percent) compared with women (27 percent). A quarter of the female attorneys reported experiencing demeaning comments or other types of harassment based on their gender. More than 20 percent reported one or more forms of discrimination based on their gender. Sadly, many Native women also reported gender-based discrimination from male Native attorneys. “As a Native woman, I believe that we are



regarded as the least competent of all gender/race combinations and have to constantly prove our worth to organizations,” said one female attorney.

Exclusion from External and Internal Networks

Success in the legal profession often depends on access to both formal and informal networks. Unfortunately, Native American women reported being excluded from informal networks available to their male colleagues. Seven times more women (23 percent) than men (3 percent) experienced a lack of access to informal or formal networking opportunities that impacted the advancement of their careers. Women reported an “old boys’ network” in their work environments and said that men often felt uncomfortable socializing with female colleagues. One young lawyer recounted: “As an associate at a law firm with male supervisors, my social interactions with the supervisors were always quite formal, business-related, and alcohol-free. ... [W]hen a new male associate from another office of the firm came by, my supervisor immediately left to ‘get a few beers’ with him. I thought, ‘Man, I would have liked that!’ I occasionally wondered whether some men are simply uncomfortable socializing with women outside of work because they’re afraid of sending inappropriate signals.”

Outside of their work environments, women experienced a lack of access to clients and information necessary to advance their careers. One particularly riveting incident is recounted: “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.”

Disparity in Compensation

Reflecting unequal compensation among all women in the legal profession, Native women reported being denied appropriate compensation based on gender in multiples of 30 to 1 compared to men. This disparity in compensation was true regardless of the work environment.

One particularly riveting incident is recounted: “I was on a law journal, attended a top-five 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 socioeconomic background that you should be thankful for the opportunity to have a job!”

There was a continuing theme that there is discriminatory treatment when women have children, even for younger female attorneys. One young female attorney noted that “[g]ender has been an issue because so much is expected of young attorneys and if a female wants a family it is nearly impossible to have both. This is true for men as well, but there is an assumption that females’ work productivity will diminish. There is an assumption that male productivity will stay the same. I find this dangerous as well. Supervisors say it is good to focus on family, but then you don’t get the best assignments.”

Experiences of Younger Attorneys

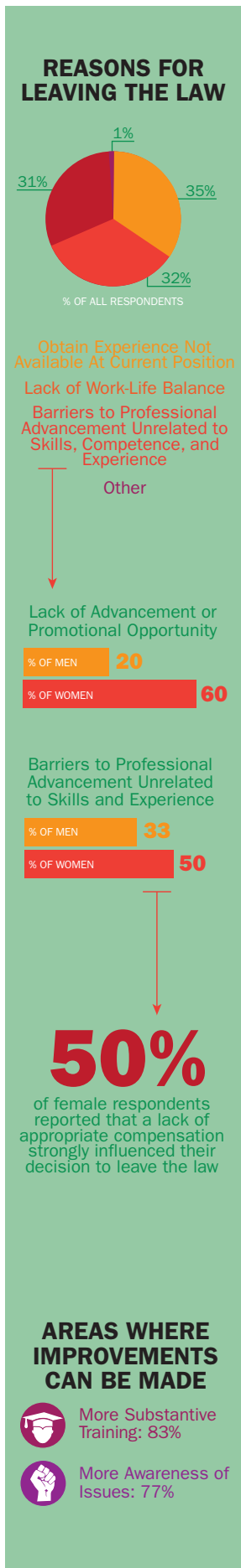
Generational differences were particularly pronounced. Overall, younger attorneys expressed more frustration with their experiences than more-senior attorneys. Many younger respondents commented on generational differences in how being Indian is perceived. As one lawyer lamented, “There is a big difference 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.”

Younger female attorneys who are Native often experience a double whammy that is the result of them being twice removed from those in power—white men—as both their race and gender are different. “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,” observed one lawyer. Another attorney put 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.”

Reasons for Leaving the Law

The experiences of exclusion, disrespect, and marginalization have led large numbers of Native lawyers to leave the law altogether. The top reason that respondents identified for leaving the law was to obtain experience that not available through their current position (35 percent). Respondents also identified a lack of work-life balance (32 percent) and barriers to professional advancement that were unrelated to skills, competence, and experience (31 percent).

For women, the reasons for leaving the law were different than men, confirming that there is gender bias in the profession. Three times more women (almost 60 percent) than men reported



that a lack of advancement or promotional opportunities strongly influenced their decision to leave the law. More than 50 percent of women, compared with 33 percent of men, reported that barriers to professional advancement unrelated to skills and experience strongly influenced their decision to leave the law. As further evidence that there is a pay gap in the legal profession that is exacerbated for Native women, almost 50 percent of Native women, compared with 20 percent of Native men, reported that a lack of appropriate compensation strongly influenced their decision to leave the law.

While work-life balance is often thought of as a women’s issue, one surprising differential here between women and men was that 60 percent of men, compared with only 48 percent 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 with age for this rationale in the population of respondents who have already left the law. In other words, men were more represented in the older age groups, and, generally, the older the attorney, the more likely he was to cite work-life balance as a reason he had left the law.

The study also polled attorneys currently employed in the legal profession for reasons that would influence them to leave the practice of law. Overwhelming, the main reason given was to obtain greater work-life balance (42 percent). The gender differences were similar with current practitioners, except that work-life balance was cited by more women (45 percent) than men (38 percent). Because men and women were more equally represented in various age groups within the group of current attorneys, this statistic seems a more accurate reflection of gender differences with respect to work-life balance as a reason to leave the law.

The Path to Inclusion

Biased perceptions of Native Americans often result in a lack of progress for Native American attorneys, and an overall lack of understanding about Native American issues and Indian law gives way to feelings of isolation and a lack of inclusion for Native American attorneys. Respondents reported that training and better awareness of Indian issues would have had positive impacts on their careers.

An overarching conclusion of this research is that traditional diversity and inclusion programs are not having an impact on Native American attorneys. “Inclusion” in these programs does not extend to Indian lawyers. One attorney summed up this exclusion: “I feel completely ignored in my firm’s diversity efforts. I’ve been made fun of be-

cause I've asked them to focus on Native American issues.”

There was a general feeling of isolation and marginalization, coupled with a tacit sense that excluding Native Americans or treating them disrespectfully is somehow sanctioned or perfectly acceptable. As one attorney succinctly stated: “It’s easy to ignore us because we have been ignored for so long that ignoring us feels natural to everyone.” Discrimination against Native Americans is not taken seriously because it often does not look like the kind of discrimination that workplaces are used to seeing with other minority groups. This societal or institutional ratification of discriminatory behavior distinguishes Native Americans from other underrepresented groups.

When Native Americans are included, sometimes it is with the thought that they should be compartmentalized to work only on Native American issues. Some respondents referred to this phenomenon as the ghettoization of Native Americans. The study suggests that some employers try to fit Native attorneys into a Native practice, and if there is not a Native practice, they seem to get omitted and disregarded altogether. This is highly problematic, and it is what makes the situation even more troublesome from an inclusion standpoint. So, while all minority attorneys may have trouble securing top positions in the legal profession, Native attorneys experience an additional burden in that their relevance is determined to be linked to their ability to bring in Native clients or work with Native people, so their individual qualifications may indeed be invisible.

A number of factors coalesce with respect to Native American attorneys that negatively impact their experiences. While any one factor would have a negative impact, the factors when combined result in the abysmal results of this study. One factor is the relatively small numbers of Native Americans in the legal profession. “There aren’t enough of us to make it feel like a bad thing,” said one respondent. “[T]he 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.” Another factor is the fact that Native Americans are the only group that has a completely separate area of law that governs relations with the federal government and with tribes. Because of this legal specialization and separation, there is a profound lack of understanding about Indian law and issues impacting Native Americans. In other words, because many non-Natives are not familiar with Indian law and many Native Americans practice Indian law, Native American attorneys are often further separated from the rest of the profession.

To offset the often grim results of the survey regarding the status of Native Americans in the legal profession, respondents were asked about areas in which improvements can be made. An overwhelming majority (83 percent) felt that more substantive training and development opportunities would have a positive impact, and about 77 percent reported that more awareness and understanding of issues faced by Native Americans would have a positive impact on their careers.

Given the marginalization of Native attorneys once they enter the legal profession and the resounding lack of effectiveness of diversity and inclusion programs with respect to Native attorneys, one interesting debate emerged from the research. Some respondents felt that legal workplaces need to be fixed first before more young Native Americans are thrust into the pipeline. One respondent expressed this view:

“I think working on the pipeline and recruiting are very impor-

tant, 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.”

On the other hand, another group of respondents felt that increasing the pipeline was the first step, as having more Native American lawyers in the work place would, in itself, help to fix some of the problems. 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 will 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 graduate law school ready to thrive as a lawyer.

Recommendations and Strategies for the Future

This study was designed not only to raise awareness about Native attorneys but to chart a path to greater inclusion in the pipeline, in law school, and in the profession.

The pipeline begins long before the decision to attend law school. There was a fundamental agreement among the respondents that more Native American students should be introduced to the possibility of a legal career at a young age and then provided with the tools, both financially and otherwise, to succeed. More opportunities should be created to learn about the law and the legal profession in elementary, middle, and high school. These programs can take the form of law days, mock trial competitions, or simply Native American attorneys visiting schools to talk about their lives and their experiences. As the lack of visibility is a recurring theme throughout the study, it should not be underestimated that including the story of even a single Native American attorney in pipeline materials sends a powerful message.

More than other groups, Native American attorneys report that their decision to attend law school was strongly influenced by family, friends, mentors, and lawyers. As such, community, social, and tribal networks can play an important role in encouraging young students to attend law school and to help more fully develop a robust pipeline from tribal communities.

Once the decision to attend law school is made, additional efforts can be made to ensure that more Native students are admitted into law school. The report notes the value of programs such as CLEO and PLSI but emphasizes that any pre-law program should actively recruit and include Native American students. It is clear from statistics showing that the total enrollment of Native students in the 2009–10 academic year is only 1,273 that additional efforts need to be made. Organizations that support scholarships and other financial assistance should make deliberate efforts to reach potential Native American law students.

Success in law school depends, similarly to success in the workplace, on strong support systems and both formal and informal net-

works. Much like NNABA for attorneys, establishing a National Native American Law Student Association (NNALSA) chapter can be a fantastic resource for support and professional development. Law schools and their career centers can learn more about the unique reasons that many Natives attend law school and then work to craft strategies to help them in their goals. Some law schools offer Indian law programs, and these programs can be further developed and improved. As Professor Casey Ross-Petherick, the head the Oklahoma City University School of Law American Indian Law and Sovereignty Center, stated: “Now we’re seeing more students interested in business diversification issues, people who want to go back to their tribes and help them develop their interests and ventures.”¹³

According to the report, there must be a concerted effort to include Native American attorneys in the social and professional life of institutions. Special and systemic efforts need to be made to better understand the experiences of Native attorneys and to make the firm culture as open and inclusive as possible. Because of the often small numbers of Indian attorneys in some settings, extra efforts need to be taken to ensure full integration. Indeed, a single Native attorney should not become the token for a whole population but should be judged on his or her individual merits.

For Native American women, clients can promote the full participation of Native women by exerting their considerable influence. The report also recommends that institutions view advancing Native women not simply as a work-life-balance or a work-family-conflict issue. Establishing support systems through both internal and external networks as well as affinity groups can help women navigate the often unwritten rules to success. Training in business development and rainmaking can also help empower women to greater longevity and success.

In terms of the pipeline, institutions must increase the awareness and integration of generational differences in hiring, training, development, and advancement efforts of Native American lawyers. For young Native lawyers, measures that worked for more seasoned lawyers might not work for Gen X, Gen Y, and millennials. At the heart of these measures should be effective mentoring and sponsorship programs. Mentoring programs, both formal and informal, provide a resource, sounding board, and advice to younger attorneys. Young attorneys, however, must not seek only mentors, but sponsors—more senior attorneys who will actually serve as an advocate, connecting them to important players and assignments.

Finally, for all of these efforts to make a difference, there needs to be accountability, whether it is for law schools, the government, or law firms. These institutions must make specific gains in the above areas part of the measure of the overall success of the organization.

Conclusion

The research reveals a young population of Native American attorneys with some cause for hope. Overall, however, 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.

One of the powerful findings of this study is not even the overt discrimination or implicit bias that Native American attorneys

American Indian Law Center’s Pre-Law Summer Institute

The most successful pipeline program that has produced the most Native American law students is the Pre-Law Summer Institute (PLSI) of the American Indian Law Center Inc., which has been housed at the University of New Mexico School of Law since 1967. When the program first began, only about 25 Native attorneys could be identified nationwide, but now more than 1,000 students have attended PLSI with a law school graduation rate of approximately 90 percent. In the early years, the program was funded by the Bureau of Indian Affairs. When federal funding was drastically reduced, the Law School Admission Council recognized the success and importance of this unique program and has supported it since 2005 in partnership with the Bureau of Indian Education.

The program prepares American Indian and Alaska Native students for the rigors of law school. To replicate the first semester of law school, the concentrated program includes eight weeks of instruction, research, and study that teach the incoming students the unique methods of law school research, analysis, and writing from law faculty selected from law schools all over the country. The two-month summer boot camp for American Indian and Alaska Native 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.

This nationally recognized orientation program is centered on solid legal education principles. For more than four decades, PLSI has remained dedicated to providing training for students to help them develop the skills necessary for the study of law, preparing for the rigors of law school. While the program has assisted some students with lower-than-average predictors, it is also a preparatory program for students with GPAs and LSAT scores in the top 5 percent. Many PLSI students have gone on to attend top law schools. The program has helped prepare many future leaders, some now representing their own tribes or becoming law professors, and others appointed to top state government posts or serving in top federal positions, including five assistant secretaries of the U.S. Department of Interior. Importantly, many have returned home to directly serve their communities as tribal government officials or as tribal court judges. ☺



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experience but their relative invisibility and the often 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 the failure of traditional diversity and inclusion efforts to reach Native American attorneys, the study sheds light on unique challenges facing American Indians in the legal profession, sometimes from other Native Americans and 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 still overt discrimination that some Native women attorneys experience, it appears that Native Americans are, in some ways, behind other under-represented groups.

It is clear that more—and different—steps need to be taken not only to improve the pipeline but to help Native American attorneys succeed—and to be included in the future of the legal profession. While the survey findings are most likely not surprising to Native American attorneys themselves, we hope the study will be eye-opening to the legal profession at large.

This research is a snapshot of the present, but it does not have to be predictive as well. Real changes need to be made, both from an institutional perspective and with more individualized measures. 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 front lines of pressing legal issues in their communities—from protecting tribal sovereignty to confronting higher-than-normal crime rates to developing innovative economic development projects. Forty years from now, I hope a different picture emerges with greater numbers of Native American attorneys not only surviving but thriving across all practice settings.



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Endnotes

¹The target group for this study was Native American lawyers. NNABA considers Native Americans to be American Indians, Alaska Natives, and Native Hawaiians. The terms Indian, American Indian, Native American, and Native are all used interchangeably to mean the indigenous peoples to what is now the United States. Indian is the term used in the federal constitution, and Title 25 of the U.S. Code is “Indians.”

²See, e.g., *Native American Attorneys: Small in Number, Not in Influence, Diversity and the Bar*, MINORITY CORPORATE COUNSEL ASSOCIATION (MCCA), available at www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=882 (“[T]he 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 *Lawyer Demographics*, AMERICAN BAR ASSOCIATION, available at www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf.

³Respondents were located through intensive one-on-one outreach and emails sent on organizational listservs.

⁴The American Indian and Alaska Native Population: 2010, U.S. CENSUS, available at www.census.gov/prod/cen2010/briefs/c2010br-10.pdf.

⁵*Id.* at 3-4.

⁶2011–2013 American Community Survey 3-Year Estimates, U.S. CENSUS, available at factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_3YR_S0201&prodType=table. Also available at www.streetinsider.com/Press+Releases/U.S.+Census+Bureau+Facts+for+Features%3A+American+Indian+and+Alaska+Native+Heritage+Month%3A+November+2014/10036749.html.

⁷See 4 HANDBOOK OF NORTH AMERICAN INDIANS: HISTORY OF INDIAN-WHITE RELATIONS (William C. Sturtevant, gen. ed. & Wilcomb E. Washburn, vol. ed. 1989).

⁸See *Morton v. Mancari*, 417 U.S. 535 (1974).

⁹American Indian or Alaska Native J.D. Enrollment (1971-2010), AMERICAN BAR ASSOCIATION, available at www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_11.authcheckdam.pdf.

¹⁰Brian Brus, Law Schools Prepare Students for Tribal Issues, NATIVE AMERICAN TIMES (Dec. 14, 2014), available at www.nativetimes.com/index.php/life/education/10924-law-schools-prepare-students-for-tribal-issues.

¹¹For more information on the box-checking phenomenon, see Lawrence Baca, American Indians and the ‘Box Checker’ Phenomenon, IILP REVIEW 2011: THE STATE OF DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION, available at nylawyer.nylj.com/adgifs/decisions/090611diversity.pdf.

¹²In 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 include the law that is applied in federal court, whereas tribal law would be the law of a particular tribe that is applied in tribal court. Indian law can be seen as encompassing both federal Indian law and tribal law.

¹³Brian Brus, Law Schools Prepare Students for Tribal Issues, NATIVE AMERICAN TIMES (Dec. 14, 2014), available at www.nativetimes.com/index.php/life/education/10924-law-schools-prepare-students-for-tribal-issues.