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Groundbreaking Survey:

NATIVE AMERICAN ATTORNEYS NOT FULLY INCLUDED IN LEGAL PROFESSION

BY MARY SMITH



More than 40 years after the arrival

of a significant wave of Native American lawyers, 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 often the number of Native Americans participating in these projects has relegated them to a footnote—if they are mentioned at all.

In order 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 titled “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, the findings in this study will be used to develop educational materials and programs that will help improve the recruitment, hiring, retention and advancement of Native American attorneys in the legal profession.



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

The Complexity of Simply Being an Indian

A general definition of who is an Indian can be found in the *Smithsonian Handbook of North American Indians*.² There would be three components: the individual would: (1) have ancestors who were in America before the arrival of Europeans; (2) be recognized by the community where they live or where they are originally from as Indian; and (3) hold his/herself 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 work settings or social settings.

Pipeline Into Law School

The growth of Native American law student enrollees per year has increased from 392 in 1979-80 to 1,273 in 2009-2010, yet the percentage growth of Native Americans in relation to the overall law student population has been miniscule, from 0.32 percent in 1979-80 to 0.82 percent in 2009-2010.³

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 (LSSSE) generally identifies the desire to have a challenging and rewarding career and financial security as two primary reasons to attend law school.

In contrast, NNABA’s survey respondents chose to attend law school for reasons that are unique to Native Americans. 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.

Law School Information and Support Systems

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

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the military, and a feeling of destiny or spiritual guidance that 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

ones cited in this study were financing law school (costs for application, LSAT preparation, tuition and room/board); 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

A large number of the survey respondents indicated that they wanted to serve their tribe or help protect tribal sovereignty. In fact, more than 20 percent of respondents practice in the tribal sector. The next five predominant practice settings are (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 5.7 percent in private law firms with over 501 attorneys. The overwhelming majority (over 63 percent) reported focusing on Indian law. (See table “Workplaces” on p. 18.)

Practice Areas

The overwhelming majority reported that their practice focuses 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 practice in a tribal setting, the largest three practice areas were federal Indian law (64 percent), Indian law (64 percent), and tribal law (59 percent).⁴ (See table “Areas of Law” on p. 17.)

After the three top areas relating to Indian law, the following practice areas were also identified by over 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).

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, the 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.

One 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 dif-

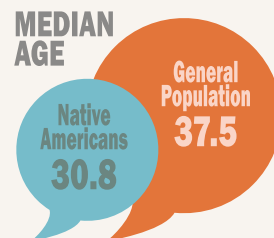
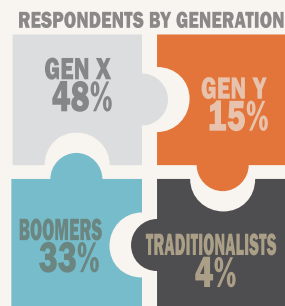
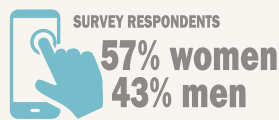
METHODOLOGY, STRATEGY, DEMOGRAPHICS

There are only 2,640 Native Americans attorneys in the United States, comprising 0.2 percent of the over 1.2 million attorneys in the United States.¹ About 20 percent of the entire Native American attorney population in the United States responded to the survey. 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 57 percent, and men 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 and 54 one-on-one confidential telephone interviews with 23 men and 31 women.

The Native American population is young, with the median age for Native Americans of 30.8 compared to 37.5 for the U.S. population as a whole.² Not surprisingly then, Gen X (born between 1965 and 1980), representing almost 50 percent of the respondents, and Gen Y (born after 1980) at 15 percent, made up the majority of the respondents to the survey. Persons born before 1946, referred to as Traditionalists, represented 4 percent, and Baby Boomers (born between 1946 and 1964) 33 percent.

NNABA’s survey respondents were younger than the legal profession as a whole, thus 43 percent of respondents had practiced less than 10 years, with 20 percent practicing less than 5 years and 22 percent practicing between 6 and 10 years. Rounding out the responses, 17 percent practiced 11 to 15 years, 12 percent had practiced from 16 to 20 years, and 28 percent had practiced for more than 21 years.



1. See, e.g., Minority Corporate Counsel Association (MCCA), Native American Attorneys: Small in Number, Not in Influence, Diversity and the Bar, available at 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 www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf.
2. U.S. Census, 2011-2013 American Community Survey, available at http://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.

ference 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."

Even though there was overall satisfaction by attorneys working for tribes, some respondents expressed that tribal politics, heavy workloads, and frustration with making a difference tempered the satisfaction. Men were significantly more likely to report being "extremely satisfied" with their careers (48 percent) than were their female colleagues (27 percent).

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.

Experiencing the Profession

The results of the study are disturbing. A significant percentage of Native American attorneys experience demeaning comments, harassment, and discrimination. 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 reported 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 overall numbers are intolerably high and indicate the experiential challenges faced by Native lawyers.

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.

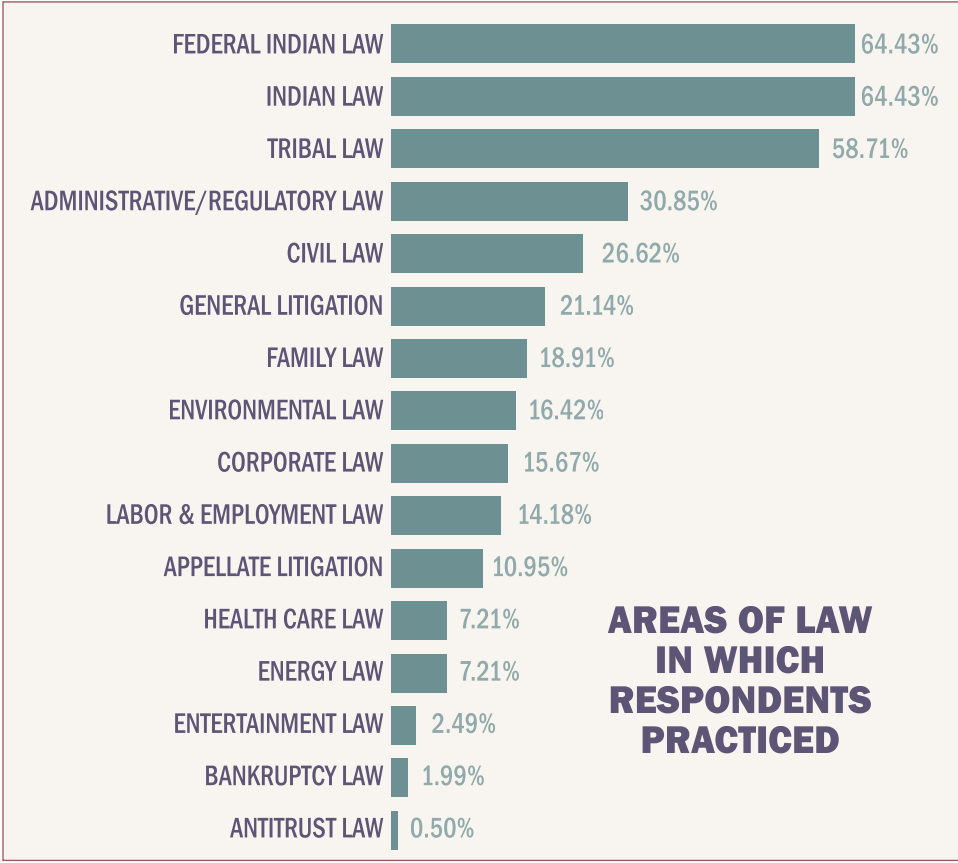
The Path to Inclusion

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.

Traditional diversity and inclusion programs are not reaching Native American attorneys. "Inclusion" in these programs does not seem to extend to Indian lawyers.

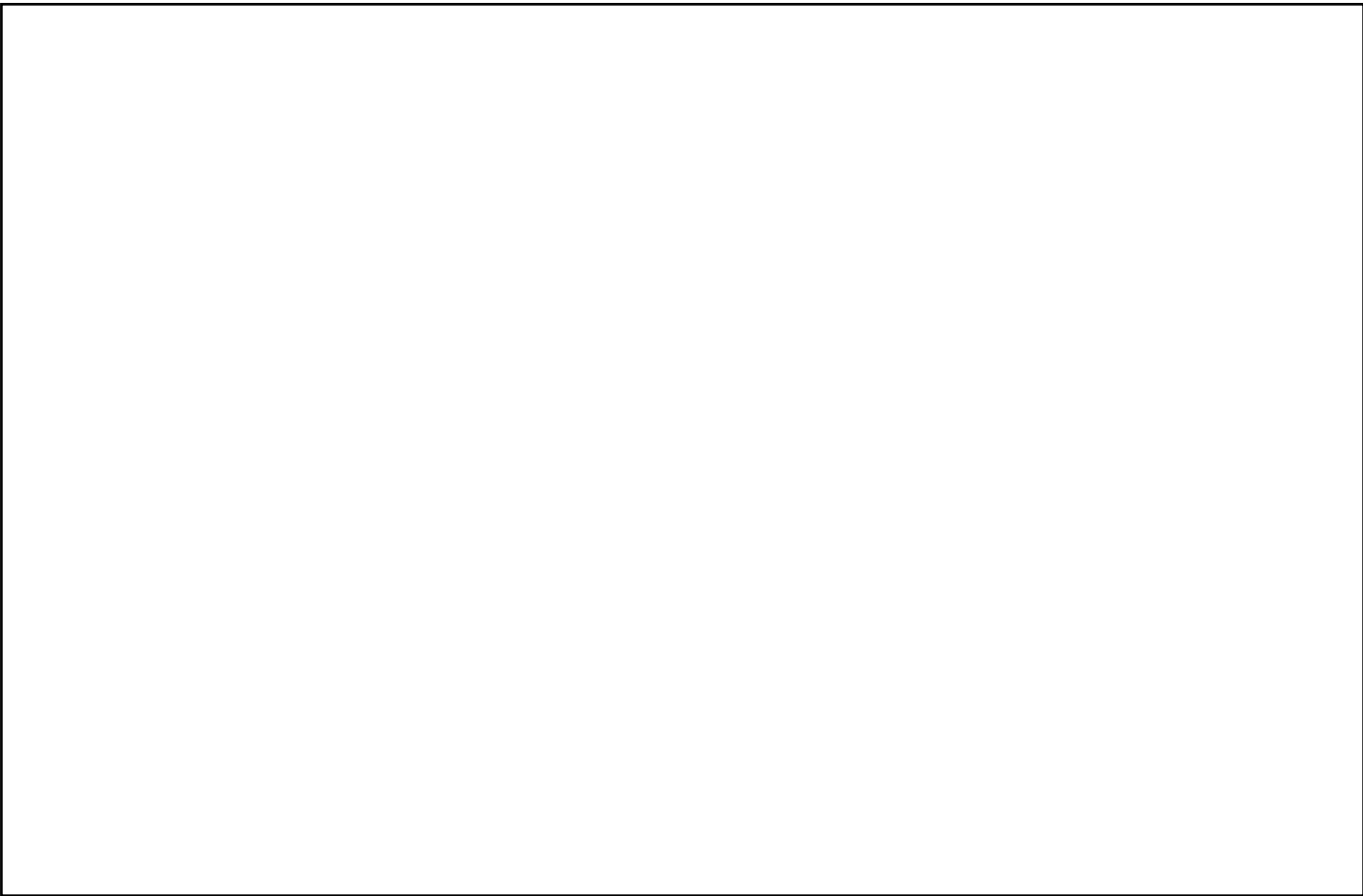
One attorney summed up this exclusion: "I feel completely ignored in my firm's diversity efforts. I've been made fun of because I've asked them to focus on Native American issues."

When respondents were asked about areas



in which improvements can be made to alleviate the concerns they expressed, 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.

There is a larger debate within the community of Native American attorneys as to where resources and activities should be focused and prioritized. Whereas 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 to increase the number of Native Americans practicing with and for Native American tribes. This debate 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



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financially and otherwise so they graduate law school ready to thrive as a lawyer.

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.

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 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 Council on Legal Education Opportunity (CLEO) and PLSI, but emphasizes that every pre-



law program should actively recruit and include Native American students.

Like success in the work place, success in law school depends on strong support systems and both formal and informal networks. Much like NNABA for attorneys, establishing a National Native American Law Student Association (NNALSA) chapter can be a valuable resource for support and professional development. Law schools and their career centers can learn more about the unique reasons that many Native students attend law school and then work to craft strategies to help them in their goals.

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.

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.

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

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. Years from now, it is hoped, a different picture will emerge with greater numbers of Native American attorneys not only surviving but thriving across all practice settings.

COMPLETE REPORT AVAILABLE: To download the full report and executive summary, go to www.nativeamericanbar.org/native-american-attorney-study/

endnotes

1. The target group for this study was Native American lawyers. NNABA includes Native Americans, American Indians, Alaska Natives and Native Hawaiians. The terms Indian, American Indian and Native American 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 United States Code is “Indians.”
2. See 4 HANDBOOK OF NORTH AMERICAN INDIANS: HISTORY OF INDIAN-WHITE RELATIONS (William C. Sturtevant gen. ed. and Wilcomb E. Washburn vol. ed.) (1989).

3. American Bar Association, American Indian or Alaska Native J.D. Enrollment (1971-2010), available at www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_11.authcheckdam.pdf.
4. 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.”