



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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ADMINISTRATIVE ASSISTANT
Jennifer Williams

National Native American Bar Association

P.O. Box 11145
Tempe, AZ 85284
www.nativeamericanbar.org

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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.

This study is about Native American attorneys and their pursuit for full inclusion in the legal profession. This study is also about the profession itself and the choices it will have to make about how to be more inclusive of Native Americans.

Methodology and General Sample Demographics

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

Quantitative Survey and Survey Sample Demographic

The survey captured information from, 527 Native American attorneys, approximately 20% of the 2,640 Native American attorneys² in the United States which would net a sample with a 99% confidence interval and a confidence interval of +/- 5 points.

- Women comprised 57.18% and men comprised 42.82%.
- Generational Representation: Traditionalists (born before 1946) - 4.59%; Baby Boomers (born between 1946 and 1964) - 32.91%, Gen X (born between 1965 and 1980) - 47.7%, and Gen Y (born after 1980) - 14.8%.
- Age at Law School Graduation: 68.78% graduated between the ages of 25 to 34; 16.5% graduated when they were 24 or younger. 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.
- Tier of Law School & Class Rank At Graduation: 28.32% of the study participants graduated from a Top 20 law, 29.82% graduated from a law school ranked between 21 and 50. 22% graduated in the top quartile of their class with 7% graduating in the top 10% of the class.
- Tenure of Practice: 45% of the survey respondents had practiced for less than 10 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%) vs. 45.18% of men.
- Marital Status and Responsibility for Household: 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%). The survey respondents overwhelmingly (70%) had shared or primary responsibility for children under the age of 18. 61.73% of the respondents were the sole or primary income provider for their household.

Focus Group & Interviews

The qualitative component began with one focus group that consisted of a facilitated discussion with Native American attorneys and by 54 individual self-selected and confidential telephone interviews consisting of 23 interviews with men and 31 interviews with women.

Summary of Findings

Four key areas of findings emerged from this comprehensive study: (1) the extraordinary complexities and challenges of identifying and living as a Native American lawyer; (2) unique pipeline challenges; (3) the particular professional development opportunities and challenges faced by Native American lawyers; and (4) the specific personal satisfaction, inclusion and alienation experienced by Native American lawyers in the legal profession.

The foundational finding in which all four areas were rooted was that *neither understanding diversity in general nor the experiences of other racial/ethnic groups scratched the surface of understanding the distinctive experiences of Native American lawyers.*

The Complexity of Simply Being an Indian

Native Americans are 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, sometimes “being an Indian” requires wide-ranging

criteria from belonging to a federally-recognized tribe to proving blood relations to tribal members in highly quantified ways. These types of criteria stand in sharp contrast to the way other racial/ethnic minorities are defined and create unique challenges in understanding who is Native American and how we measure progress for a group of people for whom belonging to the group is by itself a complex process.

Pipeline into Law School/Legal Profession

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. 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 2009–2010.³ These statistics unfortunately carry a degree of unreliability 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 in the hope of receiving some sort of preferential treatment.⁴ Few law schools look for any criteria beyond the self-identification of applicants to determine whether an applicant is “actually” Native American.

Differences in Motivations/Incentives for a Law School Education

When asked about their motivations to pursue a legal education, Native American attorneys 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. It is equally necessary to encourage Native Americans to consider law school and a legal profession for more than a career in Indian Law. 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

When asked what factors influenced them to go to law school, Native American attorneys reported that the following factors influenced their decision to attend law school:

- Over 60% said connections made and/or information received through family members and friends and/or tribal networks;
- Only 14% said college and/or law school career placement offices and/or alumni networks.

Attorneys also noted that the American Indian Law Center’s Pre-Law Summer Institute, active service in the military and/or law enforcement, and a feeling of destiny or spiritual guidance led them to the law.

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

- financial, including costs for applications, LSAT preparation, tuition, and room/board costs);

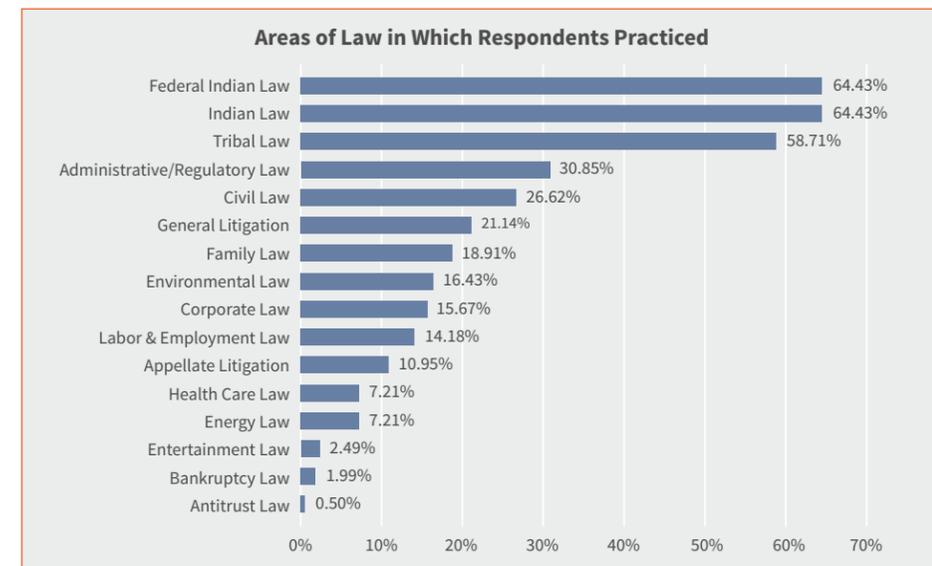
- making informed decisions about the best law schools to attend and navigating the application process;
- knowing how to prepare to be successful in law school; and creating the social networks in law school to get the information and resources necessary for success.

Professional Development Opportunities and Challenges in the Profession

The Landscape



Almost 22% of all survey respondents reported working in the tribal sector. Of the nine sectors surveyed 19% reported working in federal or state government or non-profit service and only 8% in private law firms. Almost 65% of all respondents reported working in Indian law or federal Indian law. The next three largest categories were Administrative/Regulatory (30.85%), Civil (26.62%) and General Litigation (21.14%).⁵



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 as an attorney in a private law firm of less than 50 attorneys.

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/pressure them to contribute to the Indian Law practice or that 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.

Personal Experiences of Satisfaction, Inclusion and Alienation in the Profession

Overall Career Satisfaction

- 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.
- Men were significantly more likely to report being “extremely satisfied” with their careers (48.48%) than their female colleagues and counterparts (27.15%).

Experiencing the Profession

- 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;
- 25% of attorneys overall in the study reported experiencing demeaning comments or other types of harassment based on their gender; and
- 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. Women also reported that they faced challenges due to being perceived as less committed because they were mothers.
- 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. This included Native Americans not being seen as an important aspect of diversity and inclusion efforts that required deliberate focus because of their relatively small numbers, a failure to understand the Native American experience and that it included race based discrimination just like other minority groups.

Experiences and Exits

When asked what would influence them the most to leave the law, women reported at higher rates than men lack of access to networking opportunities, lack of advancement and appropriate compensation and a failure to provide mentoring and the information necessary to succeed in their place of business. Native American women also reported high rates of gender bias (33%) and racial bias (26%) as reasons they might leave the practice of law.

The factors that men were more likely than women to cite as strongly influencing their decisions to leave the law included a lack of racial/ethnic diversity in their workplaces (33.34%) and a lack of American Indian/Native Alaskans in their workplaces (40%) as strongly influenced them to leave the law.

Additionally, 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.

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.

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: work-life balance, the desire to work for an organization/profession which offers advancement opportunities not currently available to them, the desire to avoid barriers to professional advancement that are unrelated to skills, competence and/or experience, gender bias and racial/ethnic bias.

The Path to Inclusion

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

1. 83.1% the attorneys in this study reported more substantive training and development opportunities. 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 in this study reported that more awareness and understanding of issues faced by Native Americans would have a positive impact on their careers. 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 given the ways diversity and inclusion initiatives have largely ignored the issues and concerns of Native American attorneys.

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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.
 4. 75.42% of the attorneys in this study 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.
 5. 72.34% of the attorneys in this study reported that a greater opportunity to influence decisions on matters/cases on which they work(ed) would have a positive impact on their careers.
 6. 68.78% of the attorneys in this study reported that more colleagues who identified as American Indian/ Native Alaskan would have a positive impact on their careers.
 7. 61.67% of the attorneys in this study 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.
 8. 57.06% of the attorneys in this study reported that more supervisors who were racially/ethnically diverse would have a positive impact on their careers.

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

I. 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. All outreach efforts to make racial and ethnic minority students aware of financial opportunities must 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.

II. 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.

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.

III. 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.

IV. Generational Inclusion Strategies

Increase awareness and integration of generational differences in hiring, training, development, and advancement efforts of Native American lawyers. Recognize and integrate an understanding of how generational differences may impact how younger Native American attorneys identify, express and manifest their Native American identities.

V. 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 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.

Endnotes

¹ See www.nativeamericanbar.org.

² 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). 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 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.

⁴ For 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 <http://nylawyer.nylj.com/adgifs/decisions/090611diversity.pdf>.

⁵ The categories are not exclusive of each other.