

P.O. Box 11145
Tempe, AZ 85284
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June 26, 2020

The Center for Women in Law
Veronica.Stidvent@law.utexas.edu
Executive Committee

The NALP Foundation
FHornblower@nalpfoundation.org
JMandery@nalpfoundation.org
Board of Trustees
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Re: Exclusion of Native American Women Law Students from “Women in Color – Law School Experiences” Study

Dear Organization Officers:

On Wednesday, June 15, 2020, The Center for Women in Law (CWIL) and The NALP Foundation (NALP) issued a national press release on the publication of their newly released “Women of Color - Law School Experiences” study. The study is described as a “first-of-its-kind report detailing the educational and social experiences of women of color in law school across the country.” In the press release, the women of color responses analyzed in the study were set forth as follows: “Asian/Pacific Islander, Black/African-American and Hispanic women/Latinas comprised the majority of the women of color respondents.” Glaringly absent from this list are Native American/American Indian/Alaska Native women of color. When reviewing the study, numerous charts, illustrations and qualitative responses are set forth and all fail to include Native American women of color. This failure reflects an ongoing issue in the legal profession to undervalue and exclude Native American voices.

National Native American Bar Association (NNABA) leadership, Native American law professors, and other supporters have identified numerous issues with the study and expressed their concerns to NALP and the CWIL during a conversation on June 19, 2020.

The concerns fall into four categories.

1. Invisibility of Native law students in the study;
2. Lack of Native Americans in the Planning of the study;
3. Flaws in the Methodology of the study; and
4. Misrepresentations in the study.

1. Invisibility of Natives in the study - It is NNABA’s position that the survey serves to further legitimize the exclusion of Native Americans in studies about Native Americans in the legal profession. The study only includes Native Americans in the aggregate data and excludes Native Americans from the executive summary and the descriptive part of the report. This omission contributes to the marginalization of Native Americans and perpetuates 500 years of genocide and inequity. It also sends a message to current and future Native American law students that they are not a part of the future of the

legal profession. The harm will likely also negatively affect the careers of current and future Native American women lawyers.

2. Lack of Native Americans in the Planning of the study - The study contains a list of about 40 advisors and, to the best of our knowledge, not one is Native American. With so many advisors and not having one as Native, seems to make clear that Natives were not even included in the planning of the study. And, if even one Native American had been included, it is almost certain that Native law students would have been fully included in the study. For hundreds of years, Native Americans have often not had a seat at the table and have had decisions made for them, and, unfortunately, this study perpetuates this long history

3. Flaws in the Methodology of the study - The study's design was flawed and did not attempt to secure voices of all women of color. Despite the omission of one of the core groups of women of color, the report reads like it is a representative and generalizable study of the experiences of women of color. The report is not generalizable or representative. The report describes the experiences of only Hispanic/Latina, Black/African American, and Asian/Pacific Islander law students at 46 law schools during one academic year (2017-18). The methodology allowed for schools and its students to self-select and included no effort to obtain a representative sample. Also, there was not a particular number of responses that was set as a goal for the study - rather, the study was concluded when you felt that you had reached a big response. It was stated that this is the methodology that NALP uses for all its studies - which reveals a problem beyond this study. The report, however, does not explain the limits of its findings or even transparently explain the research design and methodology used to collect the data it reports. Native American researchers, many of who are empiricists, noted the study has serious methodological flaws, including the use of a convenience sample based on self-selecting participants rather than a research design structured to target women of color and ensure their participation, a sample size too small to say anything useful about Native women, and the use of statistical analyses without any discussion of the racial biases inherent in them.

There was no effort to do any concerted outreach for particularly underserved populations, including targeting schools with Indian programs or circulating the study to national affinity groups such as the National Native American Law Students Association. Further, even with the low response rate from Native Americans, aggregate data and analysis could have included a Native American perspective. Study authors informed us that they could not aggregate the data because of confidentiality concerns and the IRB requirements. However, since the law schools were not listed, there is no risk of breaking any confidentiality or identifying who produced the response, If the study authors were truly committed to getting a diverse pool, they could have reached out to Native American programs to secure sufficient Native American responses in the aggregate data. Yet the report fails to acknowledge these problems and how they have led to a serious informational bias (the exclusion of Native American women).

4. Misrepresentations in the Title of the study – Since the study essentially bills itself as a study of all female law students of color, our position is that is a misrepresentation since Native Americans are essentially excluded. Approximately 4,000 students from 46 of 203 law schools participated in the study through self-selection. Because the Native American voice is missing, the study cannot continue to claim that it is truly a study of all women of color across the country.

As a result of these concerns, NNABA is requesting that the study be withdrawn and redone so that Natives can be included in a meaningful way. NNABA and multiple Native American and non-native

law professors have offered to assist in the outreach to Native American women law students to serve as study participants. If you are not willing to withdraw and redo the study to include Native American women law students, we request an apology for the omission of Native American women law students from the report and would call for the attachment of the apology to the study permanently on the web site locations where it is housed as well as a distribution of the apology in a news release to the same entities that were sent the June 17, 2020 news release.

Unfortunately, after preliminary outreach, NALP and CWIL have stated that they would not withdraw the study but would try to provide some clarifications and note the lack of responses from Native law students. NNABA and its supporters believe that at the very least this type of clarification would be inadequate, and it could even make the situation worse. Indeed, the language added after the June 19th conversation has led to a distrust of your organizations for failing to consult.

NNABA hopes that there can be a continuing dialogue to try to reach some outcome where the vibrancy and perspectives of Native American law students are fully included in this research. We believe that the voices of Native Americans matter and that these systemic exclusions continue to perpetuate harm in both the profession and our pipeline. We hope that by identifying the problems with this study that you can join us in advancing all women of color, including Native American women, in the profession. We appreciate your consideration of this request.

Sincerely,

Thomasina Real Bird Ihanktonwan Nakota, Sicangu Lakota President, 2020-2021 National Native American Bar Association Founding Partner Patterson Earnhart Real Bird & Wilson LLP Email: trealbird@nativelawgroup.com	Lauren van Schilfgaarde Cochiti Pueblo Board Member National Native American Bar Association Tribal Legal Development Clinic Director UCLA School of Law Email: vanschilfgaarde@law.ucla.edu
Paulene Abeyta Navajo Nation President National Native American Law Students Association Email: nnalsa.president@gmail.com	Geneva E. B. Thompson Cherokee Nation Board Member Young Lawyers Committee Chair National Native American Bar Association Email: gebthompson@gmail.com
Colleen Lamarre Mohawk Board Member National Native American Bar Association Email: colleen.lamarre@pillsburylaw.com	Katie Jones Cherokee Nation Board Member National Native American Bar Association Email: ktjones@gmail.com

<p>Mary Smith Cherokee Nation Past President, NNABA Vice Chair, VENG Group Email: marysmith828@hotmail.com</p>	<p>Irene Oria National President Hispanic National Bar Association Email: president@hnba.com</p>
<p>Patty Ferguson-Bohnee Pointe-au-Chien Past President, NNABA Sandra Day O'Connor College of Law, Arizona State University Email: pafergus@asu.edu</p>	<p>Susan Allen Rosebud Sioux Tribe Attorney Email: susan_allen@live.com</p>
<p>Lawrence R. Baca Pawnee Past President, NNABA Email: lawrence.baca@yahoo.com</p>	<p>Swethaa S. Ballakrishnen Assistant Professor of Law University of California Irvine Email: sballakrishnen@law.uci.edu</p>
<p>Joel West Williams Cherokee Nation Past President, NNABA Email: williams@narf.org</p>	<p>Ahtza Chavez Diné & Kewa Pueblo Treasurer NALSA UNM School of Law Email: chavezol@law.unm.edu</p>
<p>John Echohawk Pawnee Executive Director Native American Rights Fund Email: jechohwk@narf.org</p>	<p>Grant Christensen Associate Professor of Law Director of the UND Indian Law Program University of North Dakota Email: grant.t.christensen@und.edu</p>
<p>Jerry Gardner Cherokee Executive Director Tribal Law and Policy Institute NNABA Delegate to ABA House of Delegates Email: jerry@tlpi.org</p>	<p>Richard Collins Professor University of Colorado Email: richard.collins@colorado.edu</p>
<p>Rose Petoskey Grand Traverse Band of Ottawa and Chippewa Indians President, 2020-2021 Native American Bar Association of Washington, DC Email: rose.petoskey@dentons.com</p>	<p>Sarah Deer Mvskoke University Distinguished Professor University of Kansas Email: sarah.deer@ku.edu</p>

<p>Cara DiMare Email: cara.dimare@sittingbull.edu</p>	<p>James Grijalva Friedman Professor of Law University of North Dakota School of Law Email: james.grijalva@und.edu</p>
<p>Angelique EagleWoman Sisseton-Wahpeton Dakota Oyate Visiting Professor Mitchell Hamline School of Law Email: Angelique.EagleWoman@mitchellhamline.edu</p>	<p>Catherine Grosso Professor Michigan State University College of Law Email: grosso@law.msu.edu</p>
<p>Eric D. Eberhard Affiliate Assistant Professor of Law University of Washington School of Law Email: ee23@uw.edu</p>	<p>Jacqueline Hand Professor University of Detroit Mercy Law School Email: handjp@udmercy.edu</p>
<p>Joshua Fershee Dean and Professor of Law Creighton University School of Law Email: JoshuaFershee@creighton.edu</p>	<p>Alia Hawkins Eastern Band of Cherokee Email: alia.hawkins@mitchellhamline.edu</p>
<p>Matthew Fletcher Grand Traverse Band of Ottawa and Chippewa Indians Professor Michigan State University College of Law Email: matthew.fletcher@law.msu.edu</p>	<p>Dylan R. Hedden-Nicely Cherokee Nation Associate Professor University of Idaho, College of Law Email: dhedden@uidaho.edu</p>
<p>Carla Fredericks Mandan Hidatsa Arikara Nation Clinical Professor University of Colorado Law School Email: carla.fredericks@colorado.edu</p>	<p>Kysa Huddleston Email: kysa.huddleston@mitchellhamline.edu</p>
<p>Gabriel S. Galanda Round Valley Indian Tribes of California Former Board Member, NNABA Attorney Galanda Broadman, PLLC Email: gabe@galandabroadman.com</p>	<p>Esther Jamison Tribal Law Journal Email: jamisoes@law.unm.edu</p>
<p>Julia A. Giffin Sac and Fox Nation Email: jag565@cornell.edu</p>	<p>Jerrod Johnson Creek JD Candidate Mitchell Hamline School of Law Email: jerrod.johnson@mitchellhamline.edu</p>

<p>José Roberto Juárez, Jr. Professor of Law University of Denver Sturm College of Law Email: bjuares@law.du.edu</p>	<p>Jessica Martinez Chihene Nde Nation of New Mexico (Apache) Editor-in-Chief Tribal Law Journal Email: martinjes@law.unm.edu</p>
<p>Sarah Krakoff Moses Lasky Professor of Law University of Colorado Law School Email: Sarah.Krakoff@colorado.edu</p>	<p>Dr. Kirsten Matoy Carlson Associate Professor of Law Wayne State University Email: kirsten.carlson@wayne.edu</p>
<p>Elizabeth Kronk Warner Sault Ste. Marie Tribe of Chippewa Indians Dean, S.J. Quinney College of Law University of Utah Email: elizabeth.warner@law.utah.edu</p>	<p>Robert J. Miller Eastern Shawnee Professor Sandra Day O’Connor College of Law Arizona State University Email: robert.j.miller@asu.edu</p>
<p>Stacy Leeds Cherokee Nation Dean Emeritus and Professor of Law University of Arkansas Email: leeds@me.com</p>	<p>Monte Mills Associate Professor Director of Margery Hunter Brown Indian Law Clinic Alexander Blewett III School of Law University of Montana Email: monte.mills@umontana.edu</p>
<p>Dan Lewerenz Iowa Tribe of Kansas and Nebraska Staff Attorney Native American Rights Fund Email: lewerenz@narf.org</p>	<p>Richard A. Monette Turtle Mountain Band of Chippewa Professor University of Wisconsin Law School Email: richard.monette@wisc.edu</p>
<p>Vicki J. Limas The University of Tulsa College of Law Email: vicki-limas@utulsa.edu</p>	<p>Steven Moore Senior Staff Attorney Native American Rights Fund Email: smoore@narf.org</p>
<p>Kevin Maillard Seminole Nation Professor of Law Syracuse University Email: maillard@syr.edu</p>	<p>Makalika Destarte Naholowaa Native Hawaiian Policy Committee Chair, National Native American Bar Association Chief of Staff to the General Counsel and Assistant General Counsel, Microsoft Corporation Email: manah@microsoft.com</p>

<p>Michael Oeser Cherokee Nation Associate Professor Senior Fellow, SULC NALPI Southern University Law Center Email: moeser@sulc.edu</p>	<p>Leah Sixkiller Red Lake Band of Chippewa Indians Associate Faegre Drinker Biddle & Reath Email: leah.sixkiller@faegredrinker.com</p>
<p>Brooke Pinkham Nez Perce Director Center for Indian Law and Policy Email: pinkhamb@seattleu.edu</p>	<p>Alex Skibine Osage Nation Professor University of Utah College of Law Email: alexander.skibine@law.utah.edu</p>
<p>Kristen Polk San Carlos Apache Tribe Events & Outreach Editor Tribal Law Journal Email: polkkr@law.unm.edu</p>	<p>Max Spivak Submissions Editor Tribal Law Journal Email: spivakma@law.unm.edu</p>
<p>Trevor Reed Hopi Associate Professor of Law Arizona State University Email: trevor.g.reed@gmail.com</p>	<p>Michalyn Steele Seneca Nation Francis R. Kirkham Professor of Law BYU Law Email: steelem@law.byu.edu</p>
<p>Collette Routel Professor of Law Co-Director of Indian Law Program Mitchell Hamline School of Law Email: collette.routel@mitchellhamline.edu</p>	<p>Victoria Sutton Lumbee Associate Dean for Digital Learning and Graduate Education Paul Whitfield Horn Professor Texas Tech University School of Law Email: vickie.sutton@ttu.edu</p>
<p>Sudha Setty Dean and Professor of Law Western New England University School of Law Email: sudha.setty@law.wne.edu</p>	<p>Heather Tanana Navajo Assistant Professor of Law (Research) S.J. Quinney College of Law University of Utah Email: tananah@law.utah.edu</p>
<p>Gregory Silverman Mohegan Tribe of Indians of Connecticut Associate Professor of Law Faculty Director, Center for Indian Law and Policy Seattle University School of Law Email: gmsilver@seattleu.edu</p>	<p>Melissa L. Tatum Research Professor of Law University of Arizona Email: mtatum@arizona.edu</p>

<p>Sherrri Nicole Thomas Taos Pueblo Associate Dean of Institutional Culture and Equity University of New Mexico School of Law Email: thomas@law.unm.edu</p>	<p>Robert A. Williams, Jr. Lumbee Tribe of North Carolina Regents Professor Faculty Co-Chair of the Indigenous Peoples Law and Policy Program The University of Arizona Email: lumbee@arizona.edu</p>
<p>Ann Tweedy Associate Professor University of South Dakota Email: ann.tweedy@usd.edu</p>	<p>Verna Williams Dean and Nippert Professor of Law University of Cincinnati College of Law Email: verna.williams@uc.edu</p>
<p>Gloria Valencia-Weber Mexican Indigenous Emerita Professor University of New Mexico School of Law</p>	<p>Marcia Zug Professor of Law University of South Carolina School of Law Email: zug@law.sc.edu</p>
<p>Jack F. Williams Professor Georgia State University College of Law Email: jwilliams@gsu.edu</p>	