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Storytelling and Truth-Telling: Personal Reflections on the Native American Experience in Law Schools

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Storytelling and Truth-Telling: Personal Reflections on the Native American Experience in Law Schools

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**STORYTELLING AND TRUTH-TELLING: PERSONAL
REFLECTIONS ON THE NATIVE AMERICAN EXPERIENCE
IN LAW SCHOOLS**

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I. INTRODUCTION

*Angelique EagleWoman (Wambdi A. Was'te Winyan)*¹

In January of 2021, the American Association of Law Schools (“AALS”) theme was *Freedom, Equality and the Common Good*. The Indian Nations and Indigenous Peoples Section of the AALS embraced the theme and announced a call for personal reflections incorporating the experiences of Native Americans in law schools. The theme of striving for academic freedom and equality allows for an in-depth questioning of whether Native Americans have been adequately and appropriately represented in legal curricula in the nation’s approximately two hundred law schools. The aspirational goal of realizing the common good must be inclusive of Native American voices as students, faculty, staff, and graduates and in curricula choices in law schools across the country.

There has been sparse legal scholarship on the experience of Native American applicants, law students, faculty, and staff in law schools. The Indigenous perspective essays in this compilation are an opportunity to hear the voices of Indigenous peoples on their lived experiences in seeking law degrees and careers in law-related fields. Words such as resiliency, endurance, and perseverance often come to mind when Native Americans discuss their personal experiences in the legal academy. The following collection of essays are a contribution to the legal academy in the Indigenous tradition of storytelling shared as firsthand accounts through the seven authors’ perspectives. Within the personal reflections, the tenacity of Native people to succeed and overcome barriers is a common theme. Many of the contributors speak to the value of mentoring or becoming a Native lawyer to serve as a mentor. The compilation provides insight into the experience the authors share of a deep commitment to their Indigenous communities and to trailblazing for the next generation of Native lawyers.

The first essay in the compilation is *Becoming a Native Lawyer* by Dominic Terry (Navajo Nation/Diné). His contribution is motivated by his desire to “share my story in hopes that it inspires Native children to believe in themselves.” He details the struggles of surviving a broken home, poverty, and teachers with low expectations, and worse, derogatory comments from his childhood and teenage years. Drawing on his grandmother’s love and

¹ Professor Angelique EagleWoman (Sisseton Wahpeton Oyate) served as the Chair of the Indian Nations and Indigenous Peoples Section of the American Association of Law Schools in 2021. The Board members of the Section who made this publication possible were: Chair-Elect Professor Trevor Reed (Hopi Tribe), Secretary Professor Adam Creppelle (United Houma Nation), Treasurer Professor Heather Tanana (Diné), Executive Committee Members - Professor John P. LaVelle (Santee Sioux Nation), Professor Monte Mills, and Professor Addie Rolnick. See Indian Nations and Indigenous Peoples Section at: <https://www.aals.org/sections/list/indian-nations-and-indigenous-peoples/> [https://perma.cc/F5NP-A79M].

determination, he persevered when an injury sidelined his dreams of a football career and re-dedicated himself to pursuing his undergraduate degree after finding himself off-track. A poster in the back of a classroom planted the seed that he could attain a law degree.

With few examples of Navajo college or law graduates, Dominic decided to serve as an inspiration and role model by becoming a Navajo lawyer. Taking the Law School Admissions Test (“LSAT”) twice to gain admission to law school, he explains, “[l]aw school was exactly what I expected- tough.” Major life changes occurred for him as a law student as he moved across the country to attend law school, fathered a newborn, and adopted his nephew. His resiliency was again tested when he failed the Minnesota bar examination and eventually triumphed on the fourth attempt. He remembered his grandmother’s words to never give up. The personal essay concludes with Dominic contributing as a lawyer in the Child Protection Division as an Assistant Hennepin County Attorney in the Minnesota Twin Cities area. Through his many difficult experiences, he finds the sacrifices were worth it as he can now state that “[m]y position allows me to be a voice for the Native community.”

The second essay is titled, *Barred: A Personal Reflection on the Native American Experience in Legal Academia*, by Lani Petrulo (Native Hawaiian). In her essay, she writes, “[a]lthough Native Hawaiians are treated differently under most federal laws and policies than members of federally recognized tribes, they are still connected to their Indigenous brothers and sisters through shared cultural values that live on today.” In detailing her ancestral history as a Native Hawaiian, Lani explains that the lack of inclusion in both mainstream legal curricula and in curricula focused on American Indians and Alaska Natives can be painful and traumatizing. She shares that “learning and practicing in the field of Native American law can bring up many painful and unresolved issues related to generational trauma, but also involving confusion of cultural identity.” She names the experience of “Native imposter syndrome” as connected to the invisibility for her as a Native Hawaiian woman in the legal field.

As in the prior essay, the theme of making a difference for future generations is present in Lani’s essay. Due to the uncertainty around Native Hawaiian political status, she cites to the multiple barriers she faced when applying for scholarships, the limited spots for Native Hawaiians in the one law school in Hawaii, financial stressors, and the emotional toll from the impending occupation of “Maunakea, one of the most sacred sites in Hawaiian culture, believed to be an ancestor of the people.” Following her Juris Doctor (“J.D.”) and Master of Laws (“LL.M.”) degrees, she currently works as a judicial law clerk and has the goal of joining the legal academy to become a law professor and “ultimately be the Native Hawaiian representation that I never had.”

Next is my personal essay in this compilation titled, *Making a Community and Taking a Stand: Reflections on Law School from a Dakota*

Woman. In the essay, I speak of racial injustice and broken U.S. government treaty promises as motivating my dream of being a Native lawyer from a young age. My lived experience included a lack of stability in my early home life requiring ongoing focus to attain high grades which led to acceptance at Stanford University. After graduating with a degree in political science, I questioned my path to a law degree and ultimately attended the law school closest to my reservation to avoid homesickness. During law school, I participated in “demonstrations and small teach-ins on why the University mascot was dehumanizing towards my people and our sister Tribes.” My experience in law school was often a lonely one as the only Native law student in most law classrooms and in my graduating class.

After becoming a lawyer and a single mother, I returned to law school to earn my LL.M. degree in American Indian and Indigenous Law. The faculty in the LL.M. program encouraged my development in the law and allowed me to confidently apply to be a law professor. Currently, I am a law professor and director of the Native American Law and Sovereignty (“NALS”) Institute at Mitchell Hamline School of Law (“MHSL”) in Saint Paul, Minnesota. In the legal academy, there are very few Native Americans and “fewer Native women, who have attained the rank of tenured law professor in the two hundred plus law schools in the United States.” While my path was a winding trail, the strength of elders and ancestors helped me along to encourage the next generation of Native lawyers. “Through my example and advocacy, I hope to ensure that the doors of law schools stay open to Native women and men students and that there are resources of community, financial assistance, and cultural understanding for these same students to succeed.”

The fourth contribution highlights the importance of mentoring by Dr. Gavin Clarkson (Choctaw Nation) and is titled, *My Indian Law Journey*. With both parents escaping poverty and instilling the value of education, Gavin pursued a career as a professor in the field of computer science as a self-labeled “nerdy Native.” He attained degrees from Harvard University and after a decade of teaching was encouraged by mentor and visiting law professor Robert A. Williams to consider becoming a Native law professor. “If I wanted to solve any of the problems I had witnessed in the Choctaw Nation and elsewhere, becoming an Indian law professor would provide such an opportunity.” With the goal of infusing tribal economic development into the legal academy curriculum, Gavin pursued his law degree to complement his doctorate in business.

Professor Williams steadfastly served as a mentor while Gavin advocated a variety of perspectives on initiatives that combined tribal economics and tribal sovereignty. He noted that, at times, he faced opposition within the field of law and took his mentor’s advice to keep focused on his research. This led to the publication of law review articles on tribal finance, testimony on tribal access to capital markets, and eventually a position with the Trump Administration to serve in the U.S. Department

of the Interior as the Deputy Assistant Secretary for Policy and Economic Development. “Although Professor Williams and I disagree on many political issues off-reservation, he was able to look past those differences and think outside the box about how I might contribute and make a difference in other people’s lives throughout Indian Country,” he explains.

Next, third year law student, Angela Levasseur (Nisichawayasihk Cree Nation) contributed her personal essay titled, *Native American Legal Experience: A Cree & Dakota Grandmother’s Perspective*. To provide insight into her experiences as a law student, Angela determined five areas of focus as “trauma and intergenerational trauma; the importance of mentors and role models, poverty and the consequential financial struggles; systemic racism and discrimination; and finally; culture shock.” From the experiences of her ancestors, her tribal history and her own personal lived experiences, Angela declares “these experiences have made me extremely resilient.” She also credits mentors and role models with demonstrating that she too could complete her legal education as “others have broken the trail for you and are actively cheering you on.”

She relates how a case taught in her first-year criminal law course about a Native American family did not include instruction on the context, the cultural forces at work or the tragedy of the events depicted. Angela felt obligated to provide the class with a history lesson on the removal of Native children and the context for the course material. This and other similar experiences around the lack of context for Native American issues are described as “exhausting” as she pursues a law degree. She also experienced “culture shock” from the lack of Native American imagery and space within the law school building. These experiences have inspired her to set the goal to “practice law for several years in service to my tribe and then become a Native law professor.”

The sixth reflection is by attorney and tribal judge Leah Sixkiller (Red Lake Band of Chippewa Indians) sharing experiences in her essay, *Reflection Paper*. She noted that “my law school experience is exceptional and perhaps unbelievable to some.” After graduating from Harvard University, Leah attended law school in Arizona within a well-developed program where she attained the Certificate of Indigenous Peoples Law and Policy. She felt welcomed, celebrated and in a law school where Indian law was recognized as important for all law students. “For the first time in my entire life, I was not part of the unheard ultra-minority in an institutional setting, but rather of the outstanding and celebrated minority,” she explains.

Leah provided her lived experience as an example of best practices to support and uplift Native American law students. “To all of a sudden be a part of a sizable and vibrant American Indian educational community at [the University of Arizona College of Law] both floored me and added to my self-confidence and sense of self-worth, thus propelling me to work toward excellence and seek the most competitive opportunities.” As she reflects on her life in the law, she has found her motivation was to make her family

proud. Leah shared, “I am standing on their and my ancestors’ shoulders, and I have a duty to do and be the best.”

The seventh and final reflection is *Why I Fight for Equity in the Criminal Justice System* by Jack Rice (San Luis Rey Band of Luiseno Indians), criminal defense attorney and international trial advocacy trainer. He reflects on the impoverished conditions of his early years and the encouragement of his single mother telling Jack and his brother that they could achieve their dreams. “Coming from where she came from and from what she endured, I’m still blown away by her tenacity, her wisdom,” he explained. Dealing with racism and a history of ancestral genocide, Jack viewed his law school experience as failing to incorporate other perspectives on the law. The adversarial model of law “frequently ignored other forms and approaches including Native American ones that could be more effective.” He relates how he successfully employed a Native American restorative approach to a case that gained national attention due to the pulling down of the Christopher Columbus statue in Saint Paul, Minnesota.

Jack has practiced in the criminal defense field for decades and provides trial advocacy training in countries around the world. As a new lawyer, he witnessed a judge take the time to provide a comfortable space and respectfully listen to his client who was a “poor, drug addicted, sexually abused” Native American woman. This judge demonstrated an open mind, and that the court had an obligation to justice as much as the defendant. This courtroom experience was pivotal in providing him hope that the criminal justice system could be positively influenced by the morals of judges, lawyers, and jurors towards defendants from diverse cultural communities. He provides the view that “if people are going to bandy about words like equality and justice for all, they also better be prepared for those of us who are going to hold them to it.”

Through this collection of essays, the voices of Native Americans as law students, lawyers, judges, and law professors speak through storytelling and personal truths. It is hoped that the ears of the legal academy are open to hear the recommendations on incorporating Native American law, restorative justice traditions, and context for Native American legal issues into law school classrooms and curricula. The common good for law schools will be positively impacted by admitting more Native American law students and hiring more Native American law professors for a more representative, inclusive, and just legal profession.

II. BECOMING A NATIVE LAWYER

Dominic J. Terry (Navajo Nation / Diné)

A. Ya'at'eeh!

My name is Dominic Terry, and I am a member of the Navajo Nation (Diné). My maternal clan is Tlaashchi'i and my paternal clan is Naakaii. I want to share my story in hopes that it inspires Native children to believe in themselves. I want Native children to understand the importance of education and consider attending law school, because Native communities need more Native American lawyers.

I was born in Gallup, New Mexico, which is located just outside of the Navajo reservation. I was raised there by my grandmother. However, I consider Las Vegas, New Mexico, a small town in northern New Mexico, my hometown. That is where I experienced the most stability in my life while being raised by my aunt and uncle. Since I did not grow up on the reservation, I did not have a traditional Navajo upbringing. I did not practice Navajo traditions, and I did not learn to speak Navajo fluently. I realize that this is not a fault of my family, but rather a result of assimilation policies.

Although I was not raised on the reservation, I still faced many of the same challenges that Navajo children experience. I came from a broken family, experienced poverty, suffered physical and emotional abuse, and I did not have a great education. I also experienced oppression and racism while growing up in New Mexico.

As a result of these barriers, I felt that my ability to succeed was limited simply because I am Navajo. From a young age, I viewed my goals and dreams as being out of reach and unattainable. The feeling of oppression was so heavy that the mere thought of graduating high school or obtaining a well-paying job seemed overwhelming and too difficult. I did not see any of my family members graduate high school, attend college, or obtain professional careers, nor did I see many Navajos thriving in my community.

B. Don't Be A Victim of Your Environment

Despite the heaviness of oppression, I dreamed big and set goals. I knew education was the path I needed to take in order to break the cycle of poverty in my family. So, my first goal was to graduate high school. My second goal was to attend and graduate college. My third goal was to play college football. But above all, I wanted to live an exemplary life, one that would make my family proud.

From an early age, I relied on several individuals for inspiration: my grandmother, my football coaches, my aunt and uncle, and my best friend's dad. These individuals inspired me to be resilient, work hard, believe in

myself, and never give up. Their encouragement and support got me through some tough times in my life.

C. Work Hard, and Never Give Up

No one has been more inspirational to me than my grandmother because of her love, teachings, and belief in me. One of the most important messages she drilled into me was simple, “work hard, and never give up.” Not only did she tell me this, but she lived it. I watched her work two jobs at times, work night shifts, and take care of her grown children and grandchildren. No matter how hard things got, she never gave up on providing for me and our family.

It was not only my grandmother’s love and determination that fueled my motivation to succeed. There are two messages of hate and doubt that, instead of bringing me down, propelled me forward. The first statement was made by the C-team football coach my freshman year of high school. He told me, “You’re the worst defensive end I have ever seen.” In high school, this statement taught me that not everyone is going to believe in me. This ultimately pushed me to work toward becoming a better football player. The hard work that I put in led me to be an all-state football player and earn a football scholarship to a small Division II school. Today, this statement reminds me that there are people who will overlook me and who will not believe I can succeed. Whether I am striving to learn more, communicate more effectively, be more persuasive, or be a better father and husband, this statement motivates me still.

The second statement was made by an art teacher during my junior year of high school. He told me, “You’re probably going to become just another drunk. Isn’t that what all Navajos are, drunks?” This motivated me to take my education seriously and focus on graduating high school. Today, this statement reminds me that some people expect Native kids to fail simply because they are Native. This motivates me to write this essay so that I can encourage Native children to pursue education and to believe in themselves.

D. The Scenic Route

In 2002, I achieved those three major life goals. I graduated high school, I was admitted into college, and I earned a football scholarship. Unfortunately, my college experience did not come without challenges. I describe my undergraduate years as a “scenic route.” When I entered college, I did not know what I wanted to study or major in. First, I thought about staying close to football. So, I considered the possibility of becoming an athletic trainer. However, I quickly realized I was terrible at math and chemistry, so I lost interest in the sciences. But more problematic, I did not challenge myself to get better academically. I did not apply the same amount of effort in my schoolwork as I did in football. I never pushed my mind in

the same ways I pushed myself physically to get stronger, bigger, and faster.

I found that the more I was improving at football, the worse I was becoming in the other areas of my life. My grades began to drop, I began experiencing shoulder injuries, and I even wrecked my car. After two years, my college football career ended. I found myself in a downward spiral. I began abusing alcohol and marijuana. At that time in my life, I realized that I was not prepared for college. I lost sight of my grandmother's teachings. I had become the man I fought so hard to avoid. I eventually took some time off, away from school, to find myself and to figure out my priorities. The process of finding myself took time, but again I recognized that education was going to be the key to leading me away from the bad habits I created.

I continued to pursue my education. As I restarted my educational journey, I still didn't know what I wanted to do for a career. At this time, I needed a job to support myself. I decided to work as a paralegal. The thought of becoming a lawyer was not yet on my mind. However, while working toward an associate degree in paralegal studies, I saw an advertisement in the back of one of my classrooms for Hamline School of Law in Saint Paul, Minnesota. I remember thinking, "Why is a law school in Minnesota advertising at a community college in New Mexico?" I now recognize that this may have planted the seed in my mind to consider law school. After completing my paralegal studies, I worked as a paralegal and my interest in law school increased.

I turned my attention toward earning my bachelor's degree at the University of New Mexico. Since I needed to continue working, I attended school part-time and worked full-time. I was forced to live by a strict schedule. I had to use my time wisely, juggling classes during my lunch hour, going to work earlier, reading on the forty-five-minute bus ride, and dedicating my weekends to schoolwork. As I got closer to graduating college, attending law school became my goal.

E. So Close, Yet So Far

A familiar feeling of doubt struck me. Like all my past goals, the idea of becoming a lawyer seemed unachievable, distant, and out of my grasp. As I began considering law school, I realized that I had never known or met a Navajo lawyer. Therefore, the need for Native or Navajo lawyers largely inspired me to become a lawyer.

In 2013, I graduated from the University of New Mexico. Then a new barrier to becoming a lawyer would present itself, the LSAT. The LSAT was a tough test, and one I believe does not determine who will be a good lawyer. But I am biased because I hated that test. Unfortunately, I needed to take it twice because I did not score high enough the first time. I got through it, and I was accepted into MHSL in Saint Paul, Minnesota.

Law school was exactly what I expected—tough. But I knew it would not be as tough as what I had already experienced in life. I was willing to

accept the challenges law school presented and find a way to overcome them. It was hard—I worked full-time during law school, moved to a new state, had a newborn, and adopted my nephew. Like undergrad, I had to be disciplined, stick to a schedule, and dedicate every waking moment to studying. In May of 2018, I graduated from law school. I believe my decision to pursue law school was worth the sacrifices, because now I am in a position where I believe I can make meaningful change for the Native community.

F. The Bar Exam Does Not Define You!

Following law school, the bar exam would become my biggest barrier to becoming a lawyer. Unfortunately, I failed the bar exam three times. It was embarrassing and devastating each time. It was particularly devastating because of the amount of work I put into studying. Despite the difficulties, I held on to what my grandmother taught me, “work hard and never give up.” So, it was settled in my mind that I was never going to give up. Ultimately, what got me through this exam was my perseverance, my willingness to change my approach to studying, and my support system. I was very fortunate to be surrounded by people who continuously believed in me. My wife, kids, and mentors were all instrumental in being my major motivators. I also have amazing friends who watched our kids, brought us dinners, and encouraged me along the way. When I passed the bar exam, the heaviness of the oppression that I was used to, lifted. The cycle of failure and poverty that my family experienced was broken by my achievements. The trajectory of my family’s story changed forever.

G. Ya’at’eeh, My Name is Dominic Terry

I am currently an Assistant Hennepin County Attorney in the Child Protection Division. I specialize in the Indian Child Welfare Act, also known as ICWA. I chose this area of law because I believe protecting children is one of the most important things we can do in our community. ICWA is a very important law because it works to preserve Native families. As an assistant county attorney, I have the important responsibility of ensuring that ICWA is implemented appropriately. My position allows me to be a voice for the Native community. I get to provide my perspective about the issues many Native families experience.

Representing the Native community is important to me not only to ensure that Native families receive the services they need, but also because I have the opportunity to reflect on the potential of Native people. I want to demonstrate to our Native people that they have the ability to succeed. I also want to make a difference in the lives of Native children. I hope my story, and my work, can inspire them to work towards their dreams and goals.

III. BARRED: A PERSONAL REFLECTION ON THE NATIVE AMERICAN EXPERIENCE IN LEGAL ACADEMIA

Lani Petruolo, J.D. (Native Hawaiian)

A. Introduction

The title “Barred” is more than just a play on words to describe how I have been on the outside looking in at a vocation for which I specifically incurred debt the size of a home mortgage and trained for years to fulfill. It is also how I would describe so many aspects of my life growing up as a woman of color in a White suburb in Minnesota, and how I am now navigating a White-male-dominated career field in Portland, Oregon.

There is an extreme lack of Native representation in legal academia. There is a further lack of understanding within these institutions of the need to adapt to various learning styles and to stop perpetuating bar admission standards that equate generic testing data with minimum competency to practice law. Despite my lifelong dream to become a lawyer, I hardly fit the “one size fits all” approach to legal education and licensure, and studies have shown that the bar exam was designed to keep minorities out of the legal profession.²

Even where Native law programs exist, there is still often a lack of Native Hawaiian representation among students, staff, and faculty, as well as very limited learning opportunities and curriculums—which largely ignore Hawaiian legal issues. This is partly due to the fact that most law schools focus on national and/or regional case law and policies that are likely to appear on standardized bar exams. However, speaking from personal experience, learning and practicing in the field of Native American law can bring up many painful and unresolved issues related to generational trauma, but also involving confusion of cultural identity.

During the past year and a half, I have been working on receiving my LL.M. in Indigenous Peoples Studies with the University of Oklahoma, and it was several months before I felt truly comfortable voicing to myself, my peers, and professors, that I was Native. In one course, we were tasked with writing an autobiographical essay narrated by our cultural values and reading various assigned articles that discuss the impacts of Native cultural traditions on peoples within those communities. My eyes were initially opened by an article by Professor Rebecca Tsosie, articulating what she calls “conflict

² In 2021, the American Bar Association released recent data regarding longstanding racial gaps in bar passage rates, going back at least thirty years. *See Summary Bar Pass Data: Race, Ethnicity, and Gender, 2020 and 2021 Bar Passage Questionnaire, 2021 A.B.A. SEC. LEGAL ED. AND ADMISSION TO THE BAR*, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/20210621-bpq-national-summary-data-race-ethnicity-gender.pdf [https://perma.cc/9DE4-Z4MF].

dualism,” a conception of the universe as one of opposing forces in conflict.³ Tsosie highlights four main characteristics: (1) animist tradition; (2) human kinship with the natural world; (3) a focus on duties rather than rights; and (4) reciprocity and balance as guiding ethics.⁴ I began to match all sorts of Native Hawaiian values to these characteristics, such as “aloha ‘aina” (love of the land), which is inseparable from Hawaiian culture; encompassing all the elements, whether they be natural or animal in nature; and “kuleana,” responsibility to each other and the earth is inherent, a privilege to behold, rather than feelings of ownership of the land.

Although I have known for a few years now that I was called to work in this field, I only recently felt that I had found my voice and my place as a Native woman in this world. This is why one of my driving forces to join academia and become a law professor is to ultimately be the Native Hawaiian representation that I never had. I want to encourage more Native Hawaiians to pursue careers in the law and to feel comfortable owning their Native identities.

B. A Brief Legal History of the United States’ Treatment of Native Hawaiians

Nearly every Native law course begins by covering the basic definitions, including: (1) what is a tribe, (2) who is an Indian, and (3) what is considered Indian country. Unfortunately, none of these definitions apply to Native Hawaiians, which makes it nearly impossible to seek justice under the law for wrongs involving cultural and/or racial issues. The foundational Supreme Court cases for this field are known as the “Marshall Trilogy,” as all three majority opinions were penned by Chief Justice Marshall. These cases were the first to define the relationship between the tribes and the federal government, as well as the role of the states. The foundational Supreme Court cases for this field are known as the “Marshall Trilogy,”⁵ as the majority opinions were penned by Chief Justice Marshall, and all three cases define the relationship between the tribes and the federal government, as well as the role of the states.⁶ When the Court ruled that the tribal-federal relationship was akin to a “ward to his guardian” because tribes are not separate sovereigns but rather domestic dependent nations needing the protection of the federal government,⁷ Hawaiian lands were not part of the United States, so this relationship did not apply to Native Hawaiians. Further, it appears that the federal government learned from its mistakes in

³ Rebecca Tsosie, *Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge*, 21 VERMONT L. REV. 225, 268–87 (1996).

⁴ *Id.*

⁵ See *Johnson v. M’Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832).

⁶ See *id.*

⁷ *Cherokee Nation*, 30 U.S. at 17.

dealing with the mainland tribes, one of which was treaty-making and actually consulting with Native populations, something Native Hawaiians were never given the chance to do.

In 1848, Westerners urged the King of Hawai'i to convert the communal land system to private property ownership, retaining about one million acres as "Crown Lands," assigning 1.5 million acres to the main chiefs of the islands, and the remaining 1.5 million to the government.⁸ While the expectation was for Hawaiians to own land in fee, this decree, known as *Ka Māhele*, actually opened the door for Westerners to take over. Then, during the Reservation Era, the U.S. military forced King Kalakaua to sign a constitution⁹ reducing him to a figurehead and placing the Hawaiian government under a U.S.-dominated cabinet.¹⁰ During the Allotment and Assimilation Era, from 1893–1920, the U.S. occupied Hawaii with the sole purpose of assimilating the Native people and allotting their land. It began with military occupation of Hawaii, forced abdication of the monarchy, annexation of Hawaii as a territory, facilitation of American homesteading, removal of Native land ownership, and suppression of cultural practices, including the use of the Hawaiian language.¹¹ The sovereign status of Native Hawaiians was never really discussed or adjudicated in any form. The forced assimilation tactics used on them appeared to be part of Hawaii entering statehood, despite the similarities between the treatment of the Native populations on the mainland. Finally, during the Termination Era, the U.S. passed the Statehood Act to force Hawaiians to officially forgo their status as a sovereign Indigenous nation.¹²

As America moved into the Self-Determination Era, laws and policies have attempted and failed to accommodate cultural practices for Hawaiians, as we have been denied the substantive elements of self-determination, which include the freedom and equality to govern ourselves as a sovereign people.¹³ One example is the so-called and since-forgotten "Apology Resolution" of 1993, where Congress recognized America's transgressions against the Hawaiians and urged the President to make amends.¹⁴ A more recent example occurred in 2015, when the Department of the Interior ("DOI") created an administrative process for reestablishing a formal government-to-government relationship with the Hawaiian community to more effectively implement the special political and trust relationship that

⁸ *Ka Māhele*, Land Division [Constitution] 1840 (Hawaiian Kingdom).

⁹ Bayonet [Constitution] July 6, 1887 (Hawaiian Kingdom).

¹⁰ *Id.*

¹¹ Newlands Resolution, Annexation of Hawaii, 1898; Hawaiian Organic Act of 1900, Pub. L. 56–339, 31 Stat. 141; Hawaiian Homes Commission Act of 1920, 42 Stat. 108.

¹² Pub. L. No. 86-3, § 5(b), 73 Stat. 5 (1959).

¹³ S. James Anaya, *The Native Hawaiian People and International Human Rights Law: Toward a Remedy for Past and Continuing Wrongs*, 28 GA. L. REV. 309 (1994).

¹⁴ Pub. L. 103–150, 107 Stat. 1510 (1993).

Congress established between that community and the United States.¹⁵ These policies are failed attempts to accommodate Hawaiian cultural practices, because the Apology Resolution did not have any concrete results, and the 2015 DOI rule merely acknowledged the ability to re-establish a Native Hawaiian government. Neither can undo or even begin to make up for the harm caused by an almost complete erasure of our culture.

The Supreme Court has also negatively impacted the cultural autonomy of Hawaiians. First, in 1998, the Court ruled that land owned by an Alaska Native Village did not meet the requirements of a “dependent Indian community” or “allotment” under Congress’s definition of Indian Country¹⁶ because the lands were not validly set apart for the use of the Indians as such or under the superintendence of the federal government.¹⁷ This decision effectively prevented both Alaskan and Hawaiian natives from exercising the same type of sovereign authority over traditionally Indigenous lands as tribes in the lower forty-eight states.¹⁸ Shortly after, the Court further usurped self-governance from Hawaiians when it ruled that a Hawaiian constitutional provision limiting the right to vote for Office of Hawaiian Affairs to those of Native Hawaiian ancestry violated the Fifteenth Amendment.¹⁹

This decision was intended to follow the *Mancari* Court, which ruled that preferential programs for Native people are constitutional as “political” rather than “racial” classifications, but only for members of federally recognized tribes.²⁰ However, Hawaiians were specifically carved out of that decision as they were forced into statehood rather than left to suffer the “ward-guardian” status reserved for federally recognized tribes.²¹ Although Native Hawaiians are treated differently under most federal laws and policies than members of federally recognized tribes, they are still connected to their Indigenous brothers and sisters through shared cultural values that live on today.

C. “Native Imposter” Syndrome

Impostor syndrome is the persistent inability to believe that one’s success is deserved or has been legitimately achieved as a result of one’s own efforts or skills.²² Although it is not an officially recognized disorder in the Diagnostic and Statistical Manual of Mental Disorders or the International Classification of Diseases, psychologists have been studying this

¹⁵ 43 C.F.R. pt. 50 (2016).

¹⁶ 18 U.S.C. §1151(b)–(c) (1948).

¹⁷ *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998).

¹⁸ *Id.*

¹⁹ *Rice v. Cayetano*, 528 U.S. 495 (2000).

²⁰ *Morton v. Mancari*, 417 U.S. 535 (1974).

²¹ *Cherokee Nation v. Georgia*, 30 U.S. 1, 10 (1831).

²² Impostor Syndrome, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/impostor%20syndrome> [https://perma.cc/9W8V-95JF].

phenomenon since the mid-twentieth century, generally concluding that lawyers suffer from depression and anxiety at nearly three times the rate of other professions.²³ For BIPOC individuals,²⁴ imposter syndrome goes much deeper than fearing our ability to compete with others in skills or knowledge, and actually impacts our cultural and ethnic identity as well.²⁵ As a young Native Hawaiian woman in the legal profession, I experience the effects of systemic racism and implicit biases on a near-daily basis, along with stressors unique to my Indigenous identity, including generational trauma and the threat of cultural extinction. Ultimately, I have often felt like a “Native imposter” while studying and working within the field of federal Indian law and tribal law because Native Hawaiians are basically in legal limbo, neither a tribal sovereign nor fully part of “White” American society.

Being both a Native Hawaiian and an American citizen presents a unique range of issues, such as facing rapid cultural erasure and appropriation, gentrification by the government and private sectors making us unable to afford to live in our traditional homelands, and otherwise being cut out of federal policies pertaining to and/or providing benefits for Indigenous peoples in the United States.

On one hand, Native Hawaiians face extremely competitive and restrictive scholarships geared toward those of Native Hawaiian ancestry, including the fact that proof of such ancestry is defined by state and private entities rather than Native cultural groups. We are unable to receive the same kind of federal and tribal financial aid or free college admission as many Native American individuals do on the mainland. Additionally, many of these scholarships require applicants to have attended secondary or post-secondary institutions within Hawaii’s state boundaries in order to be eligible.²⁶ In my personal experience, I was raised primarily in Minnesota, and my parents could not afford to send me to any Hawaiian schools, so I was unable to apply for several scholarships. When I did apply for a scholarship, it involved a lengthy process to verify my Hawaiian ancestry (which took around eight months) only for the scholarship foundations to deny me for inadequate records, because my mother was adopted.

Adversely, Native Hawaiian students wishing to pursue a legal career are limited to one law school within the State of Hawaii, which means that if a student is not accepted to that school, they must leave their home to

²³ Jess Miers, *The Real Deal on Imposter Syndrome? You Belong Here*, A.B.A. (Aug. 26, 2021), <https://abaforslawstudents.com/2021/08/26/dealing-with-imposter-syndrome/> [https://perma.cc/59AC-YBCV].

²⁴ Black, Indigenous, and people of color.

²⁵ Vanessa Nepomuceno, Ph.D., *Taking Action: The Imposter Syndrome and Graduate Minority Students*, AM. SOC’Y OF PHARMACOGNOSY, <https://www.pharmacognosy.us/taking-action-the-imposter-syndrome-and-graduate-minority-students/> [https://perma.cc/8CJK-RZHJ].

²⁶ *Financial Aid*, KAMEHAMEHA SCHOOLS, https://www.ksbe.edu/apply/financial_aid/college_scholarships/pauahi_foundation/#eligibility [https://perma.cc/46NG-T6VD].

attend a school on the mainland or attend an online program. The latter, while an attractive option to many students especially during this pandemic, is not ideal for all learning types, and students can often feel cut off from their classmates, professors, and other on-campus privileges and resources. Students who have to leave Hawaii to attend law school are not only leaving their home, but their support systems and cultural ties as well. It is usually fairly expensive to travel to and from Hawaii, and COVID-19 has resulted in new travel restrictions.

These issues are exacerbated by the continued pressure on law graduates to pass the bar exam amid a devastating global pandemic. Prospective lawyers all over the country had to somehow focus on studying for an already daunting exam, while juggling other major responsibilities such as providing for school-aged children at home and increased stress due to loved ones lost to COVID-19. Perhaps the largest stressor examinees faced was the overwhelming increase in financial stress due to loss of employment, resulting in inability to pay rent, health insurance, car loans, and other necessary expenses.²⁷

One issue on the forefront of Native Hawaiian students' minds today is the impending occupation of Maunakea, one of the most sacred sites in Hawaiian culture which is believed to be an ancestor of the people.²⁸ A group of Native Hawaiians called the *kia'i* have been protesting for years now to prevent the federal government from installing the Thirty Meter Telescope, which will inevitably disrupt Hawaiian cultural practices and devastate the natural environment.²⁹ To the *kia'i*, protecting Maunakea from desecration is more than a cultural responsibility, but rather a lineal duty to those who came before them and the generations who will succeed them.³⁰ "Mālama ka 'aina" (to care for the land) is probably the most tangible representation of Native Hawaiian values; we believe that when you take care of the land, it will take care of you. Professor Frank Pommersheim summarized this concept when he wrote that "the land often determines the values of human landscape because it not only provides subsistence, but is the source of spiritual origins."³¹ In the most recent ruling, the Hawaii State Supreme Court ruled³² that the installation of a NASA facility on Maunakea does not violate any laws pertaining to religion or environmental protection,

²⁷ A.B.A. SEC. LEGAL ED. AND ADMISSION TO THE BAR, *supra* note 2.

²⁸ *Maunakea*, OFF. OF HAWAIIAN AFFS., <https://www.oha.org/maunakea/> [https://perma.cc/UQP4-JEYG].

²⁹ Complaint, *The Office of Hawaiian Affairs v. State*, No. 17-1-1823-11 (1st Cir. Haw., Nov. 7, 2017).

³⁰ Frances Nguyen, *The Pandemic Hasn't Stopped Native Hawaiian's Fight to Protect Maunakea*, VOX (Aug. 7, 2020), <https://www.vox.com/2020/8/7/21354619/mauna-kea-tmt-telescope-native-hawaiians> [https://perma.cc/QD25-MK7G].

³¹ Frank Pommersheim, *The Reservation as Place: A South Dakota Essay*, 34 S.D. L. REV. 246, 246-51 (1989).

³² *Maunakea Anaina Hou v. Bd. of Land and Nat. Res.*, 136 Haw. 376, 363 (2015); *see also Flores v. Board of Land and Natural Resources*, 143 Haw. 114, 424 P.3d 469 (2018).

nor Native Hawaiian rights to engage in traditional and customary practices under the American Indian Religious Freedom Act of 1978,³³ Executive Order 13007,³⁴ and Hawaii's Constitution.³⁵ The pressure on Hawaii to provide a locale for NASA research stems from a history of federal oppression, including the fact that Maunakea is technically on ceded lands, property of the federal government by way of the United States' annexation and forced statehood of Hawaii.³⁶

Beyond the usual pressure law students and eventual lawyers face, it is incredibly heartbreaking to study and work within a field of law that aims to advocate for self-governance and restore sovereignty rights to Native populations. At the same time know that these mechanisms may not be applied to my homeland or Native Hawaiian communities. It is my hope that within my lifetime or my children's lifetimes, both legislative and judicial entities will open the door for more inclusion of Native Hawaiians.

D. Conclusion

In 2022, I will begin a new position as a judicial clerk, a job I previously, and incorrectly, believed was out of my reach as a person of color given certain societal constructs within the legal field. My beliefs were changed and shaped in large part by the students I worked with in my role as Program Administrator for the Native American Law and Sovereignty Institute at MHSL. While I did not think I was too far removed from my experiences as a law student, these students taught me an incredible amount about perseverance as not just a law student, but also as a Native individual. I watched them soar to unbelievable heights, overcoming adversity and daily effects of generational trauma, by using their Native voices to reach wider audiences. I hope to transform my own feelings of pain, loss, confusion, and inadequacy into strength and continued advocacy for increased tribal sovereignty in whatever roles my career path brings me to. I also hope to proudly claim my identity as a Native woman and allow my experiences to drive me rather than define me.

³³ 42 U.S.C. § 1996.

³⁴ Exec. Order No. 13,007 (1996).

³⁵ Haw. Const. art. XII, § 7.

³⁶ Pub. L. No. 86-3, § 5(b), 73 Stat. 5 (1959).

IV. MAKING A COMMUNITY AND TAKING A STAND: REFLECTIONS ON LAW SCHOOL FROM A DAKOTA WOMAN

*Angelique EagleWoman (Wambdi A. Was'teWinyan)*³⁷

When I was eight years old, I first wanted to become a lawyer. At that age, I watched my Auntie, a Dakota/Black woman, and her husband, a Black man, on television emerge from a courtroom in Kansas where he had won a civil judgment against the county sheriff's department for police assault.³⁸ I grew up in a multi-racial family and understood from a young age that racism was a reality that required constant vigilance to combat. I grew up in households below the poverty line, living with my mother throughout childhood and off and on with my father as a teenager. I saw law as a way to overcome injustices. Through my father's recommendations on books to read, I grew up absorbing our tribal history, the many broken promises of the U.S. government, and the injustices we faced as Dakota people.

My educational path was full of detours and false starts as I bounced between my parents who had divorced when I was six years old. My high school transcript was full of inconsistency and instability. I attended public high schools in Kansas and Texas and my reservation tribal school in South Dakota. Yet, I loved to learn and did my best to earn the highest grade in all of my classes. I spent a post-graduate year at a preparatory high school to prove myself and gain entrance into Stanford University, as the admissions office had recommended my attendance. From my time of moving between my parents, I became adaptable and found my way in new environments. The grades I earned led to acceptance at Stanford which uplifted my life path to new and different experiences.

Throughout my educational journey, I maintained a steady focus on attending law school, to enter the legal profession as I believed in justice through the law. When I spoke to my elders on our reservation in South Dakota, they encouraged me and told me to keep on the path. One of my grandpas would give me a hug and a handshake with a ten-dollar or twenty-dollar bill every time I visited during school breaks. My family was part of a group of families supporting traditional ceremonies. During college, I participated in ceremony for four summers and it taught me self-discipline, community, and trust in the Creator.

Yet, when I graduated with my undergraduate degree in political science, I was unsure whether law school was the right way forward. As an undergraduate, I experienced homesickness, which is often familiar to

³⁷ This Article is dedicated to all of the Native youth who stand for truth and justice. Keep dreaming, doing, and making the world into a place for you.

³⁸ See Angelique EagleWoman, *Balancing Between Two Worlds: A Dakota Woman's Reflections on Being a Law Professor*, 29 BERKELEY J. GENDER & JUST. 250, 252 (2014).

Native students traveling far from their tribal communities for an education. I enjoyed being immersed in my culture, my family, my community. I worked for several years on my reservation and a sister reservation in North Dakota before the calling to law returned stronger than ever. I decided that if I was going to law school, then it would be as close as possible to my reservation.

With this in mind, I applied to and was accepted at the University of North Dakota, which at the time had a derogatory mascot targeting my people. It was about two and a half hours from my reservation and that was what mattered the most to me. I had received a very high score on the entrance exam, the LSAT, and had a strong grade-point-average from Stanford. But I was not awarded a diversity scholarship by the law school. I did receive the federal Indian fellowship scholarship for the first two years of law school but did not realize that the U.S. Congress had failed to appropriate further funding.

Financial stress was a factor for me during law school. I was unable to pay tuition in the middle of my third year and planned to dropout to work back on my reservation. In the nick of time, I heard of an opportunity and received assistance from a donor to the American Indian College Fund to complete the year and graduate.³⁹

In my first year of law school, I was the only Native student. There were no Black or Asian-American students in the entering class. I struggled with the lack of diversity in class discussions and the invisibility of racial issues, treaty rights, and the impact of wealth and poverty on the law. As a law student, I led demonstrations and small teach-ins on why the University mascot was dehumanizing towards my people and our sister Tribes. I felt isolated among my White peers in law school and spent time at Native undergraduate organization meetings, gatherings, and events to feel connected. At one point, I collaborated to establish a pre-law organization for Native students and gave LSAT exam tips.

My experience in law school was lonely.⁴⁰ When I was scheduled for my first oral argument, I invited several Native undergraduate students to be in the audience in the law school's courtroom. Several times, I asked Native friends to sit in the back row with me in upper year law classes. I dropped the federal Indian law course, as I felt the professor was disrespectful to tribal perspectives on sovereignty and replaced the course with a Native studies course at the undergraduate level to feel grounded. While I was involved with our Native American Law Student Association ("NALSA") chapter, White law students dominated the organization led by the White

³⁹ The American Indian College Fund provides support for Native American students, as well as tribal colleges and universities. For more information go to <https://collegefund.org/> [<https://perma.cc/F74Q-9KEP>].

⁴⁰ Issues of loneliness and invisibility are often experienced by Native American law students. See e.g., Roshanna K. Toya, *A Rite of Passage: Perpetuating the Invisibility of American Indian Lawyers*, 69 J. LEGAL EDUC. 699, 702-703 (2020).

law professor advisor.

In the middle of my first year of law school, I filed a grievance based on what I considered racial discrimination at a law school event. In resolution to the grievance, I requested and received appointment as a student representative on the law school's faculty diversity committee. The issues I focused on were the lack of diversity at the law school and the racist mascot of the University. To the law faculty's credit, they did vote to retire the University mascot, but the University did not take action. The mascot would be retired almost twenty years later.⁴¹ I believe my grades were impacted by my advocacy to change the law school while I was a student. My class standing was never entirely clear to me, but I know that I graduated within the top seven students in the class. As I recall, I was the only non-White person in my graduating class.

During my summers in law school, I had the elite experience of working in a well-known Washington, D.C. law firm, specializing in federal Indian law and tribal law. It was during my first summer in D.C. that I met Native women lawyers for the first time. I spent every summer at the same law firm where I felt a sense of belonging. Being one of the Native law students in D.C. for the summer was exciting, as there were law events at firms, federal government departments, museums, and organization offices centered on Native issues and policy. To this day, I recommend law students spend at least one summer in D.C. to gain perspective on law-making and policy development at the heart of the U.S. government.

When I reflect on my law school experience, I remember drawing on my hope to make a difference for my people and all Indigenous peoples. There were times when I would leave a classroom angry with the professor's teaching and my classmates' comments about Native people or other people of color. Between classes I would try and explain to other law students the concept of cultural appropriation or why the mascot was dehumanizing or provide insight into tribal perspectives on legal issues. Once, I was called into a White professor's office, so she could discredit the historical account behind the 1830 Indian Removal Act by suggesting I read a certain law review article. I remember another White law professor showing me the front page of the local newspaper with students wearing mock headdresses and face paint. She then said that when she saw the newspaper that she thought of me and how upset I would be. I didn't think at the time to tell her that the better response would be for her to use her position of power and call out the racial mockery, rather than leave it on my shoulders as a Native law student.

There were also positive experiences when I engaged in writing law review articles and had two published as I graduated. In encouraging other

⁴¹ *University of North Dakota Unveils Fighting Hawks Logo*, ESPN (June 22, 2016), https://www.espn.com/college-football/story/_/id/16426384/university-north-dakota-unveils-fighting-hawks-logo [https://perma.cc/GK4V-YFRU].

Native people to consider law school at a joint recruitment event by the University of North Dakota and the University of South Dakota, I was selected to be featured in a video by the representative from the Law School Admissions Council.⁴² I felt proud to be a role model and honored to have my journey commemorated. My love for the tribal legal traditions I was raised within, and for the rule of law and my strong desire to straighten out the tangle of federal Indian law led me on through the difficult times. I received my J.D. degree with distinction.

After practicing law for five years, I found myself divorced with a newborn son and the need to find a stable path in the law for our little family. I had been a regular attendee at the annual Federal Bar Association (“FBA”) Indian Law conference and had enjoyed conversations with Professor Bill Rice, United Keetoowah Band of Cherokee Indians, on changing the trajectory of federal Indian law and policy by incorporating traditional tribal law.⁴³ He had encouraged me to consider attaining a LL.M. degree at the University of Tulsa College of Law where he taught. At a crossroads, I reached out and was accepted into the program. When my son was seventeen days old, I packed us up and drove from South Dakota to Oklahoma for a new start.

In the LL.M. program, I thoroughly enjoyed the courses and was introduced to international Indigenous legal principles. I wrote a paper that was then published as a law review article discussing issues impacting my reservation.⁴⁴ I also explored topics in international family law, environmental protection, and domestic violence law. One of the best features of the Indian law program was the Muscogee (Creek) Legal Aid Clinic. I was able to step in as a lawyer with prior litigation experience and handle a variety of cases in tribal court.⁴⁵ I also worked part-time with two local law firms after passing the Oklahoma bar exam and gained more depth in litigation.

In terms of community, NALSA was active and lively with several members who were parents of young children. We attended stomp dances, traded babysitting for each other’s evening classes, and took a community bus to the annual FBA Indian Law Conference. Because of our common interest in tribal events and Indian law, we saw each other often inside and

⁴² See, Law School Admissions Council, *Indian Lawyers Translators of Two Worlds*, - Chapter 3, YOUTUBE (Nov. 3, 2009), <https://www.youtube.com/watch?v=npchS8f14NI&list=PLDB2E6107611EF44C&index=3&t=2s> [https://perma.cc/99PS-PT2R].

⁴³ See Dean Lyn Entzeroth, *TU Law Remembers Professor G. William Rice (1951-2016)*, UNIV. OF TULSA (Feb. 15, 2016), <https://law.utulsa.edu/tu-law-remembers-professor-g-william-rice/> [https://perma.cc/N8G6-C4QB].

⁴⁴ Angelique Eaglewoman, *Re-Establishing the Sisseton-Wahpeton Oyate’s Reservation Boundaries: Building a Legal Rationale from Current International Law*, 29 AM. INDIAN L. REV. 239 (2004-05).

⁴⁵ For more information on the tribal court, see Muscogee (Creek) Nation District Court, <https://creekdistrictcourt.com/> [https://perma.cc/V2SR-Y9TL].

outside of classes. Many of my lifelong friends were made during my time in Oklahoma.

The faculty in the Indian law program coached me through the process of becoming a law professor. They listened to my mock “job talk” and provided feedback. I had never dreamed of becoming a law professor and they helped me to see that I could live that dream. I attained my LL.M. degree with honors and started the application process. I was provided support and encouragement. It was difficult leaving my young son with a family friend for the interviews at law schools around the country. I was relieved and thrilled when the hard work paid off and I was offered a tenure-track position in the Dakota homelands at Hamline University School of Law in the Twin Cities.

In my two law school experiences as a student, I can reflect on both the academic aspects and the sense of belonging that was so important to me in attaining my J.D. and LL.M. degrees. I am thankful for the first experience where I learned the intricate details and processes of the law with the ability to go home to my reservation on weekends. From the second experience, I enjoyed a community of Native families and began to understand traditional and international Indigenous law on a broader scale. In addition, I gained a new path as a law professor on the inside of the law school experience. Other meaningful experiences in law schools later included establishing the Native American Law emphasis program at the University of Idaho College of Law and serving as the first Indigenous dean of a law school in Canada.⁴⁶

In a full circle, I am a tenured law professor and director of the Native American Law and Sovereignty Institute at the MHSL in the Twin Cities.⁴⁷ There are very few Natives, and fewer Native women, who have attained the rank of tenured law professor in the approximately two hundred law schools in the United States.⁴⁸ There are under twenty Native law programs in those law schools.⁴⁹ Through my example and advocacy, I hope to ensure that the

⁴⁶ See May Warren, *First Aboriginal Woman to Head Canadian Law School Lives Up to Her Name*, TORONTO STAR (Jan. 24, 2016), <https://www.thestar.com/news/insight/2016/01/24/first-aboriginal-woman-to-head-canadian-law-school-lives-up-to-her-name.html> [https://perma.cc/NAW3-47X4].

⁴⁷ *A Unique Legal Program Within Mitchell Hamline*, Native American Law and Sovereignty Institute, MITCHELL HAMLIN SCH. OF L., <https://mitchellhamline.edu/native-american-law-and-sovereignty/> [https://perma.cc/X2XG-VPYR].

⁴⁸ See Matthew L.M. Fletcher, *On Becoming an American Indian Law Professor: 2021 Update*, SSRN (Sept. 24, 2021), <https://ssrn.com/abstract=3930158> [https://perma.cc/NMP2-DAXL]. In this article, Professor Fletcher identified twenty-eight American Indian law professors within the tenure system of 9,400 full-time law professors. *Id.*

⁴⁹ For a listing of Native American law programs, see National Native American Bar Association, *The State of Indian Law at ABA-Accredited Law Schools* (2021), <https://www.nativeamericanbar.org/wp-content/uploads/2021/04/2021-State-of-Indian-Law->

doors of law schools stay open to Native women, men, and non-binary students, and that there are resources of community, financial assistance, and cultural understanding for these same students to succeed. Since time immemorial, justice has been maintained in tribal communities and a law degree can make a positive difference in upholding tribal sovereignty, culture, and traditional teachings for the good of the community of nations.

V. MY INDIAN LAW JOURNEY

Dr. Gavin Clarkson, Esq. (Choctaw Nation)

My Indian Law journey started with my father, an orphaned Choctaw kid in Chickasha, Oklahoma during the “Dust Bowl” days of the Great Depression. He was so broke that he often dug through other Indian’s garbage cans for food. However, he would always say that he was broke and not poor since “‘poor’ is a state of mind—‘broke’ is temporarily insufficient cash flow.” In 1943, Dad decided two things—he was sick and tired of poverty and mad at the Japanese for Pearl Harbor—so he joined the Navy and never looked back. In 1948, he became the first American Indian to fly a jet. In 1962, Dad became the senior nuclear targeting strategist at the North Atlantic Treaty Organization (“NATO”) headquarters where he met my mother, herself a tribal member who similarly escaped abject poverty. Mom was an intelligence analyst with a top-secret clearance. Yes, my parents met when they were both spies in Paris.

Not only am I proof positive that Indian poverty is not a life sentence, but I was also destined to be a nerdy Native (#IndigiNerd). My parents’ influence first led me to an academic career in computer science, and I helped my tribe become the first to teach language classes online.⁵⁰ In pursuit of a full-time academic career, I later became the first tribal member to earn a doctorate from the Harvard Business School (“HBS”) and still remain the only HBS doctoral graduate to have placed in a livestock show. After I started the doctoral program, I gained admission to Harvard Law School (“HLS”), became the managing editor of the Harvard Journal of Law and Technology, and served as president of Harvard’s NALSA chapter.

How my academic career turned towards Federal Indian Law, after

at-ABA-Accredited-Schools_Final.pdf [https://perma.cc/33MU-8GD5]; *Law School Recruitment*, AM. INDIAN L. CTR., <https://www.aile-inc.org/plsi/law-school-recruitment/> [https://perma.cc/RL5M-TL6F].

⁵⁰ See, e.g., *Choctaw Campaigner Is Proud to Be Wired*, AUSTRALIAN FIN. REV., Apr. 10, 1999, at 18. See also Marcia Haag and Wayne Coston, *Early Effects of Technology on the Oklahoma Choctaw Language Community*, 6 LANGUAGE LEARNING & TECH., 70–82 (2002), <https://www.lltjournal.org/item/245/>.

nearly a decade of teaching Computer Science, should interest legal educators and administrators, as my story demonstrates the power of mentoring. Like many Native students, I didn't have an Ivy League undergraduate degree, I was several years older than most of my classmates, and I already had a family to care for. Having seen how the law interfered with my own tribe's economy, I hoped to find some answers in my Federal Indian Law class with Visiting Professor Robert A. Williams during the Winter 2000 term. After one particular Saturday class, Professor Williams sensed my frustration with *Oliphant's* fundamentally mischaracterization of my tribe's treaty history, and he invited me to his office to talk. We had visited after class several times before, but he had something more specific in mind that particular afternoon. After we walked back to his office and sat down, he told me that he had been thinking about me and then said, "Gavin, you should become an Indian Law professor."

Although I was already planning an academic career, Indian Law wasn't in the plan. When I asked him to elaborate, given that I was a computer scientist earning a doctorate in business, Professor Williams said the Indian Law academic community was full of critical race theorists and natural resources folks handling land, fish, trees, and water. What Indian Law didn't have was someone like me. If I wanted to solve any of the problems I had witnessed in the Choctaw Nation, and elsewhere, becoming an Indian Law professor would provide such an opportunity.

Professor Williams wasn't unique in observing that I wasn't a typical Indian Law academic. I remember one NALSA meeting where we discussed speakers to invite. When I suggested someone to talk about tribal economic development, there was a universal response along the lines of "Oh, Gavin, that's so boring." Ironically, almost all the future attorneys in that meeting now allocate the bulk of their practice to tribal economic development efforts.

The one area where Professor Williams saw hope was in economic development. But as, we all know, most folks go to law school because there is no math on the LSAT. Nonetheless, Professor Williams insisted that Indian Law needed someone like me. Few, if any, Indian Law faculty had business backgrounds, yet I was getting a doctorate at HBS, the self-proclaimed center of the capitalist universe. Professor Williams expressed cynicism about whether the law would advance the tribal cause much further. Instead, he characterized the legal landscape as trench warfare with only incremental advances.

I pointed out that, unlike critical race theorists and most environmentalists, I was politically conservative. At the time, Professor Williams thought I would still be able to survive academically because people would focus on my tribal economic development scholarship and ignore my pro-capitalist leanings and conservative positions on off-reservation issues.

So, in January 2000, I started on a twenty-year scholarly journey to

advance the cause of tribal economic empowerment. While Professor Williams' prediction was mostly accurate initially, the academy shifted further and further left over time, and my advocacy of free-market capitalism became less and less tolerable. But Professor Williams never abandoned me and continually encouraged me to keep pushing the boundaries of what was possible.

Given that the "first key to economic development is sovereignty,"⁵¹ my work emphasized the need to bolster tribal sovereignty from the outset. Even when he was back in Arizona, Professor Williams remotely supervised my "third-year paper" at HLS, which argued for the reinstatement of the Choctaw Nation's judiciary branch.⁵² The publication of that article eventually led to the formation of the modern-day Choctaw Nation court system.

As part of my doctoral dissertation, *Essays on Intellectual Asset Management*,⁵³ I included an article examining tribal identity as an intellectual asset in the context of the Indian mascot controversy.⁵⁴ While my proposed solution eliminated ninety-four percent of all Indian mascots, I carved out an exception for tribes to license their identity where the tribe felt culturally appropriate doing so.⁵⁵

That pro-sovereignty provision prompted a surprising amount of vitriol from the "woke" left. As I soon learned, anything less than complete fealty to their position was heretical and contemptible for authoritarian leftists. The critical race theorists attacked me for "selling out" even though my position respected tribal sovereignty while their objections seemed to only pay lip service to tribal sovereignty. Simultaneously, the political right attacked my proposal as political correctness. Since both extremes were upset with me, I was clearly on to something, and ultimately my proposal was adopted by the National Collegiate Athletic Association ("NCAA") two years after its publication.⁵⁶

⁵¹ Stephen Cornell, *Sovereignty, Prosperity and Policy in Indian Country Today*, 5 CMTY. REINVESTMENT 5, 5 (1997).

⁵² Gavin Clarkson, *Reclaiming Jurisprudential Sovereignty: A Tribal Judiciary Analysis*, 50 U. KANS. L. REV. 473 (2002).

⁵³ Gavin Clarkson, *Essays on Intellectual Asset Management* (June 2004) (Ph.D. thesis, Harvard Business School) (on file with author).

⁵⁴ Gavin Clarkson, *Empirical Evidence Behind the Indian Mascot Controversy*, 11 CARDOZO J. INT'L & COMP. L. 393 (2003).

⁵⁵ *Id.* at 397.

⁵⁶ See *NCAA Executive Committee Issues Guidelines for Use of Native American Mascots at Championship Events*, NCAA (Aug. 5, 2005), <http://fs.ncaa.org/Docs/PressArchive/2005/Announcements/NCAA%2BExecutive%2BCommittee%2BIssues%2BGuidelines%2Bfor%2BUse%2Bof%2BNative%2BAmerican%2BMascots%2Bat%2BChampionship%2BEvents.html> [https://perma.cc/9FGB-QTUR]. Note, however, that the NCAA failed to fully implement my proposal, at least initially, in that they failed to investigate tribal permission for certain mascots and wrongly penalized those institutions. Nonetheless, those universities

That experience taught me that while many on the right are ignorant of tribal issues, most of the radical left is simply bat shit crazy. They cannot be reasoned with, even when we are all supposedly working for the betterment of Indian Country. Apparently, if leftists don't like a tribe's exercise of tribal sovereignty, they use extra-tribal forces to bring that tribe in line with their agenda. Such tactics routinely found an ally in Justice Ginsburg, although Justice Gorsuch later changed her thinking.³⁷ My position was that "[s]overeignty includes the right to make a 'bad' decision,"³⁸ i.e., one that authoritarian leftists might not like.³⁹ Professor Williams advised me to ignore the bile-spewing from the left and focus on my research. I took his advice.

Fortunately, most of my scholarly activities focused on tribal finance and used empirical data to advocate for statutory and regulatory changes. That work was recognized when I was the only untenured professor invited to contribute to the 2005 version of *Felix Cohen's Handbook of Federal*

that did have permission from the respective tribal nations successfully worked with those tribes to be removed from the "hostile and abusive" list (which was consistent with my argument to respect tribal sovereignty in terms of intellectual assets). See, e.g., *NCAA Ruling on Use of "Catawba Indians" for Athletic Teams*, CATAWBA INDIANS (2006), <http://www.gocatawbaindians.com/page.asp?articleID=3355> [<https://perma.cc/R752-LYWV>]; Doug Lederman, *Two More Universities Off NCAA's Mascot List*, INSIDE HIGHER ED. (Sept. 6, 2005), <https://www.insidehighered.com/news/2005/09/06/two-more-universities-ncaas-mascot-list> [<https://perma.cc/G7N9-K25H>]; Joe LaPointe, *Bonding Over a Mascot*, N. Y. TIMES (Dec. 29, 2006), <https://www.nytimes.com/2006/12/29/sports/ncaafotball/29seminoles.html> [<https://perma.cc/H26K-E7TA>]; *NCAA: Mississippi College Can Keep Choctaws Nickname*, DIVERSE ISSUES IN HIGHER ED. (Feb. 22, 2006), <https://www.diverseeducation.com/sports/article/15081729/ncaa-mississippi-college-can-keep-choctaws-nickname> [<https://perma.cc/8WYT-XGBB>]. Florida State secured permission not only from the Seminole Tribe of Florida but also the much larger Seminole Nation of Oklahoma, see *Seminole Nation OK with Use of Mascot*, NBC SPORTS (Aug. 15, 2005), <https://web.archive.org/web/20120207222547/http://mbcsports.msnbc.com/id/8940521/> [<https://perma.cc/3FYA-5DDP>]. Of particular note, the University of Utah and the Ute Indian Tribe renewed their agreement in 2020. See Courtney Tanner, *Ute Indian Tribe Signs a New Agreement with the University of Utah—Adding a Stipulation*, SALT LAKE CITY TRIB. (March 3, 2020), <https://www.sltrib.com/news/education/2020/03/04/ute-indian-tribe-signs/> [<https://perma.cc/2YWQ-74YK>]. Incoming freshmen should be taught about the licensing tribes' history as their place in the twenty-first century. See Clarkson, *supra* note 54, at 402-404.

³⁷ Gavin Clarkson, *Indian Country Should Thank Donald Trump for Justice Gorsuch*, INDIANZ (Mar. 20, 2019), indianz.com/News/2019/03/20/gavin-clarkson-indian-country-should-tha.asp [<https://perma.cc/PLZ6-BMFN>].

³⁸ *Blood, Race and Sovereignty in Cherokee Freedmen Dispute*, INDIANZ (Apr. 26, 2007), indianz.com/News/2007/002611.asp [<https://perma.cc/E6MA-QTDJ>].

³⁹ See, e.g., *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), and any pre-Gorsuch decision authored by Justice Ginsburg.

Indian Law.⁶⁰ My scholarship⁶¹ and congressional testimony⁶² on tribal access to the capital markets helped lead to the inclusion of \$2 billion of Tribal Economic Development Bonds in the American Recovery and Reinvestment Act of 2009. I had similar success in eventually getting the Securities and Exchange Commission (“SEC”) to treat tribes as accredited investors.⁶³ The late Steve Emery hired me to develop a tribal financial model to help kick the federal government in the teeth for tens of millions of dollars when it tried to shortchange the Cheyenne River Sioux Tribe on a Joint Tribal Advisory Committee (“JTAC”) settlement.

As a result, the *Financial Times* named me the nation’s “leading scholar in tribal finance,”⁶⁴ and I was repeatedly cited by the *Associated Press*,⁶⁵ *Bloomberg*,⁶⁶ the *Wall Street Journal*,⁶⁷ and *USA Today*⁶⁸ on matters of tribal finance and economic development.

While I authored several more tribal finance articles,⁶⁹ an article on

⁶⁰ My contributions covered tribal finance, taxation, and intellectual property.

⁶¹ See Gavin Clarkson, *Tribal Bonds: Statutory Shackles and Regulatory Restraints on Tribal Economic Development*, 85 N.C.L. REV. 1009 (2007).

⁶² *Encouraging Economic Self-Determination in Indian Country: Hearing Before the Subcomm. On Long-Term Growth and Debt Reduction of the S. Comm. on Finance*, 109th Cong. (2006) (statement of Dr. Gavin Clarkson, Assistant Professor, Univ. of Mich. Sch. of Info., Sch. of L., Native Am. Stud.).

⁶³ Gavin Clarkson, *Accredited Indians: Increasing the Flow of Private Equity into Indian Country as a Domestic Emerging Market*, 80 U. COLO. L. REV. 285 (2009).

⁶⁴ Matt Kennard, *Lights Go Out for Native American Hopes*, FIN. TIMES (May 22, 2011), <https://www.ft.com/content/c7ce2a20-84a4-11e0-afcb-00144feabdc0> [<https://perma.cc/G7U5-SD58>].

⁶⁵ *Fraud Allegations May Hurt Navajo Bonding Ability*, ARIZONA CAPITOL TIMES (Aug. 8, 2011), <https://azcapitoltimes.com/news/2011/08/08/fraud-allegations-may-hurt-navajo-bonding-ability/> [<https://perma.cc/J5SH-PLR3>].

⁶⁶ Amanda J. Crawford, *Navajos Rated Above California Plan First Bonds: Muni Credit*, BLOOMBERG (Nov. 1, 2011), <https://www.bloomberg.com/news/articles/2011-11-01/billionaire-navajos-rated-above-california-plan-first-bonds-muni-credit> [<https://perma.cc/YKQ5-UMTN>].

⁶⁷ Gary Fields, *On U.S. Indian Reservations, Criminals Slip Through Gaps*, WALL ST. J. (June 12, 2007), <https://www.wsj.com/articles/SB118161297090532116> [<https://perma.cc/R3MH-NFE4>].

⁶⁸ Dennis Wagner, *Grand Canyon Skywalk Judgment Could Devastate Tribe*, USA TODAY (Feb. 19, 2013), <https://www.usatoday.com/story/news/nation/2013/02/19/grand-canyon-skywalk-judgment-tribe/1929813/> [<https://perma.cc/ERU3-GU68>].

⁶⁹ See, e.g., Gavin Clarkson & Katherine Spilde, *Online Sovereignty: The Law and Economics of Tribal Electronic Commerce*, 19 VANDERBILT J. ENT. & TECH. L. 1 (2016); Gavin Clarkson & Alisha Murphy, *Tribal Leakage: How the Curse of Trust Land Impedes Tribal Economic Self-Sustainability*, 12 J. L., ECON. & POL'Y 177 (2016); Gavin Clarkson & James Sebenius, *Leveraging Tribal Sovereignty for Economic Opportunity: A Strategic Negotiations Perspective*, 76 MO. L. REV. 1045 (2012); Gavin Clarkson, *Wall Street Indians: Information Asymmetry and Barriers to Tribal Capital Market Access*, 12 LEWIS & CLARK L. REV. 943 (2008).

tribal criminal jurisdiction over non-Indian offenders,⁷⁰ and the first ever Indian Law article published by the Federalist Society,⁷¹ my career changed dramatically once I started examining the issue of double-taxation of job creators in Indian Country. Immediately after presenting *American Indians Versus the Billion-Dollar Tax Weevil: The Pernicious Dual-Taxation of Tribal Economies After Cotton Petroleum*,⁷² at the 2017 Sovereignty Symposium, I accepted a presidential appointment to serve as the Deputy Assistant Secretary for Policy and Economic Development in the United States Department of the Interior, specifically to work on that issue.

While accepting a position in the Trump administration meant academic suicide, I could not turn down the chance to work on something that could generate tens of billions of dollars of investment and economic activity to Indian Country.⁷³ While most of my academic colleagues unfriended me on Facebook (as if social media really matters), Professor Williams was again the exception. I still have the encouraging note he wrote me.

As I have written elsewhere,⁷⁴ during my time at the Department of the Interior, we successfully obtained empirical data from tribal leaders about projects that were not happening because of double-taxation, developed a working paper,⁷⁵ which laid out the economic case for the proposed regulatory change, and published the empirical data provided by Indian

⁷⁰ Gavin Clarkson & David DeKorte, *Unguarded Indians: The Complete Failure of the Post-Oliphant Guardian and the Dual-Edged Nature of Parens Patriae*, 2010 ILL. L. REV. 1119 (2010).

⁷¹ Gavin Clarkson, *Not Because They Are Brown, But Because of Ea: Rice v. Cayetano*, 24 HARV. J. L. & PUB. POL'Y 921 (2001). As a thought experiment to prove that arguments in favor of tribal sovereignty should appeal to both the right and the left, I updated the article and, with the full agreement of both editorial staffs, published it with the Michigan Journal of Race and Law. Gavin Clarkson, *Not Because They are Brown, but Because of Ea: Why the Good Guys Lost in Rice v. Cayetano, and Why They Didn't Have to Lose*, 7 MICH. J. RACE & L. 318 (2002). Appearing in publications from opposite ends of the political spectrum probably helped that article become one of my most highly cited articles.

⁷² Gavin Clarkson, *American Indians Versus the Billion-Dollar Tax Weevil: The Pernicious Dual-Taxation of Tribal Economies After Cotton Petroleum*, 30 SOVEREIGNTY SYMP. OKLA. SUP. CT. NETWORK (June 7, 2017).

⁷³ I was also well aware that academia had become exceedingly hostile to conservatives. I was the last remaining conservative among Indian Law faculty nationwide, and my support of Indian Country capitalism had already resulted in two lateral offers at other universities being sabotaged by leftist faculty revolts. There was also an effort by leftists on my own faculty to sabotage my career by spreading demonstrably false allegations of plagiarism, which they later leaked to the media. See, e.g., *Pompeo Should Say Foreign Dirt Illegal: Rep. Lujan*, MSNBC, (June 17, 2019), [msnbc.com/morning-joe/watch/pompeo-should-say-foreign-dirt-illegal-rep-lujan-62084165849](https://www.msnbc.com/morning-joe/watch/pompeo-should-say-foreign-dirt-illegal-rep-lujan-62084165849) [https://perma.cc/7NLS-U533].

⁷⁴ Gavin Clarkson, *The Problem of Double-Taxation in Indian Country*, FED. LAW., Mar.-Apr. 2022, at 33.

⁷⁵ Steven Payson & Gavin Clarkson, *An Economic Analysis of the Effects of State Taxes on Infrastructure Development and Economic Growth in Tribal Nations*, (Dec. 14, 2017), available at SSRN, <https://ssrn.com/abstract=3943926> [https://perma.cc/8N2Q-542F].

Country.⁷⁶ A peer-reviewed economics journal later published our economic model.⁷⁷

As I look back on my academic career, it was a lonely journey as a conservative Indian Law academic. Still, I take great comfort in knowing that billions of dollars poured into Indian Country because of my work.

Although Professor Williams and I disagree on many political issues off-reservation, he was able to look past those differences and think outside the box about how I might contribute and make a difference in other people's lives throughout Indian Country. For his mentorship and encouragement, I will always be grateful.

VI. THE NATIVE AMERICAN LEGAL EXPERIENCE: A CREE & DAKOTA GRANDMOTHER'S PERSPECTIVE

*Angela Levasseur (Nisichawayasihk Cree Nation)*⁷⁸

A. Introduction

The law school experience has its share of highs and lows for everyone, regardless of race, cultural background, sexual orientation, or socioeconomic status. A prospective law school student will experience tremendous pressure from day one, while studying for the LSAT, applying to law schools, and taking the LSAT. This is followed by wishing, hoping, and waiting as the process of applying to law school, gaining acceptance, and making arrangements to attend law school is no small feat.

For Indigenous law students, the experience is unique in countless ways and distinguishable from the experience of others. This Essay will focus on five domains: trauma and intergenerational trauma, the importance of mentors and role models, poverty and the consequential financial struggles, systemic racism and discrimination, and finally, culture shock.

B. Trauma/Intergenerational Trauma

As an Indigenous woman, mother, and grandmother, I have endured significant personal, historical/intergenerational, and collective trauma in my lifetime. I have also experienced vicarious trauma by witnessing the

⁷⁶ *Indian Traders (25 CFR 140)*, U.S. DEP'T INTERIOR: INDIAN AFFS. (2017), <https://www.bia.gov/as-ia/raca/archived-regulatory-efforts/indian-traders-25-cfr-140> [<https://perma.cc/6YDA-K9AA>].

⁷⁷ Steven Payson, *The Economic Effects of Infrastructure Development in American Indian Tribal Areas with Low Income and High Unemployment*, 11 AM. J. ECON. & BUS. ADMIN. 61 (2019).

⁷⁸ This Essay is dedicated to my father, E. Lemard Busch; my mentor, Professor Angelique EagleWoman (Wambdi A. Was'teWinyan); and my granddaughter, Heidi Leslie Kosmolak.

traumatic experiences of others. Collectively, these experiences have made me extremely resilient. This resilience has brought me to where I am today, a third-year law student who will be graduating from MHSL in December of 2022.

I have experienced personal trauma due to surviving various forms of abuse in my lifetime including physical, sexual, mental, emotional, and spiritual abuses. Moreover, I have endured historical trauma in the form of having my ancestral lands and resources dispossessed. My Cree and Dakota relatives have been subjugated onto reservation lands, while settlers have extracted the plethora of natural resources to provide for their own wealth. Also, my people have experienced widespread forced assimilation through the Indian boarding school system, the Indian Adoption Project or Sixties Scoop, and the Indian Child Welfare system.

In terms of intergenerational effects, I am the child and grandchild of Indian boarding school survivors. The experiences of my family members have left a lasting and negative impact on my life and on the lives of my children and grandchild. Indian boarding schools, or Indian Residential Schools, were designed to “Kill the Indian, Save the Man.”⁷⁹ The ultimate goal was to eradicate Native languages and culture and forcibly assimilate Indigenous people into Euro-American society.⁸⁰ As a result, I am not fluent in my native Cree or Dakota languages, and learning about my Native cultures has been a lifelong process.

These adverse experiences have been extremely intergenerationally traumatic.⁸¹ Research has concluded that some of the intergenerational effects of Indian boarding schools include mental health issues, increased numbers of suicide attempts, learning disabilities, academic difficulty, and alcohol and drug abuse.⁸² I have personally experienced anxiety and depression throughout my adolescent years and during my adult life; these types of struggles have made law school very challenging at times.

Moreover, trauma presents itself in many ways, including mentally, emotionally, and physically.⁸³ Whereas anxiety may be an emotional response, physical responses to trauma can include exhaustion, fatigue, and poor concentration.⁸⁴ For Native American people, it is important to note the connection between genocide and trauma. Historical trauma and systemic oppression have led many Native parents to raise their children

⁷⁹ Angelique EagleWoman & G. William Rice, *American Indian Children and U.S. Indian Policy*, 16 TRIBAL L.J. 4 (March 09, 2016) (quoting MARGARET L. ARCHULETA, BRENDA J. CHILD & K. TSIANINA LOMAWAIMA, *AWAY FROM HOME: AMERICAN INDIAN BOARDING SCHOOL EXPERIENCES, 1879-2000*, 16 (Margaret L. Archuleta et al. eds., 2000)).

⁸⁰ *Id.* at 9-10.

⁸¹ Tori DeAngelis, *The Legacy of Trauma*, AM. PSYCH. ASS'N (Feb. 2019), <https://www.apa.org/monitor/2019/02/legacy-trauma> [https://perma.cc/6UQH-AJWY].

⁸² *Id.*

⁸³ *Trauma Symptoms, Causes and Effects*, PSYCHGUIDES.COM, <https://www.psychguides.com/trauma/> [https://perma.cc/GB8E-4XPC].

⁸⁴ *Id.*

with fear-based survival messages which get passed on from generation to generation.⁸⁵ Some of these messages include not wanting to ask for help, increased interpersonal vulnerability, and a reluctance to trust others, including health care providers and academic support staff, which makes it difficult to seek out and accept help and/or support from others.⁸⁶

C. The Importance of Mentors and Role Models

In my personal experience, I would not have made it through law school without the following supports: NALSA, the Minnesota American Indian Bar Association (“MAIBA”), and Native American mentors such as Professor Angelique EagleWoman, Minnesota Supreme Court Justice Anne McKeig, and Mary Al Barbour, a well-known Native lawyer from Minnesota. Having mentors and role models is imperative to the success of a Native law student. You can experience imposter syndrome, doubt your abilities, and engage in negative self-talk all you want, but you cannot convince yourself that attaining a legal education is impossible when others have broken the trail for you and are actively cheering you on.

D. Poverty and Related Financial Struggles

Many law school students come from families of lawyers and judges, but this is not the case for me. There has never been a lawyer or a judge in my family, nor my extended family, or even my tribe. My dream has been lifelong, and my path has been rocky. For instance, I had a newborn baby whom I was breastfeeding during the two months I spent studying for the LSAT. I also had to drive sixteen hours each way to come to campus in Saint Paul, Minnesota for prep week and Capstone week of my 1L year because I was still breastfeeding my son, and I had to bring him with me.

I also have four other children and a grandchild who depend on me financially. Therefore, I have had to work full-time while in law school. Finally, I became very ill in my 2L year with advanced osteoarthritis and spinal stenosis. This required me to have major spinal surgery in July 2021, as I was becoming paralyzed. Luckily, the surgery was a success, and I managed to complete my summer courses; I even earned an A in one course: the Indian Child Welfare Act and Child Protection and Adoption Proceedings.

It has been very difficult to juggle three full-time jobs: law student, teacher, and mother/grandmother. If I had the choice, I would have wanted to complete law school without the added burden of having to work full time to support my family. I have been blessed to be the recipient of the Native Justice Scholarship from MHSL, be awarded a scholarship from MAIBA, and have support from my employer, my family, and my tribe. To produce

⁸⁵ DeAngelis, *supra* note 81.

⁸⁶ *Id.*

more Native lawyers, there needs to be more scholarships and bursaries for Native students.

E. Systemic Racism, Discrimination, and Oppression

Systemic racism, discrimination, and oppression have been lifelong battles that I have consistently fought head-on. Throughout my personal, professional, and academic life, I have overcome many race and culture-related barriers, and I have had to push back against racism and both cultural and gender-based discrimination. In essence, I have had to work twice as hard to get half the respect of other racial, cultural, and gender-based groups.

This experience has been exhausting, as is the process of continually having to educate others about Native law, history, and culture. For example, in my first year at MHSU, we studied a 1971 case in criminal law called, *State v. Williams*.⁸⁷ There, a Native couple did not seek medical attention for their seventeen-month-old toddler who had an abscessed tooth because they feared that the child would be apprehended by the state and be permanently adopted to a non-Native family.⁸⁸

Sadly, the child's tooth became gangrenous, and the child eventually died from pneumonia.⁸⁹ The parents were convicted of involuntary manslaughter, which was affirmed on appeal.⁹⁰ Now, this may seem reasonable to a person who is uneducated in the realm of Native history, but to Native people, this case was a tragedy.

Williams was decided in 1971, right in the middle of the Native Adoption Project or the "Sixties Scoop," where thousands of Native children were apprehended by child welfare authorities and then adopted to White families.⁹¹ In my class of ninety-six first-year law students, very few seemed to be educated in this very important history. So, I took the liberty of providing my classmates with a brief history lesson. Thus, a cultural sensitivity course that includes a major component on Native law should be mandatory for all first-year law students, especially since Native people are highly overrepresented in the criminal justice system and experience mass incarceration rates.⁹²

⁸⁷ *State v. Williams*, 484 P.2d 1167 (Wash. Ct. App. 1971).

⁸⁸ *Id.* at 1170.

⁸⁹ *Id.* at 1173.

⁹⁰ *Id.* at 1174.

⁹¹ Angeliqwe EagleWoman & G. William Rice, *American Indian Children and U.S. Indian Policy*, TRIBAL L.J. 1-29 (2016).

⁹² Matt Davis, *The Overrepresentation of Indigenous People in America's Jails: What Needs to Change?*, SAFETY AND JUST. CHALLENGE (Oct. 8, 2021) <https://safetyandjusticechallenge.org/blog/the-overrepresentation-of-indigenous-people-in-americas-jails-what-needs-to-change/> [https://perma.cc/CFK2-SG9Q].

F. Culture Shock

When I first arrived at MHSL in the Twin Cities, a single thought kept running through my mind: “I don’t belong here.” Ironically, MHSL is located on the traditional land of my Dakota ancestors, and we have always belonged here. Everywhere I looked, almost everyone and everything was White or Euro-American, as well as male-dominated. I had to look very closely to see any reflection of my Native heritage and found only one tiny piece of Native art on a side wall in a stairwell.

This has changed over the last two and a half years, but much work needs to be done to raise the profile and improve the visibility of Native Americans at my law school. I want to see more Native law students, professors, and support staff. This will equal more Native lawyers and Native judges, and in turn, a better world. My ultimate goal is to practice law for several years in service to my tribe and then become a Native Law professor at MHSL. And maybe one day I will become the Director of MHSL’s Native American Law and Sovereignty Institute (“NALSI”).

To conclude, as an Indigenous woman, I have learned to be very resilient. My people are resilient, and we are still here. I thank the Creator daily because I am still here, and I am going to earn my law degree.

Ekosi, Kitam Kekawapamitin.

VII. REFLECTION PAPER

*Leah R. Sixkiller (Red Lake Band of Chippewa Indians)*⁹³

I attended the University of Arizona College of Law (“UA”) and received my J.D. and Certificate of Indigenous Peoples Law and Policy therefrom in 2010. As a college student at Harvard University (A.B. 2007), I decided that I wanted to attend law school specifically to learn Federal Indian Law because that was when I first learned how law and policy impact tribal nations and individual citizens. Based on my own personal knowledge and the advice of mentors and professors, UA undoubtedly had the best program for Indian Law in the country. I considered only three other top tier law schools, but each of them failed to “woo” me to attend, due to their lacking Indian Law programs and inability to provide enough financial assistance. UA did an incredible job of recruiting me and my then-boyfriend, now-husband, from our respective Ivy League colleges. UA included personal contact from world-renowned Indian Law professors and offered us full-tuition scholarships. Because of UA’s robust Indigenous Peoples Law and

⁹³ Judge, Shakopee Mdewakanton Sioux Community and Of Counsel, Hogen Adams PLLC Red Lake Band of Chippewa Indians.

Policy Program (“IPLP”) and ability to recruit American Indian and other Indigenous students, there is a relatively large and strong community of American Indian students and support therefore.

For the first time in my entire life, I was not part of the unheard ultra-minority in an institutional setting, but rather of the outstanding and celebrated minority. The IPLP provided a solid platform for American Indian students’ visibility, and I will always remember when the UA Dean referred to the IPLP as “the crown jewel at the College of Law.” Many UA students took IPLP courses, regardless of their intent to practice law in Indian Country. This fact alone had the profound impact of ensuring that all UA students knew of and understood the importance of Indian law and issues affecting Indian tribal nations. I met J.D., LL.M., and Juridical Science Doctor (“S.J.D.”) IPLP students from all over the country and around the world, most of whom were indigenous to their respective countries of origin.

Our NALSA chapter was large (mostly including American Indian members), active, and thriving. I served as both secretary and president of NALSA, during which time my leadership earned me the title of National Native American Law Students Association (“NNALSA”) 2L of the Year and earned our chapter the title of NNALSA Chapter of the Year. I found my calling as a leader during this experience, and I achieved notoriety within the law school, locally in Arizona, and nationally. For example, a national bar magazine featured me in an issue, a local news station conducted a short segment on me (interviewing and following me for a day), I was asked to narrate a documentary that the University was producing regarding tribal nation governance, I received achievement awards from UA, and my classmates voted to have me as our commencement speaker.

I know that my law school experience was exceptional, and perhaps, unbelievable to some. I imagine that most law schools do not provide adequate support and celebration of American Indian women law students, let alone foster and encourage the level of achievement and prosperity that I experienced. All law schools should actively recruit American Indian students and ensure that incoming 1L classes include at least as many American Indian students as is comparable to the percentage thereof in the general population. On the application, each law school should require applicants who indicate that their race/ethnicity is “American Indian” to provide their tribal citizenship information. All law schools should similarly actively recruit and retain at least one American Indian professor. Finally, each law school should have the goal to ensure that every student feels acceptance, validation, understanding, and celebration. I have never understood why professors do not require a quarterly or semesterly check-in with each student, even for five minutes, just to meet each other. For some students, it may not be in their nature or even understanding that they bear the burden of reaching out to an untouchable and unreachable professor.

Although my law school experience was generally quite positive, I certainly had negative experiences as well. Like many law students, my first year felt horrific. Despite my rigorous academic background, I did not expect the grueling challenge and emotional rollercoaster of the first year of law school. I could not yet take my desired IPLP classes because all 1L students must take the same basic classes. I could not actively participate in NALSA or other extracurricular activities because there was no time to do so. Additionally, I was away from my family in a very foreign desert. Honestly, after the first semester, I wanted to quit. I am a generally gritty and resilient person, so this part of my story often surprises people who know me. However, I stuck it out, and I am so glad that I did because I ended up thriving and leaving a big piece of my heart in the Southwest once I graduated and returned home.

A few unfortunate life events also upset my otherwise apparently charmed situation. All within a short timeframe, my cousin, my grandmother, and my auntie (who helped raise us and was like another mother to me) died. I felt so guilty in these moments because I was enjoying school and thriving far from home while my family was suffering. It was important for me to return home for the funerals, and the only reason I could afford to do so was because I had the privilege to work as a summer associate at elite law firms during the summers. One of my non-Indian professors commented to me, in a very compassionate manner, that it appeared to him that the only students that experience such disproportionate loss are his American Indian students. In my experience, I agree.

Prior to attending UA, I had no idea that such a supportive and visible American Indian community existed in an educational institution. I had attended private schools my entire life up until that point, due to the fact that my parents sacrificed everything for my education and my siblings' education. They did this to ensure that we had access to worlds that most of our family could never imagine. Though my private school and college had only a few American Indian students, I do think that they provided early opportunities to learn about and engage with individuals who might serve as examples for me. The first time I met an American Indian woman attorney was as a college student at Harvard University. She was on a guest panel of women who had been flown in from across the country. But my most striking memory of meeting someone like me who later became a mentor and role model was when I met an American Indian woman who was a student at Harvard Law School. She came across as remarkably brave and well-spoken, asking pointed and seemingly controversial questions at an American Indian studies faculty presentation. For the first time, I thought, "I want to be her when I grow up!" I had never met or even seen someone like me in that type of setting—and with such power and

grace to top it off. I often think of her extraordinary demeanor when I need a reminder of my own strength, aptitude, and ability.

Because of my private school upbringing and elite private college experience, I had always been one of the only tribal citizens in my class. To suddenly be a part of a sizable and vibrant American Indian educational community at UA both floored me and added to my self-confidence and sense of self-worth, propelling me to work toward excellence and seek the most competitive opportunities. During my first law school summer, I worked at the largest firm in Minnesota. I recall showing my parents my private office on one of the top floors of the tallest buildings in downtown Minneapolis, and my dad pointed out that from my window we could see the housing project in which he grew up in North Minneapolis. My second law school summer I worked at a mid-size law firm in Minnesota because its only American Indian attorney, who was a woman, recruited me. I had gained another mentor and role model. At the end of law school, I chose to return to my first firm for many reasons, including its national Indian law practice and reputation. I know that to have had a choice is a sort of privilege, but I also know that my hard work and resilience are the driving reasons behind such opportunities.

I am now an attorney practicing law in Indian Country as Of Counsel at Hogen Adams PLLC and a judge for the Shakopee Mdewakanton Sioux Community. I live in my hometown of Minneapolis, Minnesota, with my husband and our four young children. Everything I did and do in my life is to make my family proud. I am standing on their and my ancestors' shoulders, and I have a duty to do and be the best. One of my simultaneously proudest, saddest, and most poignant moments was when I learned at my uncle's funeral that he always talked about me to everyone on our reservation because he was so proud of me. Behave like your family and ancestors are watching you, and you cannot misstep.

VIII. WHY I FIGHT FOR EQUITY IN THE CRIMINAL JUSTICE SYSTEM

Jack Rice (San Luis Rey Band of Luiseno Indians)⁹¹

When I walk into a courthouse as a criminal defense attorney, I carry my history with me. My older brother and I grew up in a trailer park. My father was absent, leaving my mother to care for us. She never graduated from high school—which is not a fair statement, as she is (and we are) much more than that. There were times we didn't have a place to live, food to eat.

⁹¹ I dedicate this to my Mom and to my Tribe. I would not be who I am without either of them.

We often relied on food stamps and free school lunches to get by. Sometimes, strangers would feel pity for us and give us a meal.

There were many times my mom would put food on the table and whisper, “this cost \$1.35. You better eat it all.” That statement has never left me. The constant reminder that none of my extended family (my mom was one of thirteen children) ever went to college has never left me. There was nobody to look to as an example of how to get out of the cycle of poverty and rid the stigma attached to it. I mean, the only connection I had to the legal system was scores of my relatives in both state and federal prison.

But *history* is not only composed of lived stories and memories. There is another piece—culture. You see, my family is registered with the San Luis Rey Band of Luiseno Indians, located in Northern San Diego County. The people of the Pacific Ocean run through us. It is us. We are also Latino. Like many, my ethnicity is a confluence of varied traditions and cultures which make up my life experience. In this context, I can’t help but wonder how my background has impacted the decisions I have made and the general trajectory of my life.

There is no doubt that racism played a role in my life. I remember a time when my brother started dating this girl. He was so excited about finally getting to meet her family. But when he came home, I could tell that something was wrong. He told me that when he met his girlfriend’s mother, she said, “Get that black Indian out of my house.” I can still remember the look on his face when he described it. In some ways this made me feel guilty. It is weird to say, but I look a lot like my (White) father, while my brother favors my mom. I never really understood his feelings because, to me, my brother and I were the same. Nevertheless, the hurt in his eyes, the pain he felt, the pain he still feels, makes me hurt all the same. It is easier for me to pass as part of the “majority population” while he never could. That being said, I still have people ask me where I “come from.” Never Indian enough. Never White enough. A strange place to be sometimes. It is this outside force—the force of racism and separation rooted in populism—that places us on separate levels.

While the outside forces of racism create real and ongoing issues for minorities, I cannot help but think of the internal forces that disadvantaged my ancestors. I often think about going to the San Luis Rey Mission. Founded in 1798, the Mission is located smack dab in the center of the lands my people once inhabited. My grandmother is buried there, my great-grandmother is buried there, and my great great . . . well, you get the picture. This Mission, this church, that so many of my relatives were so connected to is the same organization that decimated and destroyed our people, our tribe. In fact, they still have the bells that rang in the nineteenth century—the bells which told the Indians to come in from their disparaging and inferior work in the fields. Today, the Mission displays the bells with pride on the wall. Again, I’m conflicted, but there is no doubt that all of this—piece by piece, drop by drop—makes me who I am.

Despite these shortcomings, what I would call inside and outside forces, my mother always taught my brother and me that we were as capable as anybody else in achieving our dreams. Coming from where she came from and from what she endured, I am still blown away by her tenacity and wisdom. It is a lesson that I have had to remind myself of throughout my life. It is a lesson that my brother and I, both lawyers, have truly internalized. My mom is the most tenacious person I have ever met. With no background or experience, no connections, no money, no nothing, somehow, she found a way to get her boys through high school, undergraduate school, and finally to law school. If that isn't tenacity, I don't know what it is.

Again, all of this, layer-by-layer, comes with me when I walk into these courtrooms. Not all people were fortunate to be raised by my mother. Other people have different life experiences, and those experiences can land them in our criminal justice system in a very different way. So, this is why I fight for those charges with crimes. Without a lot of luck and a tenacious Indian mother, I could easily have been the one needing the attorney.

Law school was quite another experience that was new and, in some ways, even foreign to me. The idea of precedent and institutional knowledge of the common-law system was something that made a lot of sense in some ways. And yet, I occasionally found the narrowness in which it was applied to be lacking. What happens when the generally confrontational approach simply didn't work? Law school frequently ignored this and other forms and approaches, including Native American ones that could be more effective. Instead, they just hammered away at these traditional legal approaches that seemed so familiar to them.

Little was I to know that twenty-five years later, I would face one of the most challenging cases of my career—when I represented an American Indian man who pulled down the Christopher Columbus statue at the Capitol in Saint Paul—and the traditional models pounded into me by my law school simply failed me. Turning to Native models of restorative justice ended up being the answer. I wonder if those old professors had seen this, they might reconsider how they teach in the first place? Nevertheless, that is for another day.

Through my criminal justice work, I have become deeply engrossed in understanding the underlying inequities that many of my clients have faced in their lives which led them straight to my door. While this has been true for my Native American clients, it has also been the case for my Hmong, Somali, Latino and other clients as well. Our justice system is founded on the principles of fairness and equal opportunity for all. It is a system that is designed to look at each defendant as innocent, as an equal. That is the goal. That is the aspiration. Equity. But does it happen? Rarely. But there are some instances that shine a positive light on this ideal of fairness and equality.

Early in my career as a criminal defense attorney, I appeared before a very good, experienced, and prestigious judge. My client was poor, drug

addicted, sexually abused. On top of that, she was Native American. Her circumstances led her to prostitution to survive. She was weathered, burnt-out, ashen, and beaten covered in ink and scars that only a junkie would acquire. She was the kind of person that one would ignore, only to give enough attention for judgment and despise. That is, besides the police.

You would not have to guess why she was in court if you saw her. She was the picture of what the majority would call a “criminal.” But this well-seasoned judge looked at her in a different light. He looked at her with an open mind—letting her explain what placed her in front of him that day. He recognized the severity of the offense but did not take the “black and white” cop-out. He understood that accountability cut both ways, and the court had obligations to her as well. He offered her a seat in the courtroom, allowing her to feel incorporated in the process. He made sure that she was comfortable, that she understood the process, that she mattered. This changed everything about how I perceived the justice system, about the possibilities that one judge can create for a defendant. It made me see my true role as an advocate, assuring that a hard fight, compassion, and integrity can assure justice for our minority groups.

That judge gave me hope for the future. Law schools around the country are focusing on alternate forms of justice—forms that reduce the disproportionate number of minorities in our system. Restorative justice is a perfect example. These new lawyers will help shape the future. And, maybe one day, a majority of the judges in district court will mirror the morals of that judge I met so long ago. But not all justice is in the hands of the judge. Many times, a person will find themselves accused, standing in front of a jury, a jury composed of people that don’t possess the kind of knowledge being taught in our law schools.

Standing in front of a jury can be oddly intimate. If you do it right, they will feel what you say. But it does not come in one fell swoop, one tsunami of understanding. Sometimes they feel the drop-by-drop, layer-by-layer experiences that only you possess. If you do it right, you can educate the jury about the veil of ignorance they subconsciously hold—the preconceived notions they may have about a minority defendant. This helps ensure that the jury makes a decision consistent with the presumption of innocence. They also hear about the two-way accountability of the criminal justice system that I mentioned above regarding that young woman. And ultimately, they hear how that accountability requires something more than they might have considered. But some jurors give too much weight to their subconscious, sometimes even conscious, bias towards minority groups. This is why the *voir dire* of potential jurors is so important, and why I study, understand, and prep jury issues so frequently.

Although I am experienced and have been doing this for a long time, I think a quote from Minnesota author, Louise Erdich, sums it up best: “We do know that no one gets wise enough to really understand the heart of

another, though it is the task of our life to try.”⁹⁵ In other words, the more I learn, the more I realize what I don’t know. That’s experience. It is my goal to keep learning, and, most importantly, to keep teaching my peers on the importance of minority representation, alternative justice, and jury preparation.

Over the years, I have tried more than fifty jury trials (and counting) in Minnesota’s district courts, including everything from domestic assault to murder. I am a Board-Certified Criminal Law Specialist. I have worked for the government, both state and federal, so I have experience and am sensitive to prosecutorial challenges. I teach trial advocacy skills to civil attorneys, prosecutors, and defense attorneys in Minnesota and around the world.

My work with the Minnesota American Indian Bar Association and with Indigenous people worldwide helps me understand and contribute to our diverse cultural communities. Teaching trial advocacy and training around the United States as well as Russia, Republic of Georgia, Tanzania, Kenya, South Sudan, Uganda, Turkey and elsewhere, has made a substantial difference on how do my job right here in town. The bulk of my career, however, has been dedicated to representing working class people who found themselves in very difficult circumstances.

Life can break you. No one can protect you from that. However, when the “system” is the wrecking ball, the breakage can become a permanent stain on your record—leading to huge implications on a person’s life, finances, housing, and general reputation. This institution is supposed to protect us from that breakage when the law is not in support of the outcome. Under this same law, we all should receive equal protection. It should be ours by right. We the people, by the people, and for the people. Of course, it was never originally intended for a lot of us, and it rarely works out that way. But I’ll be damned if I won’t work my tail off until I see change. I mean, if people are going to bandy about words like equality and justice for all, they also better be prepared for those of us who are going to hold them to it.

⁹⁵ LOUISE ERDICH, *THE BINGO PALACE* (1994).