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Building Native American Representation in the Law: the Need for Affirmative Action[†]

Faith Smith

I am the President of NAES (Native American Educational Services) College, the only private Native-controlled college in the country, and a consultant to the Kellogg Foundation on its Native American Higher Educational Initiative. I have engaged in work relating to Native American education and community development throughout my career. My curriculum vita is attached as Exhibit A.[‡]

I have agreed to serve as an expert witness for the student intervenors in this case. I am not being compensated for my services. In the past four years I have not testified as an expert at trial or at deposition.

I have consulted the definitive work on Native American demography in preparing my testimony: C. Matthew Snipp, *American Indians: the First of This Land* (National Committee for Research on the 1980 Census/Russell Sage Foundation, New York 1989).

NAES College offers a B.A. degree in Public Policy for adults in Native communities who have not been served adequately by conventional institutions of higher education. When NAES was founded, few Native communities had Native people with appropriate credentials working within their programs and there were only a few thousand enrolled in higher education, most of them at the Associates level. Those working within tribal and Native communities with credentials, if there were any, were non-Indians, often unfamiliar with the history and culture of the tribe or community.

An area in which the lack of trained and credentialed Native people has been and is most crucial is in the field of law. Today, as then, every tribe and Native community has the need for legal counsel both for on-going work and for litigation. The protection of tribal natural resources, sovereignty, equal access to public resources for tribal members, and child and family welfare are but a few of the areas that require legal counsel and which frequently end up in the court system. Few tribes and Native communities are able to hire Native attorneys because there are so few. And non-Native attorneys have little or no knowledge about laws and policy that impact Native communities. For Native tribes and communities this has sometimes meant inadequate representation and no justice.

In the 1970's and 1980's, Native communities recognized the importance of addressing the need for Native attorneys and sought special financial support for Native people to enter this field. And while their efforts have resulted in increasing numbers of Native people who have law degrees today, the number is still far below the need, since there are 552 federally recognized tribes and over 200 cities with major Native populations.

[†] Expert report submitted on behalf of Intervening Defendants (Student Intervenors), *Gutter v. Bollinger*, 137 F. Supp. 2d 821 (E.D. Mich. March 27, 2001) (No. 97-75928).

[‡] The exhibit is not included in this publication.

Among NAES graduates, two have since earned law degrees and one is now in law school. As undergraduates, they came to us academically under-prepared to meet the rigors of higher education. But they were bright and had a strong desire to enter law school and work in their home communities. It required several years of hard work on their part and one-on-one tutorials with faculty to address the past failures of institutions in which they had previously been enrolled. But they succeeded at NAES and they succeeded in law school. The two persons who completed law school did so at the University of Nebraska Law School and John Marshall School of Law. Both of these law schools must be commended for assuring that Native students were a priority and that special consideration be given to those whose past experience and circumstances are outside the mainstream of our society. Today, one of these new Native attorneys works for her tribe in Nebraska and the other directs the Lawyer's Committee for Better Housing in Chicago.

Achieving equitable access to law and professional schools for Native people is a long process, but one which is being addressed, albeit slowly, through affirmative action. In twenty years, the situation has improved dramatically. We entered the twentieth century with no Native attorneys. Those who have earned law degrees did so in the past two decades. While equitable access is now a dream we can imagine, we are not at the point where we can relax our vigilance about making sure that Native people have equal preparation and access to resources and a learning environment in which they are valued. Affirmative action continues to be the vehicle through which these issues can be addressed.

July 7, 2000