Stick Houses in Peshawbestown

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There are many stories here. And, there is much to learn for the future. For all the pain and heartache we have felt, there has been and will be an equal amount of joy. That is how everything works. There is always a struggle to maintain the balance.

—Winona LaDuke¹

It is undoubtedly true that Indians may be easily led to make bad bargains, and, when made, usually stick to them.

—Kobogum v. Jackson Iron Co.²

M-22, Leelanau County, 10 A.M.

Parker Roberts turned her head to the left for just a moment and crossed the yellow line. Our Honda sideswiped an oncoming Explorer and knocked it into the ditch. We spun out violently, sliding off the road and over the snow bank, through the air between scraggly trees, and onto the Grand Traverse Bay, covered in ice. We stayed there for four hours.

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¹ WINONA LADUKE, LAST STANDING WOMAN 299 (1997).
² 43 N.W. 602, 604 (Mich. 1889).
Parker liked to drive fast, like her grandmother, a traveling Powder Puff driver back in the thirties and forties. She didn’t fly past other drivers or routinely collect speeding tickets, but on the highway she would set the cruise about fifteen over the limit. She drove fast enough to make a cop think about pulling her over, but not fast enough to make the cop’s decision an easy one. She drove with enough latent talent to relax her passengers even as she pushed the envelope into legal recklessness. She was good enough to make us feel as though she drove defensively. She was smooth.

The ice cracked underneath us. Not right away because the west bay had been frozen for several weeks, but it was March and over forty degrees for the second day in a row. The mist over the bay was impenetrable and there was about two inches of water on top of the ice. We slid and slid over the bay, pushing a wave of water ahead of us as we spun out. I remember clenching my body, afraid that if I moved while we slid that our horizontal inertia would fail and we would sink. I knew cars should not be riding on the ice.

We did stop after a few seconds, leaving us in a blinding white room, our car surrounded by the curtain of fog. I couldn’t see the road, the shore, the trees, or even the sun’s outline through the glass in the sunroof. The trail left by the car instantly faded as the water lapped up against the tires. I looked all around, trying to remember the stories my father told me about the North Star, the Northern Lights, or which direction the sun rose, but I could not see any of those signs that morning through the mist rising out of the ice.

I don’t remember my father’s face except through pictures now. Someone had to die in the second Gulf War and he was one of the unlucky Americans. My mother, an undergraduate student at Central Michigan, vigorously protested the war before Strickland’s call-up, mostly complaining about American imperialism and Iraqi civilian casualties. Though she did not express it in her letters to the local Members of Congress, she wrote in her diary that she feared being a war widow. She feared her son would be a half-orphan and that she would be a single mother. She would feel responsible for actions taken by her government in retaliation for her family’s loss.

After Strickland accepted orders to travel to the war zone, Parker dropped out of college and came home to Peshawbestown. Gramma raised me, her duty as a grandmother according to the old Indians, while Parker took a job at Leelanau Sands and then at Eagletown Mar-
ket when a cashier position opened. She rented a small apartment across
the street from a pizza place in Suttons Bay and bought a used Civic
from her cousin. Parker hated American cars as much as she hated
American wars. She explained her foreign car purchase to the local patri-
ots on the basis that the Civic got better gas mileage. She worried about
greenhouse gases too, and the fact that the bay never really froze over
anymore.

But in February and March 2003, the bay froze and the ice both
saved and doomed us at the same time. They explained to me later that
Parker probably hit her head on the steering wheel either at the time we
hit the SUV or when we hit the ice. I remember her leaning backward
in her seat, sleeping peacefully, as we sat on the ice. She talked in her
sleep. That day, she said Strickland’s name several times, pronouncing
every syllable, every consonant, carefully, as though lecturing him from
her dreams. I closed my eyes to mimic her. I wanted to sleep too. I
thought we were already in heaven. I may have even nodded off—it is so
easy for the young to drift off—but Parker moaned in agony from the
depths of her trance and woke me.

Parker loved to sleep. She worked the afternoon shift at Eagletown
so she wouldn’t have to get out of bed until after ten or eleven. I woke
early and snuck into her room to watch her sleep. After we left Mt.
Pleasant, Parker slept more and more, going to bed earlier and waking
later. I watched over her because she was my mother and because she
named me after the eagle. Gramma explained that I was supposed to
watch over Parker, because that’s what eagle does. In the mornings, I
would stay as quiet as I could for a long time and watch her eyes for
signs she might wake. Sometimes, she woke suddenly and I would run
from the room, startled, while she laughed at my escape. We spent the
most time together in her bedroom while she slept because she worked
during the days and I’d be sleeping when she came to pick me up from
Gramma’s at night.

I tapped Parker’s shoulder, but she didn’t stir. I pushed the parka
she wore until I felt her bony shoulder, but she still did not stir. I kept
the seatbelt on and reached for the radio. I knew we rested precariously
on ice, so I moved slowly and deliberately, lest my sudden movements
send us crashing to the bottom of the freezing bay. The car had stalled
in the accident, but I knew the radio would still work. The morning talk
deejays had left for the day and the news was on. A couple of
snowmobilers drowned in Long Lake a few weeks before and the police
had called off the search for the bodies until the ice melted completely. They said it wouldn't be long—a few days maybe.

"Mom, wake up," I said.

I heard sirens and cars approaching. I heard adults talking urgently, some very scared, and I listened for someone calling for the Jaws of Life. I imagined the fire engines and ambulances that sometimes raced under our windows at home had stopped to help us, but I wondered how they would be able to drive out over the ice to collect our little car. I shut off the radio and rolled the window down (ever so gently) to hear them better. It was very cold on the ice and I immediately felt chills.

"Mom, wake up," I said again. I pushed her as hard as I felt the ice could stand. "Listen."

Parker did not move.

I listened to the authorities deal with the Explorer and its occupant, who suffered a strained neck and concussion caused by his stubborn refusal to buckle his seat belt. There was little injury to his vehicle, just a large scrape of red paint down the side and the alignment problems caused by going into the ditch. I learned later that the police treated the accident as routine. I began to worry that the police would forget about us.

"Parker," I said, repeating Gramma's mantra, "you sleep too much." It was too cold so I rolled the window back up and to wait for rescue. Instantly bored, I turned the radio back on.

I don't listen to the radio anymore. It reminds me of that day, how people can be so close but still too far. Sound creates the illusion of proximity. It lies.

I remembered something then. I reached over and gently pushed the orange triangle button on the dash, the button Parker told me signified emergency. I relaxed, knowing that the emergency lights would assure our rescue. I began to worry about how much it would cost to fix the car once they towed it off the ice—if they could tow it off the ice.

I. TATTERED INDIAN SKINS

One absence of truth
One horrible thing you saw
What you truly wanted to become
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In this hole we have fixed
We get further and further
Further from the world
—Chan Marshall

The Indian Health Service doctor in Albuquerque took Mariana’s baby in the fourth month at Mariana’s request. Stephen Thunder wouldn’t be coming back to her and Mariana did not trust herself to raise a child alone. She lied about her age—she was only fifteen—and the nurses knew about it but didn’t care. She was an ordinary Indian.

The Indian Health Service doctor also took Mariana’s womb without telling her.

If it had been a boy, Mariana would have named him after his great-grandfather, Benjamin. If it had been a girl, she would have named her Solsona because it was a beautiful name.

Mariana left the hospital at seven in the morning before the sun rose over the mountains and stole a truck. Stephen taught her how to hotwire Ford F-150s the day after they first left her aunt’s house in

3 Cat Power, In This Hole, on The Covers Record (Matador Records 2000) (covering Cat Power, In This Hole, on What Would the Community Think (Matador Records 1996)).


In recent years a new wave of practitioners of federal Indian law have thrown caution to the winds and produced a massive amount of new literature which pretends that a few popular concepts can be used to explain a very complicated, very diverse body of data.

Most of the new literature reads like a mechanic’s manual, describing a machine with only three moving parts and using some monosyllabic words that are assumed to communicate some meaning beyond their ordinary meaning in common usage. No effort is made to examine the larger philosophical context of law and ask whether or not federal Indian law actually fits into this context. The tortured reasoning of various Supreme Court opinions receives no criticism and the idea that historical incidents may well have determined the context and content of the law, regardless of what either the Congress or Supreme Court might have intended, are quite foreign thoughts in modern federal Indian law. When law is made in this fashion, it becomes the exclusive province of the practitioner, and he acts pretty much the way a priesthood demands that he act. Law develops a language all its own and is no longer perceived to have any relationship with the lives of ordinary people.

Id.

5 “[I]t has been estimated that during the 1970’s, the Indian Health Service was sterilizing women at a rate that could have eliminated all pure blooded Indian races in less than fifteen years.” Meredith Blake, Welfare and Coerced Contraception: Morality Implications of State Sponsored Reproductive Control, 34 U. Louisveille J. Fam. L. 311, 316 (1995-1996) (footnote omitted).
Peshawbestown. The one she picked was dented, old, and covered in
dried mud—a skin's truck.\textsuperscript{6} Whoever it was—Navajo, Zuni, Ute,
Tewa—she figured they'd understand. She figured a lot of things, not
seeing the irony of leaving an Indian helpless outside an IHS building
with no ride, no way to escape the scalpels and clamps of modern
genocide.\textsuperscript{7}

Mariana drove south and turned west at Las Cruces before it got
too hot to travel. She planned on Tucson. Tucson sounded great. She
heard that Leslie Silko\textsuperscript{8} lived there. And Simon Ortiz.\textsuperscript{9} She wanted to be
around all the Indians. She heard ten percent of the population of Ar-
izona was Indian.\textsuperscript{10}

Lame Bull had decided the night before to give me a ride into Dodson. From there I
could catch the bus down to Malta. We left early, before the gumbo flat could soak up
enough rain to become impassable. The pickup slipped and skidded through the
softening field as the rain beat down against the windshield. There was no wiper on
my side and the landscape burned light brown against gray. Patches of green relieved
this monotony, but suddenly and without form. I had placed a piece of cardboard in
my side window— the glass had fallen out one night in town last winter— to keep
out the rain. I could have been riding in a submarine.

\textsuperscript{7} See Rayna Green, Native American Women, in Readings in American Indian Law,
215, 221 (Jo Carrillo, ed., 1998):
The literature bulks large with studies of the Navajo, the Inuit (Eskimo), Pueblo, and
Iroquoian groups, with occasional forays in to the cultures of the California tribes and
the many Ojibway groups. Where are the women of the Northwest Coast, the Siouan
and Southeastern peoples whose male members fill the literature on American Indi-
ans? The choice of tribes and topics shows a distinct preference for those that already
interest anthropologists rather than for those which might offer contradictions to
older ideas. Preference has clearly been for people who are visibly traditional (read: old-fashioned) and amenable to being studied (read: easy to work with) and women
who fit the models drawn up for female "primitive" behavior (read: artistic hunter/gatherers). . . . Unless the scholarly agenda changes, we will learn less and less about
Native American women.

\textsuperscript{8} See Leslie Marmion Silko, Ceremony (1977).


\textsuperscript{10} See Jo Carrillo, Beyond the Cliff of Abiquiu, in This Bridge Called My Back: Writ-
ing by Radical Women of Color, at 68 Cherrie Moraga & Gloria Anzaldúa eds.,
2002)(1981) [hereinafter "This Bridge Called My Back":

Oh, those Indians.
They are
all
just
drunks.
Can’t even go through Gallup
A cousin, Lizzie, taught Mariana to drive only a few months before she met Stephen. Most of Mariana’s cousins learned to drive at fourteen—that was the going age in Peshawbestown in 1983. Mariana had been living with Aunt Emma and her cousin Parker for about a year.\textsuperscript{11} Her mom moved down to Detroit after passing out drunk with a lit cigarette and burning the house down.\textsuperscript{12} It wasn’t much of a house. Just a stick house with walls insulated with old magazines, newspapers, and torn-up cardboard boxes. She remembered the last time she talked to her mother, Linda, back when the old Indians used to call her Bug.

“Turn it up, Bug.”

She did as she was told.

“Shush.”

She shushed as if she were loud before being told to shush.

“I still can’t hear.”

She turned it up more and more.

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without seeing at least \\
\hspace{1cm} at least \\
\hspace{2cm} ten of them.
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\textit{Id.} at 69-70.

\textit{Id.} at 69-70.

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The Odawa language distinguishes types of family members that the English language does not. For example, mothers were important in traditional Odawa society. They owned the corn fields that made the Odawa prosperous, they harvested and preserved food, and they cared for children. Mothers were so essential to Odawa life that the children had more than one—children called all their mother’s sisters by a name that loosely translated to English means stepmother. . . . This assured that there would always be someone to help care for the needs of the family.

\textit{Id.}

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Back in the 1950s and 60s, there may have been ten homes, maybe 20 people. [Peshawbestown] was quite prosperous—or larger, I’ll say, not prosperous but larger at one time, but because people moving away and houses burning down and no economic opportunity, people left. . . . At least once a month for I’m going to say a couple years seemed like at least once a month there was a house burning down in the village because of the wood stoves, the chimney fires, the newspapers that were used for insulation and other things. And Sutton’s [sic] Bay was the closest village, but it was five miles south of us and responded, I guess, the best they could, but our homes burned.

\textit{Id.}
The man’s radio voice was raging when he said, “Everything you have been told is a lie.”

“I knew it,” Mariana’s mother said, muttering and grumpy. She did. She said she knew it all along. Way before those AIM Indians and those new professional Indians. Way before the urban Indians and even before the BIA Indians. And definitely way before the Indian Lawyers.13

“You’re not gonna be a lawyer, are you, Bug?”

Mariana shook her head. There was no way she would ever be like her dad.

Mariana’s mother had met a young white man in the 1960s who came to the reservation, talking about filing land claims.14 He went to Stanford, he said. He said he was an Indian from out west and he had good grades and references and we wouldn’t know his people, being from Michigan. The Peshawbestown Indians had high hopes for the guy, Ellis Short, but from day one, he got on their nerves. Everyone said the lawyer was a big jackass. Being a nonconformist, Mariana’s mother fell in love with the lawyer and conceived Mariana with him.

Mariana knew the story. The old Indians said the worst thing about Mariana’s dad, the lawyer, was how arrogant he was, never listening to the Indians’ arguments or responses to his comments. In fact, it turned out he had only come into knowledge about his Indian blood when his parents, who were very wealthy, went to a resort and met a lawyer who had represented a Tribe out west for many years. The man

CHARLES WILKINSON, FIRE ON THE PLATEAU: CONFLICT AND ENDURANCE IN THE AMERICAN
SOUTHWEST (1999)):

We are taught that attorneys are “officers of the court,” and we like to think of ourselves as representatives of the law. But how do we represent the law? To what degree does it become part of ourselves, allowing us to look back on our lives and see that we have become an integral participant in the legal process in the most positive fashion? And in what portion of our consciousness do people and places lodge when the recitation of doctrines and dogmas have faded? These are questions we must answer if we are to be more than technicians or money machines.

Id.

14 See Smith v. United States, 515 F. Supp. 56, 57 (N.D. Cal. 1978) (“Since the lands were held in trust, they could not be taxed by state or local authorities, and the resident Indians had no power to convey title of the lands to others.”) (citation omitted), aff’d, Daniels v. Andrus, 633 F.2d 221 (9th Cir. 1980); Bacher v. Patencio, 232 F. Supp. 939, 941 (S.D. Cal. 1964) (“Therefore, wherever a sale of property has been made by an Indian during the trust period the courts have not hesitated to strike it down as void. Even if fair consideration has been given for the property the sale will not be allowed to stand; nor need the Indian first return the consideration. The sale is of no effect whatever.”), aff’d, 368 F.2d 1010 (9th Cir. 1966).
they met at the resort had helped put together a genealogy for the Tribe for a federal claims case and remembered seeing their family name.\(^{15}\) When Mariana’s dad was just starting at Stanford Law, the lawyer checked out his heritage and told Mariana’s grandfather that he had one sixteenth quantum blood with that Tribe and they were eligible for membership with a Tribe in the southwest. The lawyer said that they might be eligible for settlement money too.

After a few months, the Peshawbestown Indians gave up on Mariana’s father and eventually fired him.\(^{16}\) He went to work for the state attorney general’s office after that to work on fishing rights cases.\(^{17}\) Mariana had never met him. The last her family had heard about her father was that he was a bigwig lawyer for a law firm called Berkman, Deloria, and Goldman.\(^{18}\)

“Bug, get me a glass of water. From the sink, not the friggin’ bottles.”\(^{19}\)

Mariana hesitated. She did not like being told what to do, especially by her mother. But she retrieved the water and her mother smiled at her with a false sort of love that said, ‘What you just did for me is nice, but is nothing compared to me donating a kidney to you or offering my arm to doctors for your blood transfusion or saving your life after a car tips over on your legs.’ It was smile that shredded Mariana.

“Mom,” she asked, “why are you so mean to me?”


\(^{16}\) Cf. FRANK WATERS, PUMPKIN SEED POINT: BEING WITHIN THE HOPI 45 (1969): Moreover, [the Traditionalists] opposed filing such a suit. The land had been given the Hopis by their spiritual guardian long before the arrival of either the Navajos or the white man. They would never assent to having a white man’s court decide whether their land belonged to them. As a matter of fact, they already had written to the Navajo Tribal Council saying that they would never authorize or recognize such a suit.

\(^{17}\) See, e.g., People v. Jondreau, 185 N.W.2d 375, 376 (Mich. 1971) (discussing case where State of Michigan prosecuted Keweewaw Bay Indian for exercising treaty fishing rights under Chippewa Treaty of 1854) (citing 10 Stat. 1109 (1854)).


“Shut up, Bug. You don’t know everything just because you’re 14.”

Mariana sighed. She quietly exited the living room and entered the linoleum factory of her mother’s kitchen. She smelled like bacon grease and old butter and stale ketchup and dried beer and salt mixed with pepper for no good reason. The phone was greasy when she lifted it. Her mom had been rolling piecrust with Crisco. Mariana packed her bag and went over to her cousin Parker’s house to stay with Aunt Emma and Gram. Aunt Emma always called Mariana by her given name and never called her Bug.

Stephen Thunder was a big Arapaho Indian guy with a silver belt buckle, smooth blue jeans, and powerful cowboy boots. He smoked Marlboros and had the longest, blackest, shiniest Indian braids in Indian Country. There was no question the man was a full-blood Indian.

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20 C.f. Anastasia M. Skilnyk, A Poison Stronger Than Love: The Destruction of an Ojibwa Community 160-61 (1985): At Grassy Narrows, the “catastrophic response” of women to the social and economic order of the new reserve is manifest in various ways... These women have stopped “caring for tomorrow.” More important, in not caring for their own offspring, they have produced another generation of women who have no role models to follow in caring for their offspring... I would venture to suggest that government modernization policies have had a much more devastating impact on the women of Grassy Narrows than on the men. In the absence of opportunities on the productive side of the economy, the women have been sentenced to lead marginal lives.

Id.

21 See generally Darcy McNickle, They Came Here First 283 (rev. ed. 1975): What was not anticipated, even by early social scientists, was the tendency of human societies to regenerate themselves, keeping what is useful in the past, and fitting into the new patterns, sometimes incongruously, to make a working system. Indian societies did not disappear by assimilating into the dominant white culture, as predicted, but assimilated to themselves bits and pieces of the surrounding cultural environment. And they remained indisputably Indian, whether their constituents lived in a tight Indian community or commuted between the community and an urban job market.

Id.


Petitioners were not wearing their hair in a desired style simply because it was the fashionable or accepted style, or because they somehow felt the need to register an inchoate discontent with the general malaise they might have perceived in our society.
One day in the early 1980s, he came to Peshawbestown to give a talk about Red Power and Wounded Knee. The old Indians said he was at least ten years too late but they still came to take a look at him. He claimed to have been there when those two FBI agents were gunned down at the Jumping Bull compound.  

He claimed to know people who took over the Department of Interior building and those who occupied Alcatraz. He said Red Power was the real reason that Buddy Chippewa and the others stood up to the Michigan DNR in the late 1960s and early 1970s. He said Red Power caused the Fox Decision that vindicated Ottawa and Chippewa treaty rights. He said the Red Power movement was the greatest success any Indians ever had in fighting back against the white man, but he said the Indians gave up on it too soon. He said the federal government came up with a brilliant way to shut up the Indians, to keep them in line—law school. He said too many smart Indians, intellectual Indians, and radical Indians moved off the reservation to Albuquerque and Cambridge and Minneapolis and Seattle and Ann Arbor and got law degrees. They took bar exams and swore oaths to uphold white men’s constitutions and laws, the same laws that

They were in fact attempting to broadcast a clear and specific message to their fellow students and others—their pride in being Indian. (Douglas, J., dissenting from denial of petition for cert.).

24 See generally Campau v. Dewey, 9 Mich. 381, 1861 WL 1643 at *1, 3, 8 (Mich., Nov. 20, 1861) (discussing the legal ramifications of full-blood Indianness in regards to the Treaty of Saginaw, 7 Stat. 203, 203-06 (1819)).

25 See generally Peltier v. Booker, 348 F.3d 888, 889 (10th Cir. 2003):

On June 26, 1975, FBI agents Jack Coler and Ronald Williams entered the Pine Ridge Reservation with an arrest warrant for four men charged with armed robbery and assault with a deadly weapon. The two officers began following a van carrying several men. The van came to a stop when it neared the Jumping Bull Compound, and the officers stopped at a distance behind it. A firefight erupted between the agents and the men in the van and expanded to include others. The group firing on the agents was comprised chiefly of AIM activists. Agents Coler and Williams were wounded in the gun battle and then killed by shots taken at point-blank range with a high-velocity, small-caliber firearm. The murder weapon was subsequently determined to be an AR-15 linked to Mr. Peltier.

Id.


held Indians back, the same laws that let the white men steal Indians' land and rights. He said a bar card was a ball and chain. He said treaty fishing was a thing of the past. The new way to fight the power was slot machines and poker and blackjack tables and high-stakes bingo. He said he knew of men who would bring slot machines to the Grand Traverse Band Reservation. When Stephen Thunder spoke of slot machines that night, some people listened. Gambling was big money, they knew. And on the state side of the reservation border, it was illegal. But the old Indians and the ambitious Indians knew that the twelve and one-half acres left of the Grand Traverse Band Reservation wasn't in the State of Michigan any longer.29

Mariana fell for Stephen that night. He was the Indian man she had seen on television and read about in cowboy books. He was the Indian man she always heard about. He was from a real reservation out west, not some Michigan backwater full of assimilated Indians. He was pure Indian. He could dance like the wind, too, she figured. He was big and strong and he was the one. Most of all, her mother would hate his filthy, rotten guts. Stephen stayed in Peshawbestown for a week and Mariana got to know him well in that short period of time before he asked her to go west with him. He made a lot of promises to her and she believed him because he told her everything about himself. He couldn't, he wouldn't, stop telling his stories, the oral history of his life, the way he said all the Indians should talk about themselves and their people. He told stories all night long.

The first thing he told her was that he was a lawyer—an Indian Lawyer, a self-hating Indian Lawyer. He said that he graduated from the University of Michigan Law School in 1975 and that it was the biggest mistake he had ever made. He told Mariana the story once about his first trial. He called it his 'Tchwunk' case, tchwunk being the operative

word in his client's language. His client was one of the bigger Tribes in the west with some timber money and they were preparing to build their first housing project. It was a modest affair, but it was symbolic of the advances the Tribe had made and they wanted to make sure it was done right. Unfortunately, the only usable land for the project was on a small plateau, halfway up a large hill. Tribal members had lived on the hill for hundreds of years—but the further up the hill, the worse the housing conditions. Naturally, the tribal members lived up and the non-Indians lived down. The houses near the bottom were much better off in large part because a nice, clean stream ran down there. Anyway, the ten or so houses going up were barely going to fit on this plateau—really no more than a ledge—and they had a problem with the septic system for one of the houses. For nine of the houses, they had enough room to spread the drain fields out away from the homes and from the other houses, but for the tenth house, they had no space. Because they didn't want to disappoint the tenth family to whom they had promised the home, they decided to try an unusual method of draining the septic system several hundred yards away from the plateau on a smaller ledge, slightly lower than the plateau. They'd have to hook up the septic system with a long pipe, a little too long, according to the neighbor down below. The Tribe had been fighting for decades with this guy who owned a big ranch at the bottom of the hill. It was never a secret that the Tribe wanted to put housing on the ledge above and to the right of this guy's property and he argued against it every chance he could. He was the kind of guy that would sue, sue, sue, and demand more and more remediation for every little thing they found. He'd fight the Tribe to the Ninth Circuit and back again. He was one of the new breed of Custers, Stephen said. They weren't trying to win; they were trying to make it so difficult for the Tribes to do anything to help themselves that it would become impossible.

Well, this guy sued immediately as soon as he saw workers digging the pipe line for the one septic tank drain field. He rode a horse over to


the county court and dropped off the papers, because his truck was broke. He wasn’t a lawyer but he had the complaint for a TRO ready to go beforehand—all he had to do was fill out the reason. The ranch-owner argued that there’s such a thing as a hundred-year storm and when these storms happen, the whole side of the hill slides down onto his property. In fact, he said there was a hundred year storm only a few years earlier and the hill came down on him then, flooding his house with mud and slime. He said that the drain field would ensure that, in the next storm, not only would his house and property be filled with mud and slime, but also tchwunk.  

32 He also said he had wells on his property that would be damaged and contaminated by the tchwunk. So, the judge granted the TRO the same day, ex parte and all. The Tribe hired Stephen’s Indian legal services group to handle the contracts for the construction, so they asked him to appear at the hearing, which was set for several days later. He was fresh out of law school and very nervous, but there was no one else available in the legal services group, so he put on a blazer, nicest dress boots and jeans, and headed out to the rez. The ranch-owner had a lawyer in town that he always used. Apparently, the ranch owner was very litigious and called upon this lawyer a lot. The lawyer had been some sort of youthful prodigy a decade before, but had fallen on hard times since, in large part because he fell off his porch one day and hit his head on a boulder. He recovered but was never the same and had taken to drinking a bit. He often forgot things.  

The hearing for the preliminary injunction went poorly for Stephen. He didn’t know much about the new septic systems or the geology of the area or much of anything about the law, either. The ranch-owner testified about almost anything he wanted and Stephen was helpless. He did get the ranch-owner to admit that he never used the wells on his property and that the one closest to the house, the one he complained loudest about in the complaint, was capped. The ranch-owner’s

32 See, e.g., Pohurski v. City of Allen Park, 641 N.W.2d 219, 224-25 (Mich. 2002) (“On August 6, 1998, a ‘one hundred year storm’ dropped approximately 4.6 inches of rain in less than six hours on the city of Farmington Hills, causing flooding throughout the community. As a result, raw sewage from defendants’ sewer system traveled up through plaintiffs’ floor drains and into their basements.”).

33 Cf Smith v. St. Paul Fire & Marine Ins. Co., 471 F.2d 840, 841 (5th Cir. 1972) (“The term negligence ought not to carry a . . . connotation [of professional incompetence] because we are all aware that a competent and skillful person may make a slip or be forgetful on a single occasion without losing his professional skill.”) (quoting John W. Wade, The Attorney’s Liability for Negligence, 12 Vand. L. Rev. 755, 775 (1959)).
lawyer didn’t say a word. He never objected to Stephen’s questions or asked many of his own. And yet the judge ruled against Stephen from the bench and set a date for a hearing on whether or not to grant a permanent injunction. Stephen said he talked an Indian Health Service engineer\(^\text{34}\) into coming out and testifying that the septic system was safe, even if a little unusual. The Tribe’s Vice-Chair offered to testify that the legend of the hundred-year storm the ranch-owner talked about was a complete fabrication—the storm which occurred a few years earlier had been unique—and that the hill had not ‘fallen’ or ‘slid’ onto the ranch-owner’s property.

So the big day came and Stephen showed up with his witnesses. The plaintiff did not appear at all. They waited for a half-hour. Finally, the judge came in with his clerk and said that he was going to ask the clerk to call the ranch-owner to see what’s going on. Stephen thought he’d won because the plaintiff didn’t show up. So the judge called a recess for another hour and went back to his chambers. Stephen waited again. He was sitting in the courtroom talking with his clients and witnesses and just before the deadline the ranch-owner walked in, sans attorney. The judge called the room to order and started the proceedings. He asked the ranch-owner why he was late and the man said his flaky attorney never mentioned the date of the hearing to him. Everyone knew about the absent-minded attorney so Stephen did not object. The ranch-owner proceeded without his attorney. Stephen got him on the stand and got the guy to admit to all the things he said before. Stephen felt like things were going well. His witnesses did their thing and the ranch-owner ineffectually crossed them. Stephen gave his summation and sat back to wait for the ruling. The judge ruled from the bench. No written opinion. He granted the permanent injunction. No factual basis for it, but he was the one with the ‘wise discretion.’\(^\text{35}\) Stephen found out months later that the ranch-owner and the judge were childhood friends and while Stephen was waiting with his clients for an hour at the court-

\(^{34}\) See generally Absentee Shawnee Tribe v. Ponkilla, 1997 WL 1146309 (Ab. Shawnee D.Ct. Aug. 22, 1997) (noting that the Indian Health Service provides sewer services to Indian housing).

\(^{35}\) Cf. Cornelius v. Benevolent Protective Order of Elks, 382 F. Supp. 1182, 1187 (D. Conn. 1974) (dismissing complaint against private club alleging civil rights violations arising from the club’s exclusion of African-Americans, in part, on the basis that “We sit in legal, not moral judgment”) (citing Shoshone Indians v. United States, 324 U.S. 335, 355 (1945) (Jackson, J., concurring)).
house, the judge had hopped into his truck and drove over to the ranch-owner's place and brought him to the hearing.

Mariana loved hearing Stephen's stories about his law career, but they mostly had unhappy endings for the Indians. He talked and talked in the truck on their way out west to North Dakota, Montana, Wyoming, Utah, and so on. He told her a story involving another Tribe. Anyway, this Tribe had terrible social problems—violence, poverty, drinking, depression, hopelessness—and the tribal government seemed to be helpless, practically nonexistent. A couple of staff people got together and wrote a grant for a runaway shelter. Shelters weren't in vogue yet and there wasn't much funding out there, but the Tribe got this two-year grant out of pure desperation—none of the other applicant jurisdictions were in as bad shape as this Tribe. So, they got this money, bought a small, dilapidated house on the reservation for a pittance and fixed it up, and went to work. They had all these rules and regulations to follow as to eligibility that were written into the grant. During the first six months, exactly one runaway child showed up, but they were turning away battered women and kids left and right. One night after some soul-searching and worrying about the rules of their grant, the people running the shelter decided to ask the Tribal Council to let them turn the grant-funded runaway shelter into a battered women's shelter. The Council saw that the shelter could do a lot of good as a women's shelter so they agreed, even though the grant writers were screaming that if they changed the whole project around they'd lose the funding as soon as they got audited or as the end of the grant, whichever came first. As soon as they started accepting battered women and kids, the shelter became one of the greatest success stories on the reservation since first contact. The media got interested in good news for once and the state began asking them how they did it so well. The Tribal Council got re-elected because of the good will resulting from this great model project. And then the two-year funding cycle ended and the federal government took the next cycle's funding away because they violated the rules of the grant. The Tribe had no money and the State of California wasn't about to fund a shelter away from the vast majority of their constituents, so the greatest success in 125 years closed down. For Stephen,

36 "Domestic dependent nations are permitted an existence in the United States so long as they are weak." Carole Goldberg, *A Dynamic View of Tribal Jurisdiction to Tax Non-Indians*, 40 L. & CONTEMP. PROBS. 166, 166 (1976) (quoting Mary Shepardson, *Navajo Ways in Government* 113 (1963)).
that was the law, the local backdrop of federal government trust responsibility. A pure failure. Even when it was good thing, it ultimately failed.

Mariana met a ton of Indians wherever Stephen Thunder drove them in those four months. He spoke to Tribal groups and raised a lot of hell. Some places booed him and threatened violence; others cheered him and talked about starting another revolution. The Indians would give him a little money for gas and roadside burgers and they would drive to another reservation community. When they reached Albuquerque, Stephen said he wanted to move on without Mariana. He said that life was hard and she better grow up fast and then he was gone.

When she first arrived in Tucson, Mariana met a few Indian college students at the bar on the bottom floor of the Hotel Congress. They were shorter than she imagined Indians in the desert southwest would be, much shorter than Stephen Thunder. They took her over to the Yaqui village at Pascua and showed her around. They took her over to the University of Arizona campus and showed her where all the Indian students hung out and the houses where they lived. There were Navajos and O’odham and even a few Ottawas here and there. She got a job waiting tables at a bar near campus called Frog & Firkin. She slipped into a haze of waking up around noon, drinking coffee and reading all afternoon, and working until four or five in the morning. The Indians didn’t go to her bar so she never saw anyone she knew.

37 "Clearly visible at the core of the Indian trust relationship is racial prejudice, a belief that Indian peoples, their property and affairs may properly be made subject to the control of a superior, white civilization." Indian Law Resources Center, United States Denial of Indian Property Rights: A Study in Lawless Power and Racial Discrimination, in RETHINKING INDIAN LAW 15, 24 (National Lawyers Guild, Committee on Native American Struggles 1982).

38 See THE AMPS, Fall on Idle, on PACER (4AD 1995):

    Say you're
    One man's taste
    Want one? Fall and break
    We see the new folks
    In our day
    One,
    Fought the Father, the Pope
    Finally sent away

Id.

39 See Barbara Cameron, Gee, You Don't Seem Like An Indian From the Reservation, in THIS BRIDGE CALLED MY BACK, supra note 10, at 49:

Because of experiencing racial violence, I sometimes panic when I'm the only non-white in a roomful of whites, even if they are my closest friends; I wonder if I'll leave the room alive. The seemingly copasetic gay world of San Francisco becomes a mere
mates were already at school when she woke up and they didn’t get back from classes until after she left for work. She never got to meet Leslie Silko in her big gas-guzzling Detroit monster cruising around town or Simon Ortiz because she just missed them or because they were around and they’ll be back later. She was lonely and always tired and she was lonely for Peshawbestown. She missed her Parker and her Lizzie and Auntie Emma and Gram. She never wrote letters to them and they never knew where she went or what she was doing. She was ashamed at the way she had run off with Stephen Thunder. She was ashamed that she had gotten pregnant. She was ashamed that she turned out like her mother. She was ashamed that she had run away . . . like her mother.

Mariana worked at the bar for two years before she met Wilson Perez at work during a slow happy hour. She was only 18 years old by then but she felt decades older. She felt like she, one Indian woman, had lived the entire lives of ten white women. The first thing he said to her was that she looked like she should be in law school.

“How do you figure that?” she responded, thinking he was just another drunk looking to score with a waitress.

Wilson laughed. “Because you don’t take any crap from people.”

Wilson Perez was a lawyer at the University’s legal aid clinic. He was a short and wide middle-aged Latino man with a big smile who always seemed to be in a good mood. Wilson handled criminal defense and Indian child welfare cases at New Pascua, the reservation of the Pascua Yaqui Tribe. From his practice, he said he knew several Indian women who had been sterilized without their consent by Indian Health Service doctors. He was trying to help them but he didn’t have the time. There probably wasn’t anything he could do anyway. He didn’t think

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dream after the panic leaves. I think to myself that it’s truly insane for me to feel the panic. I want to scream out my anger and disgust with myself for feeling distrustful of my white friends and I want to banish the society that has fostered those feelings of alienation.

Id.


Many women who enter male-dominated work settings, such as law, have either overcome the pre-existing problems of a socialization that tends to make them less confident than men or have been able to avoid situations that cause problems of confidence. But after the point of entry they must still overcome the problems of working in a setting that can easily alter their confidence.

Id.
the women could sue the Indian Health Service for genocide. Wilson helped Mariana pass her GED test and helped her get admitted into the University of Arizona. While attending school, she kept working at Frog & Firkin and, when Wilson hung out his own shingle, she occasionally helped him type legal pleadings and letters.

Once when Mariana was working at Wilson’s office, she got a call from an Indian student at a new community college in one of the Dakotas. The student was a young Chippewa woman who had never lived on the reservation and wasn’t familiar with the culture. She called up from out of the blue and asked a few questions about the Pascua Yaqui Tribe. Wilson talked to her for a long time. She told him about her instructor. He was teaching a class on traditional healing practices and claimed to be a Yaqui Indian. He was dark blond and blue-eyed, but the student didn’t know any better and was really excited about the class. After a few sessions, she started to become very suspicious. His teachings seemed vaguely wrong. He was always getting out the bongos and making everyone hold hands and chant. That’s when she decided to call Wilson and ask him for verification about Yaqui healing practices.

Wilson brought Mariana in to listen to the woman. After she heard everything, she said, “He’s a fake Indian. I don’t know much about Yaqis or Navajos or O’odham but I’m pretty sure some other culture invented bongos.”

The young Indian student told them that her teacher had lived on the reservation from the time he was born until he moved away from Tucson to become a teacher. The teacher claimed to have been healed from a poisonous snakebite with traditional healing practices when he was five years old. They were simply too far away from the city—something like sixty miles—to get to a hospital in time so his family resorted to traditional techniques to save him. The woman said her teacher claimed to be from the Yaqui reservation. Wilson knew the teacher


42 Cf. Michael M. Epstein, Judging Judy, Mablean, and Mills: How Courtroom Programs Use Law to Parade Private Lives to Mass Audiences, 8 UCLA ENT. L. REV. 129, 136 (2001) (“Judge Jerry Sheindlin, as the successor to Ed Koch on The People’s Court, does not reap the benefit of a carefully worded opening theme that softens his image. The People’s Court opens much the way it did in its 1980s’ incarnation, under Judge Wapner, except that its theme music is gone; plaintiff and defendant proceed into the courtroom as bongo drums play and an unseen announcer intones the specifics of the case.”).
made up the whole story about his Indian blood because the Pascua Yaqui Tribe wasn’t even recognized until 1978, let alone hold reservation land. Pascua, the town where many Yaquis lived even prior to recognition, was located only a few miles from downtown Tucson and the hospital.

Mariana liked working with Wilson. He helped her with her classes and encouraged her. She had a very difficult time with college and didn’t get along with most of the students, many of whom were wealthy California suburbanites who didn’t get accepted into the University of California system of schools. She did her studying at Wilson’s office, spending more and more time there. They worked well together. He represented poor people and had to do a lot of hard work to make enough money to live on. Mariana respected Wilson’s work ethic, though she believed he ate too much albondigas and too many fish tacos to be healthy. The Indians at her house teased her about her old man boyfriend, but they stopped when she and Wilson helped one of them get some money back from the store where he worked.

Wilson got to know one of the judges on the reservation pretty well. The judge had retired from the state court and became the tribe’s first tribal court judge. “So, after the judge retired,” Wilson said, “he sat around for a few years until the mid-1970s. He hadn’t saved any money and he was living off his state pension, which in Arizona is fairly pathetic, even for a judge. After the Tribe established their Tribal Court, they contacted the judge because they wanted to make their court appear more legitimate to the other courts and to the local law enforcement agencies. He doesn’t have a reliable car so every day he rides the bus out to the reservation, about an hour and a half ride. The last bus leaves at 4:30 every day, so that is when court ends. That day, I was trying to get the judge to grant bail to one of my clients, the one with the motorcycle. The hearing started around four, so I kept my argument short. I needed the judge to sign that order before 4:30. And it’s Friday, so if he didn’t sign the order, this kid’s going to spend the weekend in Yuma. Oh, and you know the reservation BIA officer doubles as the prosecutor, right? The BIA officer, wearing his gun and flak jacket and


45 See National American Indian Court Judges Association, Indian Courts and the Future (David Getches ed. 1978) (noting the absence of prosecutors on most reservations
everything, talked as slowly as he could. He knows when the judge leaves, too. The BIA officer isn’t a lawyer and couldn’t think of enough things to argue, so he finished his spiel at 4:25. The judge agreed to my motion and asked for the order to sign. I gave him the proposed order and the judge began to sign. His name must have been James or John because he signed his name in cursive, beginning with a J—a huge J. The signature line was in the middle of the document, but the judge’s eyes were so bad that he wrote the first letter all the way up to the top of the page and then back down to the bottom. He started his second letter, but ran out of space. Right then, he checked the clock and noticed it was 4:30, so he grabbed his cane and split for the bus. Me and the BIA officer didn’t say anything for several minutes after the judge left. At least Stevie got to go home for the weekend and see his mom.”

A few weeks later, Wilson told Mariana the judge passed away. Wilson really liked the old man so they went to the funeral. A friend of Wilson’s, a lawyer named Ramon, was at the funeral, too. He said he also knew the judge pretty well before he retired. After the funeral, they went over to Chuy’s for lunch. Ramon was a prosecutor for Pima County and he told them a few stories about the judge.

Ramon said, “The judge had a long, boring career before he ran for Pima County judge in the early 1970’s. Ramon said he was a nice guy, a liberal—the kind of guy that would always stop to help somebody out, the kind of guy that would sign a petition for a cause, the kind of guy that supported Indian Tribes, the kind of guy that would denounce sexism and maybe support the decriminalization of marijuana. But on top of all that, Ramon said, he was also recklessly naïve. His private practice included not much more than transactional work in a large law firm based out of Phoenix. He rarely saw his clients until he became a partner and then he spent so much time playing golf at the resorts in the foothills that he never saw poor people. His first few months as a judge blew him away. All the crimes, the horrors of child abuse and domestic violence and police brutality, coupled with the relatively petty contract and land disputes, jaded him quickly. On the bench, he worked hard to maintain a calm demeanor at all times, but all he wanted to do was scream at people for being so stupid as to hurt each other and so inane


46 Cf. Dan Georgakas & Marvin Surkin, Detroit: I Do Mind Dying 175-87 (rev. ed. 1998) (discussing Justin Ravitz, the so-called “Marxist Judge of Recorder’s Court”).
as to file hundreds of pages of briefs over the meaning of the term “reasonably.” During his first year on the bench, he worked hard to prepare for every case, every hearing. He stayed at the office later and later, trying to keep up. One night, he was at the office, practically falling asleep, and he looked outside. His office was on the 15th floor or so in the state building, right next door to the federal tower. He apparently was not the kind of person to stare at people like a peeping Tom—he’d had enough of that in court—but that night he noticed a Black man and a White woman in an office across the way, wrestling around with each other. At least, that’s what he thought he saw. He looked closer and realized that the Black man was in the process of disrobing the woman. It looked violent to the judge, you know, with the two people maybe 75 yards away. He couldn’t see as well as he used to, what with all the reading he’d been doing the previous 30 years. He tried to turn his head away and assume the whole thing was consensual, but he’d seen so many Black and Brown men before him in court that it had affected his perspective.

“So the judge couldn’t turn away and when he saw the Black man on top of the woman, with her arms and legs flailing away,” Ramon said. “He felt he had to act. He would be a bad person if he found out later that the woman had been raped; that he had seen the whole thing and done nothing about it. So he called the police, identified himself, and reported a crime in progress. Turns out, the woman was an AUSA and the man was a key witness in one of her RICO cases, but the sex was completely consensual. They shouldn’t have been screwing around like that—both received censures from the court and she had to deal with the disciplinary action from the state bar—and the judge was vindicated minimally, but he knew better. He knew that his time on the bench and his lifetime as a White man had made him assume that,


The English language, blending and building upon the vocabulary of its Latin and Germanic roots, is a marvelous and omnificent language, offering a rich variety of words and expressions to describe or explain a single thought. And so, in characterizing the complaint made in this appeal by Mr. David Bruce Baker, we have much to choose from—ludicrous, preposterous, silly, asinine, ridiculous, absurd, nonsensical, frivolous, outrageous, unreasonable, laughable, foolish, unsound, and incongruous come to mind, but there may be others. Meritless and erroneous are partly descriptive, but somehow they don’t seem to capture the full flavor of the thought. In other words, we propose to affirm.

\textit{Id.}
when a Black man engages in sex with a White woman, someone has to call the police and put a stop to it."

Wilson and Mariana laughed at the story, but Ramon’s gossip left a bad taste in Mariana’s mouth.

“That’s Tucson,” Ramon said. “It’s a weird town. All the sun must bake peoples’ brains. I heard about a criminal trial in federal court where the prosecution was just rolling with their key witness. The public defender wasn’t doing much of anything. No objections, not taking notes, nothing. He was just slumped way down in his seat, not looking like he was paying any attention at all. Finally, the prosecution finished. The defender still didn’t do anything. The judge waited a moment and then asked the defender if he wanted to cross-examine the witness. The defender stood up all of a sudden, as though being disturbed from an elaborate daydream. His fly was undone and his shirt was stuck in the fly. The court was shocked. I think all the best Supreme Court cases about criminal procedure come out of Arizona.48 Some people say the Arizona bar is easy because we only have nine laws.”

Ramon had a friend, a public defender in Manhattan, who said that so many of her clients were Arab or Black or Indian or Latino, she didn’t think it possible for the prosecution or the supposedly race-neutral bench to act without prejudice. Seeing so many minority defendants pushed some of them over the edge. Another of Ramon’s friends was a prosecutor in Alaska. She said she was selecting jurors for the trial about a person accused of theft. She had all these generic questions she had to ask jurors. One of the questions was, ‘Has anyone ever stolen anything from you?’ Some of the potential jurors were Alaskan Natives. One of them answered, ‘Yes. Our land.’ Ramon’s friend was horrified. She hadn’t wanted to racially insult any of the jurors and it kept getting worse. Another Native answered, ‘Yes. Our language.’ And finally a third Native answered, ‘Yes. Our culture.’ She said she felt like crawling into a hole.” Ramon had all the good stories on judges and trials.

Eventually, Mariana graduated and let Wilson talk her into marrying him. He was much too old for her and too short for her but she could not deny that she loved him. They tried for several years to conceive without success. Mariana dreaded going to a doctor for a checkup

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due to her bad experience in Albuquerque. When she did go, a gynecologist informed her that she had been sterilized many years earlier. The doctor was shocked that Mariana was unaware of her condition. Mariana knew it had to be the doctors at the Indian Health Service in Albuquerque. Wilson flew into a rage and threatened to sue every IHS official he could find, but eventually calmed down. He withdrew into himself and acted a little distant from everyone, including Mariana. He was always polite to everyone but the sparkle in his eye was extinguished. Mariana worked full-time with Wilson—she as his paralegal—and they focused on the job. They worked hard together, side-by-side investigating personal injury cases and contested divorces. It was a hard job. Wilson and Mariana were together all day, nearly every day, but they rarely spoke about anything except their clients. He even stopped talking to Ramon.

A few months after Mariana’s visit to the doctor, representatives from the Barrio Libre Band of Yaquis who had just been federally recognized called Wilson. The new chair of the Band, Ilaria Graves, had been one of Wilson’s clients ten years earlier and trusted him. The Band wanted to put about 10 acres of land into trust on the South side of Tucson in Barrio Libre. They had just received a large grant of money from the federal government for housing, a desperate need of the membership. They had a gaming compact but they were being sued by an anti-gaming taxpayer group they believed was funded by a dog track promoter or maybe even another Tribe. As such, they had very little money to pay Wilson. Wilson got to work on it right away. He called his old friend Ramon, who was a good friend of the mayor of Tucson. Within days, the City of Tucson passed a resolution in support of the Band’s application for the Secretary of the Interior to take the land into trust for housing purposes (while remaining neutral on the casino law-

50 See 25 C.F.R. Part 151.
52 See American Greyhound Racing, Inc. v. Hull, 305 F.3d 1015 (9th Cir. 2002); Dairyland Greyhound Park, Inc. v. McCallum, 655 N.W.2d 474 (Wis. App. 2002), review denied, 655 N.W.2d 129 (Wis. 2002).
suit).\textsuperscript{54} Wilson knew the attorney who represented the Pima County Sheriff's Department from his years at legal aid and got the Sheriff to agree in principle to a cross-deputization agreement.\textsuperscript{55} Mariana spoke to the Tucson Chamber of Commerce armed with a spreadsheet of the size of the project and how much it would contribute to the local economy in terms of construction. The Chamber enthusiastically approved. Mariana had the time of her life working on a real Indian Law issue. A few weeks later, Wilson received a letter in the mail from the Governor of Arizona stating that she was not opposed to small, non-gaming trust acquisitions, but neither was she in favor of them. That was good enough for him. Engineers employed by the Band filed an environmental assessment with the Bureau of Indian Affairs.\textsuperscript{56} All of the pieces were in place for the Band.

The only roadblock was a United States Senator. She had taken a position that the trust acquisition provisions in the Indian Reorganization Act were unconstitutional.\textsuperscript{57} She would not back down from her position. She threatened to add a rider to the House Interior appropriations bill that would prohibit or restrict the Secretary from taking land into trust for the Barrio Libre Band.\textsuperscript{58} She added in the letter that she believed the Band should not have been federally recognized. Based on the letter, the Secretary decided not to take the land into trust. Over the

\textsuperscript{54} But see Forest County Potawatomi Cmty. of Wis. v. Doyle, 803 F. Supp. 1526, 1530 (W.D. Wis. 1992) (discussing case where city opposed proposed fee-to-trust acquisition by Secretary of Interior on behalf of Indian Tribe). Cf. Fallon Paiute-Shoshone Tribe v. City of Fallon, 174 F. Supp. 2d 1088 (D. Nev. 2001) (discussing case where city refused to provide public services to Indian trust lands until Secretary of Interior took the land out of trust status).


\textsuperscript{57} See South Dakota v. United States Dept. of Interior, 69 F.3d 878, 884 (8th Cir. 1995) (holding that federal statute allowing Secretary of Interior to take land into trust for benefit of Indians and Indian Tribes was unconstitutional), vacated, 515 U.S. 919 (1996).

\textsuperscript{58} Cf. H.R. 2656, 108th Cong. (2003) (amending the Graton Rancheria Restoration Act, which mandates that Secretary of the Interior to take land into trust for Indian Tribe, to give the Secretary discretion regarding taking land into trust); S. 1342, 108th Cong. (2003) (same).
course of the next few months, no matter how hard Wilson and Mariana worked, the Band’s housing project fell apart.\textsuperscript{59}

Wilson worked for eight months on the project. He said he was born to help this new Tribe stave off the challenges from Goliath. But as he worked, he continued to gain weight. Sometimes the stress made his face red and a large vein in his head would bulge out. When Ilaria told him that the project was dead and to let it go, he swore he would never work in Indian Law again.

“Don’t you think you’re being melodramatic, Wilson?” Mariana asked. She was sitting in the office listlessly paying bills. The ten thousand dollar retainer given to them by the Band had been spent for three months.

“It’s too frustrating,” Wilson said. “Everywhere a Tribe looks, there is someone—a politician or a state official—saying, ‘No, we won’t let the tribe do that.’ And when you tell them the proposal is for housing or health care they look you right in the eye and say, ‘You’re lying. We know it’s for gaming.’ I’m so tired of that. I don’t know how anyone does it.”

Mariana heard that complaint before—from Stephen Thunder. “Well, there are other things you can do. There were a bunch of calls last week from Wesley Simon, the guy with the headaches. He wants you to sue the Social Security Administration for denying him benefits. And there’s Nancine Robbins. She’s been wanting you to help her with her immigration problem.”

Wilson seemed so tired and beaten. He didn’t return any of the phone calls. He talked about retiring and living out in the desert in a shack. He wouldn’t talk to anyone. He continued to lie fallow. He never did any work around the house and his color and temper grew worse. A month later, he died of a sudden heart attack.

Mariana was alone again. She had no lover. She could not have children. She had no job and no place to stay. She went back to work at Frog & Firkin but her relatively slow-paced office job had dulled her razor-sharp serving abilities. Management let her go after she spent a few weeks of dropping drinks and forgetting orders. She spent hours sitting by the cloudy pool at her new apartment complex near El Con Mall,

\textsuperscript{59} Cf. Audre Lorde, \textit{The Master’s Tools Will Never Dismantle the Master’s House}, in \textit{This Bridge Called My Back}, \textit{supra} note 10, at 98, 99 (“[T]he master’s tool will never dismantle the master’s house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change.”).
cooking in the sun and letting her life drift away.\textsuperscript{60} She thought about Stephen Thunder and cousin Parker and Aunt Emma and Gram. She missed Wilson terribly. She missed her old life—working in his office, going to school, and living with her husband and best friend. She fantasized about seeing him walk across the cement to her chair by the pool to bring her back.

One day Mariana called information and asked for Louise Roberts in Peshawbestown, Michigan. The operator connected her. After ten or more rings, she heard a plastic click and, then, an old cracked voice. "Hello," the old woman said. "Who is it?"

It had been nearly two decades, but Mariana knew that it was the voice of her Gram. The voice was worn and thin, but it could be no other person.

"Who is it?" Gram asked, more insistently.

Mariana said nothing. Twenty years between conversations was a terribly long time. She had so much to say, so much shame, so many stories. She couldn't say a word. She almost put down the phone.

"Mariana, is it you? When are you coming home?"\textsuperscript{61}
Mariana wept.

\textbf{WEST GRAND TRAVERSE BAY, LEELANAU COUNTY, 11 A.M.}

I dozed then, I think. The excitement of the car wreck had worn me down and fatigue hit me, as it does with small children, without warning. I took comfort in the presence of the authorities. I took comfort that Parker slept comfortably.

The deejay woke me announcing the eleven o’clock trivia question. I listened carefully, hoping the question would be about the Lord of the Rings trilogy or Star Wars, Parker’s favorite collections of films. I knew

\textsuperscript{60} See The Breeders, Huffer, on Title TK (4AD 2002):
Toil toil toil ’til I get sick
I try reverse but I’m not that quick
Chained to the ground
No flyin’ for you
If you want it bad
You gotta steal your own fuel

\textit{Id.}

\textsuperscript{61} See Transcript, supra note 12, at 77-78 (testimony of Ardith "Dodie" Chambers) ("Once the outlying areas... our whole northwestern Michigan area and even everybody in the State of Michigan, all of our members in the state, when they realized that our tribe was going to be something and when jobs were being found for our members, then they start coming home from Grand Rapids, from Detroit, from anyplace.").
some of those answers, but instead the deejay asked her listeners about a
celebrity’s birthday. I tired of the subject and shut the radio off. It took
me another second to realize where we were, that we sat delicately on a
thin layer of ice, surrounded by white. I rolled the window down and
listened. I heard adults talking but they seemed to be saying their good-
byes to each other. I wanted to hear about their progress in reaching our
car, but I didn’t hear anything.

“Hello?” I said. As in a dream, nothing would come out of my
lungs but a thin whisper of air. I tried again, but still the same. I took a
deep breath and felt an intense pressure on my chest. I could not take in
the air I needed to be heard. I prodded my chest and felt actual pain
that time. I began crying, too tired to care anymore.

“Parker,” I said, realizing that I could barely whisper. “Parker.
Mom. Wake up.”

I sat there for a long time trying to think about what to do. Men in
movies acted swiftly, without caution, and with extraordinary wisdom
and knowledge. I was little and didn’t even know where in the world the
Army took my dad. I thought that maybe the operator’s manual would
help. Parker carefully examined it when she added anti-freeze to the
engine block. I reached for the glove compartment, but my arms were
too short. I slowly, carefully, gently, fearfully, let myself out of the seat
belt. Parker said that the seat belt would save my life. She had seen the
horrible consequences first hand when kids didn’t wear their seat belt. I
fought through her warnings and peeked over to make sure she didn’t see me cheat. I felt a twinge in my chest as I helped myself to the floor
of the car, but it didn’t seem serious.

Parker traveled to Barcelona and Amsterdam in college the year
before she had me. She loved French fries and relied upon them to sur-
vive cheaply in Europe, but grew to resent the fact that European fast
food joints charged her for ketchup packets. She felt condiments should
be free, of course. To ensure that she never had that problem again, she
decided to start saving ketchup packets from fast food franchises in her
glove compartment. The packets built up in large quantity and she
stopped collecting them, thinking she had enough for her next trip, but
she left them in the glove compartment. I suspect she kept them in the
car as a reminder of Old Europe and the packets would compel her to
go back one day.

I rifled through the ketchup, a tire gauge, and scratched sunglasses
to get to the operator’s manual. When I found it, I leaned back onto the
seat and replaced the seat belt. I could read, but not the grownup books. Parker read to me from Judy Blume, Dr. Seuss, and Emma Goldman, so I thought I could read anything. The car manual had many pictures but none of them showed how to wave down the police. There were no pictures of police anywhere. The only useful information involved the orange triangle button, but I already knew what that did.

I leaned back and tried to think through the problem. Parker sleeping, more soundly than ever before. Police a few feet away but leaving. I couldn’t yell to get their attention. Trapped on ice. Cold air outside. I could feel the cold in the car then. The engine stopped and the heat stopped, too. I flicked the heat switch but nothing happened. At least the radio worked.

The radio.

I got excited and turned it on high. I rolled the window down as quickly as I could. My chest hurt more than ever before and I had to stop and rest a moment. I thought Parker would wake up when I turned the radio up so loud, but she wouldn’t. I couldn’t believe it. How many times had I sat with Parker complaining about the radio being up too high while waiting for Gramma to walk out of Hansen’s with ice cream and coffee cake? I couldn’t understand.

I croaked out her name. “Parker,” I said, but my chest constricted and nothing happened.

I began to think that we would not be discovered and that we would have to leave the car and travel across the ice and save ourselves. The authorities had failed. Maybe they were afraid of falling through. Or maybe they didn’t care. Or maybe they didn’t know. I developed a plan—probably my first plan to save a life—in those few seconds before the radio station break ended and started blasting an advertisement for the Victories Casino in Petoskey, that ad with the singers screaming out “Victories!” with several seconds of sustain.

II. Gram

*My Mother and I Had a Discussion One Day*
*and she said I was quite fortunate*
*to have two sons*
*and I said how is that? and she said*
*with daughters you worry for them*
*birth control, child rearing,*
*you worry for them, the threat of rape,*
and then there is the wedding expense.
I looked into her tired eyes
and clouded face and saw
that she was quite serious
Yes, but, I said,
boys eat more

—Denise Sweet

Parker’s Gram loved her very, very much. Two weeks after Parker was born, her mom went back to the office, leaving her daughter with Gram for the day. Gram lived with Uncle Frank and worked nights at the Northport hospital and would be asleep when Parker arrived in the morning. Parker played quietly so as not to wake her. She played with Uncle’s old toys—Lincoln Logs, Hot Wheels cars, a train set, an Atari 2600—while he slept in his room, the one with the funny smell and the Car and Driver magazines stacked four feet high in the corner. Uncle complained a lot about the new President.

When Parker was two, the Election Board swore Emma Roberts in as a member of the Interim Tribal Council in 1983. The first piece of paper the other Council Members handed her was a letter from the Bureau of Indian Affairs. For the next five years, she would be buried in the Grand Traverse Band’s fight against the Department of the Interior over the Tribe’s Constitution. Her child wouldn’t see much of her. [She] would have to spent most of [her] time with her grandmother.

The letter said that the BIA was reconsidering its decision to recognize the Grand Traverse Band of Ottawa and Chippewa Indians as an

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62 Denise Sweet, My Mother and I Had a Discussion One Day, in Reinventing the Enemy’s Language: Contemporary Native Women’s Writings of North America 496, 496-97 (Joy Harjo and Gloria Bird, eds. 1997).

The nub of the complaint is that on December 2, 1978 (no doubt intended to read “1975”), Gordon says he was unlawfully arrested while campaigning in the New Hampshire Presidential Primary, and unlawfully jailed without bail until March 15, 1976. As a consequence, it is claimed, the 1976 presidential election was fraudulent and new “legal” elections must be held for the office of President of the United States.

This suit is filed in this district on the theory that the citizens (electorate?) of New Jersey were denied a free Presidential election in 1976. The demand for judgment includes a request that new Presidential elections be held for the State of New Jersey. The complaint also alleges that: “Had there been a free legal 1976 Presidential election, J. John Gordon would now be the President of the United States.”

Id.
Indian Tribe. President Reagan had cut taxes and his cabinet members were searching for ways to cut the federal government’s expenses. The Secretary of the Interior chose to reduce the BIA’s expenses by reducing the number of federally recognized Indians. The local superintendent decided to put the squeeze to the Grand Traverse Band, to make them an example to the other newly-recognized Tribes. His letter gave the Band 30 days to cut its membership numbers in half or else. Emma


65 Vine Deloria, Jr., Introduction in AMERICAN INDIAN POLICY IN THE TWENTIETH CENTURY, 6 (Vine Deloria, Jr., ed. 1985).

At a much lower level of policy we find the nebulous arena of implementation. Here personal whims, misunderstandings, the security of federal employment, the informal networks of political bureaucracy and the guerrilla tactics of political activism play an important role in defining what the pretty phrases devised at the highest levels actually mean. Regardless of the posture of any national administration toward Indians and their problems, the lower-level bureaucracy largely determines what the actual policy of the government will be. Implementation of the policy rarely resembles anything previously described by the policy makers.

Id.

66 See Memorandum from Chief, Branch of Tribal Enrollment Services (BIA) to Chief, Branch of Tribal Relations (BIA) at 1-2 (April 19, 1993) (using Grand Traverse Band of Ottawa and Chippewa Indians precedent against the Jamestown Klallam Tribe).

67 The BIA refused to approve the Grand Traverse Band Constitution unless drastic changes were made to the membership provisions. See Letter from Acting Deputy Assistant Secretary – Indian Affairs to Joseph Raphael 2 (Mar. 18, 1985) [hereinafter March 1985 BIA Letter] (“Our analysis of the Band’s current roll indicates that the membership as enrolled goes far beyond the Grand Traverse Band as it was presented and considered during the acknowledgment process.”). Most damaging, the BIA threatened to revoke the Band’s federal recognition unless the Band capitulated to its demands concerning membership and enrollment. See id. (“The character of the current membership is such that it raises the question of whether the acknowledgement decision validly applies to the Band as now constituted.”); Letter from Scott Keep, Assistant Solicitor, BIA, to William Rastetter 2 (July 2, 1985)

[S]uch a sudden and dramatic expansion of membership as the Band now proposes may raise fundamental questions about the correctness of the Assistant Secretary’s decision [to recognize the Band]. In order to avoid having the Assistant Secretary reexamine his position on the Band’s existence, we have proposed criteria for completion of the base roll that are intended to ensure that the resultant membership still meets the acknowledgment criteria.

In March 1985, the BIA threatened to revoke all federal funding and stop issuing treaty fishing cards and refused to take land into trust. See March 1985 BIA Letter, at 2 (“If agreement . . . from the interim council . . . cannot be obtained within 30 days . . . it will be necessary to suspend further funding of current grants and contracts and programs for the Band. Further, no additional land can be taken into trust and made part of the reservation and no additional treaty cards can be issued.”).
and the rest of the Interim Tribal Council met day after day to decide how to proceed. They all had full-time jobs somewhere else and would meet after work in the cold, clammy administration building. The veterans of the treaty fishing wars wanted a federal lawsuit and political protests replete with nasty letters to the BIA and the Secretary. Others wanted to avoid litigation. The Band had no money or political power. The Department of Justice would crush them under a ton of paperwork. The Band’s two attorneys were split on how to proceed. One wanted to negotiate and the other wanted to sue. Eventually, the litigators prevailed over the negotiators. If nothing else, the lawsuit would initiate negotiations. At the expiration of the 30 days, the Band sued the BIA.\textsuperscript{68} It had no choice.

Parker spent her youngest days with Gram until kindergarten; and then, half days. She didn’t want to give school a chance. She wanted to stay with Gram and chew on frozen toaster waffles and watch game shows and soaps all day. She and Gram got along just fine and there was no reason to make a change. Besides, Mr. Tom, her teacher, was mean as a junkyard dog, like the man in her dad’s records.\textsuperscript{69}

Emma worked day and night with the Band’s attorneys and staff to rewrite the proposed constitution to meet the Bureau’s demands. The Bureau wanted to keep out all of the non-Grand Traverse Band Ottawas. The Tribal Council wanted to include all Michigan Ottawas in the membership because none of the other Ottawa bands—Little Traverse Bay, Little River, Mackinaw, Grand River, Burt Lake, Beaver Island, and so on—were federally recognized.\textsuperscript{70} There were about 500 Ottawas that would be disenrolled if the Tribal Council acquiesced to the BIA’s demands.\textsuperscript{71} A whole bunch of people were already calling


\textsuperscript{69} See Jim Croce, Bad, Bad Leroy Brown, on Life and Times (ABC Records 1973).


\textsuperscript{71} Because of the BIA’s overt threats and the amount of time it would take to litigate, in 1986 the Band consented to a compromise. See Letter from GTB Tribal Council to Bureau of Indian Affairs 3 (Dec. 2, 1986) ("The fact remains that the proposed Constitution and its membership criteria are a compromise, in light of BIA pressures for these criteria."). In order to secure BIA approval of a Constitution, GTB agreed to the BIA’s demands for more restrictive language in its Constitution. As a result, approximately 500 Indians were disenrolled. See id. at 1
Emma and the rest of the Tribal Council a pack of federal government sell-outs.\textsuperscript{72}

While Emma worked, her child thrived. Parker and Gram had been going to camp meetings since before Parker turned five; two or three times a year. They went to Mt. Pleasant, Northport, White Pigeon, wherever there were Indians praising Jesus. Parker never cared for sitting around in the outdoor chapels with the woodchip floors, singing and praising the Lord, but she loved playing with her cousins in the woods, getting filthy dirty, and eating frybread like it was going out of style. A week before kindergarten started, Parker jumped off the monkey bars from the top rung (Hey, everyone else did it) and broke a small bone in her foot. The pain was almost ticklish and Parker loved the idea of being hobbled, getting a cast and crutches, and receiving loads of extra attention and sympathy. Instead, she got a brace instead of a cast, she got yelled at by her new teacher for being slow, and got her Gram in trouble with her mom.

Parker could not hide her disappointment with school. Even at five, she decided her childhood glory days were over. School was the beginning of growing up, responsibility, getting a job some day. She hadn’t met anyone that liked their job. It wasn’t anything to look forward to. Plus, her teacher always talked about Satan.\textsuperscript{73} Satan was here and there and everywhere and if one let her guard down even for an instant he would get her. Afternoons and then summer brought some relief; back to the days staying with Gram, sitting with her as she knitted and watched the tube or read, helping her cook and clean, polishing her nurse’s shoes, and writing her checks out for her. Her arthritis twisted her knuckles and writing was a terrible chore.

First grade was worse because Parker had to attend school all day. She explained to her mother that she had believed school only needed to be half-day—all the kids did in class in the afternoons was take naps.

\footnotesize{\textsuperscript{72} See generally LESLIE MARMON SILKO, Tribal Councils: Puppets of the U.S. Government, in YELLOW WOMAN AND BEAUTY OF THE SPIRIT: ESSAYS ON NATIVE AMERICAN LIFE TODAY 92 (1997).}

\footnotesize{\textsuperscript{73} See United States ex rel. Mayo v. Satan and His Staff, 54 F.R.D. 282, 283 (W.D. Pa. 1971) (“[Plaintiff] alleges that Satan has on numerous occasions caused plaintiff misery and unwarranted threats, against the will of plaintiff, that Satan has placed deliberate obstacles in his path and has caused plaintiff’s downfall.”).}
watch Sesame Street. She could definitely do that at home. Her mother would not relent so she punished her by not making friends, not taking naps, and not trying very hard in school. She still saw Gram on weekends and even spent the night on Saturdays. One weekend, during a thorough woman-to-woman talk, Gram explained that she should not blame her mother for school. Her mother would go to jail if she didn’t go to school and try harder. Parker didn’t know that. Had she known that earlier, she would have gone without complaint, no matter how ridiculous she considered school. Gram smiled, though part of her believed that Parker was spoiled. School for her was rough.\footnote{See Bruce A. Rubenstein, Justice Denied: An Analysis of American Indian-White Relations in Michigan, 1855-1889 74 (1974) (unpublished Ph.D. dissertation, Michigan State University) (“If the children appeared sloppy and disheveled severe discipline was used; the plan is to reward the good Indians and thrash the bad ones until they can see the beauty of goodness.”) (footnote omitted).}

After first grade, Gram retired from the vets and Parker spent all summer with her in the red 1973 Chevy Nova going to camp meetings.\footnote{See Transcript, supra note 12, at 75 (testimony of Ardith “Dodie” Chambers) (“[W]e participated in other events with our neighboring people like what we know today as camp meetings. . . . It was like a religious rally of some type, just a spiritual gathering, and that . . . was going on in Charlevoix County and Antrim County, Leelanau County where our people traveled to those different areas at those camp meeting times.”).} She started second grade with a better attitude and made friends and played nice with the other kids at recess. In class, she finished her assignments in half the time as other students and had the time to read more books. On weekends, she played Scrabble with Gram, starting with the junior version, then quickly switching to the one without words already spelled out on the board. Often, cousins and aunts would come over on Saturday nights for iced tea, potato chips, and Scrabble. They’d bring over a cheap plastic hourglass timer and a dictionary and played to win. If it wasn’t in the dictionary or you took too long, you had to pass. Parker still did well, at least until it got too late for her to stay awake. Retired, Gram started gaining weight and did more visiting. She loved Spanish rice, hamburger deluxes, strawberry shortcake, lemon meringue pie, bean burritos with extra onions, and all kinds of nuts.

After several years of negotiation and litigation,\footnote{Cf Coyote Valley Band of Pomo Indians v. United States, 639 F. Supp. 165 (E.D. Cal. 1986) (holding that Secretary of Interior’s policy of approving constitutions before holding Secretarial elections was unlawful).} after a trip to the Sixth Circuit and back, the Grand Traverse Band and the BIA were close to a deal in late 1987. The Band agreed to disenroll the members of the
other Ottawa bands unless they could prove a connection to the band and the Grand Traverse Bay area. The political backlash against the Tribal Council by family members of the disenrolled Indians was robust. After the BIA approved the membership rules and the constitution in 1988, the Tribe held a vote on who would be in the first Tribal Council under the Grand Traverse Band’s constitution. All but one of the interim Tribal Council members lost their jobs—all except Emma. The six who did not win the election immediately filed suit in Tribal Court—its first case—to contest the election.

In the summer after fourth grade, Parker’s mom stopped leaving her daughter at Gram’s. She allowed her daughter to sleep in and get over to Gram’s by herself. Gram lived only a few blocks away behind the ice cream place on Adams Street. Parker and Gram fought a lot that summer, especially when Parker slept in until 9:30 or 10 and wouldn’t answer the phone when Gram called. Parker started reading more adult books, books her dad liked: Peter Straub, Stephen King, Richard Stark, Jim Thompson, and so on. She hid these books from Gram. Gram was a religious woman and wouldn’t approve of horror and murder stories with a ton of swears and sex scenes. On weekends (and weekdays she could get away with it), she stayed up late watching the movie channels and MTV. She and Gram watched the Martian Chronicles mini-series over ice cream, popcorn, Spanish rice leftovers, marshmallows, and hamburger deluxes or bean burritos with extra onions from the bar and grill down the street.

Emma testified about the history of the Band at the Tribal Court trial. The opposing counsel, a civil rights lawyer from Detroit, tore into her about the election ballots and accused her of intimidating people into voting for her, forcing her to tears on more than one occasion. She fought back on the stand and said what she came to say—the Band conducted a fair election. The Tribal Court of Appeals ultimately

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77 See Grand Traverse Band of Ottawa and Chippewa Indians Const. art. II, § 1(b)(3) (allowing the Tribal Council to adopt persons with one-quarter Indian blood quantum who can “demonstrate . . . substantial community ties to the Band.”).
78 See generally Crampton v. Sam, 27 Indian L. Rptr. 6239 (Little River Band of Ottawa Indians Tribal Judiciary 1999) (addressing the procedures for the appeal and resolution of tribal election challenges or disputes).
79 See Peter Straub, Ghost Story (1979).
82 See Jim Thompson, The Killer Inside Me (1952).
83 See The Martian Chronicles (BBC 1979).
agreed. The plaintiffs immediately filed suit in federal court, grumbling that going to federal court was the only way to vindicate Indian rights.

When Parker turned twelve, Gram took her out to Peshawbestown to teach her how to drive. She warned Parker to keep it from her mother and since Parker and Gram had kept secrets since before Parker could remember, it very exciting. Gram's dad made her drive him all over the place as soon as she turned twelve so he could read on the way. Gram drove a blue 1979 Chevy Nova with air conditioning. She was shorter and had to look through the space beneath the top of the steering wheel and the dash to see the road. She never, ever got into accidents, but always drove fast, at least until Parker took a curve on M-22 a little too fast. A lot of Indians had died on that road over the years so she drove slower so as to stop influencing Parker the wrong way.

When Parker was fourteen, she drove Gram to the last sleepover camp meeting they'd attend. That one was in Mt. Pleasant, the same place she had broken her foot nearly ten years earlier. Parker allowed herself to overload on nostalgia and the fact she was growing up. She began to understand for the first time that her Gram would not live forever. She was inconsolable and Gram let her stay the whole time in the Holiday Inn to eat greasy chicken nuggets, watch bad made-for-TV movies, and listen to Elton John's *Goodbye Yellow Brick Road.*

When Parker received her learner's permit the next summer, Gram took advantage, making Parker drive her all over the state. They visited

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84 See, e.g., Chamberlain v. Peters, 27 ILR 6085 (Saginaw Chippewa Indian Tribe App. 2000).


86 See generally Getches, supra note 45, at 11 (stating death rate for Indians in 1976 caused by automobile accidents was 117.1 per 100,000, compared to 26.6 for Whites) (citation omitted).

87 See Elton John, *Goodbye Yellow Brick Road,* on GOODBYE YELLOW BRICK ROAD (Rocket 1973).


Life forced to drive us
Spent the whole trip
Tryin' to go my own way
uncles in Flint and Allegan, aunts in Ypsilanti and Kalamazoo, cousins in Battle Creek and Hopkins and Dorr. They went to tribal council meetings in Dowagiac and pow wows all over the place, every weekend it seemed. Gram wanted to spend the summer trying all the different kinds of frybread at all the different pow wows to see if any of them compared to her sister’s frybread. None did. In Dowagiac, she showed Parker the picture of the Pokagon tribal council hanging on the wall, the one dated 1948. Gram pointed out that the gaunt man on the far left was her father. When Parker was in college, Congress published that photograph in one of its documents when it recognized the Pokagon Band for good.\(^8^9\) The photo proved that the Pokagons had never given up.

At the end of the summer, right before school started, Gram asked Parker where she wanted to go. Parker had been driving her around all summer and it was Parker’s turn to choose where they went. Parker knew that Gram wanted to go to the camp meeting way down by White Pigeon, so Parker suggested they go there. Gram said that was fine and they hit the road. As they entered Grand Rapids on U.S. 131, Gram asked Parker if she really wanted to go to an old camp meeting or if she would rather stop at the new hotel on Pearl Street and spend the night there—order pizza, watch TV, savor the cool air conditioning, and swim in the pool. Parker chose the hotel. She just wanted to stay with her grandmother alone.

A few months later, two of the former members of the Interim Tribal Council approached Gram for advice and guidance. Their federal court lawsuit had created sharp divisions within the community and most Grand Traverse Band Ottawas opposed their position. They felt strongly that they had done everything they could for the Band in its infancy. They believed it was unfair for the community to judge them harshly for the hard compromises they had to make. They came to Gram because she was not a political person and because she was respected in the community. And because she was the mother of the

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* * *

If I
Offer to drive
Just know where your lifeline’s going

\textit{Id.}

lead defendant in their case, Emma, she could start to heal wounds better than anyone. Gram received them on a Saturday. Parker had spent the night and listened, amazed to see the people that had fought so loudly against her mother show up at Gram's door.

"Aanii," they said to Gram.

"Boozhoo."

"We're here because we can't fight any longer. Our attorney advised us that he'll withdraw unless we can pay him thousands more dollars. We're tired of fighting this war with the tribe. Our families are tired. How do we make this better, Louise?"

Gram paused for a long while before she answered. "I loved my older brother very much, but he was a daredevil. He drove fast cars and did dangerous things all the time. My father tried to talk him into getting a steady job and settling down, but Andrew wouldn't do it. He kept being reckless. I guess he was one of those people who didn't feel alive unless he living life to the fullest. I think I worshipped him a little. I was always impressed with his stunts, all the crazy stuff he did. He always laughed with me and took me for crazy rides. You remember that TV show, the Dukes of Hazzard? Well, my brother would drive me around in his car like those boys drove. He wouldn't settle down. Eventually, he fell from a beam in the barn trying some stunt and broke his neck. He died when he was 22 and I was 16. That was over 50 years ago. I loved my brother Andrew the best. I miss him. Some days there is nothing I want more than to see my brother again, to sit and joke with him and listen to his stories. I know part of the reason he was my favorite brother was because of the crazy things he did, the excitement he brought to my life. I know that a little part of him would always resent me if I did it, but I would have made him give that up just so I could talk to my brother again, so I could grow old with him. In a second."

Gram talked to the visitors for another hour and they talked about politics and how hard it was, but even Parker knew that the story about Gram's brother was enough to make up their mind. They dropped the lawsuit after that.

When Parker turned 18, Gram stopped driving altogether. She could no longer see over the dash and gave the car to one of Parker's

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90 See Yellowbank v. Chingwa, No. C-018-0300, Hearing Decision at 2 (Little Traverse Bay Bands of Odawa Indians Tribal Court, June 19, 2000) ("Plaintiff recognizes that although this Court can ensure fairness in tribal law and its application, it can not make politics fair.") (citation omitted) (on file with author).
cousins in Hopkins. Gram started taking strong pain medication—one level below morphine—and nitro capsules for her heart, just to get her through the day. The new meds must have changed her mental picture because she started talking about her childhood, her young adulthood years before she got married, and her family. Before, she rarely spoke of those times and people, the heartache was too great. She took drops because her eyes were dry, but she always told Parker it was because she had cried until all of her tears ran out. She began remembering Indian words that the sisters had made her forget at the boarding school her father sent her when her mom died giving birth to Aunt Gina. She talked about the religious schools in North Dakota and Indiana where she worked in her twenties. She talked about how she had been a powder-puff champion race car driver, touring all over Michigan until her dad made her stop, made her come home to help with her younger sisters. She talked about the brothers and sisters that had walked on ahead of her, some of them gone 40 or 50 years by then. She even talked about her husband, Parker’s grandfather Luke. He was charming and very, very smart; dangerously so. He liked to drink and gamble, but he told great stories.

When she came home from college, Parker always stopped first at Gram’s place to have a hamburger deluxe or a bean burrito with extra onions. Gram usually slipped Parker a few bills when Parker stepped in to visit from college in Mt. Pleasant. School is expensive, she’d say, and it would make her feel better to know that her oldest granddaughter had a couple of dollars in her jeans if she wanted to see a show or order a hamburger deluxe.

Parker took a class on Indian history and law and took to arguing with her Gram about it over the phone. She would say, “The judges are bigots.” We learned about the Black Hills case. That’s the worst case

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The view that an incorporated Indian tribe possesses any attributes of sovereignty whatever and that its members are citizens of the nation, the state, and have a kind of tribal citizenship too, is, therefore, a manifest absurdity for it rests on the ludicrous premise that an exclusive group having a preordained and common bloodline and of a predetermined race may possess powers of government and have special rights in state and national resources not available to all other national, state and local governmental entities. It is an erroneous premise necessarily acknowledging that a political entity or subdivision dependent for its existence solely on race and ancestry may, under the constitution, possess some degree of sovereignty independent of the state and the nation.

Id.
in the history the Supreme Court.” Gram, who had done missionary work in the Black Hills in the 1930s and 1940s, said nothing at first, biding her time. “Rehnquist voted against the Sioux Nation and he is still on the Supreme Court,” Parker said. “I bet at least three other members of the current Court would agree with him on the question of Indian affairs. State court judges probably think so, too. Very, very few judges would actually say what they think if they can help it, but sometimes you get a glimpse of their thoughts, particularly when they’re very agitated about something.” Parker mentioned Vine Deloria and how much she liked his writing.93

“So you want to be a lawyer now?”

Parker said she was thinking about it.

Gram sat back to think a moment about what Parker said. “Don’t judges use their own personal experience to decide the law, for better or worse? Don’t those same judges, particularly Supreme Court Justices, read legal books and get offended by writers they think are ill-informed, writers that seem to attack them personally? How many times has Vine Deloria criticized a Supreme Court case as poorly written, badly researched, and downright racist? If we know that judges bring their prejudices to the courtroom, even if unconsciously, shouldn’t we admit that writers might alienate them? The way you talk, there’s probably a hundred to one ratio of articles criticizing the Court on Indian cases

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There were undoubtedly greed, cupidity, and other less-than-admirable tactics employed by the Government during the Black Hills episode in the settlement of the West, but the Indians did not lack their share of villainy either. It seems to me quite unfair to judge by the light of “revisionist” historians or the mores of another era actions that were taken under pressure of time more than a century ago.

Id.


If the history upon which legal decisions depend is simply an article of faith, derived no doubt from the childhood memories of judges and Justices, then we are removed a considerable distance from not only [Felix] Cohen’s Handbook of Federal Indian Law (1942) but from law itself. When law degenerates into a situation where the historical facts determined by a lower court can be challenged by a Supreme Court Justice on the basis that he prefers a different version coinciding with his own personal perspective, then we are admitting that law is merely a matter of personal emotional preference of judges and Justices.

Id.
compared to articles approving of the Court.94 We shouldn’t forget that, no matter how smartly a law professor argues that the Court decided a particular case wrongly, the Court is never, ever wrong. That’s why the word ‘Court’ is modified by the word ‘Supreme.’ And that’s why the word academic has two meanings.”

“So what are you saying?” Parker asked, confused.

“What about courting the Justices instead of alienating them?”

Parker considered it. “Maybe. I know Vine Deloria said the Justices on the Court were ‘mediocre.’95 I’d imagine that Justice Scalia doesn’t think of himself as mediocre.”

“Nor Ginsberg or Souter or Breyer or Thomas or any of them. They know who they are—they’re Justices of the Supreme Court—and no one can overrule them except each other.”

“Well, you’re attacking virtually all Indian law legal commentators.”

“See what I mean? Why is what I say an attack? It’s not an attack. It’s a suggestion, an idea, something that could create a discussion. Let me put it this way. Let’s say you write a scathing article criticizing, oh, I don’t know—Justice Ginsberg—and compared a decision she wrote to Plessy v. Ferguson96 or Korematsu.97 Let’s say you called her a racist pig for that decision in some article. And then let’s say when you become the lawyer for Grand Traverse Band and we get involved in a dispute over... I don’t know... treaty hunting rights and the case goes up the


96 163 U.S. 537 (1896).

Supreme Court and you have to write the brief and argue the case. Don’t you think that Justice Ginsberg, who probably has never heard of you, would ask one of her clerks to look up your track record? And when her clerk tells her that you called her a racist in some obscure law review article that nobody ever read, do you think she is going to think about that at least a little bit before she reads your brief?"

“Well, I’d never call her a racist pig or even a racist for that matter."

“You’re fighting the problem. Let’s say you did.”

“No. Seriously. I’d never call her a racist.”

“Okay, then. Let’s say some judge from the Deep South, a hanging judge, got appointed to the Court.”

Parker’s face blanched. “Man, now that I think about it, I wouldn’t say a word about those people in print if I thought I might have to argue a case in front of them. Of course not.”

Gram sat back and smiled. She never lost an argument with any of her children. “Well, don’t worry about it. That might never happen. It’s a moot point right now. To paraphrase Elizabeth Cook-Lynn, ‘A moot case is a case argued by law students before a moot court.’”

When Parker came home from college pregnant, Gram was the first family member she told and the only one to get excited right away. Parker’s mom didn’t talk about it for a week until Gram reminded her that her own daughter also had come home unmarried and pregnant twenty years earlier, so she better be nice about it.

And yet Gram scolded Parker harshly when Parker refused to bring her boyfriend Strickland home, making the young woman cry for two hours straight. Gram joined in the weeping when she realized how much she had injured her precious granddaughter in a time of uncertainty. In her eighth month, Parker finally brought Strickland to Gram’s apartment behind the ice cream place on Adams Street and, after sharing a Coke and a game of Scrabble with Gram, took him over to her mom’s house.

A few weeks later, Gram, Parker, and Strickland were playing Scrabble over hamburger deluxes when Parker’s water broke. By then, Gram could get around her little apartment okay, but she needed a wheelchair and an oxygen tank to move around outside. Gram implored

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them to leave her and get to Munson in Traverse City, but Parker insisted that Strickland help Gram put on her coat, hook up her oxygen, and wheel her out to the car. As a result, Emma made it to the hospital a half-hour before they did. Hours later, Strickland took the first picture, Gram sitting in her chair holding the baby boy Niko with the new mom and new Gramma near by.

Parker brought the boy over to Gram’s every day for a little while, whenever she and Strick needed a break. Gram didn’t change too many diapers for her great-grandchild, but she did speak exclusively in Indian to him when they were alone, a much more difficult task.99

Gram started needing oxygen all the time a few months after the boy was born. She got out of doors less and less and became crankier. Parker’s mom did all her laundry and cleaned her up when necessary. Parker hated to do it but she moved downstate to go back to school in the fall. Parker called her Gram twice a week, but could barely afford the gas money to come home on weekends. Gram often spoke of being lonely, that she was tired of living and had seen and met everyone she had wanted to meet. She kept saying it was time.

After one more semester, Parker dropped out of school and moved back home against her mother’s wishes. She missed her grandmother. She missed her home. Mt. Pleasant was not home, even though there were a bunch of Indians down there. Like her mother, she said she would run for office. She promised the Chief Judge of the Grand Traverse Band Tribal Court would swear in Parker Roberts as the youngest female Tribal Council Member ever.100

99 See Rubenstein, supra note 74, at 40-41 (“Agent Long reported boastfully that at councils he had ‘found it necessary to order some of their chiefs to sit down and stop talking’ because he ‘considered their language impertinent’ and ‘would not suffer them to talk in that manner.’”) (footnote and quotation omitted).

100 See Melanie McCoy, Gender or Ethnicity: What Makes a Difference? A Study of Women Tribal Leaders, in Readings in American Indian Law, supra note 7, at 235, 236 (citing Robert F. Berkhofer, Native Americans, in Ethnic Leadership in America (John Higham, ed. 1978)).

A new and growing trend in tribal governance is the increasing number of women participating in elective tribal politics. Although Native American women have historically had significant influence in many different tribal political systems, few have held formal elected tribal offices. Today, increasing numbers are doing so. However, the role of Native American women in tribal politics is almost unknown and unresearched.

Id.
The last conversation Parker had with her Gram was on a Tuesday. Gram told her that she wanted to go to Heaven to see her dad and brothers and sisters. Parker said to wait a little while longer, not knowing what else to say. “Wait until Niko has to start kindergarten, Gram.” Gram always gave the best explanations to talk kids into doing the things they didn’t want to do. The explanations usually involved jail or getting knocked down the stairs.

Gram said she would try, but would make no promises. She did ask Parker if Parker had actually believed the threat of jail all those times. Parker never answered because she was crying too hard.

Gram waited several minutes until her granddaughter calmed down. Finally, she said, “Well, granddaughter, I don’t think I can wait that long.”

“You better try,” Parker said.

Gram walked on a few days later. After the wake, Parker and her family went to the bar and grill down the street and ordered hamburger deluxe and bean burritos with extra onions.

WEST GRAND TRAVERSE BAY, LEEANAU COUNTY, 11:30 A.M.

The ambulance had taken away the driver of the SUV. The fire truck from Peshawbestown had driven off when the police determined that the Jaws of Life were not needed and no gasoline had been spilled. Most of the tribal police had returned to their patrols. Only two officers remained, waiting for the tow truck that would take the damaged SUV to a body shop. They probably stood on the roadside drinking coffee and talking about what they would do to the person in the red car who had apparently violated the law by leaving the scene of the accident. To this day, no one has explained to me how the collected group of police and rescue personnel, as well as a few gawkers, had missed the tire tracks that marked our sudden entrance onto the bay.

Parker complained about the police in general a great deal, but always defended the tribal officers. Digging through her school materials, I read about her police practices class, about how the criminal justice professor explained that cops regularly ate too many donuts and got fat and lazy. She drew little pictures in her notebooks of obese police officers surrounding a suspect, guts uniting in one large jailhouse wall, saying that the suspect was free to leave at any time, but that it would be better for everyone involved if he explained how the marijuana got on the bus.
I learned to be suspicious of police officers from Parker's outbursts while watching cop shows. After Strickland left, Parker rarely expressed much emotion except when ridiculing the writers of crime dramas and cop-based reality shows for brainwashing the public into trusting the police. I enjoyed her animation and joined in with her, glad to see her move, to live.

But with tribal officers, Parker said nothing bad. She felt they did a good job. I don't know how the local police were better than the cops on TV, but I took her word for it.

"Parker," I said. Maybe she couldn't hear me over the radio. I turned it back down. "Wake up, mom," I said again. "The police are coming." I hoped the reference to the police would stir her. She said nothing but I could see the faintest outline of her breath. The cold had invaded and I shuddered, suddenly awake with chills.

The two officers had heard the radio. The sound shot through the moist, cold air, but it was also devious.

"Who's there?" I heard from the male officer on the road. He spoke with authority, the kind of authority that pre-school teachers and day care attendants would never use with a three or four-year-old. He spoke with the kind of authority that made me quiet, lest the police bust down the door and arrest me and my mom. I stiffened and listened.

The other officer, a woman, spoke to her partner about hearing a radio and that there might be another vehicle in the fog. She spoke up and said loudly, "Is there anyone there?" It sounded more like a teacher and I felt compelled to answer, but nothing came from my mouth but a weak croak.

The officers must have conferred about the sound of the radio and decided to call it in, but Parker did not react to the very loud noise of the deejay cackling or to my warnings about the police. She remained still.

III. The Park Henry

everyone
who passes through your life
shops your heart and soul
for a bargain priced piece of you
to take with them.

like a trinket shop on a turnpike
it’s a mug that says “New York”
that will grace a table
at a garage sale
or end up in a thrift shop
surrounded by mugs from other states

—Paul Stebleton¹⁰¹

Toledo Marks left Emma the first time in 1981 and then he left for good in 1984. Emma Roberts never married him because part of her always knew he would leave, but she always loved him.

Toledo, who grew up in Kewadin with the Manitou family, was a runt castaway abandoned by his mother for good when he turned two in 1942. She was quits with him because he never cried. He never seemed to need anything. She moved out to South Fox Island to live with her grandmother, one of the last Anishinaabes out there.¹⁰² Later, Toledo’s mother moved to Chicago to join the Rosie Riveter Alliance and never returned.¹⁰³ In her absence, Toledo took to reading right away. The Manitous being a strongly Methodist family, he read the Old and New Testaments, the Apocrypha, and all the hymns written by the Wesley brothers, founders of the church. By the age of eight, he tired of religion and turned to philosophy. He read Bertrand Russell’s History of Western Philosophy,¹⁰⁴ a book left behind by George Manitou, who had briefly attended the University of Michigan¹⁰⁵ before escaping to China. Before Toledo, George was the crazy Indian in the family.

¹⁰² See generally Kathy Nickerson Craker, They Came to South Fox Island 38-48 (1983) [hereinafter South Fox Island Report] (discussing the Ottawa allotments on the island).
¹⁰³ Cf. Transcript, supra note 12, at 76, (testimony of Ardith “Dodie” Chambers)
After high school I had the opportunity to leave home and go on to college, so through the Bureau of Indian Affairs, I was able to go to college. And it was like a relocation program moving us — taking us off the ‘reservation,’ putting us into the city attempting to assimilate our kids into the non-Indian society, so in . . . January of 1966 I actually physically got on a bus and went to Chicago to attend school.”); Turtle Creek Report, infra note 108, at 65 (“[D]uring the post-World War II years . . . Indian people all over Michigan moved to southern urban centers to accept wage labor jobs. Grand Traverse Band members did migrate south, but a core population remained in the homeland.

¹⁰⁴ Bertrand Russell, History of Western Philosophy (1946).
¹⁰⁵ Cf. Children of the Chippewa, Ottawa and Potawatomi Tribes v. Regents of the Univ. of Mich., 305 N.W.2d 522, 527 (Mich. App. 1981) (“In a pristinely humane world, it might be honorable and fair to compel defendant to offer comprehensive scholarships in gratitude for the
The Manitous were a truly penitent family. One of the few Grand Traverse Indian families to succeed as farmers in accordance with the terms of the 1855 treaty, they also hoped to abandon their so-called savage ways. The Manitou farm thrived while other Indian families lost their allotments en masse, falling victim to land speculators, fraud, racism, and violence. Ben Manitou, the patriarch, funded the building of the Methodist church in Kewadin and often held popular Sunday dinner parties.

Toledo distanced himself from the family and the local Indians as he grew older. He delved deeper into Bertrand Russell and even hitchhiked to Ann Arbor to meet the philosopher at a talk in 1954. After reading Russell’s Proposes Roads to Freedom, he intently read the local newspapers for political and international news. He felt disgusted by the political era—the McCarthyism, the crypto-fascism, and the lethargy and acquiescence of the American public. He saw amazing and intense poverty in Kewadin, the local Indians struggling to eat and find shelter after the logging industry died down and the Department of Nat-

1817 conveyance.”) (citing Treaty of Fort Meigs, 7 Stat 160., art. 16 (1817)), cert. denied, 459 U.S. 1088 (1982).

106 See Treaty of Detroit, June 27, 1856, art. 1, cl. 8, para. 3, 11 Stat. 621, 622 (“The United States will give to each Ottawa and Chippewa being the head of a family, 80 acres of land.”).

107 See infra Part IV, infra; see also Rubenstein, supra note 74, at 115 (“Speculators and land-sharks who stole Indian land were, for the most part, unscrupulous persons willing to use every available means to achieve their goal.”).


Four of the eight families at Elk Rapids live in the sand dunes and in squalor. The other four live better in the town. At Kewadin, the four families live on seven acres purchased and held by 25 Indians. Ben Mamagona who owns and farms 80 acres in a high state of cultivation, is their advisor. He is an Indian and the first Ottawa, so far found by the survey who owns farm stock and machinery.

Id.

109 BERTRAND RUSSELL, PROPOSED ROADS TO FREEDOM (1919).

110 See Transcript, supra note 12, at 97 (testimony of Barry Burtt) (“[O]ne of the worst case situations, one that we talk about, was an older fellow that was literally living out of a root cellar. There were several gentlemen that [were] homeless. They literally had several poles in the ground that they have plastic draped over and some canvas.”).

111 See McClurken, Gah-Baeh-Jhagwah-Buk, supra note 11, at 66 (“When the prosperity of the lumber era ended, Odawa men found they had few options. . . . Mostly the work that Odawa men did was manual labor with low pay and little prestige. And some men had no jobs at all.”).
ural Resources shut down sustenance fishing on the bay and the lake.\textsuperscript{112} Lack of federal recognition didn’t help.\textsuperscript{113}

Toledo, always distant from his foster family, read as they farmed. He often sat in the upper levels of the attics with the flies and the bats, reading Joyce and Hobbes and Adam Smith. Reading Marx would have been unthinkable and Bakunin, Berkman, Goldman, and Kropotkin were completely inaccessible to him in Grand Traverse Bay area libraries. In 1958, without Ben Manitou’s permission, he applied to enter college at Harvard. He scrounged for the ten-dollar application fee by doing odd jobs for older farmers in the area without enough sons and daughters needed for the manual labor.\textsuperscript{114} Harvard turned him down at first, Ben finding the rejection letter in the mail, confronted the boy with it.

“I know you’re not part of this family,” Ben said matter-of-factly, not intending to cut. He was only five-six, two inches shorter than Toledo, but towered over the young man. Ben used every minute of his sixty years to pound his point home. “I also know you’re not going to be a farmer. You’re too intelligent, too lazy, too weak, and too much a heathen.”

Toledo had never heard such language from Ben, who rarely spoke to him. He sat down on a kitchen chair as though slapped, mouth open.

\textsuperscript{112} See, e.g., People v. LeBlanc, 248 N.W.2d 199, 201-02 (Mich. 1976) (discussing case where State of Michigan prosecuted Chippewa Indian exercising treaty fishing rights under the Treaty of 1836) (citing Treaty of Washington, 7 Stat. 491, art. II (1836)).

\textsuperscript{113} See Transcript, supra note 12, at 77-78, (testimony of Ardith “Dodie” Chambers):

Well, coming from Peshawbestown, I didn’t realize... that we were considered poor. I mean so what, we went without this and that, but to us we weren’t poor. But when I met the other kids from the other tribes and even within Michigan from Mt. Pleasant and Baraga, they had better housing. They had running water in their house, and our tribal people didn’t. I didn’t know how our village and the other villages in the area could not have that. So in talking to the kids during and after school, I had asked, ‘Well, why is it your people — your tribe has water? Why do you have these septic tanks and bathrooms and not modern houses but definitely better homes than we had?’ And they simply said, ‘Well, our tribe gets money from the government.’ And I said, ‘What are you talking about, you get money from the government?’ And the kids all stated, ‘Well, we’re federally recognized by the government, and we get services from the Indian service. We get services from HUD. We get services from the Bureau of Indian Affairs because we’re acknowledged, federally acknowledged by the government.

\textsuperscript{114} See Rubenstein, supra note 74, at 75 (“Manual labor was undesirable and unattractive to Indian children who had seen their parents fish, hunt, and plant small gardens only for subsistence. Physical labor, in the white man’s sense of the term, was considered by most Indians something to be avoided unless necessitated by dire economic straits.”).
“Don’t take it badly, boy,” Ben said. “I want you to be famous. I want you to be successful at whatever you do. Mostly, though, I want you to leave.”

That evening, Toledo borrowed a typewriter from Nathan Jones down the road and typed a letter of recommendation from his foster father. Toledo spared no exclamation, no adjective, and no reference to Harvard’s legendary obligation to the eastern Indians, mostly scraped clean off the earth to clear the way for settlers and colonists and soldiers and business moguls and Ivy League colleges. Ben signed it without reading it. One month later, Harvard’s dean of admissions wrote to congratulate Toledo on becoming the very last member admitted to the Class of 1962.

The same man became dean of the entire school in the spring of 1959 and his first task as the new dean involved signing a letter asking Toledo to leave the college. Unabashed anarchists do not make good Harvard alumni, the letter stated. Toledo knew why he had been expelled, but he never spoke of the incident again.

Emma Roberts’ mother Louise actually named her Angelique Emma Roberts, but it was the Emma that stuck. Emma had difficulty spelling her name at the age of four and asked her mother if she could write Emma on her finger paintings instead. Louise consented. Emma’s father Luke had liked the name Emma after hearing the name used in infamy during a radio program in 1952 in which Richard Nixon and Joseph McCarthy condemned anti-Americans and Russian ingrates such as Emma Goldman. Luke had no idea who Emma Goldman was or what she did to deserve such antipathy, but he hoped and prayed that some day his daughter Emma would commit some glorious crime and be reviled by hard-core psychopaths like Nixon. In Luke’s mind, Emma Goldman must have done something extraordinary to provoke such a response. If her own daughter could replicate a similar feat, then it would mean than a Native child had done good for her family, for her

115 Cf. Soglin v. Kauffman, 295 F. Supp. 978 (W.D. Wis. 1968) (discussing expulsion of university students for blocking entrance to building where Dow Chemical, a producer of Agent Orange, was conducting on-campus interviews).

116 Cf. Kleindienst v. Mandel, 408 U.S. 753 (1972) (upholding Attorney General’s decision to exclude anarchist professor from the United States where he had sought to speak at Stanford University).

117 See Goldman v. United States, 245 U.S. 474 (1918) (affirming conviction of Emma Goldman and Alexander Berkman for conspiring to induce persons to dodge the draft); see generally EMMA GOLDMAN, ANARCHISM AND OTHER ESSAYS (1917).
people. It might mean persecution for her, but he would be satisfied that she had lived fully, that she had accomplished things, things that would be remembered. He never mentioned this fantasy to his wife or anyone.

On the day Harvard expelled Toledo for disrupting its classes and irritating its powerful political allies, Luke and his one-year-old prognosticator, Emma, slid on the ice and crashed into a tree on Setterbo Road. The steering wheel impaled Luke just above the navel. He lived for almost an hour before he passed. Emma, wrapped in two very thick blankets, flew through the front window unharmed and landed on a soft, pure white snow bank. She remained there for an hour, looking at her father's bloodied face as he told her Bearwalk stories. The police discovered her sitting triumphantly on the snow bank an hour after the accident. Luke had just passed away and the girl, no longer entranced by her daddy's stories, escaped the tightly wrapped bundle. She tugged at her underthings, expecting to be changed at any moment. The officer, an Irish anarchist revolutionary in Spain in the 1930's and a keeper of the peace in Michigan in the 1950's, carried her away from the scene to her extreme dissatisfaction, holding her body as far away from him as he could without dropping her.

After leaving Cambridge by train, Toledo found work at an aerospace facility in Dearborn after acing the mathematics exam given during the interview process. He lied about his age, he lied about his expulsion from Harvard, he lied about his family relations—he lied about absolutely everything. He had never taken math at Harvard, figuring knowledge in math only served the military-industrial complex, a phrase he enjoyed using around conservative, hawkish Republicans in love with Eisenhower who never had a clue about what he was talking about. He especially enjoyed informing the same hawkish conservatives that Ike himself had coined the term, not some commie subversive. He applied at the aerospace facility because he actually wanted to prove Ike's hypothesis false. If the world did revolve around the military-industrial complex, and if there really was such a thing, he would be very disturbed.

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118 See Getches, supra note 45, at 11 (noting that 117.1 of every 100,000 Indians died from motor vehicle accidents) (citation omitted).
Riddler-Knight hired Toledo on the spot. He had tested higher than any applicant ever before him on an exam written by the one and only Albert Einstein. They put him in the experimental physics lab with a crew of hard drinking, college graduate, math wizards. At the age of nineteen, Toledo began to drink and smoke and read pornographic magazines and gamble. Toledo’s very first drink was called Brown Ruin, a drink invented by alcoholic New York City newspapermen during Prohibition.\(^{121}\) It tasted like liquid horror and he drank three more before the night was over. He claimed to have visions.\(^{122}\) He woke up alone in a bar and meeting hall for Polish-American veterans of foreign wars. The proprietor treated him reasonably well and he would return regularly to that hall for some time.

Toledo did well at his job. The men he worked with told him that he must be the exception to the rule about Indians being lazy and slovenly.\(^{123}\) Toledo quit the job at Riddler-Knight about nine months after he started. He created the formula that would later be used to develop the fuel-air explosive:\(^{124}\)

\[
D = 0.15 \times (0.1 \times \text{mass} \times \text{hc})/3
\]

He developed the formula to help farmers living under the threat of dying of grain-elevator explosions, as well as workers in oil refineries and chemical companies. The formula helped to explain the dangers of accidental chemical vapor explosion. As soon as he completed his report and signed the final paper, he realized that it would be published by a top secret Pentagon research journal and used for military applications long before it could be declassified and used for civilian safety purposes. His supervisor, off the top of his head, estimated that it would be ten years

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\(^{121}\) See \textit{Samuel Fuller, A Third Face: My Tale of Writing, Fighting, and Filmmaking} 57 (2002).

\(^{122}\) See Peek v. Ciccone, 288 F. Supp. 329, 333-34 (W.D. Mo. 1968) ("During the course of the hearing, petitioner informed this Court that he had had a religious experience in which it was revealed to him that he was the reincarnation of Jesus Christ").

\(^{123}\) See Rubenstein, \textit{supra} note 74, at 40

[Federal] agents began to be more critical of the Indians. They stereotyped Indians as lazy, disrespectful ingrates who would never work for anything until the government ceased giving them everything; according to one agent Indians were "entitled to no sympathy or consideration" and it was his opinion that they agency should be closed, thereby forcing Indians either to work or to starve to death.

Id. (footnote omitted).

before the military would allow the formula to be used for public safety.\textsuperscript{125}

Toledo took the bus to the Polish beer hall and drowned his sorrows until the money ran out a month later. Economics took over and he started serving drinks in the beer hall, but his taste for glasses of Brown Ruin forced the management to make a change. Rather than hitchhike home to the Manitou farm, he took a job at the Ford plant in Willow Run near Ypsilanti. Over the next nineteen years, he worked off and on in the automotive assembly lines in the Detroit metropolis.\textsuperscript{126}

Emma first saw Toledo at a Tiger game in 1979. The Mariners were in town for a twi-night doubleheader and Willie Horton, former baseball star and cultural hero of the Tigers in the sixties,\textsuperscript{127} was the star of the evening for the Seattle ball club. He aged since his heyday with the Tigers in the 1960s, but that night he lit up the Tigers for a pair of homers in the second game to help Seattle salvage a split. Emma felt like crying that night after Willie Horton lofted the second long fly ball over the left field fence. She remembered what he had done in 1967, how he had put his life in jeopardy in an effort to end the riots. Toledo, sitting two rows behind Emma and her cousin Lizzie, reached over and touched her on the shoulder. He produced a yellowing hanky for her

\textsuperscript{125} Cf. Rubenstein, supra note 74, at 75-76

Aversion to labor resulted partly from apathy and partly from past experiences in which Indian laborers were cheated by white employers. For example, Indian stevedores unloaded tons of raw ore from barges for the Leland Iron Company in 1870 at a wage of twenty-five cents per day, and Indian lumberjacks received only half the pay of their white counterparts.

\textit{Id.} (footnote omitted).

\textsuperscript{126} See Transcript, supra note 12, at 70 (testimony of Ardith “Dodie” Chambers) (“Back in the 1950s and 60s, there may have been ten homes, maybe 20 people [in Peshawbestown]. It was quite . . . larger at one time, but because people moving away and houses burning down and no economic opportunity, people left. They left the village and moved on to the cities or whatever.”).


Looking back with obvious excitement, Keith recalls both the good and the bad for black lawyers who practiced over three decades ago: “I loved getting up every morning to go to the office—it was exciting. We represented the major black companies in Detroit, such as, the House of Diggs and the Stinson Funeral Homes, the Great Lakes Mutual Insurance Co. as well as the Diggs Insurance Co. and baseball star Willie Horton.” “Willie the Wonder,” was a star athlete at Northwestern High School, Keith’s alma mater. Keith, who was also Horton’s legal guardian, negotiated what was then an enormous signing bonus for Horton with the Detroit Tigers—$50,000.00.

\textit{Id.}
budding tears and she accepted, genuinely touched. She decided at that moment that this kind and understanding Indian man would become her partner in life and love. Lizzie, very protective of her cousin, instantly attacked poor Toledo with fists, fingernails, and a Polish sausage, but Emma defended him from attempted murder. Toledo charmed them both with his stories about the mascots at minor league baseball games in Ohio.\textsuperscript{128}

A week later, Toledo returned to the Grand Traverse Bay area, bypassing his foster family and heading straight for Peshawbestown. He moved in with a distant cousin, living in the loft above a garage, and took work picking cherries for the season. A month later, he convinced Emma to take a boat out to South Manitou Island. On their first night together in a green, canvas tent on the crescent beach under the full moon and stars, Emma agreed to marry him. She didn’t really believe Toledo was the marrying kind and had no intention of exchanging vows, but he was the one. She knew that.\textsuperscript{129}

The previous suitors failed Emma miserably. She rejected Suttons Bay High’s star halfback and linebacker with a forceful punch in the groin. She hopped out of a Leland man’s Corvette before he could reach

\textsuperscript{128} See Lyons Partnership v. Giannoulas, 179 F.3d 384, 387 (5th Cir. 1999):

The sketch would begin with the [San Diego] Chicken disco dancing. The Barney character would join the Chicken on the field and dance too, but in an ungainly manner that mimicked the real Barney’s dance. The Chicken would then indicate that Barney should try to follow the Chicken’s dance steps (albeit, by slapping the bewildered dinosaur across the face). At this point, Barney would break character and outdance the Chicken, to the crowd’s surprise. The Chicken would then resort to violence, tackling Barney and generally assaulting Barney. Barney would ultimately submit to the Chicken and they would walk off the field apparently friends, only for the Chicken to play one last gag on the back-in-character naive and trusting Barney. The Chicken would flip Barney over a nearby obstacle, such as a railing.

\textit{Id.}

\textsuperscript{129} See JAMES JOYCE, ULYSSES 783 (1918) (Vintage Books 1961):

O that awful deepdown torrent O and the sea the sea crimson sometimes like fire and the glorious sunsets and the figtrees in the Alameda gardens yes and all the queer little streets and pink and blue and yellow houses and the rosegardens and the jessamine and geraniums and cactuses and Gibraltar as a girl where I was a Flower of the mountain yes when I put the rose in my hair like the Andalusian girls used or shall I wear a red yes and how he kissed me under the Moorish wall and I thought well as well him as another and then I asked him with my eyes to ask again yes and then he asked me would I yes to say yes my mountain flower and first I put my arms around him yes and drew him down to me so he could feel my breasts all perfume yes and his heart was going like mad and yes I said yes I will Yes.

\textit{Id.}
second base and slammed the door in his face as he attempted to follow her out the passenger side. She turned down flat most boys and men, not bothering to let them feel they had a chance. She would not settle, not for even a stolen night of pleasure, no matter what the popular songs preached.

Toledo talked Emma into moving to Detroit, where he claimed to have a job lined up at the new Dodge plant. He had no such job, but he was a convincing orator. He dearly missed his cronies—the drunks he met at the Polish beer hall, the people of color he placed his bets and drank with—and the flea markets and second-hand stores where he obsessively searched for the best bargain imaginable. Emma followed out of love and devotion and because she was already pregnant.

Emma gave birth to a stillborn boy, Welch Thompson Marks, in January of 1980 at Henry Ford Hospital. Toledo missed the birth altogether. He had business in India for his most recent temporary employer, an oil refinery setting up shop for the first time that needed him to allay their concerns about chemical explosions. Toledo took the job gladly, eager to use his formerly classified knowledge to prevent rather than cause harm for one time, at least. Toledo earned a large bundle of money that he immediately lost betting on the DePaul Blue Demons in the NCAA tournament. Humiliated, he moved the family to Kalamazoo, Michigan, to take a job teaching a physics lab to undergraduates at the invitation of Professor Michael Forster, a former colleague at Riddler-Knight.\footnote{Cf. Preface, in Freedom with Reservation: The Menominee Struggle to Save Their Land and People ix (D. Shames, ed., 1972), reprinted in Getches, supra note 45, at 85-86:}

It was just after the Treaty of Cedars, in 1836, when the Menominee ceded all their land east of the Wolf River (about three million acres) to the U.S. government. Governor Dodge of Wisconsin had presided over these transactions and wished to offer a token of his appreciation to the spokesman for the Menominee delegation, Chief Oshkosh. He gave the chief a top hat and formal dress coat.

* * *

Donning the top hat over his long hair and fastening the coat over a buckskin vest, breeches, and wampum necklace, he would parade through town on moccasin feet. This undaunted little man of five feet would call out to his friends as he strode by, “Don’t I look awful? This is the way the white man’s law fits the Indian.”

\textit{Id.}

\footnote{Cf. Compo v. Jackson Iron Co., 16 N.W. 295, 295 (Mich. 1883) (“The evidence for complainant is the Marji Geshick went to an Indian girl named Susan, and asked her to go and}

\textit{HeinOnline 2 Cardozo Pub. L. Pol’y & Ethics J. 242 20032004}
Hospital. During Emma’s pregnancy, Toledo quit the Western Michigan University position to take a job at Rhoda Tires in East St. Louis, Illinois. He quit that job at Emma’s insistence and took a job at an auto parts factory in the South Side of Chicago. Again, fearing for her family’s safety, she instructed Toledo to find another job. He left to find work and returned a month later with the promise of a job in Grand Rapids. He had no such job and in fact had merely located an old drinking buddy at Herkimer Hotel with an angle on a bookie.

A week after Parker was born, Toledo left for the first time. He just did not come home at seven like he had promised. Emma waited until midnight to call the police. A few days later, she moved back home to Peshawbestown to live with her mother and took a job at a law firm in Traverse City, typing legal pleadings and letters for the lawyers.

Toledo showed up in Peshawbestown a few months later, talking about how he had been offered a job with General Motors to work on

live with him as his wife, and that she assented, and did live with him for a time, and Charlotte Kobogum was the fruit of their intercourse.

132 Sewing Terrorists, The Day My Ass Expanded and Ate Grand Rapids, on Sewing Terrorists (2001):
  wiped out devos hall
  not one, but all of them
  devoured the entire van andel
  of course caused quite the scandal
  * * *
  took out the new s-curve
  MDOT thought I wouldn’t have the nerve
  replaced it with ten lanes for bikes
  now the whole town’s run by dykes

Id.

133 20 Miles, East St. Louis, on I’m A Lucky Guy (Fat Possum Records 1998):
  Now it’s been awhile since East St. Louis
  But I remember her so
  We were drinkin’
  I was thinkin’
  How far it will go
  But the bottle’s nice and empty
  That’s how it goes
  She’s the one that wore me down

Id.

134 The Gossip, Don’t (Make Waves), on Movement (Killrockstars 2003):
  It’s like I gotta burn a hole in my pocket
  Tryin’ to keep you satisfied
  It’s like I gotta burn a million bridges
  Just to keep you by my side

Id.
their new airbags. They needed people with experience in chemical explosions. Toledo talked to Emma through the night, apologizing, explaining, and romancing. She cried. He cried. They walked and talked and joked and by the next morning, Emma agreed to move back to Detroit. It lasted a month. Toledo just stopped going to work and started tending bar at the Park Henry in Cass Corridor. Emma didn’t have any money to pay for the rent or for food, so she moved her children back to Peshawbestown.

One day tending bar at the Park Henry in 1983, Toledo met a man who said he knew people who knew things about Vegas-style slot machines.\textsuperscript{135} The man said, “I imagine those Indian Tribes up north might be interested in knowing these people.”

“Yes,” Toledo said, wiping down the bar with an old, smelly rag. “They might.”

The man kept talking. “You know, this is the perfect time for the Indians to do something about this situation. I’ve been doing a little reading—and this is between a drinker and his bartender\textsuperscript{136}—but I think I know what I’m talking about.”

“Oh, yeah?” Toledo pretended to be listening.

“The problem is still the federal government. They always defer to states’ interests,\textsuperscript{137} large landowners, corporate interests; all the non-In-

\textsuperscript{136} Cf. Klaiber v. Orzel, 714 P.2d 814, 815 (Ariz. 1986) (discussing claim that written statements of bartender were privileged attorney work product). \textit{But see} Jaffee v. Redmond, 518 U.S. 1, 22 (1996) (Scalia, J., dissenting) (“For most of history, men and women have worked out their difficulties by talking to, \textit{inter alios}, parents, siblings, best friends, and bartenders—none of whom was awarded a privilege against testifying in court.”).

States’ rights is only a halfway house of rigorous conservative ideology and shows a reluctance to follow the obvious line of reasoning. If the federal government is too large and too active, then it should naturally follow with the complex society of today that states are also too large and interfering to vest ultimate powers of government in them. Bringing the issue down to the local level means that the local organization must reflect not simply the political rights of local people, but their culture, social system, economic resources and problems, and racial composition. The federal Constitution thus becomes the definition of ground rules for the interaction of group relationships.

The contemporary Indian tribe is a good illustration of how this principle can work. While individuals Indians may complain bitterly against being ruled from long distance by a group of less-that-sympathetic whites, there has been no corresponding call for revolution and destruction of the present governmental scheme by Indian people.
dian, anti-Indian people. Every time a Tribe or an individual Indian wants something, someone comes along and calls the government racist for helping out Indians.\textsuperscript{138} Indians spend so much time trying to get the government to fulfill its treaty and statutory obligations but the BIA won’t do it for fear of being sued.\textsuperscript{139} It used to be they wouldn’t do anything to help the Indians because they wanted resources in the land or the land itself,\textsuperscript{140} but now that they have almost all of the resources and land, they won’t do anything to avoid being racist. The non-Indians argue that all those laws passed for the benefit of Indian Tribes and

\begin{quote}
Indeed, the major complaints have been that the United States has failed to protect treaty rights of the tribes and that individual Indians have suffered accordingly. Indian tribes have a vested interest in maintaining the Constitutional framework, because tribal rights derive from this document and individuals receive from tribal rights the identity and status they seek as individuals.

\textit{Id.}\textsuperscript{138} \textit{See generally} Michael A. Dorris, \textit{Contemporary Native Americans}, \textit{DIEALUS}, Spring 1981, at 43, 61:

Backlash movements have sprung up in a number of states, many of them part of an organization euphemistically titled the Interstate Congress for Equal Rights and Responsibilities. As in the past, \textit{equalization} of Indian rights translates to mean \textit{reduction} of Indian rights, that is, concession of those elements of special privilege that derive from agreements reached in the eighteenth and nineteenth centuries treaties between the tribes and the United States.


\textit{Id.}\textsuperscript{140} \textit{See} Scholder v. United States, 428 F.2d 1123, 1130 (9th Cir. 1970), \textit{cert. denied}, 400 U.S. 942 (1970):

We feel obliged to add that the Bureau’s conduct, as reflected by the record before us, borders on the shocking. At best, it reflects gross insensitivity. The United States has a high moral obligation to the American Indian, and Congress has entrusted the officials of the Bureau of Indian Affairs with the responsibility of meeting that obligation. We have no doubt that the Bureau failed to meet its responsibility in the instant case. Over 45 percent of the Indian acreage within the Pala project is without functioning laterals. The area is naturally very arid. In past years Indian landowners, as well as representatives of the Pala Band, have made numerous requests to the Bureau for the construction and repair of laterals, and the Bureau’s uniform response was that no moneys were available. The former owners of the Allers property were Pala Indians, and they were forced to give up the allotment after their fruit trees died for lack of water. Their requests to the Bureau for repair of the lateral were refused, and the land was completely without water. Yet shortly after Allers, a non-Indian, purchased the property, the Bureau agreed to build a lateral that would benefit solely his land.

\textit{Id.}\textsuperscript{139}
individual Indians are racist and unconstitutional.\footnote{See, e.g., Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse—Wisconsin, Inc., 991 F.2d 1249, 1252-53 (7th Cir. 1993) (discussing sometimes violent tactics of anti-Indian, anti-treaty rights organization), remanded to, 843 F. Supp. 1284, 1286-91 (W.D. Wis. 1994) (marshalling six pages of evidence that anti-Indian, anti-treaty rights tactics were racially motivated), aff'd, 41 F.3d 1190 (7th Cir. 1994), cert. denied sub nom. Crist v. Lac du Flambeau Band of Lake Superior Chippewa Indians, 514 U.S. 1096 (1995). See generally Getches, supra note 45, at 118 ("[M]odern developments have brought increasingly strident cries of 'reverse discrimination.' Such concerns have been raised most consistently in the Northwest and in the Great Lakes area, where the major Indian fishing and hunting rights decisions have been handed down.").} Sad thing is, racism is not a thing of the past, nor is it even particularly well-hidden.\footnote{See ROBERT TRAVER, LAUGHING WHITEFISH 27 (1965) (St. Martin’s Press 1983) ("This blanket indictment of a whole race, this blind mass presumption of guilt, sickened and disheartened me. I felt that the bitter truth was that we had converted many of these children of nature into howling savages. . ."); see also Brief of Amicus Curiae California State Sheriffs’ Association at 1, 6, Inyo County v. Paiute-Shoshone Indians of the Bishop Colony, 538 U.S. 701 (2003): The opinion of the Ninth Circuit Court of Appeals serves to establish hundreds, and with the growth of so-called “Indian Land” perhaps many more, tribal enclaves that are now virtual sanctuaries where evidence of off-reservation (as well as on-reservation) criminal enterprise may be locked away, immune from a search by law enforcement officers who are investigating the violation of state crimes. . . .} Am I wrong? They’re still calling you savages after all this time.”\footnote{And according to the theories of Thomas Hobbes, “The advantages of government are so great that it is worth sacrificing some of our freedom to bring about those advantages.” . . . For, in the absence of government, the resultant “state of nature” would be one where conflict between people is inevitable, and “no one can be confident that he will do well in this state of conflict. Everyone is vulnerable to death, injury, and other losses at the hands of other people.” The state of nature would be a “war of all against all” and human life would be “solitary, poor, nasty, brutish, and short.” . . . Is not this “state of nature” as described by Hobbes akin to the “state of lawlessness” on tribal lands which Congress sought to end through the enactment of Public Law 280? Id. (quoting STEPHEN NATHANSON, SHOULD WE CONSENT TO BE GOVERNED? A SHORT INTRODUCTION TO POLITICAL PHILOSOPHY 70, 71 (1992) and citing Confederated Tribes of the Colville Reservation v. State of Washington, 938 F.2d 146, 147 (9th Cir. 1991)).} Toledo looked away.

“I’ve been reading about the anarchist syndicates in Spain before the Spanish Civil War.\footnote{See generally GEORGE ORWELL, HOMAGE TO CATALONIA 46-71 (1952) (discussing the political landscape of the Spanish Civil War); George Orwell, LOOKING BACK ON THE SPANISH CIVIL WAR, in A COLLECTION OF ESSAYS 193-215 (1946) (same).} They put the theory into practice about the locals owning the means of production, free from the intervention of the
state. Government is what some would call a necessary evil, but what if it isn’t necessary? I know Indian Tribes are a long way from where they want to be, but think about them for once as anarchist syndicates. They could have local control of their means of production, if any. It could be fishing or agriculture or ranching or mining or something else. There are some federal regulations they have to follow but that they don’t really need; it’s just the fed’s way of trying to control the Indians’ own money.\textsuperscript{145} But if the Indians used their own capital, then the regulations don’t matter. The Tribes have their own leadership, their own bureaucracy, their own courts, their own ways of dealing with property and violence. There are definitely a few that could give it a shot right now. You know, go it alone, if it were legally possible, which of course it’s not. But if they could, I think you’d see something very close to the anarchist syndicates in Spain and elsewhere. And this isn’t some utopian community. The Tribe would work to make money and deal with others and each other like before, but it could be a model for how any indigenous community could do it in the United States, Canada, Mexico, Brazil, wherever.”

“A few slot machines might help move that idea along.”

“Pre-contact, there were Indian Tribes that survived without the welfare state, without a standing army, without an Internal Revenue Code, without zoning regulations. They just did what made sense. And, even in this world structure, even overrun by the ‘deadliest enemies,’\textsuperscript{146} Indians have their enclaves of authority and self-determination. If the Tribe had an economy, they’d be there. Tribes would provide their own

\textsuperscript{145}Vine Deloria, Jr., \textit{Evolution of Federal Indian Policy Making in American Indian Policy in the Twentieth Century} 239, 249 (1985) (Vine Deloria, Jr., ed.).

Until the appointment of Indian Affairs Commissioner John Collier, policy formulation was fundamentally a contest between Congress and the executive branch, represented by the secretary of the interior. The department would allow certain kinds of changes to take place in the structure of Indian affairs, but it zealously protected its established prerogatives in dealing with Indian property. Every initiative that came from the Interior Department sought to enhance its power over Indians’ lives and property.

\textit{Id.}

\textsuperscript{146}United States v. Kagama, 118 U.S. 375, 383-84 (1886). The Court wrote:

These Indian tribes are the wards of the nation. They are communities dependent on the United States, — dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the states, and receive from them no protection. Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies.

\textit{Id.}
housing, their own health care and social services, pay for their children’s education. That’s the goal of all Tribes. Of course, they’d probably never be given the chance. It has to do with the authority of the state over our lives. Don’t you see the irony? The term ‘anarchy’ is used to denote violence and chaos and a State of Nature. Look at all the texts.\(^{147}\) Well, to paraphrase Noam Chomsky, they jailed the socialists, but they executed the anarchists.”\(^{148}\) The man sipped his whiskey.

Toledo listened, finally finding a use for his studies of Bertrand Russell. “But there aren’t any anarchists anymore, right? They’re all dead, right?”

“Yeah, the movement’s ‘mostly dead,’\(^{149}\) but there are still remnants of academia that talk about the theories of anarchism seriously.”\(^{150}\) The man laughed harshly. “You want to know anarchy? A friend of mine, a lawyer, told me about the time he spent a few months in Nome, Alaska, in the early 1980’s. He’d been out of law school for a few years already and had done some work for legal aid down in Albuquerque, but he wanted to start over and write a book, a novel. He flew into Nome, set himself up in a small boarding house, and hit the local


Admittedly, the Members of this Court decide cases “by virtue of their commissions, not their competence.” And arguments may be made one way or the other whether the present case is distinguishable, except as to its facts, from Rummel [v. Estelle, 445 U.S. 263 (1980)]. But unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.

\(^{148}\) See NOAM CHOMSKY, UNDERSTANDING POWER: THE INDISPENSABLE CHOMSKY 199 (Peter R. Mitchell & 7 John Schoeffel eds. 2002)(stating “they were harsh on socialists”).

\(^{149}\) PRINCESS BRIDE (20th Century Fox 1987).

\(^{150}\) See NOAM CHOMSKY, THE CHOMSKY READER 29 (1987):

Well, anarchism isn’t a doctrine. It’s at most a historical tendency, a tendency of thought and action, which has many different ways of developing and progressing and which, I would think, will continue as a permanent strand of human history. Take the most optimistic assumptions. What we can expect is that in some new and better form of society in which certain oppressive structures have been overcome, we simply discover new problems that haven’t been obvious before. And the anarchists will then be revolutionaries trying to overcome these kinds of oppression and unfairness and constraint that we weren’t aware of before. Looking back over the past, that’s pretty much what has happened. Just take our own lifetimes. Sexism, for example. Twenty years ago it was not in the consciousness of most people as a form of oppression. Now it is a live issue, which had reached a general level of consciousness and concern. The problems are still there, but at least they are on the agenda. And others will enter our awareness if we the ones we faced are addressed.

\(^{148}\) See.
tavern to meet people and take in the local flavor. Over the course of the next few hours, he got to know the bartender and mentioned that he was a lawyer. The bartender knew the local public defender’s office was looking for a new attorney and thought my friend was it. So he got excited and dragged him to a room way in the back of the tavern. In that room, there was a white-haired man sitting at a booth, face down on the table, beer and liquor bottles strewn about. The bartender grabbed the inebriated man’s hair, pulled his head up, and said, ‘Judge! Meet the new public defender!’”

“Sounds like my kind of judge,” Toledo said.151

A few weeks later, Toledo and his friend Vinnie took a trip to the Caribbean to learn the casino business by watching and participating. Toledo lost track of Vinnie as soon as they went in the front door. He was like a kid in a candy store. They didn’t meet up until seven in the evening. Toledo suggested they head over to a restaurant for dinner. Then they could split up again. When they arrived at the restaurant, it was completely deserted except for a few servers. They looked around but saw no other customers. Toledo checked his watch—it was definitely dinner time. He shrugged and they sat down to eat. They ate alone in a large restaurant, Vinnie doing most of the talking, bragging about his winnings at the craps table. The next morning over breakfast, Toledo read in the paper about the roving gangs of bandits that periodically would hold up gamblers at the resort’s restaurants and hotels. The evening before, around six, a group of robbers held up the restaurant where Toledo and Vinnie had eaten dinner. Some of the restaurant’s customers resisted the hold-up. Two robbers and two customers were shot dead. Somehow, in the hour after this robbery and shooting, the restaurant cleaned up the mess and reopened in time for Toledo and Vinnie to eat dinner. Toledo was glad there were no roving gangs of bandits152 in Peshawbestown.

Upon his return, Toledo put the man from Detroit in touch with an old friend of his from Peshawbestown who was on the Interim Tribal Council with Emma. He figured she’d never go along with it. A few months later, Toledo, Vinnie, and some guys from Peshawbestown

151 See, e.g., In re Gilbert, 668 N.W.2d 892, 893 (Mich. 2003) (suspending state judge for six months due to smoking marijuana at Rolling Stones concert).
drove a couple trucks up from Chicago on the back roads of West Michigan in the fall before the snow fell. They brought a few dozen slot machines, a couple green-felted poker and blackjack tables, and a roulette wheel to the reservation. The Grand Traverse Band started gaming operations in a pole barn behind the administration building.\textsuperscript{153} Everyone that worked for the tribal government tended bar or dealt blackjack at the casino after work. Within weeks, the gamblers were waiting all day in line to get in.

Toledo moved back in with Emma and Parker. He went to work at the casino in the pole barn behind the administration building, dealing blackjack and running the makeshift craps table. He referred to himself as a croupier, a classy Midwestern casino dealer. He talked about making his kid legitimate and his woman honest, but never got around to buying a ring. Emma didn’t mind. She was glad he was around and working. Plus, her daughter adored her daddy. Emma hadn’t seen the girl smile and laugh so much since the last time he was in Peshawbestown. He laughed and joked and made friends the way he used to. Everyone thought he was the nicest guy, the funniest, and the smartest.

Then on a cold winter night in December 1984, he left without saying good-bye.\textsuperscript{154}

\textbf{WEST GRAND TRAVERSE BAY, LEELANAU COUNTY, NOON}

The ice first began cracking at noon. I heard a noise from the front of the car that reminded me of my Uncle Frank popping ice cubes out


\textsuperscript{154} See Neil Young, \textit{Fallen Angel}, on \textit{Mirrorball} (Reprise 1995):

Fallen angel
Who's your savior tonight?
You're surrounded
By these walls and neon lights
Hungry people
Move like waves
behind the beat
Where's the big drum?
Where's the feel
of body heat?

\textit{Id. Cf.} McClurken, \textit{Gah-Baeh-Jhagwah-Buk}, supra note 11, at 46 ("Because the work that Odawa women did in their traditional society was so important, they were afforded a great deal of personal freedom. . . . A woman could divorce a man simply by placing his belongings outside the door of the house.").
of the freezer for his Sunday football scotch. It did not concern me until I heard the female officer shout that she heard the ice crack and they had better hurry.

The female officer, whose name was Lola Ilaria, talked to me from the shore for ten or fifteen minutes. She couldn’t see me or even tell my age. She asked me all sorts of questions that I tried to answer, but my lungs kept me from talking. She asked me my name. She asked me if I had a cell phone they could call. She asked me if we had accidentally collided with a Ford Explorer. She asked me if I was injured. She asked me so many questions that I could not answer and I became exhausted and frustrated in my efforts to talk.

Eventually, Lola asked me to honk the horn if I understood her. I recalled enjoying the sound of a car horn very much until Parker rebuked me sharply several weeks earlier for using it at inopportune moments. She explained that a car horn had the same importance as seat belts and they could save lives. However, unlike seat belts, car horns were not to be used except under dire circumstances. I looked at Parker as I thought about the request to sound the horn, considered Parker’s distrust of the police and her warnings about using the horn, and decided I wanted to honk the horn anyway. And besides, maybe she would wake up, the lazy bum.

Parker did not stir even as I held my hand on the horn for a long, long time.

I began to cry and cry and cry and cry. I wept for a long time and refused to answer the calls of the police, even the mean male officer who tried to use his authority to scare me into submission. I cried until I shook. I cried until my eyes and nose felt as though a very angry person had rubbed them with sandpaper and acid. I cried until I could cry no more. I cried until I felt the car jerk a few inches forward suddenly and I heard water slowly begin to trickle into a sink somewhere. I stopped crying when I heard the ominous sound of Uncle Frank’s ice cubes clink in his scotch glass.

I heard more and more activity on the shore, but the mist continued to keep us hidden from them. They asked me to honk the horn a few more times so they could triangulate the distance and direction, but the mist tricked them again and again. I could not understand exactly what they were trying to do, but I took comfort in the fact that they were finally trying. I realized I felt a terrible hunger and that I would
miss lunch with Gramma. She had asked us over for Spanish rice and fry bread over two hours ago.

The hunger, the crying, and the attempts to talk had exhausted me again. I dozed.

IV. THE MENU

Oh, I do value you
And all the things you say
What comes is better than what came before
And you better come come to me
You better run run to me

—Lou Reed

The five-year-old Odawa boy Niko Roberts had already taught himself to read. Somehow he had learned to sound out all the words. He thoroughly enjoyed reading aloud from books all day long. Everywhere he went, he carried a book. His Gramma Emma, who took care of him during the day, had been reading to him since he was two weeks old. He had picked it up very quickly. He read constantly and had no problem asking questions for the words he didn’t understand. He read everything he could get his hands on and the questions would not cease. He often grated on his mother’s nerves. In Parker’s mind, five-year-old boys should not ask her about per capita payments, the children’s trust fund, the relationship between tobacco smoke, pregnant women, and birth defects, and a host of questions on religion, ethics, and molecular biology.

“Who gets per cap money, mom?”
“What’s a trust fund?”
“Does not having hair when you’re born count as a birth defect?”
“Does God live on a mountain with Hercules?”
“Why is it bad when I take Twinkies out of the cupboard and put them in my pocket?”

155 VELVET UNDERGROUND, I Found a Reason, on LOADED (Warner Bros. 1970).
“What is gas made of?”

Parker took Niko to meet Gramma at the diner in Suttons Bay, the one where all the Indians ate lunch during the week. Parker knew virtually everyone in the restaurant—she had known most of them her whole life. Gramma was already there, talking with the housing director, a woman she had gone to school with fifty years earlier in Northport. The diner was one of those places where Indians weren’t allowed to eat as late as the early 1980s, but that started to change when the federal government finally recognized the tribe in 1980. The Band opened up high-stakes bingo in 1984 and a real, Vegas-style casino in 1985. After that, everyone around Grand Traverse Bay wanted to head up to Peshawbestown to take in the gambling scene—some days people would stand in line early in the morning waiting for the casino to open in the evening. Most people stopped seeing the Ottawas as poor, uneducated, and dirty, and started viewing them as a government with rights and the need for revenue. Most people.

Niko sat down at Gramma’s table while Parker hung back and talked briefly with a girl she had gone to community college with, before transferring to Central in Mt. Pleasant. The server came over and

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159 See generally Petition of the Grand Traverse Band of Ottawa and Chippewa Indians to the Secretary of the Interior for Acknowledgment as an Indian Tribe at 13 (1978) (“Residents of Traverse City crowded the payment office, gawking at the Indians, acting, as Charles Dickson, the distribution agent, said, ‘as though they had never seen an Indian before.’ The curiosity was hardly friendly. Dickson’s wife told a reporter: ‘We found the worst conditions in Michigan. There is more prejudice against these people in Michigan than in any state we have been in and it is senseless.’”) (quoting Traverse City (Mich.) Evening Record, July 23, 1910).


163 See Keith Bradsher, Michigan Pact Resolves Battle Over Limits on Indian Fishing, N.Y. Times, Aug. 8, 2000, at A16 (“For whites like John Lindenau (“who stood on the dock in Leland this morning next to his thirty foot charter fishing boat, the Infinity, the dispute [between Native Americans and Whites over fishing rights] has been all about imposing the same rules on Indians that white fishermen must meet. ‘We won the Indian wars and gave it all away,’ Mr. Lindenau said.”).
talked to Gramma and Niko like they were old friends. She knew Niko
because the family always went to eat there. She smiled at him as she
wiped the table with a washrag and poured water into glasses. Then, she
handed out a couple of menus.

"Make sure you give an adult menu to Niko," Gramma said, al-
ways looking out for his interests. He’d eat the grilled cheese but he
liked to read the menus at restaurants from top to bottom. Niko put
down his book, picked up the menu, and greedily began to sound out
the words. Gramma looked at him fondly and smiled. She’d been teach-
ing him to play word games and he was a fast learner—it was almost
scary.

Parker finally tore away from her old friend and sat down. She
looked tired and beat, Gramma noticed. Parker worked at Eagletown
from 2 p.m. until closing and often worked more than 40 hours a week,
most of it standing. Parker had privately decided to run for Tribal
Council in the spring and she had been spending most mornings meet-
ing informally with elders and staff at the Medicine Lodge, the Head
Start teachers and parents at the Benodjehn Center, and eating lunch at
the Strongheart Center (called the “Turtle” because of its shape) with
tribal government staff. Gramma thought she was crazy to throw her hat
in the ring at such a young age. Parker had learned activist politics while
protesting the invasion of Iraq in Mt. Pleasant, Ann Arbor, and Grand
Rapids so she wouldn’t back down—stubbornness ran in the family like
salmon swimming upstream.164 Gramma had to acknowledge that
Parker stood an excellent chance of winning. She was smart, connected,
and savvy. She could talk down a mob and persuade oil company execu-
tives to vote Green. But Gramma knew the politics of the reservation
could crush a person. She had seen it happen. In her mind, it wasn’t
worth it.

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164 See Nora Dauenhauer, Egg Boat, in Earth Power Coming 155, 160-1 (Simon J. Ortiz
ed., 1983):

Qeixwnei had just about given up hope of getting a salmon for that day when she got
her strike. It was so strong that the strap that holds onto the main line almost slipped
from her hand. She grabbed for it just in time.

... It was the only salmon she caught that day but, by gosh, she brought it in herself. She
sold the salmon and with some of the money she got for it she bought a pie for the
family. What a feast that was!

Id.
Niko examined the broadsheet laminated in plastic from the appetizers and entée sections very seriously. He then scrutinized the breakfast section on the back like a serious newspaper reader or policy analyst. When the server returned with a pen and pad to take their order, he calmly read his order off the menu, selecting a grilled cheese sandwich, French fries, and a pop. Later, he interrupted his family a couple of times to ask what was so English about the muffins and to ask how to say quesadilla. He diligently read every line and when he reached the end of the menu he placed it down, intending to return to his other book, the one about Ben Gizzard, the crow, the upside down mountain, and the Indian mystic.\(^{165}\) However, he noticed that there was a large amount of exciting, unread text on the front cover covering the founding of the village of Suttons Bay, the story of the original owner of the diner, and the history of Leelanau County. He began to sort through that text. It read:

When in 1854, Harry C. Sutton settled with his crew of woodsmen, he established a camp for supplying fuel to wood-burning steamboats. Other than the changes time visits on a community, little has changed in Suttons Bay. Our village still exists to serve the boats and ships that dock in our “safe harbor.” Before the first road was cut through between Traverse City and Suttons Bay in 1862, mail was delivered once in two weeks. Most travel was by boat, the settlers coming from the East on Lake Huron, and from the West across Lake Michigan. The wood-burning steamboats and the sailing vessels carried freight and cordwood. Steam boats carried wood for their own use, and tan bark to be used for leather tanning, and after the saw mills were built, they carried lumber. According to early record, “by 1880 the village had grown to be a lively place of about 250 inhabitants and contained four stores, three docks, two hotels, a brick schoolhouse, a saw-mill, printing office and a new Catholic Church.” Today, whether traveling by car, bus, bicycle or on foot up M-22 to our village, you will suddenly find yourself not on a state highway, but on St. Joseph’s Avenue, our main street. We hope you will savor the transformation of “slowing down” just a bit. We invite you to stay awhile and let us continue doing what we have done since 1854—serving our visitors through our many fine services, restaurants and shops. So, please, come and

\(^{165}\) See Richard Kennedy, The Rise and Fall of Ben Gizzard (1978).
shop in our stores and stay for the day, a weekend, the summer—or the "rest of your life!"166

Niko stopped reading long enough to eat his grilled cheese sandwich. He had encountered several words he did not know and worked through their meaning with context clues. The history of Suttons Bay confused him a great deal. Gramma had told him the Ottawas and the Chippewas had been living on the Leelanau Peninsula for a lot longer than the white people. Why weren't they mentioned on the menu?

Niko paused to eat his lunch, digging through his grilled cheese and French fries, both soaking with ketchup the way he liked them. He listened to his family drone on about boring adult things. He heard Gramma say something about the reservation, about a woman she knew that claimed to be from the reservation but really wasn't. She was an attorney trying to get a job with the Tribe but she didn't really know anything about the area. She didn't know any of the people because she didn't grow up there. Niko heard a lot of stories like that from his mom and Gramma. He knew they gossiped a lot.

The boy knew about the reservation. He'd seen the reservation on television a few times.167 It was very flat and dry—usually in the desert, but sometimes in the grassy lands where the buffalo lived. And real Indians lived there, the ones that rode on horses and carried shotguns and wore war paint. Sometimes, he worried that he'd have to go to war like his dad in Iraq and shoot the Seventh Cavalry. He didn't really like horses. They smelled bad and had big teeth. Plus, his uncle once told a story about a girl cousin that got kicked in the head by a horse. He said, "She was never quite right after that horse kicked her in the head." The boy didn't know what "never quite right" meant, but he sure didn't want a horse to kick him in the head. Still, even with all that, he knew he was Indian and he wanted to see the reservation some day. Maybe they could go there on vacation.

"Gramma," Niko said, interrupting a series of complaints from his mother about the supervisor at Eagletown, the woman with really bad

167 See Transcript, supra note 12, at 76-77, (testimony of Ardith “Dodie” Chambers) (“I've heard of the Navajo from TV. I heard of the Sioux Indians from TV and didn't know there was northern Cheyenne and southern Cheyenne, Cherokees in Oklahoma, North and South Dakotas alone had not only Sioux but all other kinds of Indians there, stuff I didn't know about.”).
gas. The boy thought it was funny when Parker talked about Gassy Melinda, but he had heard all those jokes before.

“Yes, boy?” Gramma said. Everyone always called him boy. He liked it. It was his nickname and his alone.

“Where’s the reservation?”

Gramma smiled. “Yer sittin’ on it, boy.”

That really confused Niko. “I thought the reservation was out west. California. Or Air-zona.”

Gramma laughed. Niko was her first grandchild, but she had been answering questions from children her whole life. When she was young, her father had moved away and her mother moved the family back to Peshawbestown. Since her mother had to work, she left Gramma in charge of raising her younger brother. She was so good at it, even as a teenager, that aunts and uncles starting dropping off their kids at their house. She taught several Indian kids to read over the course of time. Probably a dozen still called her “Nana” years after they had grown up.

“It’s complicated. There are many different reservations. The Apaches and the O’odhams have reservations in Arizona. The Navajos, too. And the Hoopas have a reservation in California. There are over a hundred Tribes in California.”

Niko was impressed with the Gramma’s knowledge.

“The Ottawas have reservations in Michigan, Oklahoma, I think Kansas, and in Ontario, Canada. Except in Canada reservations are called reserves.”

Niko chipped in. “Like jam!”

It was about time for Parker to leave for work so she finished the last bite of her lunch.

Gramma said, “Well, no. Reserves, not preserves.”

“Oh.”

“And us Grand Traverse Ottawas? Well, this whole place is our reservation. It’s called the Grand Traverse Reservation. You know the bay, the big bay, the Grand Traverse Bay? Well, there’s reservation land on both sides of it. The Little Traverse Ottawas have a reservation over by Petoskey and Harbor Springs and the Little River Ottawas have a reservation over by Manistee.”

Niko was still confused and a little dubious. It wouldn’t be the first time that Gramma had pulled his leg. There were no Indians riding around on horseback in Suttons Bay or Peshawbestown where Parker worked. “Are you sure? This doesn’t look like the reservation.”
“It’s very complicated. I’ll explain after your mom leaves for work.” Parker gathered her things and announced that she was about to be late. She kissed her boy and her mom and left.

Niko watched Parker go and then asked, “Gramma, does Parker know we’re on the reservation?”

“Of course she does, boy. The reservation, as I understand it, starts right around Northport and includes Peshawbestown, Omena, Suttons Bay, Leland, Lake Leelanau...”

“Lake Leelanau? The whole thing?” Niko was getting excited. Parker drove him all around the lake one day just to show him how big it was.

“Almost all of it. The reservation goes down a few miles past that gas station south of here on the way to Traverse City, the one that Parker always goes to when she’s running out of gas.”

The grandson and grandmother laughed about that reference. Parker was always running on E and frantic about it. They settled down and the server came to retrieve the remains of their lunches. Niko noticed that none of the workers in the restaurant were Indians. It generated another question in Niko’s mind, especially since it appeared that there were more non-Indians than Indians living in Suttons Bay.

“Did Indians discover Lake Leelanau and Peshawbestown?” Niko asked.

Gramma laughed. “Like Columbus?”
Niko knew about Columbus and nodded sagely, glad to have made a logical, parallel conclusion.

Gramma continued. “Well, yes and no. The old Indians don’t say ‘discovered.’ The Anishinaabeg have been around here for a very, very long time. Lots and lots longer than the white men.”

“We’re ‘Nishanabes’, right? When did the white men get here?”
Gramma answered with a question of her own. “Well, when was Suttons Bay founded?”

Niko shrugged. He didn’t know the answer to that question.

“Boy, you read it out loud every time we drive in from Traverse!”

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Niko thought about it for a second and then realized—the sign at the edge of town, across from the deli and the post office. “1854!”

“Exactly!” Gramma said and patted Niko on the hand, making him feel like the brightest kid on the reservation. Niko thought about it a little more and made the connection to the front of the menu. “Just like the menu, right Gramma?” he said, pointing it out to Gramma.

Gramma read the cover and adopted a sour look. She shook her head and Niko could see she was disappointed. The boy worried he had done or said something wrong. She gathered her things. “Let’s go outside and I’ll tell you the story about how us Ottawas lost the land.” She paid for lunch and they left the diner. It was bright and sunny and there were many tourists strolling around Suttons Bay.

“My grandfather told me about all of it when I was a little girl, not much older than you. In 1836, when the tribe signed the big treaty, there weren’t many white people around Grand Traverse Bay.\(^{170}\) There were some—not very many—but we knew there would be a lot more coming and soon. You see, what the old, old Indians did in the winter was live mostly on the other side of the Bay. You know, by Kewadin where we go to church sometimes. Elk Rapids. Acme Township where the resort is,\(^{171}\) where the old, old reservation was.\(^{172}\) In the summer, we’d live all over the place. We’d walk to Detroit or Chicago or take canoes over to the Upper Peninsula and Manitoulin Island. We would take canoes all the time—across the Bay, out to the Fox Islands, the Manitou Islands, Beaver Island, Garden and High Islands, Hog Island—

\(^{170}\) *See* Turtle Creek Report, *supra* note 108, at 28 (“[F]ew settlers moved to the east shore of Grand Traverse Bay permanently until the 1870s. American squatters began to occupy lands on Grand Traverse Bay by 1844.”).


\(^{172}\) The portions of the Grand Traverse Reservation established by the 1836 Treaty of Washington ultimately included Old Mission Peninsula and portions of Acme Township in Grand Traverse County, Michigan. *See* Turtle Creek Report, *supra* note 108, at 30-49 (describing how the federal government delayed the creation of the 1836 reservation and forced the Grand Traverse Band leaders to accept Old Mission Peninsula in lieu of the east shore); *see also* Grand Traverse Band of Ottawa and Chippewa Indians v. United States Att’y for W. Dist. of Mich., 198 F. Supp. 2d 920, 924 (W.D. Mich. 2002) (“Although [the Turtle Creek Casino site is] 1.5 miles outside the 1836 reservation, evidence suggests that the site was located within the contemplated reservation, which was not designated for four years after the treaty was signed.”) (citations omitted). The 1836 Treaty reserved 20,000 acres for the Band. *See* Treaty of Washington, 7 Stat. 491, art. II (1836) (“[O]ne tract of twenty thousand acres to be located on the [east] shore of Grand Traverse bay.”).
all those islands out there in Lake Michigan. Now you can't even go out
to the cemetery on South Fox Island because some developer owns all
the land out there."\textsuperscript{173}

That seemed like a large distance to Niko, who had been reminded
repeatedly not to delve very far out when swimming at the little beaches
in Suttons Bay or Northport.

The previous winter, three of the five Great Lakes had frozen over
for the first time in many years. "And in the winter—every year, not
just a few years—my grandfather would walk over fifty, sixty miles
across the ice to Beaver Island to visit his relatives."

Niko was suitably awed.

"Indians walked everywhere in those days. And anywhere you
couldn't walk, you could take a canoe. Your grandfather told me that
one of his brothers, George Manitou, fell in love with a girl that lived in
Peshawbestown back when our family lived in Kewadin.\textsuperscript{174} Every day,
he would work ten or twelve hours, walk six miles to the Bay, take a
canoe all the way across the Bay—about fifteen miles—walk another
two miles to the girl's house, visit with her, and then go back. He did
this every night.\textsuperscript{175} But that was after the treaties established the reserva-
tion. They took the land from almost all of us eventually."

Gramma and Niko took a left and headed for the park with the
little waterwheel where people were playing basketball and tennis.

"Our relatives wanted to live on the east shore of the Bay. That's
where the maple trees were and the cattails and everything we needed to
eat—things for medicine and clothes and houses. But eventually the

Univ.)}, July 19, 2001, at \url{http://www.statenews.com} (last visited December 9, 2002) (describing
how Grand Traverse and Little Traverse Band Members' access to an Ottawa cemetery on South
Fox Island is denied by "developer" David Johnson); see also Monica Evans, \textit{Block the Swap,
evanspy_ (fox_isle).html} (last visited January 27, 2003) (describing lawsuit filed by the Grand
Traverse Band of Ottawa and Chippewa Indians and the Michigan Land Use Institute to, \textit{inter
alia}, improve access to the cemetery on South Fox Island).

\textsuperscript{174} See Turtle Creek Report, \textit{supra} note 108, at 63 ("At Kewadin the four families who live on
seven acres purchased and held by 25 Indians. Ben Mamagona who owns and farms 80 acres in a
high state of cultivation is their advisor. He is an Indian, and the first Ottawa, so far found by
the survey who owns farm stock and machinery.") (quotations omitted).

\textsuperscript{175} Cf. Simon Pokagon, \textit{The Woodland Main and Deer of White}, in \textit{From Indian Legends
to the Modern Bookshelf} 4, 6 (Edith R. Mosher & Nella Dietrich Williams eds., 1931)
("During the remainder of that day, my anxiety greatly increased to learn all I could about the
woodland maid and the deer of white, and so I concluded to cross the stream as soon as I could
construct a boat for that purpose.").
Indian agents told us we had to live on the west shore. There were too
many white settlers already on the eastern shore. We agreed to move but
only if they gave us a place on Elk Lake to hunt and fish and gather the
things we needed. They agreed because that area was swampy and white
settlers couldn’t raise animals or farm on swamplands. It seemed like a
good fit even though no one wanted to give up the rest of the Bay.”

Gramma and Niko sat down on the grass at the park. Gramma
hadn’t ever told the story about how the Indians lost the land to some-
one so young. She wasn’t sure if Niko would understand what she had
to say or, if he did, if it would wound him too deeply. But she con-
tinued because being Indian is painful sometimes.

“But the white settlers wouldn’t stay on the east shore. They
wanted the whole bay for themselves. They moved up to Northport and
that’s the first part of the 1855 reservation we lost. Congress took it
away without asking us. In the 1855 treaty, every Indian family could
choose 80 acres of land anywhere they wanted on the reservation. The
oldest boy would get 40 more acres when he turned 18. But
when our relatives selected the land and moved in, sometimes the In-
dian agent would forget to write it down. And after they forgot, they’d
give the land to a white man who wasn’t even living here yet. And when
the Indian agent forgot to write it down, they usually forgot on
purpose.”

“When the Indian agent did his job and wrote everything down
correctly, the white men would do other things to steal the land. For
example, every winter and spring we traveled to Elk Lake to hunt and
make sugar and so on. The white men would come into our homes

\[\text{\textsuperscript{176}}\text{ See Turtle Creek Report, supra note 108, at 30 ("Grand Traverse Band chiefs, in Article Two of the 1836 Treaty of Washington, reserved lands they hoped would guarantee them continued access to the east shore and its resources.").}\]

\[\text{\textsuperscript{177}}\text{ See Treaty of Detroit, 11 Stat. 621, 622, art. I., cl. 8, para. 3 (1855) ("The United States will
give to each Ottowa and Chippewa being the head of a family, 80 acres of land").}\]

\[\text{\textsuperscript{178}}\text{ See Act of June 10, 1872, 17 Stat. 381, ch. 424, § 2 (1872) ("That said unoccupied lands shall be open for homestead entry for six months from the passage of this act by Indians only of
said tribes who . . . have become of age since the expiration of the ten years named in the treaty [of 1855].").}\]

\[\text{\textsuperscript{179}}\text{ Turtle Creek Report, supra note 108, at 54-55: \}Grand Traverse Band members speared fish by torchlight on Elk Lake, Torch Lake,
and other inland waters as they had for centuries . . . Maple syrup harvested from the
upland shores and hills . . . continued to provide Grand Traverse Band members with
maple sugar which they consumed and a surplus that they sold. Grand Traverse Band
members living on both sides of the Grand Traverse Bay traveled to cut-over timber-
land to harvest berries in season.}\]
and tear everything down while we were gone. Then they'd tell the Indian agent or the court in Traverse City that we'd broken the treaty, abandoned the land, and moved away for good. And when that happened, the government wrote everything down. When the white men asked for help from the Indian agents, they never, ever forgot to write it down. And when our relatives would come back to their homes over here, the white men that moved in would make us leave.\textsuperscript{180} Sometimes the white men weren't so sneaky. Sometimes they came with guns and just took the land from us. Eventually, we lost all the land but a few acres.\textsuperscript{181}

Gramma paused for effect and looked at her grandchild. She remembered the time she told Parker this story the first time, when Parker was ten. The girl didn't understand it then, but after she had some time to think about it, she began to figure it out.

Niko felt very sad, but wanted to hear all of it. He didn't understand everything, but he understood enough. Some people do not keep their promises.\textsuperscript{182}

Gramma leaned back and started talking again. "And then there was the state property taxes. The land we received under the treaty was not supposed to be taxed,\textsuperscript{183} but it was anyway.\textsuperscript{184} Oh, and the white

\textit{Id.}

\textsuperscript{180} See McClurken, Gah-Baeh-Jhagwah-Buk, \textit{supra} note 11, at 80 ("Others left their land for part of each year for fishing, gathering, or by then, lumbering. It was not uncommon for Americans to declare these parcels abandoned and then take possession of them.").

\textsuperscript{181} See United States v. Michigan, 471 F. Supp. 192, 208 (W.D. Mich. 1979) ("The liquidation of Indian reservations in the Old Northwest was largely accomplished between 1829 and 1843."); stay granted 623 F.2d 448 (6th Cir. 1980), \textit{modified}, 653 F.2d 277 (6th Cir. 1981), \textit{cert. denied}, 454 U.S. 1124 (1981); see also Weeks, \textit{supra} note 26, at 11-12:

[M]uch of the land set aside for Indian allotment was not obtained by the Indians. ... There were several reasons: large portions were excluded from Indian settlement by federal laws and illegal transactions before the Indians began to settle land; many Indian selections failed to get registered because of government mismanagement; other parcels registered by Indians were declared invalid because of errors in certificates; and many Indians who did receive land were unable to retain it, or simply lost it to trespassers.

\textit{Id.}

\textsuperscript{182} See Fed. Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, 142 (Black, J., dissenting) ("Great nations, like great men, should keep their word.").

\textsuperscript{183} See Treaty of Detroit, 11 Stat. at 622, art. I., cl. 8, para. 8 (requiring the federal government to hold the land in trust and stating, "[b]ut such certificates shall not be assignable and shall contain a clause expressly prohibiting the sale or transfer by the holder of the land described therein."). "[N]o authority exists for the state to tax lands which are held in trust by the United States. ..." United States v. Rickert, 188 U.S. 432, 441 (1903); see also Ward v. Bd. of
men would force the Indians to sell the land when they weren’t supposed to.\footnote{185} And a lot of the Indians didn’t even know it had been taxed or sold until the state officials showed up to kick them off their own land or until the white men who bought it came to drive them away.\footnote{186}

“What does ‘taxed’ mean, Gramma?”

Gramma explained the state property tax system to her grandchild the best she could, but none of it made sense to him. She remembered the day her mom tried to explain property taxes to her.

“I still don’t understand, Gramma,” Niko said.

“Don’t worry about it, boy,” Gramma said. “You will some day. And don’t feel too bad—property tax doesn’t make sense to most Indians. That’s why they need lawyers, even if lawyers are good for nothing,” Gramma continued with the story. “Eventually, some Indians asked the federal government to help them.\footnote{187} After all, they had signed

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\footnote{184} On the Little Traverse Bay Bands Reservation, an Emmett County official summed up the policy of the local government when he said that the tax rate for Indian land would be raised until the area had “relieved itself of the presence of Indians.” Rubenstein, \textit{supra} note 74, at 117.


Outside of the permitted transactions not applicable here, the only way such owners may alienate an interest in their trust land is by securing the prior approval of the Secretary. An attempted sale of an interest in Indian trust land in violation of this requirement is void and does not transfer title.

\textit{Id.} (quoting Mottaz v. U.S., 753 F.2d 71, 74 (8th Cir. 1985)).

\footnote{186} See Aish-ka-bwaw v. Schlottenhofer, 14 Pub. Lands Dec. 548, 551, 1892 WL 885 (May 18, 1892) (“There is evidence in the record going to show that this Indian was driven from her claim and her house torn down, that she could not speak English, and was ignorant of her rights, and knew not how to protect them and was poor and friendless.”).

\footnote{187} See Indian Homesteads, 4 Pub. Lands Dec. 143, 143, 1885 WL 4675 (Sept. 7, 1885):

On the 14th of March, 1877, my predecessor directed a suspension of action upon certain contested Indian homestead entries in Ionia and Traverse City districts, Michigan, subsequently consolidated at Reed City. This was upon complaint and representation that the contests, made by white persons, were instituted for the purpose of taking advantage of the Indians’ imperfect knowledge of the requirements of the land laws, and possibly meagre compliance, and thus after depriving them of their homes,
a treaty and that was a very sacred thing. The Indians would follow the treaty. We had no choice. They would have killed us all if we didn't. Killed us or make us move far, far away—maybe to Kansas or Oklahoma like the other Ottawas. But the white settlers didn't care about the treaty. We were just in their way. There were a few good federal agents, but usually they were no good at all. It got so bad that even Congress tried to help, I'm told. But the bad federal agents lied to us and told us to follow the treaty and shut up. All they did was hide behind their laws and trick us, interpreting the law against our relatives when they should have been helping us. When the treaty said

such white persons and others in complicity with them were aiming to secure entries upon the land for their own benefit.

Id.

188 "Treaty rights may be extinguished only in rare instances. Laches or estoppel may not defeat treaty rights." Williams v. Clark, 742 F.2d 549, 554 (9th Cir. 1984) (citing Swim v. Bergland, 696 F.2d 712, 718 (9th Cir. 1983)), cert. denied, 471 U.S. 1015 (1985); see also United States v. Foriness, 125 F.2d 928, 940 (2d Cir. 1942), cert. denied, 316 U.S. 694 (1942):

Circumstances like these cannot be excused by the lame apology that others were doing likewise, and that the Senecas were known to be long-suffering. Even if such an excuse were not tantamount to an astonishing claim of a vested right in wrongdoing, preventing any correction of an evil condition, it would still fall far short of proving laches on the part of the Indians. It would be both impractical and unfair to require the Indians to bring suit each year for the paltry sum owed on this plot, a suit costing more than the amount which it would yield, and it would be equally impractical and unfair to hold that they must expend part of the rent for badgering defendants and their neighbors into prompt payment. To hold that the Senecas cannot cancel this lease because they have treated defendants and others generously in the past would, in these circumstances, be a miscarriage of justice.

Id.

189 Congress passed three Acts in an attempt to remedy the bad situation with the 1855 Treaty, which itself was an attempt to remedy the bad situation created by the 1836 Treaty. Those remedial Acts were the Act of June 10, 1872, 17 Stat. 381 ("An Act for the Restoration to Market of certain Lands in Michigan"); the Act of March 3, 1875 (18 Stat. 516) ("An act to amend the act entitled 'An Act for the Restoration to Market of certain Lands in Michigan'"), and the Act of May 23, 1876 19 Stat. 55 ("An act extending the time within which homestead entries upon certain lands in Michigan may be made").

190 See generally Antoine v. United States, 637 F.2d 1177, 1180-81 (8th Cir. 1981) ("Antoine's ancestors did all that the Indian agency required at the time and yet the government failed to issue the patent. Under these circumstances, the government should bear the burden of proving that other reasons justified the failure to issue the patent.") (citing Arenas v. United States, 322 U.S. 419 (1944)).

191 See Aish-Ka-Bwaw v. Schlutzenhofer, 14 Pub. Lands Dec. 548, 551, 1892 WL 885 (1892) ("The act of 1872, should be construed liberally, as a remedial statute to secure the rights of those Indians whose rights were overlooked or neglected"); Indian Homesteads, 4 Pub. Lands Dec. 143, 144, 1885 WL 4675 (1885) ("Certainly no mere technical objection should be permitted to deprive them of guaranteed treaty rights, if the same can be assured to them by any
one thing, the federal government would say it means another thing.\footnote{192} One of things they did was to say that all the Tribes that signed the treaty—the Grand Traverse Band,\footnote{193} the Little Traverse Band,\footnote{194} the Little River Band,\footnote{195} and the Bay Mills tribe\footnote{196}—had all agreed to disband.\footnote{197} That was simply untrue,\footnote{198} but they did it anyway because it


197 See Treaty of Detroit, 11 Stat. at 624, art. V ("The tribal organization of said Ottawa and Chippewa Indians . . . is hereby dissolved.").

198 It appears to be without question now that:

The "Ottawa and Chippewa Tribe" that was dissolved by the Treaty of 1855 was an entirely American creation. The "tribe" had been born in 1836 when the government had gathered the various Ottawa and Chippewa band chiefs of the western Lower Peninsula and the eastern Upper Peninsula in Washington to cede most of their remaining lands in Michigan. To avoid territorial disputes between the bands and to settle the cession with one treaty instead of many, the government dealt with the Ottawas and Chippewas as a single group. This group, the Ottawa-Chippewa Tribe, was created for only one purpose—to cede land. It never exercised any political sovereignity outside the treaty councils.

made it easier for them to allow the white men to take our land. Some people still say that the 1836 treaty was the end of us, but we're still here.

"There were whites that would come around to the poorest Indians and trick them into selling their land for nothing. What they would do is say, 'We hear you need money. You got land here and we'll help you sell it. Just give us some seed money to start up a business and we'll sell the land for more money that you can count.' They pretended to be friendly. They acted like they wanted to help us. Our relatives weren't so good with money. They weren't used to handling money, not like we are today. We paid for lunch at the restaurant, right? Using little pieces of green paper to buy things was very new to our relatives back then. And when the white people came around and promised us easy money, we believed them. Turns out, they were just big scams. That hap-

the United States, ceasing to treat the Band as a federally recognized tribe."


Mrs. Burdette does not now appear before this Department in the character of an Indian, but that of an ordinary citizen seeking to have a fee simple patent reformed. In fact, by the fifth article of the treaty, the tribal organization of the Ottawa and Chippewa Indians was dissolved, and when patents were issued to them for the lands, their control over, and right to dispose of, the latter were as full and complete as those of any other citizen.


The dominant motive [for the United States to enter into treaty negotiations in 1835] appears to have been to cheat the Indians out of their lands and reduce their holdings to the reservations. Thereby the Indians would be deprived of their natural habit of roaming the range of the lands on their summer and winter migrations. Thereby the Indians would be deprived of their lands before they realized their eventual value. The figure received for the land 12½-13 cents per acres indicates that the Indians were cheated out of their land.

See Begay v. Albers, 721 F.2d 1274, 1280 (10th Cir. 1983):

The record is clear that the Begay and Mrs. Cecil Navajo deeds of conveyance in the subject exchanges were forgeries, and that neither consented to the exchanges. Accordingly, because of the absence of consent by the allottees in the cases at bar, title remained in the United States in trust for Begay and Mrs. Cecil Navajo.

See also Goodrum v. Buffalo, 162 F. 817, 827 (8th Cir. 1908) ("It should be understood, once for all, that no scheme or device, however ingenious or plausible, concocted by any person,
pened to my mom's cousin Laverne. They would sell us cheap crap and then use their laws to steal the land. All sorts of land scams. Man, lawyers and their fees.

"And sometimes they weren't so nice when they cheated us. Sometimes the whites would even wreck our churches to try and drive us out. That happened in Northport with the church up there. You know how we used to go to camp meetings up there in the summer? Well, you can avail to divest the Indians of the title to their allotted lands within the period of limitation prescribed by Congress.")


One Ottawa man said, "I was born at Stoney Lake, in Benona Township, west of Shelby in Oceana County, in 1903. There's a place on the south side of [the lake] that belongs to all [the] Indians at one time." A man named Porter, who realized the value of this lake-front property for summer resorts, called a meeting of the Indian property owners. He claimed to be a government agent, and offered to act as their agent to sell the property for a tremendous amount of money. A Miss "Korski" and a Doctor "Rosin" who worked at the girls' summer camp in the area persuaded the Indians to sign papers which, they said, gave Porter the right to sell the property for them. Each Indian was asked to contribute cash to cover sale expenses. The people actually signed quit-claim deeds and Porter stamped them with a government seal which he had stolen, to make the deal look official, took their money without providing receipts, and left. "Well, he sold it, then he kept the money. Nobody prosecute him or nothing. Now what the hell you gonna do in those days?"

Id.

203 See Rubenstein, supra note 74, at 115 ("Cheap sewing machines and parlor organs, which missionaries and teachers had taught Indians to accept as symbols of civilization, were sold with land mortgages taken as collateral; when Indians failed to meet payment deadlines, the goods were repossessed and the land seized as payment.").

204 See id. at 115-16:

Some speculators would induce Indians to borrow fifty or a hundred dollars to improve their property; a prosperous white neighbor would be cited as an example of what Indians could achieve by agreeing to the loan. Mortgages served as collateral and repayment dates were set for winter months when Indians were least likely to meet payment; if payment was made, Indians still lost their land, as whites showed them a clause in the contract stating that they were obligated to pay a large attorney's fee for handling the arrangements.

Id.

205 See Native American Oral History Project, supra note 202, at 146-47.

In Leelanau County a ten acre plot of ground was donated to the Indians of “Menominee Church”, a small church west of Northport, for their camp meetings. When the settler donated this ground over a hundred years ago, the only stipulation in the deed was that the Indians must hold a camp meeting on the site every year or lose it. Over the years this bay shore property became attractive to resort builders and the Indians had problems holding it. Years ago cottages were built along the shore behind the campgrounds. The owner used the access road made by the Indians and as time
probably don’t remember. Anyway, Indians love camp meetings and there’s a great big one every summer in Northport. Before your mom was born, somebody burned it all down to try and scare us off. There’re good people around in Leelanau County and everything turned out okay. They still have camp meetings up there. I used to go there with my grandmother every summer. There are so many stories like that. Everyone who is from here has stories. I can’t begin to think of them all.”

Niko furrowed his brow and yawned at the same time. It was nearly naptime for the young boy, but he wanted to know more.

“You know, my Uncle Joshua had an allotment on South Fox Island,” Gramma said. “I went out there a few years ago with a big group of Indians to look around. They said some rich guy wanted to build a golf course on it and the Indians were joining up with the local environmental groups to oppose it. Someone told me that Uncle Joshua is buried out there. I remember my mother—she was Uncle Joshua’s niece—receiving a letter in the mail from the Secretary of the Interior saying that they wanted us to sell Uncle Joshua’s land when I was about ten or twelve. He was dead by then. They wanted us to sign on the dotted line so they could sell it to some timber company or something. I remember my mom saying, ‘Hell, no!’ and throwing the letter away. We never heard from them again until a year or two later passed, the resorters began to think the road belonged to them so they attempted to bar Indians from using it. When the dispute arose, the Indians’ rights were upheld. Recently, owners of a resort attempted to purchase the site, but the Indians refused to consider selling. Following their refusal, the grounds were ravaged by vandals, power lines were cut, a bell was stolen, and buildings were demolished.

Id.

206 See id. at 72 (“Frequently, camp meetings are held at Mount Pleasant Reservation, Kewadin, Northport, and in many areas of Canada.”).

207 See A Timeline: The South Fox Island Land Swap, Traverse City Record-Eagle, Mar. 12, 2003, available at http://www.record-eagle.com/2003/mar/12time.htm (last visited March 17, 2003) (“The Grand Traverse Band of Ottawa and Chippewa Indians formally opposes [the proposed swap, saying many tribal members have ancestral ties to the island and that there is a tribal cemetery there. The tribe contends it has treaty rights to hunt, fish and gather vegetation on public land in areas its ancestors ceded to the U.S. governments in an 1836 treaty.”).


209 Cf South Fox Island Report, supra note 102, at 76: “There is a story my Uncle Jay Oliver would tell about this occasion. An Indian agent from Ashland actually came here to Charlevoix. I don’t know what they were doing over here. If they were in the business of terminating people’s land rights or whatever,
when we got a check in the mail for five bucks or so. I know Uncle Joshua's land was worth a lot more than five bucks because that golf course developer guy spent a ton of money trying to get a foothold over there. I heard the Tribe might file lands claims over there some day. I hope they do. Sometimes the white people around here talk about land

but they made a trip over here. The person from the Bureau went to see my grandmother, Jay's mother, who was Isabelle Willis originally, but is Isabelle Oliver when they came to see her. It seemed to me that that was more related to the parcel on Beaver Island. That they were trying to... this was in the 50s also... to get her to relinquish that parcel because she was probably one of the few people still living that had some direct connection there. Her and her children are descendants of Joe Oliver. Jay said she listened for about twenty minutes and then she threw the man out... "She [Isabelle Oliver] was a tiny little woman, but she went on a tirade I guess and said, 'Don't ever come here again.' You know, I don't know what she... I wish I could have been there. She threw him out of her house and said, You know, 'Don't ever come back. You know, we've all suffered enough injury and if you think I'm going to relinquish anything, you're crazy.' Basically, that's what the tone of the conversation was. She threw him out.”

Id. (quoting Eva Petoskey) (ellipses and brackets in original).

210 See South Fox Island Report, supra note 102, at 76:

Eva Petoskey, a descendant of Jeannette Oliver, the wife of Benjamin Ane, actually owns the letter that her mother received from the Bureau of Indian Affairs regarding an heirship claim on the Sam Bird homestead [on South Fox Island]. The letter gave heirs thirty days [to] "show cause why the rejection of the application of Sam Bird should not be made final and the case closed." Although Eva's family members who received this letter were literate, they did not know what the letter meant or why they received it. They do know that the federal government passed title to the Bird homestead to others; they received a check for approximately five dollars in payment for their property.

Id. (footnotes omitted).

211 There are many Indian land claims preserved in accordance with the Indian Claims Limitation Act, see 28 U.S.C. § 2415(c) (1966), for the allotments of the heirs of several Grand Traverse Band Members. See 48 Fed. Reg. 13698, 13876 (Mar. 31, 1983). Section 2415(c) has been interpreted and applied as such:

[Section 2415(c)] provides that there is no limitations period for suits for possession or title brought by the United States. Title 28 U.S.C. § 2415(b) provides that Indian claims that are on a list published by the Secretary of the Interior pursuant to section 4(c) of the Indian Claims Limitations Act of 1982 are not barred until (1) one year after the Secretary publishes, in the Federal Register, a rejection of the claim, or (2) three years after the Secretary submits legislation to Congress to revoke the claim. The present claim was listed by the Secretary in the Federal Register on March 31, 1983... but it has never been rejected, nor has the Secretary submitted legislation to revoke the claim. Thus, the claim was timely when the United States recently intervened.

claims.\textsuperscript{212} They're afraid the Tribe is gonna take all the land back.\textsuperscript{213} Maybe they should be. I don't know. All I know is that so many of our relatives were cheated because they didn't understand, because there were some truly evil people that took the land from them.\textsuperscript{214} It makes me so sad sometimes."

Niko just listened. He wanted to remember everything his Gramma told him, but he was so small and it was so much. He had never seen his Gramma so sad and he wanted it to stop, but he wanted to know more. He wanted to do something about it.

Gramma said, “When I would visit my aunts and cousins in Peshawbestown, sometimes we'd hear the fire trucks roaring up from Suttons Bay. It seemed like every now and then, somebody’s house burned down. We lived in a county that should have been our home territory but, instead, we were surrounded by houses that were sold from white owner to white owner on the land that been stolen from us. My

Federal documents admitting liability in illegal sales of Anishinaabeg lands exist in the public record. See Memorandum from Field Solicitor, Dep't of Interior, Twin Cities Office, to the Solicitor, Dep't of Interior 1 (March 7, 1978):

In reviewing many of the allotment files at the Minnesota Agency, Bemidji, it recently became apparent that great numbers of allotments were sold during the 1950's. In checking further on some of these sales, it seems that many were made with only partial consent of the heirs of the original allottees, and some were made with no consent at all. . . . [The Agency Realty Officer] estimates, from his initial stages of review, that upwards of 2,000 parcels of lands were sold during that period with less than full consent of the beneficiaries and in questionable circumstances. If there were 2,000 of such sales on the six Minnesota Chippewa Tribe reservations alone, it is likely that the figure is even greater on the reservations under the jurisdiction of the Great Lakes Agency and the Michigan Agency.

\textit{Id.; see also} Memorandum from Solicitor, Indian Affairs, Dep't of Interior to Associate Solicitor, Indian Affairs, Dep't of Interior 1 (May 31, 1979):

[It appears that numerous transactions were entered into without the requisite authority are therefore void. . . . Current holders of these 160-acre allotments include non-Indians, municipalities, Indian tribes, and federal agencies such as the U.S. Forest Service. Their titles now suffer from a severe cloud which is a direct result of unauthorized administrative action.

\textit{Id. (citing Ewert v. Bluejacket, 259 U.S. 159 (1922)).}


\textsuperscript{214} See Rubenstein, \textit{supra} note 74, at 116-17 (“In winter, whites claiming to be agents of charitable institutions went among starving Indians giving them five dollars 'to buy food'; upon receiving the gift Indians were asked to sign 'receipts' which were, in fact, deeds to their property.”) (footnotes omitted).
Peshawbestown cousins didn’t even have electricity until the 1950s or running water until the 1970s.\footnote{See Transcript, supra note 12, at 71 (testimony of Ardith “Dodie” Chambers) (“I was 12 years old myself before we had electricity in our house, and that was 1959. . . . [The houses didn’t have running water] until . . . the 1970s.”).}

That means toilets that were outside, boy, and no video games. Understand?"

Niko nodded. He understood completely, but could not comprehend.

Gramma paused a long while before she continued. “My great-grandfather was a very strong man. He worked his whole life and lived to be over a hundred years old, though nobody knew for sure how old he was. He lived a long time and he took care of my mother when her daddy died in a car accident on Setterbo Road when she was just a little baby. My great-grandfather died when I was six. He used to speak Indian to me all the time but he could talk English, too. One day, he took me out in his car. He drove until he died, too. We were living in Kewadin back then, a few miles from the church, right near Elk Lake. He drove me around and showed me all the places where his relatives and friends used to live. This was back in the late 1950s. It was all summer tourist homes and gas stations. The land is worth so much money now—millions and millions of dollars\footnote{See White, supra note 198, at 134: “As a rule they are very poor. . . . Had they held the lands given them by the Government, then the general rise in their value would have thousands comfortable. . . . But it is too late to remedy the evil, and as a result the race will disappear in Michigan within fifty years.” Id. (quoting Edward Allen, Report of the Commissioner on Indian Affairs, 1885, at 113).}—but even then the Indians couldn’t afford to live there. He took me to Traverse City and showed me the places where his grandfather took him to fish off Old Mission Peninsula. That land is worth ten times what the land is worth on Elk Lake. There are mansions there now. The land on our two reservations is exceptionally beautiful land. When he finished driving me around the lake, he pulled the car over and he cried for twenty minutes.\footnote{See Bay Mills Indian Community Land Claims Settlement Act, Hearing Before the Comm. on Indian Affairs, United States Senate, 107th Cong. 57 (2002) (prepared statement of George Bennett, Councilor and Former Chair, Grand Traverse Band of Ottawa and Chippewa Indians): On January 5, 1841, two Grand Traverse Band leaders, Aghosa and Eshquagonabe, appealed to Henry Schoolcraft, asking him to allow members of the Band to remain in the Grand Traverse Bay area. They wrote: “We feel such an attachment to this our native place, from whence we derive our birth, that it looks like certain death to go from it.”} I didn’t know what to say, so I cried with him. We cried to-
gether for a long, long time. There just wasn’t anything else to do. It wasn’t like it is today. Now we have lawyers and smart people helping us. And young people like you who will have vision and college degrees. You will help us through all of this. You know, I’ve never forgotten that day with my great-grandfather.\footnote{See Transcript, supra note 12, at 105-07 (testimony of Eva Petoskey):}

\begin{quote}
When I was about 19 years old, I remember one incident of riding in the car with my uncle. And as I have said earlier, all of my mother’s siblings spoke our language, and my uncle, in particular, my mother’s older brother, was a very articulate speaker of our language. In fact, he spoke English very well, too... But in one case I was riding in the car with him, and he was pointing out to me various places where our relatives had lived throughout, you know, the last hundred years, so he was a person that never moved away from here. He lived there in the Charlevoix area in the Grand Traverse traditional territory all his life, and he knew everyone stretching from Charlevoix to Peshawbestown. He knew a lot of people. So we were riding in the car, and he’s pointing out to me all these places where our relatives had lived and talking about how they had lost the land and how when the lost the land, they—you know, they—excuse me—how difficult it was for them. And, anyway, so I was having the same reaction then as I’m having now as a young person. You know, tears welled in my eyes, and he just kept talking because he’d been through this already, you know. He’d heard it before, and he was a strong-hearted person. And so when we got home... we got out of the car, and... he was done with his story. And,... we went on about our business, and... we just sat in silence, I guess, to say... he told a story, and we sat in silence.

And in reflecting back on that—well, actually at the time I was 19 years old... I said to my self, ... our ancestors, they would... retell these stories, and then they would just sit in silence because they didn’t have any other options.
\end{quote}

\textit{Id.}
Gramma stretched and concluded the story. “So that’s why the menu is wrong, why it is deceptive and tricky. The people round here who now own the land sometimes don’t really know how they got it way back when, but sometimes they do. And they tell stories to try and change history. They try to pretend there were no Indians here or that we didn’t care about the land. But we’re still here. We almost didn’t make it. In the 1970s, there were only a few families left in Peshawbestown. Now we’re getting bigger, like you are. We’re alive. You’re proof of that, my grandchild.”

Niko smiled. He liked being the proof, whatever that was.

“That’s why it’s wonderful you’re learning to read. When Indians signed the treaties, they usually didn’t know how to read English. We had to have white guys write our letters for us.”

Niko wanted to know why the Indians didn’t fight back. Signing the treaties seemed like a very bad idea to him. “Gramma, why did we sign the treaties?”

Gramma laughed. “We ask ourselves that all the time. The federal government gave us 13 cents for every acre we sold to them in the treaties. It wasn’t a good deal. But we did it because we had no choice. Plus, I suppose some of the Ogemas probably thought we would be safe, that the feds would actually protect us from the white settlers. But that was about as likely as your mother being on time for anything.”

Niko laughed, but it was a bitter Indian humor kind of laugh, probably the first time in his young life he would ever laugh like that.

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220 See id. (“[T]he Indians were cheated out of their land.”).
221 See Vine Deloria, Jr., Custer Died for Your Sins: An Indian Manifesto 163 (1969):

An Indian and a black man were in a bar one day talking about the problems of their respective groups. The black man reviewed all of the progress his people had made over the past decade and tried to get the Indian inspired to start a similar movement of activism among the tribes. Finally, the black man concluded, “Well, I guess you can’t do much, there are so few of you.”

“Yes,” said the Indian, “and there won’t be many of you if you decide to play cowboys and blacks.”

Id. See also Robert A. Williams, Jr., Gendered Checks and Balances: Understanding the Legacy of White Patriarchy in an American Indian Cultural Context, 24 Ga. L. Rev. 1019, 1025 (1990): The U.S. Senate was having one of its perennial hearings on the failures of the Bureau of Indian Affairs (BIA) to serve Indian people in an effective or efficient manner. This time, an old Sioux Chief was called to testify because he reportedly knew the answer to why the BIA was so unable to help Indian people.
but definitely not the last. Gramma joined him. It had already been a long day and the boy yawned again. His Gramma noticed and said, “One of these days I’ll tell you about the Pokagon Potawatomis." My grandfather was a Pokagon, you know, so you’re a little bit Pokagon, too. But not today. You look like you’re ready for your nap.”

“Yeah, but I’m not tired.”

“No ‘yeah, buts’, boy. You’re tired and you know it.”

The two stood up and walked back to Gramma’s car parked on the street. Niko could see the boats crossing the water on Suttons Bay, the inlet attached to the western shore of the Grand Traverse Bay, from where they were walking. Niko and his Gramma walked back to her car. He fell asleep on the way to her house in Peshawbestown, listening to his Gramma tell him how important it is to get a good education for the umpteenth time.  

At the hearings, a Senator asked him, “So Chief, we understand you know the reason why the BIA fails to serve Indian people?” “That’s right Senator,” the old Sioux Chief answered. “My Grandfather was there when it all happened.”

The Senator looked puzzled at first, and then asked, “What do you mean, your Grandfather was there when it all happened?”

“Why, he was there when General Custer rode out of that fort with the Seventh Cavalry,” the Sioux Chief explained. “As I heard my Grandfather tell it, this BIA agent comes running up to Custer and says, ‘Hey, what’s going on, General?’ Well Custer, he looks down at the BIA agent from his horse and says, ‘I’m gonna go out and round up Sitting Bull and the rest of those crazy Sioux. Don’t do nothing till I get back.’”

Id. (citations omitted).

222 “Pokagon, one of the principle chiefs of the Potawatomi, ‘cried like a child as he signed’ an 1833 treaty that caused the removal of hundreds of his people.” Bay Mills Indian Community Land Claims Settlement Act, Hearing Before the Senate Committee on Indian Affairs, 107th Cong., 56 (2002) (prepared statement of George Bennett, Councilor and Former Chair, Grand Traverse Band of Ottawa and Chippewa Indians), (footnote and citation omitted).

223 See Transcript, supra note 12, at 35-36 (testimony of Eva Petoskey):

And I think that we are more astute advocates than . . . our parents were, but there’s actually a lot more to it than that because the other type of education that we received growing up as Indian people had as much to do with what we learned within our families about who we are and what our history is, and it’s really the education that we use more frequently, I believe, when we make our decisions about . . . the future of our tribe and what our goals are and what’s important to us. It is the education that we received within our families that we are using to make those decisions. They involve principles and values that we learned from our parents and grandparents. And the things that we learned, some of us, in outside institutions are really secondary to that.

Id.
WEST GRAND TRAVERSE BAY, LEELANAU COUNTY, 1 P.M.

In my dream, Parker tossed a Frisbee to me and I caught it easily, my bare feet cradled by the sand at the public beach in Suttons Bay. I was about six feet tall in my dream, all grown and smiling. Parker took off running toward the water and I led her with a perfect flick of the wrist and she caught the disc as she dove into the waves of the bay. I laughed as she stood, completely drenched. I realized that she hadn’t aged at all, that she would forever be 25. We all would. Strickland walked over to the edge of the water and helped her dry off with a large beach towel. The water in the bay would always be cold, even in the warm sun of summer. Strickland kissed her in the way he always did, his hands buried in her black hair. I watched them and envied them.

“Hey, kid!” the male officer roared. “Honk the horn again!”

The order shocked me into clenching my body. My chest hurt and I forgot why. I looked up through the sunroof and I could see the blurry outline of the sun through the fog. I imagined what the world would be like without ice.

I rubbed my eyes and looked at Parker. She had not moved.

With the window down, the car had become freezing cold and I could see my own breath before me. I reached over, surprised at how difficult and painful moving had become, and touched the horn. A short squeak followed.

“Over there!” the male officer shouted. He seemed further away than before.

I looked at Parker. I could see her breath, but she appeared to have no life in her.

I hadn’t realized it before, but I could hear a bathtub filling with water. I looked out my window and realized that we had fallen further into the bay. The whole front end of the car up to the grill was level with the surface of the ice. The sun seemed to warm my arm. Perhaps the mist would burn off.

The water covering the ice reflected the emergency lights back to me. I hoped the Civic could navigate the water like a submarine, that all I would have to do was roll up the windows and wait for rescue, safe in our little red car.

I clenched my fingers into a fist to test my strength. They were cold and numb, but I calculated that I had enough energy left to roll the window up. It took me so much time. I listened to the efforts of our
rescuers fade as I forced the window up. I could still hear them work toward us after I closed the window, but they seemed far away, their exertion dulled by distance and glass.

“Wake up, mother,” I said. “Please.” Parker would not move. She was stubborn and would not move even when I would shake her in the morning to let her know I was hungry, that I wanted oatmeal with raisins and brown sugar and not that horrible granola cereal. I had let her sleep long enough. I reached over and grabbed her parka with all my remaining strength. I shook her as hard as I could. She was heavy as a bear and I had no energy left to move her, but I did everything I could to wake her. I held her nose and her mouth opened to breathe in. I pinched her cheeks. I pulled her hair.

At that point, I saw that Parker had been bleeding. Just a little, just a thin line out of her right ear, but I knew that couldn’t be good. My chest hurt me then, more than I could bear. I slid off Parker and back to my own seat.

“Niko,” Strickland said the evening before he left us, “be nice to your mom.”

Wasn’t I always nice? What was he trying to say?

“Pick up your dirty clothes and your toys when she asks,” Strickland said. He sat down on the couch and pulled me to his lap. “You’re getting big. Big enough to help out around the house.”

“Maybe,” I said, dubious. I wasn’t that big.

I remember hearing Parker make dinner in the kitchen. She made lasagna for Strickland that night. It was the only real meal she knew how to make but she still struggled with it. She cursed and spilled and burned ingredients that night, but it was the best lasagna I’ve ever eaten. And it was Strickland’s favorite dish. He could have cooked it better, but it tasted so good because Parker cooked it and we three ate it together. Parker made a huge casserole plate full of lasagna, enough for ten Indians, but we ate it all. We never wanted that dinner to end. Strickland left at four o’clock in the morning. Parker made me get out of bed to kiss Strickland good-bye. He told me to be good.

I held my hands to my mouth and breathed warm air into them. It didn’t make a difference. I remembered Strickland joking that we should all stop breathing until the car warmed up or else the windows would fog up. We would laugh and try to hold our breaths. Parker could always hold her breath the longest, but the windows would still fog up. I looked up at the sun and it seemed much brighter. I realized that my
breathing had completely fogged up the windows. I rolled down my window a little to look out and I could see that the sun had finally burned most of the mist away. I could actually see the shore and, forty yards away, two women wearing bright yellow approaching the car. I waved, but they weren't looking.

I could still hear the bathtub filling but I ignored it until the floor of the car became wet with water from the bay. It smelled like the beach. I knew it was time to move, but I didn't know what to do. I reached over and tried to shake Parker. "Get up!" I ordered her. "You'll be late for work, dummy!" I pulled her hair again, much harder that time, and she screamed. She screamed so loud I thought my head would explode.

"Stop that, boy!" Parker said, more angry than I had ever seen her. "Goddammit! That hurts like fucking hell!"

I fell back into my seat, my chest heaving and crying out in pain. I began to cry.

Parker leaned over to me and pointed her finger at me. She was no longer angry but would lecture me. "Don't pull my hair," she said, her voice soft and wavering. "My head hurts." Her eyes rolled back into her head and her head drooped. She used her hands to hold her neck steady. Her skin went gray.

"Where are we?" She seemed breathless.

"In the bay," I said, making no sound above a whisper.

Parker blinked and looked around. She saw the fogged up windshield and said, "You've been breathing too much, Niko." She looked at me and smiled.

Then the front of the Civic collapsed completely into the bay.

Parker screamed again. I loved that sound and hated it. It meant she was awake and could save me. It also meant she was terrified that we might die. The water moved inexorably up the hood. She must have grasped our predicament instantly and she reached for the sunroof controls. Slowly, achingly slowly, the sunroof receded.

"Go up there, boy," Parker said calmly, as though she had not just screamed to wake the dead, as though she had not lain silent in a concussive coma for nearly the last four hours. She hoisted me up.

I could hear the rescue people outside, struggling to reach us, the ice cracking underneath them as the Civic sank. The water had reached the level of the seat cushions before the sunroof had opened enough for me to fit through. I squeezed my way through, more than once bumping my cracked ribs and sternum, forcing me to silently cry out in ag-
I finally pushed my butt through the tiny opening and sat on the drooping roof. By then, the sun shone brilliantly over the bay and I could see both the Leelanau shore and Old Mission Peninsula. The two rescue people, Lola Ilaria one of them, shouted at me to Move! Move! Move! Move! and I stood. I looked down and saw that the water had already reached my mother’s waist, that the sunroof would open no further, that she could not break through the strong glass in time to escape, that she would be sunk with the car and drown in the icy bay. I took a running leap like the cartoon coyote, hoping that by reducing the weight on the car, it would somehow bob back to the surface and allow these professionals to save my mother. I landed right in the arms of the two women in yellow. I turned back to look and I saw my mother look me in the eyes and smile before she sank with our car into the water.

**EPILOGUE—PARK HENRY (REVISITED)**

When I'm lyin' in my bed at night
I don't wanna grow up
Nothing ever seems to turn out right
I don't wanna grow up
How do you move in a world of fog
That's always changing things
Makes me wish that I could be a dog

—Tom Waits

Vince didn’t have anywhere to go that day, so he put on his winter army coat and walked over to the Park Henry. It was about a four-block walk, over the Lodge, past Cass Tech High, and down Henry Street to the corner of Park. A nice day, really—the sun courageously piercing through the stale pollution and freezing clouds for once. As a kid, he would’ve been playing football or stickball on Henry Street on a day like that, but he weren’t no kid anymore and the street hadn’t been the same since the riots in ’67. The street turned into the toothless maw of an old man, a life-long smoker dying from everything. All of the buildings lining the west side of the street were burned out or demolished. It used to be a neighborhood, but the riots dragged it into decline and the highway system choked it off from downtown. Henry Street would not recover in Vince’s lifetime, if ever. The Henry Street neighborhood, the

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only place Vince had lived for over sixty years, weren’t no neighborhood
no more. It was an abandoned building.225

Indian Ben was sitting at bar when Vince stepped in. Ben usually
started his day at the bar around noon with a couple shots and the
Detroit Free Press. He’d check on the scores and the day’s matchups
before heading over to his bookie’s and then to the Polish vets club to
spend the rest of the afternoon. Vince was glad to see his old friend.
Indian Ben wasn’t his real name. It was just what everyone called him.
Vince didn’t even know Indian Ben’s real name. They had once been
very close, even part-time business associates in the eighties, but drifted
apart after a dispute over a set of old golf clubs. Vince rarely made it
over to the Park Henry before four and Ben usually split before two.
They never really bumped into each other anymore.

“Hey-hey!” Ben said, watching Vince out of the corner of his good
eye.226 “Lemme buy you a drink, old man.” He signaled Sera, the bart-
tender with a bandaged thumb, for a Budweiser. Vince hated Budweiser
and Ben knew it, but Vince had never turned down a free drink and
wouldn’t start that day. Still, thin gruel-like beer was hardly the way to
start the day; not like a good stiff one. Sera deposited a brightly colored
can on the bar in front Vince, carefully placing it on a small bar napkin.
She looked at him knowingly and he shrugged. His bar tab was getting
up there again.

Vince adjusted his wide butt on the old wooden bar stool, the
stool’s coverage too limited to be comfortable. His choneys always rode
up and his ass cracked, just like it did when he worked highway jobs in
the sixties.

In his friendliest voice, Vince said, “How’re you and your bookies
getting along, Ben?”

225 Cf. THE VON BONDIES, Cass & Henry, on LACK OF COMMUNICATION (Sympathy for the
Record Industry 2001):

I saw a reflection of a shadow
of a woman I once loved
There stood my faith, my own
reflection, bitterness more often than love

Id.

claim by prisoner that jailers had “unlawfully injected him in the left eye with a radium electric
beam.”).
Ben didn’t answer at first, intently reading his newspaper. Vince had never seen Ben read anything but the sports page and failed to notice that Ben was studying the classified ads.

“Pistons won last night, I hear,” Vince added amiably. He thought he knew Ben’s habits and personality.

“Yeah, well, I don’t like the Pistons anymore,” Ben said. “I’m more into a good deal these says.”

Vince nodded. In his mind, Ben was always irritated about one thing or another and grouchier than a stubborn mule with arthritis. Vince just smiled and shook his head sadly and knowingly, giving up on his old friend, letting his buddy grow old and bitter. He looked up at the old Panasonic sitting up on the bar by the dusty ceiling. Same Iraq occupation coverage he’d seen at home, so he turned around on his stool to have a look around.

Park Henry was dank. No matter the time of day or the weather outside, it looked like Sunday dollar pint night inside. Everyone who frequented the bar was a drunk. People did not come in to meet men or women or grab a bite to eat. A thin layer of bar dust always coated the pitted cement floor. The juke in the corner rarely played and, when it did, only the sounds of classic country standards or Brat Pack crooners emanated. No one played the video poker machine in the corner anymore, not after the novelty wore off in the late eighties. Sera’s dad, Big Jim, the first owner, furnished the joint with tables and folding chairs he stole from the United Methodist Church over the years, a pair at a time.

Vince saw Bob and Maggie in the corner, both reading worn paperback romance novels. Though Bob and Maggie were in their seventies (or was it eighties, already?), the Park Henry regulars considered them the newbies because they only started coming around five or six years earlier. Vince finished his can of beer and said their names. Bob said Vince’s name in return, nodding back at him. Looked like Maggie had her regular scotch and soda and Bob his Jim Beam neat. They usually sat alone at the same table. He smoked unfiltered Luckys. She smoked Camels. They’d supposedly smoked the same brands since Dubya Dubya Two and neither could see fit to adjust their habits in their old age. On some days, Bob would wear his old flak jacket and tell stories about the bombing of western France and how he used to go out drinking with Howard Zinn.227 Vince recalled the day he met the happy

couple. They rented the bar from Big Jim for their wedding reception. Vince arrived at the bar at his regular time unaware the Park Henry was on sabbatical for a day. The wedding party—the newlyweds, four grandchildren, and a truckload of mooching cousins—invited him to stick around for wedding cake and booze. Man, it had been five, six years already.

John Carlson and Bert Widdling walked in and sat down together. Sera brought them two longneck Molsons and the men huddled together like they always did. Vince used to think they were criminals, but no one else responded when he complained so he quit mentioning it. Still, they always seemed to be plotting and scheming. Or maybe they just kept to themselves.

Vince’s piles started screaming at him like an early morning infant. Sitting on the bar stool had just about given him the business but good. He stood and pushed the stool away, standing to fill the space beside Indian Ben.

After the initial flurry of interaction, Ben and Vince settled down to ignoring each other in the manner of an old couple. Ben was never much for saying “hello” or “good-bye” or “excuse me” and he even apologized once for it being rude. Where he came from pleasantries were implied, a waste of time, and usually when someone took the time to say “hello” they were probably trying to sell a piece of plastic garbage or steal land.

It was only a few months after the riots that Indian Ben moved into the second floor of 459 Henry, looking like he was running away from people or deeds, the only man actually moving into Cass Corridor and not away. Vince liked the Indian immediately and had started calling him Indian Ben. The name stuck and Ben seemed to enjoy the handle.228

228 Cf. Vine Deloria, Jr., Identity and Culture, in Daedalus, Spring 1981, at 13, 17: Until the sixties, identity and culture were inseparable concepts that encompassed the same phenomena and were indistinguishable in their objective reality. Segregation forced minorities to create institutions, similar to those enjoyed by the majority, that could provide a measure of activity to reassure them of their status as Americans. The realization that such measures were necessary because of the exclusionary practices of the majority was a long time in coming. Thus the beauty pageants “Miss Black U.S.A.” and “Miss Indian America” were created because of the discriminatory practices of the majority, not because they expressed values transcending all groups in society. Minorities were identified by skin color, but the confirmation of this identification depended on the recognition of parallel institutions qualitatively distinct from majority values went unnoticed and unappreciated. The outward expression of mi-
“Where you from?” Vince asked that first day.

“Kewadin, Michigan,” Ben said. “A little north of Traverse City. I’ve lived all over the place, though. Hell, I even lived here off’n’on for ten years or so.”

“Hell you have. I ain’t never seen you before, I been livin’ here my whole life.”

“Yup. Lived mostly over by the Temple. Some time in Dearborn, too.”

Vince understood. He never made it over by the Temple. He figured if he left them Blacks alone over there, they’d leave him alone right where he was situated. The logic mostly seemed to work for Vince until ’65 and then those people just went anywhere they damn well pleased. He didn’t care much. He weren’t prejudiced. Hell, wasn’t a goddamn Indian damn near his best friend?

“You got a family, pal?” Vince asked back then, trying not to be nosy but unable to help himself.

Ben had a few in him by then so he answered candidly. “Let me tell you what, mister. Don’t ever go marrying a woman that can drive a car faster than you can. Takes the co-jonies right out of a man.” He mumbled something that sounded like “Eagletown woman, goddammit.”

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nority community life, however, was that of American culture, not one of distinctive variance from majority behavior.

Id.

229 See Paul Stebleton, Pilgrimage to Meijer’s, in Bus Station Meditations 13 (1992):

- hell;
- is standing in line
- at the department of motor vehicles
- to renew your drivers license
- with people
- who piss on toilet seats

Id.


To the extent that this cultural belief system has influenced all of us, we are all racists. At the same time, most of us are unaware of our racism. We do not recognize the ways in which our cultural experience has influenced our beliefs about race or the occasions on which those beliefs affect our actions.

Id.

231 See Rubinstein, supra note 74, at 68 (“But Indian children were timid in the presence of so many white children who ridiculed their appearance and taunted them with the epithets ‘savage’ and ‘Injun Joe.’ Indian parents resented the ridicule and soon discovered that the only
Vince drank to that. He understood woman troubles. He put his large, calloused hand on Ben’s shoulder in a friendly way. Ben had tensed and stared hard at the bottles on the bar by the mirror. Vince pulled his hand back and said, “Well, it’s good to meetcha. I’ll buy you a drink to welcome you to Henry Street, but first you gotta tell me something.”

Ben didn’t say anything.

“What kind of Indian’re you, anyway?”

Ben looked down at his drink and the sloppy bar top covered in cigarette ash and drops of water and booze. “What difference does it make? Indian is Indian.”

They had both aged considerably since that day they met in ’67 or ’68, neither could remember exactly when. Vince picked up a spare tire or four and two bad kidneys. Ben only had one bad kidney and one spare tire, but had also acquired a gray head of hair. Vince retained his red shock of hair, the hair that drove all the ladies wild after the war, though it faded some, like an old lampshade. Vince never learned what kinda Indian blood Ben had flowing through his brains, but it must’ve been smart Indian blood. Between the two of them, Ben knew all the answers, fixed all the cars, solved all the problems, and came up with all the ideas.

Ben ordered another whiskey neat and Vince matched him with his regular JD rocks. Vince realized once and for all that, though they shared adjoining space at a near-empty bar, as close as lovers, they were not friends. Everyone in the bar knew them both and saw through

thing their children learned at school was profanity, taught them by white children.”) (footnotes omitted).


Having only recently wandered into the academy from the gilded world of a private Indian law practice, I was pleasantly surprised when Professor Zuni invited me to speak to this conference on the subject of “Indians teaching Indian law.” It seemed a simple assignment. However, on deeper reflection, I began to feel like Professor Tolkien’s Hobbitt, Bilbo Baggins, must have felt when confronted by the wizard, Gandalf. From a simple “good morning,” Bilbo elicited the “perfect” law professor’s response: “‘What do you mean?’ [Gandalf] said. ‘Do you wish me a good morning, or mean that it is a good morning whether I want it or not; or that you feel good this morning; or that it is a morning to be good on?’” “‘All of them at once,’ said Bilbo,” which shows that he was a quite good third year law student, or possibly a citizen of the Legal Academia himself. Like poor Bilbo, the wizard confronted me as I wrestled with the ambiguities inherent in the statement of the topic for discussion.

Id.
Vince’s pretensions. All their debts to each other had either been forgiven or paid, but the friendship was kaput. It had been that way for over 15 years, but still Vince stood there sharing space with his old compadre, his former business partner—the best friend he ever had—and pretended enough to fool himself for a little while. Ben studied his paper and Vince flirted with Sera. They drank quietly, each doing their thing.

The illusion ruptured when Ben’s niece Mariana stepped in the Park Henry. Ben’s eyes lit up and he moved off the stool with surprising dexterity. He proudly introduced Mariana to everyone in the bar, embarrassing the young woman as he dragged her around to shake everyone’s hand. Mariana looked to be about 25 to Vince and she had a wild mane of dark brown hair, but her eyes made her look a lot older. She had seen and experienced more than 25 years of life. And yet she looked alive, vibrant, hopeful. Vince seriously doubted if he’d ever look as energetic as that woman ever again.

Ben explained that Mariana was a few months away from graduating from U of M Law School in Ann Arbor and everyone was impressed. Ben spoke often of her in the last few years, the kid coming around to meet her uncle and having a drink with the old man now and again. Everyone met the kid and genuinely looked upon her as fresh blood—the good kind, not some stuck up young punk trying to scam her uncle out of a pension check. That was how they looked at their own kin. She had spent a long time living in Tucson, Arizona. Vince

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234 See generally State v. Spears, 596 N.W.2d 375, 385 (Wis. 1999) (Prosser, J., dissenting):
She drove off leaving the nameless man sprawled out in the intersection. But as she drove away, something made her stop, turn around, and go back. There was no way this punk deserved to live. She drove back several blocks to the intersection and aimed her car at the punk still laying helpless in the street. She accelerated the car and drove over his body, leaving tire tracks of vengeance on the man’s back.

Id.
always wanted to go there—talked about moving there every year for the warm winters—but he knew he would never be able to leave Detroit.

Finally, Ben brought Mariana back to the bar and introduced her to Vince. Vince shook her hand and said, “So, what kinda Indian’re you, anyway?”

Without hesitating, Mariana looked Vince in the eye and said, “Grand Traverse Band Ottawa.”

The revelation shook Vince a little and he let go of Mariana’s hand limply. He wasn’t used to Indians looking him in the eye.\(^2\) Ben, the only Indian he had ever known very well, rarely looked him in the eye unless he was angry and, even then, only for a second before the punch came. It had always seemed to Vince that Ben had something to hide or, Vince suspected, Ben felt vaguely intimidated by whites. Maybe even inferior.\(^3\)

Mariana showed none of that. She looked like she belonged.

Ben didn’t acknowledge Vince after that, talking to his niece like an old friend, best friends even; just like Ben and Vince way back in the day.

Mariana drank a cup of coffee while Ben finished a special cocktail prepared special for him by Sera. They talked about Mariana’s Aunt Emma, about how she was thinking about going back to school to get her MBA. Ben didn’t say much. He just nodded, staring at his drink.\(^4\)

Eventually, they put on their jackets and turned to leave.


> Courts should not look with squinty eyes at such bona fide modification of Indian legislation to fit changed or newfound circumstances, especially where it is obvious, as in this instance, that the whole matter is still in flux and that individual rights have not yet become firm or settled in any realistic sense.

\(^3\) Id.

\(^4\) But cf. Rubenstein, supra note 74, at 42:

> Doctor H. J. Alvord, a special agent sent by the Department [of Interior] to inspect the management of the [Mackinac Indian] agency, described its condition accurately:

> While the employees appear attentive to their duties, the affairs of the Mackinac Agency generally appear to be in a thriftless and unprosperous condition, indicating a sadly deficient executive ability in its management.

\(^2\) See JUNIOR KIMBROUGH, I’m In Love With You, on GOD KNOWS I TRIED (Fat Possum Records 1998):

> Baby, be true to me, girl

> Have you been true to me?
Sera ducked underneath the bar top to give the old Indian a big hug, looking to Vince’s astonishment that she was on the verge of tears. “See ya later, Toledo,” she said. Vince had never heard Ben’s real name before and his jaw dropped. Bob and Maggie and John and Bert stood up to say farewell, Maggie dropping a big wet kiss on the old Indian man’s cheek.

“Take ‘er easy, old Ben,” Bob said.

Sera couldn’t say anything. The meanest, cleverest bartender Vince ever knew, a woman that grew up in the Park Henry Bar, couldn’t say a damn word. She ducked back under the bar top and turned her back, occasionally wiping her eyes along with her damp pint glasses.

They seemed to be telling Ben good-bye for the last time. Indian Ben was leaving Detroit, heading back home to Peshawbestown, they said, for good. Vince felt devastated. He remembered hanging out at Ben’s place on the second floor at 459 all those years. Ben kept everything forever, his small place cluttered with junk and possessions beyond any sense of reason. It must have been back in ’81 or maybe ’83 when Ben brought Vince upstairs to give him a birthday gift, six weeks late. It was one of those new Betamax players, complete with a couple of bootleg tapes. Back in those days Vince walked around trying to be tough, but it was his first birthday gift since before his wife took off with his two daughters. He wept like a four-year-old.

And now Ben was leaving for good. Vince had never given him anything.

Ben finished his drink and turned to Vince for the last time. Ben put out his hand. He said, “See you around, Vinnie.”

No one ever called Vince that pet name except Ben and only when Ben was in a good mood. Vince swallowed hard and took his old friend’s hand.

“Where you headed?”

Ben smiled and looked at his niece, who was standing at the door lighting a cigarette to keep her lips warm in the cold Detroit air outside.

“Out that door over there.”

The men shook hands. Vince watched Ben leave. He stood silently at the bar for ten minutes after Ben left. Then, after Bob Barker bid farewell to the viewers of The Price is Right, he pulled out a couple

I been true to you

Id.
twenties he'd been saving for something special. He paid off his tab and bought the house a round. He and the rest of his companions spent the rest of the day talking about home.

We all work hoping to accomplish things that will allow our children and their descendants to enjoy peace and well-being in their lifetimes. For Odawa people this is not some unobtainable utopian dream. Accomplishing this peace and well-being has been and is a goal of our traditional ways. Most times, the path towards this goal does not involve bureaucracies or councils or reams of paperwork. It's a simple one-on-one exchange in which we honor and support the individuals within our families and our communities in our daily lives. We praise our children, respect our elders, and try to forgive ourselves and others who get mired in life's struggles. We strive to learn to support others with our deeds and with positive thoughts, while we learn to respect and honor ourselves.\footnote{Testimony of Frank Ettawageshik, Chairman, Little Traverse Bay Bands of Odawa Indians at 1, reprinted in \textit{Pokagon Band of Potawatomi Indians Act and the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act: Hearing Before the Committee on Indian Affairs, United States Senate, 103rd Cong., 79, 79 (1994).}