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# Listen

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## LISTEN

Matthew L.M. Fletcher\*

*In a traditional law school setting, experiences of students of color, especially Native Americans, are often buried by the discourse of the dominant culture. This piece, a non-traditional work using elements of prose, lyric, monologue, and poetry, weaves strands of legal discourse, commentary, and autobiography into a critical narrative of the experience of legal education from an outsider law student's perspective. The author, a member of the Grand Traverse Band of Ottawa and Chippewa Indians, recounts these vignettes in a voice infused with the history and traditions of Native American oral storytelling.*

Listen.

I have something to say. I have stories to tell. I am a story. My stories define me. They restrict me. They set my limits. They flesh out my borders. Yet my stories evolve, breaking past and pushing through my borders. They are liquid. They are substantial. They are my stories.

Where to start? Stories have a beginning, a middle, and an ending. Three acts. I learned that in the undergraduate English department at Michigan. I learned it in Ms. Johnson's groovy senior English class in high school. I learned it while reading a book about heathen savages in second grade. My story has many beginnings. It starts with Laura Alice Stevens Mamagona. It starts with Angeline Marks. It starts with Honor Louise Russell Fletcher Simmons. My story starts every morning when I wake up to the sound of the phone ringing. It will ring several times before I hear it. I am difficult to reach in the morning. Often my dreams are more powerful realities than this one, so powerful that I am loathe to leave them. My dreams call me, as they call us all.

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\* (Odawa/Potawatomi) Executive Note Editor, *Michigan Journal of Race & Law*, Volume 2, 1996-97. B.A. 1994, University of Michigan; J.D. 1997, University of Michigan Law School. This piece would not be possible without the love and support of my family. Thank you all. I also would like to thank Jeannine Bell and Corinne Vorencamp. This piece evolved from numerous discussions with them over two years about our legal education and its effect on our lives. Thanks to Nancy Robinett and Matthew Russo for sharing their stories and Ruben Reyna for always being cool. *Chi-migwetch* to John Humphrey for his excellent suggestions and editorial skills.

Finally, I wish to dedicate this piece to Myriam Jaïdi. *Listen* is hers now. Thank you, Myriam, for everything.

This reality is extraordinary. Inexplicable. Commonplace. Each day brings us new stories. Let me tell you a story about myself. This story is pure fiction. It did not happen.

Listen.

I walk into the Hutchins Hall at the University of Michigan Law School on the very first day of my orientation there, take a quick glance at the other future lawyers gathered around—and walk out. I go to pursue another destiny. Another story. That story may have involved playing volleyball in Costa Rica. Or writing a sappy novel. Or jail. Or being hit by a bus in Austin, Texas. Anything—but not law school.

My reality *is* extraordinary. Inexplicable. Commonplace. In this reality, I stayed inside Hutchins Hall. I never really had any other notion to do anything differently.

In that reality, it was dark in there. It was sunny and warm outside in that Michigan August, but inside the belly of the law school, it was dark. Light struggled to reach us, seeping gradually through the cracks.

My friend, who began law school the same day I did, has a story he told once. He had to hand in a paper on a Saturday at the law school. He brought his youngest daughter, a three year old, to see his school. She hated it. The halls were like dungeons. The lights were dim and hanging from the ceiling by a black chain. You could almost hear the screams of the condemned, almost see them chained to the walls. She was scared of the dark and never wanted to go back.

That story has power, life energies all its own. It has the elements one needs to successfully tell a riveting tale. It keeps the audience interested, even if for only a few seconds. It has innocence. It has *noir*. It is the story of light and dark—good and evil. The story has a will of its own. Its heart beats, it changes shape. Maybe it is what English teachers call a metaphor. Maybe it is not. If it is a metaphor, or a simile, or an allegory, then it is defined, restricted, limited. I believe that this story has more. I will not make a conclusion about the story for you to ponder. I leave it for you, my audience, to use it for yourself. Whether you like it or not, the story, no matter how incomplete or unfulfilling, is part of you now. It is yours.

Wait.

I have another story. A poem. It is only the second poem I have ever written. I am not Sherman Alexie. Not Emily Dickinson. Not T.S. Eliot. Not Simon Ortiz. I have read their poems and heard their stories. Their stories are all inside me, living. I have incorporated them into my experiences, my stories.

Hear this now.

Language

Word

Physical

Persuasion Propaganda Pernicious Patience

Native American—American Indian

“Indian nations had always been considered as . . . the  
undisputed possessors of the soil,  
FROM TIME IMMEMORIAL . . .”<sup>1</sup>

Sovereign Possess

Words of the dominant,

words of the possessor,

words of the oppressor.

Not my words.

“ . . . [A] race once powerful,  
now weak . . . ”<sup>2</sup>

“ . . . [T]he wards of the nation.”<sup>3</sup>

The nation—strong, masculine, controlling

The wards—weak, children, subservient

“ . . . an ignorant and dependent race.”<sup>4</sup>

Savage Uncivilized

Barrier to Civilization

Barrier to Manifest Destiny

Words of the dominant,

words of the possessor,

words of the oppressor.

Not my words.

Not my terms.

What are your terms?

Unconditional surrender?

No.

Simply that—No.

Never. It must not be.

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1. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832) (emphasis added).
  2. *Lone Wolf v. Hitchcock*, 187 U.S. 553, 567 (1903) (quoting *United States v. Kagama*, 118 U.S. 375, 383 (1885)).
  3. *Id.* at 567.
  4. *Id.* at 565 (quoting *Beecher v. Wetherby*, 95 U.S. 517, 525 (1877)).

“From their very weakness and helplessness, so largely due to the course of dealing of the Federal government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power.”<sup>5</sup>

Deny these truths that are not self-evident  
 In these words there can be  
 no peace, love, and understanding of Mother Earth  
 These words mean nothing to a grass-dancer or  
 a fancy-shawl dancer

Dependence? Weakness?  
 Empower?  
 “[S]peak our truths the best that we can.”<sup>6</sup>  
 Stick to this ground.

Keep it simple.  
 And honest—it’s our truth.  
 It’s your truth.  
 my truth

Step one:  
 move beyond the language  
**IT IS NOT YOURS ANYWAY**  
 Do not trust their language  
*I’m talking to you*  
*Yes, you*

Stop the poem. I am a lawyer. I have a certificate that says I have completed all the necessary requirements for entrance into the bar of the State of Michigan: a law degree, a passing grade on the bar exam, and good citizenship. One question among many remains unanswered: what have you learned from all this, Matt?

Gerald Vizenor, an Anishnabe Indian, wrote, “[t]hese men who rule words from behind double doors and polished benches miss the best words in the language, they miss the real words. They never hear the real words in court, not even the burned words. No one would ever bring real words to court.”<sup>7</sup> These sentences touch me more than any words spoken in Property or Taxation I. Yet it

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5. *Id.* at 567.

6. JOHN TRUDELL, *STICKMAN: POEMS, LYRICS, TALKS, A CONVERSATION* (Paola Iglioni ed., 1994).

7. GERALD VIZENOR, *Almost Browne*, reprinted in *SHADOW DISTANCE* 107, 112–13 (1994).

would be a disservice to my law school, my professors, my deans to say this is what I have learned in three years.

Or would it?

Wait.

“When law recognized sexual harassment as a practice of sex discrimination, it moved it from the realm of ‘and then he . . . and then he . . .,’ the primitive language in which sexual abuse lives inside a woman, into an experience with a form, an etiology, a cumulativeness—as well as a club.”<sup>8</sup> So then, the law can learn. It evolves. It does not dictate to us unless we let it.

The law is a story.

That is what I have learned.

Sometimes for us lawyers and law students, the darkness inside Hutchins Hall alters our inner clock. Time moves differently on the inside, like prison or high school. Mostly, time is very, very slow, especially near lunchtime or recess. Sometimes, time gathers up steam and moves at impossible speeds.

Wait.

I have a story. This one is about the first case law students usually learn about in property class: *Johnson v. M’Intosh*.<sup>9</sup> It was written by a famous Supreme Court justice, John Marshall, who was instrumental in defining the powers and duties of the Supreme Court. Because my property professor told me to, I read that decision. It tells a story of how the Indians were here first, but the Europeans conquered them and took control. We have all heard this story hundreds of times.

Books. Television. Film. Newspapers. Radio. Teachers.

It is an important story. We already have heard the story hundreds of times, so we all know it. Right? That story is about how everything in this hemisphere came to pass. It is so important, the Supreme Court of the United States told the story in 1823.

Since we all know the story from a very young age, we barely notice it. The path of this story is like train tracks or I-94 or the Mississippi River. It is easily followed and just as easily ignored. It only takes a few minutes to pass over it. There are no unexpected bumps to jar our analytical minds.

As I said before, time starts and stops, slows and quickens in Hutchins Hall.

Listen.

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8. CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 106 (1987).

9. 21 U.S. (8 Wheat.) 543 (1823). This case is the first case reprinted and annotated in my first-year property casebook, *JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY* 3–11 (3d ed. 1993).

At eight o'clock in the morning on a freezing January day, my brain is rusted and stuck. The professor talks at us law students for twenty minutes about *Johnson v. M'Intosh*. His tone is somber, but his voice is soothing. It is a story that we will just have to get through, he says. True, it is unpleasant and sad, but it will be over soon. Sometimes the law takes a bad road, the professor acknowledges.

Let's move on.

The story of *Johnson v. M'Intosh*, the story of conquest, murder, starvation, disease, betrayal, has been laid down before for all of us to hear. No reason to go over it again. The lesson has been learned already. It's a real downer. Why dwell on it at eight o'clock in the morning on a freezing January day when there is so much ahead to learn—an almost unimaginable amount of information about property to master in only four months. I can hear the students now, agreeing silently with the professor: we already know this story, we have heard it before, let us not waste time.

Let's move on.

The twenty minute talk about *Johnson v. M'Intosh* lasts only about ten seconds in the weird temporal scene in Hutchins Hall. Before it sunk in, the professor began talking about the property issues of fox hunting. I wanted to raise my hand, but what would I say?

The story was told. It was over. The wheels had been greased over time to make the story move so effortlessly, it made no ripple. No one will argue with it. No discussion. No dissent.

The story is huge. I cannot emphasize that enough. The story's many strands and fibers contain the fate of ten million, or twenty million, or maybe even 100 million, people living in this land before the Vikings or Columbus arrived. Now imagine how many stories we all have, stories that shape us, define us, restrict us, lead us, teach us, and evolve with us. I have so many, I cannot keep track of them. And I always want more stories.

Now imagine how many stories there were in 1492 or 255 B.C. or 1823 in North America. Where did those stories go? Those stories were condensed like Reader's Digest into something we can handle.

Books. Television. Film. Newspapers. Radio. Teachers.

*Johnson v. M'Intosh*.

A twenty minute talk about *Johnson v. M'Intosh*.

The stories were condensed until there was nothing left to argue about.

Let me tell you a story.

Lawyers love to argue. Lawyers sometimes even like to talk for the sake of hearing themselves talk. At eight o'clock in the morning on a freezing January day, not one lawyer had an argument

or anything to say about *Johnson v. M'Intosh*. It was something we should have pounced on. It was something the professor should have hit us with, like a trial judge's gavel, until we got it. Professors get excited about secured transactions and intentional infliction of emotional distress. Why not this? It would have kept us warm that frozen January morning with its anger.

At my law school orientation, deans and professors spoke and told a story about how law school would teach us how to think like lawyers—how to look at both sides of an issue.<sup>10</sup> Every court case is a story. Listen, when I started law school, there was an ongoing story everyone had heard about. Was O.J. Simpson guilty? Law students, lawyers, law professors all had something to say about it.<sup>11</sup>

The fact that I can mention O.J. Simpson to you and have a very good assurance you will know who I am talking about is also a story. And you all know the story of *Johnson v. M'Intosh*, even if you have never heard of it, because you have heard the story of the Indians elsewhere.

Books. Television. Film. Newspapers. Radio. Teachers.

Law students. Lawyers. Law professors. Politicians. Radio and television commentators. Some paid to talk. Some talk for free.

None of them wants to talk about *Johnson v. M'Intosh*. To them, the story is more than dead. Crazy Horse and Pontiac.<sup>12</sup> Sitting Bull

10. Note this:

A lot of people who go into law school have a strong sense of right and wrong and a belief in moral truths. Those values are destroyed in law school, where students are taught that there is no right and no wrong and where such idealistic big-picture concepts get usurped. The way the majority of students deal with this is to become cynical. They actually come to disdain right-versus-wrong thinking as unprofessional and naive.

RALPH NADER & WESLEY J. SMITH, NO CONTEST: CORPORATE LAWYERS AND THE PERVERSION OF JUSTICE IN AMERICA 334 (1996) (quoting from interview with Robert Granfield, author, MAKING ELITE LAWYERS (1992) (Dec. 12, 1993)).

11. See, e.g., Christo Lassiter, *The O.J. Simpson Verdict: A Lesson in Black and White*, 1 MICH. J. RACE & L. 69 (1996) (analyzing the Simpson case and its press coverage).

12. Pontiac was an Anishnabe leader of the eighteenth century who rallied the Odawa, Ojibwe, Potawatomi, and many others against the British. CHARLES E. CLELAND, RITES OF CONQUEST: THE HISTORY AND CULTURE OF MICHIGAN'S NATIVE AMERICANS 136 (1992). Pontiac is often named

along with the likes of Crazy Horse and Sitting Bull. In fact, it is doubtful that any other Native American is so prominent in our popular culture. Besides giving his name to the automobile that we encounter on nearly a daily basis, cities and towns in several states, street names, and subdivisions are often named for this prominent [Odawa]. Given all this notoriety, it is surprising that so little is known about Pontiac as a person.

and Leopold Pokagon.<sup>13</sup> At least they are movies and books, we say, and we can learn from those. Almost all of us would say the Indians did not deserve what happened to them. If that is true—that the Indians were wronged—*Johnson v. M'Intosh* is a lie. It is wrongly decided. You may not kill people and destroy what they are and call it legal and fair play.

Can you?

The story of *Johnson v. M'Intosh* now is this: we refuse to listen, to learn. The story, like all stories, has unlimited life and power, but we do not respect that power.

Maybe you *can* kill people and destroy what they are and call it legal and fair play.

Wait. Hear these words.

*Id.* I do not see Pontiac's anonymity as surprising at all. The dominant culture would rather focus on vague insights about a few carefully chosen Indian leaders than learn the specifics about the many others.

I doubt Pontiac would be happy to find that his name is pasted everywhere—in the suburbs and on car commercials—in the lands he tried to defend against the Europeans, like the head of the captured enemy impaled on a stake outside the castle gates.

13. Leopold Pokagon was a relatively important Potawatomi leader of the late eighteenth and early nineteenth centuries. See generally JAMES A. CLIFTON, *THE POKAGONS, 1683–1983: CATHOLIC POTAWATOMI INDIANS OF THE ST. JOSEPH RIVER VALLEY* 53–76 (1984) (describing Pokagon's involvement in preserving Potawatomi lands and culture in southwestern Michigan). Clifton notes that Pokagon's story is told in various ways from various sources and has "a distinctively American, Horatio Algerlike [sic] aura to it, for not only does it suggest that the alien Pokagon had to work his way up from the bottom by his own efforts, but he also had to overcome his own savage impulses to become a 'civilized' Indian." *Id.* at 57.

It is often very difficult to obtain accurate and unbiased information about Native peoples. In this instance, I have relied upon Clifton, an anthropologist. Anthropologists are often derided by Indian writers and commentators for their earnest ignorance and willful ethnocentrism. See, e.g., VINE DELORIA, JR., *CUSTER DIED FOR YOUR SINS: AN INDIAN MANIFESTO* 87 (1969) ("Over the years anthropologists have succeeded in burying Indian communities so completely beneath the mass of irrelevant information that the total impact of the scholarly community on Indian people has become one of simple authority."). Clifton has come under fire for some of his later works. Ward Churchill writes that

[t]he function of *The Invented Indian* is to attempt a repeal of virtually every glimmer of truth about Native America which has emerged since 1970, reasserting in their stead the full range of reactionary fables long advanced by proponents of the white supremacist colonialism in which Indians are presently engulfed.

WARD CHURCHILL, *The New Racism: A Critique of James A. Clifton's The Invented Indian*, in *FANTASIES OF THE MASTER RACE: LITERATURE, CINEMA, AND THE COLONIZATION OF AMERICAN INDIANS* 163, 164–65 (M. Annette Jaimes ed., 1992) (reviewing *THE INVENTED INDIAN: CULTURAL FICTIONS AND GOVERNMENT POLICIES* (James A. Clifton ed., 1990)).

A language of termination.

A word:

Allotment<sup>14</sup>

“... [E]ncourage the Indians to adopt the ways of the white settlers and thereby become socialized into the white culture.”<sup>15</sup>

Repeat it. Say it aloud. Hear it for the first time.

Your Supreme Court has defined it

Listen

“... [U]ltimate destruction . . . .”<sup>16</sup>

Genocide

Termination<sup>17</sup>

on the books, legalized<sup>18</sup>

systematic elimination

We will be a race of Americans<sup>19</sup>

So then—termination is genocide<sup>20</sup>

14. Federal Indian policy has gone through several different stages. *See generally* STEPHEN L. PEVAR, *THE RIGHTS OF INDIANS AND TRIBES* 1–11 (2d ed. 1992) (describing the approximately seven historical phases of Indian relationships with the federal government). The “allotment” phase was codified in the Dawes Act of 1887, a statute that broke up communal Indian territory into separate parcels. 24 Stat. 388 (1887) (codified at 25 U.S.C. §§ 331–58 (1997)). The express purpose of the Dawes Act was to break up tribal governments and force assimilation of the Indians. FERGUS M. BORDEWICH, *KILLING THE WHITE MAN’S INDIAN* 124–25 (1996); PEVAR, *supra*, at 5. Allotment nearly destroyed the Indian tribes, robbing them of their collectively owned land base and crippling their cultures. BORDEWICH, *supra*, at 120–22. “Of the 140 million acres of land which tribes collectively owned in 1887, only 50 million acres remained in 1934 when the allotment system was abolished.” PEVAR, *supra*, at 5–6.

15. *Yankton Sioux Tribe v. Southern Mo. Waste Mgmt. Dist.*, 890 F. Supp. 878, 881 (D.S.D. 1995).

16. *Montana v. United States*, 450 U.S. 544, 559 n.9 (1981).

17. As recently as 1954 through 1966, Congress engaged in a policy of “termination” of Indian tribes, whereby tribal lands were forcibly redistributed and the tribal governments were dissolved. PEVAR, *supra* note 14, at 57. Over 100 tribes were terminated during this time, mostly in California and Oregon. *Id.* This practice has been upheld by the Supreme Court in *Menominee Tribe v. United States*, 391 U.S. 404 (1968). As the Supreme Court has not overruled *Menominee Tribe*, the practice remains constitutional.

18. *See, e.g.*, *Brendale v. Confederated Tribes & Bands of Yakima Indian Nation*, 492 U.S. 408, 423 (1989) (finding that the public policy of allotment—tribal termination—did not evaporate when Congress expressly repudiated that policy); *see also* Judith V. Royster, *The Legacy of Allotment*, 27 ARIZ. ST. L.J. 1, 71–72 (1995) (arguing that the expressed allotment policy survives in contemporary American Indian-related jurisprudence).

19. “In the eyes of government, we are just one race here. It is American.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 239 (1995) (Scalia, J., concurring).

20. *See generally* WARD CHURCHILL, *INDIANS ARE US?: CULTURE AND GENOCIDE IN NATIVE NORTH AMERICA* 11–63 (1994) (applying the United Nations 1948 Convention

WAIT!  
 Don't water down the language  
 Let's not get ahead of ourselves  
 Don't erode the force and power and significance  
 of the Word  
 Genocide  
 Think nazis  
 Think holocaust  
 Think European  
 mass murder<sup>21</sup>  
 Schindler's List<sup>22</sup>  
 well-documented  
 proven

Columbus was a long time ago  
 who really knows what happened?<sup>23</sup>  
 Depardieu or Brando  
 wouldn't do a puff piece on Columbus  
 if he was so bad—  
 would they?

YES<sup>24</sup>

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on Punishment and Prevention of the Crime of Genocide to acts of the Europeans and the federal government against Native Americans).

21. See *id.* at 12 (discussing the relationship between mass murder and genocide).

22. SCHINDLER'S LIST (Universal Pictures 1993).

23. Columbus landed on Hispanola, an island with possibly over 8 million Taino inhabitants in 1493. CHURCHILL, *supra* note 20, at 29. When he departed a few years later, only 100,000 remained. *Id.* at 30. Hundreds were shipped to Spain to be sold as slaves. Glenn T. Morris, *International Law and Politics: Toward a Right to Self-Determination for Indigenous Peoples*, in THE STATE OF NATIVE AMERICA: GENOCIDE, COLONIZATION, AND RESISTANCE 55, 81 n.44 (M. Annette Jaimes ed., 1992) [hereinafter THE STATE OF NATIVE AMERICA]. Native peoples were subject to having their hands chopped off and left to bleed to death as a matter of policy. CHURCHILL, *supra* note 20, at 31–32 (quoting KIRKPATRICK SALE, THE CONQUEST OF PARADISE: CHRISTOPHER COLUMBUS AND THE COLUMBIAN LEGACY 155 (1990)). Others were hanged “*en masse*, roast[ed] . . . on spits or burn[ed] . . . at the stake (often a dozen or more at a time).” *Id.* at 32 (citing BARTOLOMÉ DE LAS CASAS, THE SPANISH COLONIE (BREVÍSIMA RELACIÓN); BARTOLOMÉ DE LAS CASAS, HISTORIA DE LAS INDIAS, VOL. 3 (1951)). Children’s body parts were used as dog food. *Id.* at 32. There were mass killings, whole villages were slaughtered, and people were tortured and buried alive. *Id.* at 32–33 (citations omitted). By the mid-sixteenth century, there were no Tainos left—they were extinct. *Id.* at 30.

24. See 1492: CONQUEST OF PARADISE (Touchstone Pictures 1992) and CHRISTOPHER COLUMBUS: THE DISCOVERY (Warner Bros. 1992) for examples of mass-market revisionist history. Neil Young’s statement about Marlon Brando should also be mentioned in context with the recent Disney film. Compare NEIL YOUNG & CRAZY HORSE, *Pocahontas*, on RUST NEVER SLEEPS (Reprise Records 1979) (questioning

Voices drowning  
 deluge of popular culture  
 great flooding  
 The "increasing weight of history"<sup>25</sup>  
 Crushing weight of Precedent  
 Conquered?<sup>26</sup>  
 I won't let them tell me that.  
 It is not my word.

I'm waiting for the Ghost Dance  
 and the great Indian flood.<sup>27</sup>  
 Until then, I'll hold my breath.  
 I've got no choice.  
 500 years under sea level.

One day  
 I will be "young and charming"<sup>28</sup>  
 Like the possessors  
 Now—the present  
 I am under water  
 I may hold my breath  
 BUT I WILL NOT DROWN

A bleak history is on  
 our side  
 for once  
 We'll survive the next one.  
 They say when the revolution comes  
 the lawyers and the history teachers  
 will be the first ones  
 up against the wall.

---

whether Pocahontas would perceive the conquest of the Western Hemisphere to be benevolent), *with* POCAHONTAS (Walt Disney Productions 1995) (rewriting the Pocahontas myth as a children's story about the benevolence of the European conquest).

25. *State v. Elliot*, 616 A.2d 210, 218 (Vt. 1992); *see also* Joseph Singer, *Well Settled?: The Increasing Weight of History in American Indian Land Claims*, 28 GA. L. REV. 481 (1994) (analyzing the history of American Indian-related jurisprudence and its effects on late twentieth century decisions, such as *State v. Elliot*).

26. *See, e.g.*, *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 503, 513 (1823) ("Conquest gives a title which the courts of the conqueror cannot deny, whatever the private and speculative opinions of individuals may be, respecting the original justice of the claim which has been successfully asserted.").

27. DEE BROWN, *BURY MY HEART AT WOUNDED KNEE* 390 (1970) (quoting Wovoka, the Paiute Messiah).

28. CHE GUEVARA, *Guerrilla Warfare*, reprinted in *GUERRILLA WARFARE* 37, 169 (1985).

Will the revolution be televised?  
 Who will watch?  
 Doesn't matter.

When the tidal wave  
 tsunami  
 blast of water  
 bang or whimper  
 When that time reaches the beach  
 All that will remain  
 are the Indians

Ask yourself:  
 May I stay?  
 Cross-blood  
 Half-breed  
 Or am I one of the little Indians?  
 One foot tall.

"We want the world  
 and we want it  
 we want the world  
 and we want it

NOW"<sup>29</sup>

Change has begun  
 it is slow  
 it creeps  
 it crawls  
 it moves in the dark  
 it scares

it is older than the seas  
 it was here before the smallpox blankets  
 before the massacres  
 before Indian boarding schools  
 before "radioactive colonialism"<sup>30</sup>

"Sitting Bull said  
 'love of possession is a disease with them' "<sup>31</sup>

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29. THE DOORS, *Five To One*, on WAITING FOR THE SUN (Electra/Asylum Records 1968).

30. See generally Ward Churchill & Winona LaDuke, *Native North America: The Political Economy of Radioactive Colonialism*, in THE STATE OF NATIVE AMERICA, *supra* note 23, at 241 (chronicling the wretched history of nuclear politics in Indian Country and coining the phrase "radioactive colonialism.").

Naming    Labeling    Cursing    Dehumanizing

I am the OTHER

NOT

“heathen infidels”<sup>32</sup>

savage

nasty, brutish, short

You cannot name

Me

You cannot make me yours

I cannot be possessed

My stories are my own

not yours

Your stories are yours

not mine

Noble    Ignorant    Natural

bears and deer

turtle

buffalo

grasses and trees

unseen

unwashed

unknown

unnamed

untainted

unique

Labels    Tags    Names    Stamps    Badges:

un-American<sup>33</sup>

lawyer class<sup>34</sup>

reservations

assembly centers<sup>35</sup>

relocation

concentration

segregation

assimilation

Listen.

Do you know what that means?

31. TRUDELL, *supra* note 6.

32. MORRIS, *supra* note 23, at 63 (citation omitted).

33. *Romer v. Evans*, 116 S. Ct. 1620, 1633 (1996) (Scalia, J., dissenting).

34. *Id.* at 1637.

35. *Korematsu v. United States*, 323 U.S. 214, 221 (1944).

Stop the poem. As Bart Simpson would say, "It's always about the Indians with you, isn't it?"<sup>36</sup> Maybe so, but stories about Indians are what I find interesting. I write for myself as a lawyer, as an Indian, as a writer. My purpose is to uncover living stories that have been buried. The law sometimes buries stories.<sup>37</sup> Yet every case has a story to tell. Every lawyer has a story to tell in every case.

This story was written for the express purpose of publication in the *Michigan Journal of Race & Law*, a student-edited law journal at the University of Michigan. This story is not an article. Nor is it a student-written Note, as I am no longer a law student. It is not an essay. It contains elements of a speech, a poem, a song, a monologue. I am curious as to what it will be labeled if published by the *Journal*. As I write it, I am not sure of a title or what, if anything, I will have to say in the abstract that I most certainly will be asked to write by the Executive Editor.

I do not want to follow the rules and precedents of other legal writers. I am not writing to make a complex legal argument concerning a body of law I find interesting. I am not writing to publish or perish. I am not writing to be heard. I write for myself only. By writing these lines on a computer in Angell Hall at the University of Michigan, I have achieved my goal. It satisfies me. I have written a story. A start, a middle, and an end.

Listen. I refuse to write in the language of the lawyer or the law professor. I will not write an article or a note or a book review to be published in a law journal.

I will write a story, a poem, a song to be published in *this* law journal.

Hear these words. They are not mine.

Language of the law:

"... the prestige of this institution . . . ."<sup>38</sup>

"[i]n the light of the principles we announced . . . ."<sup>39</sup>

"[t]his case requires us to consider . . . ."<sup>40</sup>

"... we have only to consider whether it is consistent with the Constitution of the United States."<sup>41</sup>

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36. *The Simpsons: Miracle on Evergreen Terrace* (FOX television broadcast, Dec. 21, 1997).

37. See, e.g., Jeannine Bell, Note, *Policing Hatred: Police Bias Units and the Construction of Hate Crime*, 2 MICH. J. RACE & L. 421 (1997) (discussing how debate over the First Amendment implications of hate crime legislation buries analysis and necessary investigation of how criminal justice personnel enforce such laws).

38. *Romer*, 116 S. Ct. at 1629.

39. *Korematsu*, 323 U.S. at 217.

40. *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 441 (1988).

Supreme Court  
the law  
hierarchy

Prestige Order Prominence Distinction  
weight  
ranking

Forget about the law,  
where are you working next year?<sup>42</sup>  
who are you clerking for next year?  
what grade did you get?

Ask John Marshall—  
what do these words mean?  
Ask yourself—  
why is this man writing these words?  
Did you forget?

Stop the poem again. I have another story to tell. This piece, this poem, this monologue, at one time, was titled, "The Half-Life of 'Radioactive Colonialism': Tribal Sovereignty and A Case Study of the Mescalero Apache." I researched an issue for several months and put together—not wrote, slapped together with glue and scissors—a disjointed sixty-page draft. It was the story of one tribe's decision to pursue a contract to temporarily store spent nuclear fuel rods from nuclear power plants.

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41. *Plessy v. Ferguson*, 163 U.S. 537, 553 (1896) (Harlan, J., dissenting).  
42. Law firms are dangerous for law students. Nader & Smith write:

To the rapidly absorbing minds of law students at the more prominent and heavily recruited law schools, the ways and means of big-firm practice cast a heavy shadow. From their friends already practicing, reading the legal newspapers, summer jobs, and numerous visits and firm interviews, law students learn what it takes to succeed in those spacious and richly decorated office suites. The acculturation process is dramatic during the three years from entering school to graduation.

NADER & SMITH, *supra* note 10, at 334. The law school is part of the structure that encourages forgetting about the stories that matter.

Even the most "socially progressive" students begin to rationalize working for the large corporate firms. They think that is the way to power and they will be able to reform perceived wrongs from the top down. The only problem is that by the time they get there, they don't push for change because they have become part of the very power system they once disdained.

*Id.* (quoting from interview with Robert Granfield, author, *MAKING ELITE LAWYERS* (1992) (Dec. 12, 1993)).

The piece was never finished. It was not a story I could tell. To fulfill the requirements of a student-written Note, I would need to draw conclusions and make judgments and recommendations in order to formulate a solution. To create a document worth publishing, I would have to twist the story to suit my purposes. I would have to make the story work for me. To be persuasive, I would have to hide the weaknesses in my argument, and there were many. In order to publish, I would have to use the story, destroy it, and remake it in my image, as if it were clay.

This I did not do. The Mescalero Apache are not clay.

Legal writers all must ask why we create articles, notes, essays, book reviews. I asked myself why. My answer? I did not have a good reason. I just wanted my name in lights.

They say there are too many student-edited legal journals. The scholarship is being diluted. Anybody can get published. It has become too difficult to separate the best and brightest from the mere surplus opinions and platitudinous creations in the academy.

Wait.

Think of all those rock 'n' roll and jazz and blues and classical musicians who labored, paid their dues, and waited for the moment when they could stand on the same stage as their heroes and heroines as equals. Then in 1977, the punks showed up and ruined it for everyone. No talent. No practice. Taped-up, lousy-sounding instruments. Screeching, hissing vocals. Feedback.

All those years of practice wasted, ignored, unappreciated. Destroyed by a bunch of punks.

Empty out your pockets—you don't need their change  
I'm giving you the power to rearrange  
Together we'll run to the highest prop  
Tear it down and let it drop . . . away . . . .<sup>43</sup>

I am a little punk, intent on tearing down what has been built. It's not mine anyway. I didn't build it. And it wasn't built for me. I wish lawyers, law professors, law students, and judges would be angry after they read this piece. I want them to question the sanity of the editors of the *Michigan Journal of Race & Law* who selected this piece for publication.

The publication where this piece appears has a legitimate purpose, according to the University of Michigan Law School faculty who judge the *Journal* worthy of funding. The *Journal* functions "to serve as a forum for the exploration of . . . those is-

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43. THE GERMS, *Lexicon Devil*, on G.I. (Slash Records 1979).

sues that are marginalized in the mainstream legal discourse.”<sup>44</sup> That statement of purpose is part of my story as well. I want my voice heard, but I have sincere doubts it will be understood. If this piece is ever completed by the author, survives the *MJR&L* article selection process, and is finally published, someone will read it. I do hope my readers are troubled and joyous at the same time. I do want my words to have an impact. Perhaps someone will cite this piece elsewhere. Perhaps someone will even misleadingly characterize this piece in order to make my story appear foolish. I would not mind. Really. I do expect my words, however, to be ignored, misplaced, glossed-over. My story does nothing for law professors, students, lawyers. It does not help them with proposals of solutions or with identification of new and interesting lines of argumentation. It will not help anyone needing to write a brief or a law journal article. In fact, it may never be read by anyone outside of the *Journal* office or the law school’s publication center. It most certainly will not enhance the prestige of my name.

And I don’t mind. Not really. This is my story. I have many more. Words help me conceptualize and understand my realities. “I can write. What can you do?”<sup>45</sup> I am satisfied.

And that is enough.

For me.

the closing of your doors  
will never shut us out  
the closing of your doors  
can only shut you in<sup>46</sup>

Wait. For a moment there, I almost stopped. This story is not complete. I am not ready to stop yet. There is a larger story than mine.

Last month, I attended a rally supporting affirmative action at the University and listened to the stories told there. At the Michigan Law School, there are *zero* Asian or Native American faculty members.<sup>47</sup> There are few minority faculty at all, and few minority students.<sup>48</sup> Stories are being lost and ignored. There are no faculty members in Hutchins Hall who are learned in the Critical Race Theory (CRT) movement. Scholars from other law schools note that

44. Michigan Journal of Race & Law, *Statement of Purpose* (visited Mar. 14, 1998) <<http://www.law.umich.edu/pubs/journals/mjrl/>>.

45. *THE PLAYER* (NewLine Pictures 1992).

46. TRUDELL, *supra* note 6.

47. *THE UNIVERSITY OF MICHIGAN, CLIMATE AND CHARACTER: PERSPECTIVES ON DIVERSITY* 64 (1998).

48. *Id.* at 128–29.

they are hesitant to participate in forums for discussion of affirmative action in Hutchins Hall because the law school has never hired a professor from the more than decade-old CRT movement(s).<sup>49</sup>

I refuse to pay my dues. I refuse to practice, to wait my turn.

I live a reality that should not be. This is that reality.

*Listen.*

I apply for a job with the law firm.<sup>50</sup> The hiring partner interviews me over the phone. She likes me so much, she offers me a fly-back. I tour the firm's facilities, which are as technologically advanced as they are lifeless and bland. I talk to the partners and associates on the hiring committee. The hiring partner later tells me the ponytail and the chain connected to my wallet are cute but would not be easily accepted by either the partnership or my fellow associates.

I tell her I would remember that.

She also mentions to me the practice group I am interested in, with several minorities, is really the only practice group so integrated and diverse. She tells me not to expect the partners and associates working in other practice groups to be so liberal, but not to worry about it. This firm, unlike so many others, is one big happy family.

I tell her I understand.

I receive a call from the hiring partner a week later, ecstatic that she is able to extend an offer to me. I am able to tell her—it is morning, remember—that I am happy to accept the firm's offer.

On the first day of my employment, I check in with the reception desk, and I am sent up. I get in the elevator and ride up to the seventeenth floor. My tie is choking me, but I do not mind. Not really. The elevator door opens. I take a look at the lawyers gathered there—and walk out. I go to pursue another destiny. Another story. One without law firms.

My story.

*Migwetch.*

*Stories don't have endings. That's the problem for me. When I look on my life, the things that have happened, I can't find any way to wrap things up.*<sup>51</sup>

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49. Gary Peller, Address at the Michigan Journal of Race & Law Speaker Series: Understanding Race: (De)Constructing Paradigms and Implications for Legal Education (Jan. 20, 1998).

50. For a critical view of law firm hiring practices, see Angela I. Onwuachi-Willig, *Moving Ground, Breaking Traditions: Tasha's Chronicle*, 3 MICH. J. RACE & L. 255 (1997).

51. Misha Gallagher, *Stories Don't Have Endings*, in SPIDER WOMAN'S GRANDDAUGHTERS 256, 256 (Paula Gunn Allen ed., 1989).