Toledo Marks unwrapped the pipe in public for the first time as a pipe carrier. Twenty-five expectant fourth graders watched without making a sound. “It is no small thing that I show you this pipe,” Toledo said. “Just a few decades ago, I could have been prosecuted in some places for showing you this pipe.”

After decades of living away from his hometown, Eagletown, Toledo had come home after a pair of requests. The first, from his grandson Niko Roberts, was personal. Niko had just completed law school, passed the state bar exam, and would be moving back home to work as a staff attorney for the Lake Matchimanitou Band. He wanted his grandfather to be a part of his family again. The second came while Toledo pondered his grandson’s request. Until he received the second request, he was inclined to stay where he was and turn down his grandson. A difficult thing to do, but he was used to choosing the harder path. But the second request came from Ben Manitou, the grandson of the man that raised him many years earlier, also named Ben Manitou. Toledo hadn’t spoken to any members of the Manitou family in many years. They had drifted apart.

Ben was barely twenty years old and he was dying of a rare form of cancer. “I’m the last person to carry this pipe. I can’t pass it down to just anyone. The old man didn’t think much of you, we all know that. But you know the ways of the old ones. You speak Anishinaabemowin. You know the meaning of this pipe and what to do with it.”

Toledo knew that he would be condemning himself to a very special place in hell if he turned down these requests. He was a very old man, but
he still had his health. And Ben was right. Toledo knew that a great many elders had walked on in the last years. And Ben was one of the few in the modern generation that had learned the old ways. Toledo decided to take on this final obligation.

Within a month, Toledo had relocated from Detroit to Eagletown and took a job as a cultural advisor with the Band. Over that time, he had accepted the pipe from Ben Manitou, who was fading fast.

Toledo Marks, who grew up in Eagletown 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 'Nishinaabes out there. Later, Toledo’s mother moved to Chicago to join the Rosie Riveter Alliance and never returned. 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*, a book left behind by George Manitou, who had attended the University before escaping to China. Before Toledo, George was the crazy Indian in the family.

The Manitous were a penitent family. One of the few Lake Matchimani-tou 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. Benjamin Manitou, the patriarch, funded the building of the Methodist church in Eagletown 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 *Proposed 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 Eagletown, the local Indians struggling to eat and find shelter after the logging industry died down and the Department of Natural Resources shut down sustenance fishing on the bay and the lake. Lack of status as of a federally recognized tribe didn’t help.

Toledo, always distant from his foster family, read as the Manitous 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 inaccessible to him in the Lake Matchimanitou area libraries. In 1958, without Ben Manitou’s permission, he applied to enter college at Harvard. He scrounged for the application fee by doing odd jobs for older farmers in the area without enough sons and daughters needed for the manual labor. Harvard turned him down at first. Ben found the rejection letter in the mail and 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, four 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 or to anyone. Toledo sat down on a kitchen chair as though slapped, mouth open.

“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 1962. His first job was a half-hearted attempt in talking Toledo into finishing school. All the boy needed to graduate was one lousy term paper, but he just refused. Work called him, he argued with disingenuous perspicacity. Toledo would not speak of the incident again for decades.

Emma Roberts’ mother Louise actually named her Angelique Emma Roberts, but it was the Emma that stuck. Emma had a hard time 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 it 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 people. It might mean persecution for
her, but he would be satisfied that she had lived fully, that she had accom-
plished things, things that would be remembered. He never mentioned this
fantasy to his wife or anyone.

The same year Toledo left Harvard to pursue who-knows-what, Luke
and his one-year-old prognosticator, Emma, slid on the ice and crashed
into a tree on Setterbo Road near Eagletown. 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 Bearwalk3
and Old Testament 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
1930s and a keeper of the peace in Michigan in the 1950s, 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 failure at 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 con-
servative, hawkish men 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.

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. 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 (friends of Sam Fuller) during Prohibition. It tasted like
liquid horror and he drank three more before the night was over. He
claimed to have visions. 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. Toledo quit the job at Riddler-Knight about nine months after he started. He helped to invent the formula that would later be used to develop the fuel-air explosive:

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

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 estimated that it would be ten years before the military would allow the formula to be used for public safety.

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.

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, was the star of the evening for the Seattle ball club. He had 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. Toledo, sitting two rows behind Emma and her cousin Lizzie, reached over and touched her on the shoulder without saying anything. She decided at that moment that this unusual Indian man would become her partner in life and love. Lizzie, very protective of her cousin, attacked poor Toledo with fists, fingernails, and a Polish sausage, but Emma told her to back down. She liked this one. Toledo spent the rest of the evening charming them both with his stories about the mascots at minor league baseball games in Ohio.

A week later, Toledo returned to the Lake Matchimanitou area, bypassing his foster family and heading straight for Eagletown. 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.

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, on a cold January morning 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, 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 then 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 a former colleague at Riddler-Knight, now a professor.

Emma became pregnant again and gave birth to Parker in the mid-1970s. 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 just located an old drinking buddy at Herkimer Hotel with an angle on a bookie.

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 Eagletown 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 Eagletown a few months later, talking about how he had been offered a job with General Motors to work on 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 Eagletown.

One day tending bar at the Park Henry in the early 1980s, Toledo met a man who said he knew people who knew a few things about Vegas-style slot machines. The man said, “I imagine those Indian Tribes up north might be interested in knowing these people.”

“Yeah,” 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—but I think I know what I’m talking about.”

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

“The problem is still the federal government. They always defer to The Man, large landowners, corporate interests; all the non-Indian, 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. I read the papers. 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. It used to be they wouldn’t do anything to help the Indians because they wanted resources in the land or the land itself, 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 individual Indians are racist and unconstitutional. Sad thing is, racism is not a thing of the past, nor is it even particularly well hidden. Am I wrong? They’re still calling you savages after all this time.”

Toledo looked away.

“I’ve been reading about the anarchist syndicates in Spain before the Spanish Civil War. 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. 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,’ Indians have their enclaves of authority and self-determination. If the Tribe had an economy, they’d be there. Tribes would provide their own 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. Well, to paraphrase Noam Chomsky, they jailed the socialists, but they executed the anarchists.” The man sipped his whiskey.

Toledo put the man from Detroit in touch with an old friend of his from Eagletown who was on the Interim Tribal Council with Emma. He figured she’d never go along with it. She didn’t and neither did the rest of the council. But the leaders at the Lake Matchimanitou Band of Ottawa and Chippewa Indians, just down the road, wanted in. A few months later, Toledo, Toledo’s best friend Vinnie, and some guys from Chicago 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 Lake Matchimanitou Band started gaming operations in a pole barn behind the administration building. 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 over at Peshawbestown, where the Lake Matchimanitou Band was located, 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 town. 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, he left without saying good-bye.

“I come home after all this time and I get repaid with a lawsuit,” Toledo complained with sincere bitterness in his voice.

Niko sighed. His grandfather was high maintenance, a crotchety old man. “It’s not really a suit against you personally, you know.”

Jefferson Madison, nearing his 90s, had heard about the new school program in which Lake Matchimanitou Band elders would appear at the school to talk about Indian history and religion. It was the history part he believed to be the serious problem, but he knew the law would have more to say about the religion part. He crafted his lawsuit to appeal to civil rights absolutists by stressing the separation of church and state aspects of the tribal program to visit the local schools talking about tribal customs, traditions, and history.

The Lake Matchimanitou Band’s tribal council and education department convinced the Lake Matchimanitou school district to host several in-house training opportunities for staff and faculty on teaching American Indians, American Indian history, and other Indian-related themes. The Band also convinced the elementary school principal to host several talks by tribal leaders and cultural people, including Toledo Marks, who would talk about the importance of the pipe and the pipe ceremony. The agreement to hold these talks and trainings was the long culmination of a series of initiatives by parents of Indian students at Lake Matchimanitou public schools. Teachers and parents alike recalled the efforts of Parker Roberts many years earlier.

But Jefferson Madison would not capitulate. After Toledo Marks made his first presentation, Madison served the principal, the school board (of which he had long been a member, since retired), and the Band with a lawsuit seeking a permanent injunction against further events with the Band on the basis that these events violated the First Amendment. Within days, the federal district court in Grand Rapids issued an order halting the events for the remainder of the school year, or until the judge could hear the arguments of both parties. Oral argument was set for two weeks later. Niko Roberts would represent both the Band and the school district, which had no funds to pay for outside counsel, since they usually relied upon Madison to represent them when any legal questions arose.
Before the Federal District Court for the Western District of Michigan

Senior District Court Judge Elijah Ellison: We are convened today to hear oral argument in the matter of Madison v. Lake Matchimanitou School District, the Office of the Principal of the Lake Matchimanitou High School, and the Tribal Council of the Lake Matchimanitou Band of Ottawa Indians. Who is here to represent the parties?

Jefferson Madison: Jefferson Madison, Your Honor, on behalf of the plaintiffs.

Judge Ellison: Representing yourself, today, are we Jeff?

Jefferson Madison: Yes, Your Honor. It’s a pleasure to appear before you again.

Judge Ellison: Likewise. And for the defendants?

Niko Roberts: Niko Roberts, Your Honor, representing all the defendants.

Judge Ellison: So, what have we here? An exciting freedom of speech case? An establishment clause case? Let’s say ten minutes for each side and then time for questions and answers? Okay then. Jeff? I mean, Mr. Madison.

Jefferson Madison: Your Honor, I doubt I’ll take that long. This is an open-and-shut case, as you will see and probably already know.

Three weeks ago, a tribal medicine man or holy man, as you please, appeared at the public high school in Lake Matchimanitou. He appeared at the request of the principal and the school board and the tribe. His name is Toledo Marks and he performed a religious ceremony involving a sacred pipe. I don’t pretend to know what the ceremony involved, but I do know religion when I see it. And since god-fearing Christians cannot voluntarily pray in our public schools, I am appalled to see other religions practiced in the hallways of my beloved schools. As you might know, Your Honor, I was a member of that school district’s board of education for over forty-five years until my retirement a mere four years ago.

We have it on good knowledge—and without the denial of the defendants—that more of these kinds of events are forthcoming. These events include in-house trainings for teachers and staff that will also...
involve these religious practices of some sort, as well as lectures and praying on the subject of Indian spirituality. Additional student functions are in the wings as well, similar to, as I understand it, the pipe ceremony performed by Mr. Marks. Most importantly, these practices are not voluntary. Teachers and staff are paid to be in attendance at these functions. And we all know that means they are required to attend. Students also have no option. They must go to these functions and they must help these Indians practice their religion. And, as you are well aware, Your Honor, even if these functions were voluntary—and they are not—they would be unconstitutional under the Constitution of the United States.

Your Honor, the plaintiffs seek a permanent injunction that would put these religious ceremonies to a halt. The plaintiffs easily meet all of the requirements for an injunction. A violation of the First Amendment in this instance—with students being forced to participate in religious ceremonies to which only a small minority of them actually subscribe—is a classic example of an immediate and irreparable harm, as would be any violation of the Bill of Rights. And clear precedent states that violations of civil rights are not remediable by money damages. We don’t seek money damages anyway, because we don’t want to bankrupt our children’s school.

Students, teachers, and staff can participate in the religious activities of the tribe down the road a few miles. It is utterly unnecessary for these religious practices to be conducted at the school. The balance of hardships favors the plaintiffs here. I doubt the defendants will argue these questions.

The last factor is the question of who is likely to prevail at trial. Let me start with a story. I can tell you to a certainty, as a member of the school board for over four decades, that it is doubtful as to whether this tribe is really a tribe at all. Long ago, they signed a treaty in which they agreed to disband after the execution of that treaty. The plain language of the treaty is clear. And only through the gross errors of the federal government has this tribe been declared a reborn
Indian tribe. I know, because I’ve lived in Lake Matchimani-ntou County my whole life. These Indians had disbanded, or as they say in federal Indian law, “abandoned their tribal relations,” and moved away to Milwaukee or Chicago or Grand Rapids or Canada. When I grew up, no Indians lived in my area. I would have known, because I explored every hill, every creek, every field. I never met a single Indian. All of sudden in the 1970s, Indians showed up again. But they were old and decrepit. And they lived in paper shacks and underground. We have no way of knowing that these Indians were descendants of the proud tribe that once lived in our area. I am dubious.

What I am saying here is that I do not believe that these Indians that have arrived in Lake Matchimani-ntou County in the last few decades could still be called Indians. Some of them, maybe a majority, are descendants of the proud people that once lived here. But that does not make them Indians. Most are what some might call “bleached out,” meaning that they have intermarried with white folk to the point that there might not be any full-bloods there. If we took discovery on the blood quantum of the entire tribe, I bet that less than a third of the quantum of the entire tribe is Indian. Just a guess. You can look around at the spectators and draw your own conclusions.

More importantly, I doubt many of these Indians speak their ancestral language. I have never heard a single Indian speak Indian in Lake Matchimani-ntou County. I understand that a culture is all but dead when the children do not speak their cultural language. I know that the school district doesn’t offer it—nor should we, any more than we should teach Sanskrit or Swahili. These so-called “Indian” children—and I use that term loosely—don’t need to know this language anyway. It probably would hurt them more to act more Indian in our highly specialized society and economy. Regardless, these Indian children that do no speak their language—I doubt they actually practice this religion.

Consider these factors, then. First, this tribe long ago agreed to disband. Second, they fulfilled this
promise, at least until the so-called civil rights movement of the 1960s and 1970s convinced them that being Indian was a useful trick again. Third, few, if any, of their children speak their own language. Fourth, the language is dead and so, therefore, the culture and its religion are dead. Given these factors, it must be apparent to this Court that the defendants have little likelihood of prevailing on the merits. I rest for now and I am willing to answer questions.

Judge Ellison: So be it, Jeff. Mr. Roberts?

Niko Roberts: Thank you, Your Honor.

Let me start by noting the need for a relationship between the Lake Matchimanitou Band and the School District. Mr. Madison’s opening remarks demonstrate the need. In 1836, and then again in 1855, the tribe executed treaties with the federal government that tribal leaders and federal agents believed would guarantee a homeland—a reservation of 20,000 acres—for the people of the Lake Matchimanitou Band. By the late 1970s, the people of the Lake Matchimanitou Band retained less than twenty acres of that land. What happened?

Mr. Madison claims not to know. The non-Indian people of Lake Matchimanitou, many of whom live on land that once was promised to the Indian people of the Band, are just as ignorant, as are their children. And the curriculum of the public schools in Lake Matchimanitou does not even mention the history of the Band’s reservation lands and how they were lost. Many of the people who are members of the Band, educated in these public schools, don’t know their own history.

Consider this evidence. First, excuse me, Your Honor, I ask a little leeway in my presentation. What I am about to offer might appear to be irrelevant at first glance, but I assure you, it will make perfect sense by the end of my ten minutes.

This is a copy of the certificate and land sale contract executed by individuals who once lived on the land where Mr. Madison now lives. This individual was also named Madison, although I do not know if there is a relation. I assume Mr. Madison would know. The
elder Madison acquired the land, it appears, from an individual named Robert Manitou. Robert Manitou, I can show, is one of the sons of a man who signed the 1855 treaty on behalf of the Lake Matchimanitou Band. He is also a distant relation of my own.

Jefferson Madison: I can see where this is going. You think you should be living on my land.

Judge Ellison: Enough, Jeff. Mr. Roberts, where is this going? We’re here to talk about the establishment clause.

Niko Roberts: One more minute, please.

The land sale contract was executed in 1857, two years after the execution and ratification of the 1855 treaty. It purported to assign a certificate from Robert Manitou to the elder Madison, also named Jefferson. This certificate indicates that it was assigned to Robert Manitou for eighty acres in accordance with the 1855 treaty.

Now consider the language of the 1855 treaty. I quote: “But 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.”

Now, finally, one last piece of evidence. It’s from an opinion written by an Interior department official in 1885, thirty years after the execution of the treaty. I quote:

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

Are these cases related? We might never know and
persons like Mr. Madison would like these stories to remain hidden. Is there a cloud on Mr. Madison’s title? Probably not, even if the elder Madison acquired the land using fraud or coercion or other illegitimate means. The law, after all, favors the “settled expectations” of wealthy property owners.10

My point is that these stories are buried. The non-Indians who value the way the land ownership stories played out don’t really want to talk about it, while the Indians who value the land itself do want to talk about it.

And that’s the underlying story behind this lawsuit.

We held no religious ceremony at the school or demanded any involuntary exercise of religion. And there won’t be. Years ago, a tribal member named Ben Manitou, who was the holder of one of the few ceremonial pipes remaining, gave a presentation at the school. He asked those present to stand while he prayed. School officials, most have moved on to other communities, apologized for the mistake at that time. Tribal members that agree to present something about tribal culture do not ask people to participate in prayers anymore. And the clear language of the affidavits linked to this case from school district officials, teachers, and Mr. Toledo Marks indicates that no such prayer occurred here. Further, the affidavits indicate that tribal members or officials making any presentations at the school will refrain from asking participants to engage in any action that could be construed as a religious exercise. The plaintiffs’ affidavits come from no one who was an eyewitness to Mr. Marks’ presentation. They reference what happened over five years ago when Mr. Manitou made his presentation, assuming the same thing happened again.

Finally, the attachments to the affidavits detail the kinds of activities contemplated by the in-house trainings and the student assemblies. None of them includes tribal religion in any form. In fact, these trainings and presentations are about tribal history almost exclusively.

In sum, Mr. Madison might believe that the Indians of Lake Matchimanitou County are not really Indians,
but his form of revisionist history belongs in the same category of those that deny the Holocaust.

**Jefferson Madison:** Outrageous! Your Honor? A few minutes’ rebuttal?

**Judge Ellison:** Not necessary, Jeff. I think I’ve heard enough.

I caution you, Mr. Roberts, about your rhetoric. I’d caution Mr. Madison as well, but I suspect he’s not up to taking advice at this late date.

I have only one question and it’s for Mr. Madison. Is it true that none of your witnesses was present at the presentation by Mr. Marks?

**Jefferson Madison:** Yes, Your Honor, but the very presence of the ceremonial pipe in the classroom is a violation of the First Amendment.

**Judge Ellison:** How is that different from the Ten Commandments monument that sat outside the courthouse in Texas?  

**Jefferson Madison:** Obviously, the tribe and the school district brought this religious artifact into the school itself. Nothing could be more invasive. It would be as if the school district placed a Ten Commandments Monument right in the schoolhouse.

**Niko Roberts:** Well, as Erwin Chemerinsky said, “Context is everything.” The pipe in question has been used for religious practices on occasion, it is true, but the affidavit of Mr. Marks indicates that there were political uses for the pipe as well. It was this pipe that Mr. Marks’ ancestor, a gentleman named Matchimanitou, used to execute the 1855 treaty. You see, an X appears on the treaty document, but for tribal purposes the treaty was executed when the parties to the treaty smoked from the pipe. This is what is being taught. Frankly, the religious aspect of the pipe is so complicated that non-Indians would have no idea what is going on.

**Judge Ellison:** Thank you, Mr. Roberts. I’ll take this case into consideration.

The outcome of the suit was never in doubt, it appeared, as Judge Ellison overturned the temporary restraining order and denied Jefferson Madison’s motion for an injunction against the school district. Niko Roberts had won his first case—for his grandfather.