



WSBA
Washington State Bar Association

RESOLUTION

Federal Indian Jurisdiction on the Washington State Bar Examination

**As Amended and Recommended for Adoption by the WSBA Resolutions Committee
September 9, 2004**

WHEREAS, we, interested members of the Washington State Bar Association (WSBA), in support of our friends and colleagues in the WSBA Indian Law Section and the Northwest Indian Bar Association, in union with the King County Bar Association, Whatcom County Bar Association, WSBA World Peace Through Law Section, Loren Miller Bar Association, Latino/a Bar Association of Washington, Asian Bar Association of Washington and Kanoon South Asian Bar Association, hereby submit this Resolution; and

WHEREAS, the recent growth in tribal economic development and the resulting increase in interaction of Washington's twenty-nine (29) federally recognized Indian tribes with non-Indian entities and individuals, both on and off of the reservation, has given rise to an array of business transactions, regulatory issues and litigation matters between tribal and non-tribal parties in this state; and

WHEREAS, the citizens of Washington and their attorneys do not generally understand the sovereign legal rights of Washington Indian tribes; nor do they understand precisely how tribal self-governance and self-determination, and the laws and ways of Washington Indian tribes, affect and intersect Anglo-American legal and jurisdictional principles; and

WHEREAS, the integrity and competence of the legal profession in this state would be enhanced if attorneys licensed by the WSBA generally understood significant federal jurisdictional Indian principles, particularly the common law doctrines of tribal sovereignty, tribal sovereign immunity, tribal subject matter jurisdiction (both criminal and civil), and the federal Indian Child Welfare Act; and

NOW THEREFORE BE IT RESOLVED, that we do hereby urge that on October 22, 2004 the WSBA Board of Governors exercise its authority under Washington General Rule 12 and vote to include federal Indian jurisdiction on the Washington State bar examination, beginning with the Summer 2007 examination and continuing thereafter, such that every bar-licensed attorney will receive knowledge reasonably necessary for the representation and protection of all who are subject to Washington State law.



Indian Law Section

**Supporters for the Inclusion of Federal Indian Jurisdiction
on the Washington State Bar Exam**

Washington State Supreme Court-Created Access to Justice Board
King County Bar Association
King County Bar Foundation
Spokane County Bar Association
Whatcom County Bar Association
San Juan County Bar Association
King County Bar Association Young Lawyers' Division
WSBA World Peace Through Law Section
WSBA Indian Law Section
Idaho State Bar Indian Law Section
Northwest Indian Bar Association
Loren Miller Bar Association
Latino/a Bar Association of Washington
Asian Bar Association of Washington
Kanoon South Asian Bar Association
Korean American Bar Association

Washington State Attorney General Christine Gregoire
Washington State Attorney General Candidates Rob McKenna & Deborah Senn
King County Prosecutor Norm Maleng
U.S. Attorneys John McKay & Jim McDevitt
WSBA President Emeritus Dick Manning
WSBA Young Lawyers' Division President Emeritus J.D. Smith
UW Law School Dean Joe Knight
Gonzaga Law School Dean George Critchlow
Seattle University Law School Faculty (Approximately 30 Members)
Columbia Legal Services Director Ada Shen-Jaffe
Washington State Court of Appeals Judge Mary Kay Becker
King County Superior Court Judges Robert Alsdorf, Richard Jones, Steven Gonzalez, Catherine Shaffer, James Doerty, Carol Shapira, Harry McCarthy, James Cayce, Dean Lum, Mary Yu, Michael Hayden & J. Wesley Saint Clair
King County Superior Court Commissioner Kimberly Prochnau
Washington UTC Commissioner Patrick Oshie
King County Bar Foundation President Emeriti Dan Gandra & Steve Rovig
Loren Miller Bar Association President Emeritus Karen Murray
Latino/a Bar Association of Washington Josh Alex
Asian Bar Association of Washington President Ken Payson
Kanoon South Asian Bar Association Shankar Narayan



Indian Law Section

Statements of Support for the Inclusion of Federal Indian Jurisdiction on the Washington State Bar Exam

“Failure to apply the Indian Children Welfare Act correctly can disrupt placement and lead to reversible error. Although there has been more education on the topic in the last few years, I still find many lawyers do not understand this act. I would support this effort.”

– King County Superior Court Commissioner **Kimberly Prochnau**

“I support including questions about Indian Law on the bar exam. In my experience, Indian Law has been increasingly important subject matter in Washington State – not only for public practitioners and policymakers, but also for many in private practice.”

– Washington State Attorney General Candidate **Rob McKenna**

“[O]ne thing leaps out at me from the summaries of Indian law to date in our nation – that it has been and remains very inconsistent and even arbitrary. . . . By all means, please list me not only as supporting a question or questions on the Bar exam, but as supporting the actual development of fair and consistent law in this area.”

– King County Superior Court Judge **Robert Alsdorf**

“Federal Indian jurisdictional considerations touch and concern not only the lives of members of the 29 sovereign tribes in Washington, but every individual, business and government that does business with, provides services to, or engages in activities on or near reservation land. The tribes’ ubiquitous presence in our state renders it essential that our bar understand core federal Indian principles, to effectively represent individual, business and governmental clientele.”

– Columbia Legal Services Statewide Coordinator **Jim Bamberger**

“Including American Indian law on the bar exam will produce new attorneys that can spot issues and competently represent tribal and non-tribal clients in Washington. . . . [I]t is our professional responsibility to be skillfully and thoroughly aware of these issues to uphold minimum standards of competence . . . [and] to zealously advocate for all clients to the best of our ability.”

– “Should Indian Law Be Tested on the Washington Bar Exam?,” *De Novo*, June 2004

“There are 29 tribes in the state of Washington – it only seems logical that attorneys should have some idea of what Indian law is about.”

– **State Representative John McCoy**, *Puget Sound Business Journal*, October 1, 2004

“Tribal governments today interact with all sectors of our [State] economy, our social service network, health care systems and educational systems. Requiring Washington State attorneys to demonstrate competency in Federal Indian Law will ensure that their clients, both tribal and non-tribal, can obtain effective representation in all facets of the law.”

– **Swinomish Tribal Chairman Brian Cladoosby**, President of the Association of Washington Tribes



UW School of Law

W. H. Knight, Jr. (Joe), Dean

University of Washington School of Law
William M. Gates Hall
Box 353120 Seattle, WA 98195-3020
Phone 206.225.1846 Fax
http://www.uw.edu/law

1 September 2004

Board of Governors
Washington State Bar Association
2101 – Fourth Avenue, Suite 400
Seattle, Washington 98121-2330

Received

SEP 07 2004

**WILLIAMS KASTNER & GIBBS
SEATTLE**

Dear Members of the Board:

I have delayed writing to you in order to get a better sense of the points both in support and in opposition to the recent proposal to include Indian Law topics on the state bar exam. Next week, on September 9th, the WSBA Resolutions Committee will conduct a public hearing on this proposal. Although I will not be able to attend that meeting, I do wish to go on the record in favor of adding Indian Law as a testing topic on future examinations. I would also encourage the Board to consider including other important subject areas not currently tested. If our goal is to measure preparation for professional practice, we need to have a much broader dialogue about our examination approach and subjects covered. Because you have a specific proposal before you, I outline my reasons for supporting the resolution presented by the WSBA Indian Law Section and the Northwest Bar Association which appear below. Please note that I write in my individual capacity since my faculty colleagues have not discussed this matter as a group.

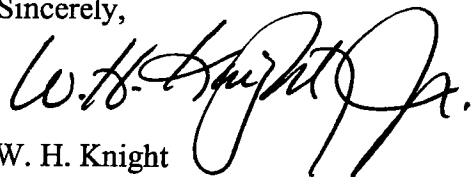
Our state includes twenty-nine federally recognized Indian tribal nations. As sovereign entities, these tribes occupy unique legal positions with both our state and federal governments. Indian jurisdictional principles underlie every interaction that Washington residents have with Indian tribes. Washington tribes occupy nearly 3.2 million acres of land in our state. Tribal economic activity contributes more than one billion dollars to our state economy and employs 15,000 Indian and non-Indian residents. No lawyer in the state can practice for any extended period of time without encountering aspects of Indian law.

As Dean of the only state-assisted law school, I can tell you that our curriculum has long included and emphasized Indian law. Several of my faculty colleagues have substantial experience in Indian country issues and share their knowledge with our students. Our Native American Law Center and both our Environmental Law and Tribal Defense Clinics provide students with multiple opportunities to learn some of the intricacies involved with Indian Law. I believe that many of our graduates would welcome the addition of this subject area on the state bar examination. Learning and understanding more about tribal self-determination, social and economic development would enhance the abilities of future lawyers coming to our state. The state of New Mexico has already become the first state bar association to test the topic of Indian law on its licensing examination. The topic is no less important in Washington than it is in New Mexico. Your including this subject on future examinations will enhance the ability of members to provide superior representation to the many Washingtonians who have legal matters in Indian

country. It is time for our bar association to recognize this important area of law by including it as a test topic. I urge you to act favorably upon the proposed resolution at your September meeting.

If I can be of any further assistance in this matter, please do not hesitate to contact me. Thank you for allowing me the opportunity to comment on this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "W. H. Knight Jr.", written in a cursive style.

W. H. Knight
Dean and Professor of Law



GONZAGA UNIVERSITY

SCHOOL OF LAW

August 23, 2004

Mr. Gabriel Galanda
Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380

Re: Indian Law on WSBA Bar Exam

Dear Mr. Galanda:

I write to support the proposed addition of federal Indian law jurisdictional principles as a subject for testing on the Washington bar examination. I do so only after giving a great deal of thought to the issue and after discussing the matter with law professors, Indian leaders, law students, and members of the bar.

I particularly wanted to understand the implications and impact of the resolution from the standpoint of law school curricula, the incremental additional burden for law students in bar preparation, and the potential benefit for Washington tribes, citizens (Indian and non-Indian), and lawyers. I also took into account my own twenty-four years of practice in Washington courts and tribal courts representing clients in a range of matters, including family law, criminal law, personal injury, civil rights, employment, consumer protection, administrative, and debt collection.

Finally, I am influenced by the fact that Spokane and Gonzaga University are part of a regional demographic tapestry and social and political history that include the Spokane Tribe, the Confederated Tribes of the Colville Reservation, the Kalispel Tribe, the Coeur d'Alene Tribe, the Nez Perce Tribe, the Umatilla Tribe, and the Confederated Tribes of the Yakama Nation -- not to mention the dozens of other Northwest tribal groups further West, East, and South.


As has been noted by others, it is simply impossible for contemporary lawyers in Washington to avoid legal issues relating to tribal sovereignty, tribal court jurisdiction, federal Indian law regulating Indian trust properties, Indian child custody and adoption, tribal economic development, gaming, and a host of other matters. Washington lawyers need not practice or specialize in these areas any more than they practice family law, criminal law, commercial law, or tort law. But it is increasingly clear that lawyer competence requires the ability to at least identify situations where tribal jurisdiction and sovereignty are implicated. I believe the need for lawyers to show an ability to recognize these issues outweighs the natural disinclination to squeeze more subject matter into the bar exam.

Mr. Gabriel Galanda
August 23, 2004
Page Two

Testing Indian law jurisdictional principles may not be necessary or appropriate in every state. However, the twenty-nine federally recognized Indian tribes in Washington create pervasive occasions for interaction between Indian tribes and non-tribal parties in commercial, family, and criminal matters. Many tribes are emerging economic powers and will have increasing influence throughout the state. It is critical that lawyers understand and recognize how and when tribal jurisdiction or fundamental federal Indian law principles apply to particular situations. It is equally important to the state's political and economic health and stability for lawyers to be in a position to educate clients about the meaning and significance of the concept of tribal sovereignty.

Thank you for the opportunity to lend my support to this resolution.

Sincerely,


George A. Critchlow
Dean

Cc: Mr. David Savage, WSBA President
Mr. Ronald Ward, WSBA President-Elect
Ms. Janice Michels, WSBA Executive Director
Committee of Law Examiners
Attn: Commissioner Frank Slak, Jr.

LOCAL

Tuesday, August 3, 2004 A3

City Editor: Dick Clever 360-416-2143 / citydesk@skagitvalleyherald.com

Tribes want Indian law in bar exam

Leaders say inclusion in test is overdue

By LEM PULKKINEN
Staff Writer

In a reflection of the increasing legal and economic clout of Washington's tribes, Indian law may soon be part of the state's bar exam.

Tribes around the Northwest decided to push for the addition earlier this year, which Synonimish Tribe Chairman Brian Cladoosby said is already overdue.

"It's about time that the lawyers of Washington state knew how to work with all the governments of the state, including the first governments of this region," said Cladoosby, who also chairs the Association of Washington Tribes, a strong supporter of the proposed change to the bar exam.

In May, 42 Northwest tribes appealed

to the Washington State Bar Association

to include Indian law in its examination. The resolution the tribal association passed

argued that attorneys who better understand tribal self-governance

and jurisdiction are more able to resolve disputes and enhance "government-to-government dialog."

Cladoosby said the change is necessary because tribal governments so often interact with the larger economy and social service network.

"Requiring Washington State attorneys to demonstrate competency in Federal Indian Law will ensure that their



Cladoosby

clients, both tribal and non-tribal, can obtain effective representation in all facets of the law," he said.

A change similar to the one currently proposed was made by the New Mexico Bar Association in 2002, and Native American rights organizations are advocating equivalent revisions in Idaho, Montana, Oklahoma and Oregon.

According to its proponents, the Washington resolution has been signed by more than 120 state bar association members, including King County Prosecutor Norm Maleng, former bar association president Dick Manning and Christine Gregoire, the state attorney general and current Democratic candidate for governor.

The state bar association has agreed to hear the resolution at its annual meeting next month, an encouraging

move for resolution supporters, said Gabriel Galanda, chair of the association's Indian law section.

"With the precedent set by our Indian colleagues in New Mexico and the Pacific Northwest, the dialogue on this issue has rapidly spread throughout the United States," Galanda said in a release. "It's only a matter of time before Indian law becomes part and parcel of state bar exams."

Resolution supporters like Galanda and Cladoosby hope the bar association's decision to hear the resolution at its annual meeting will prompt the association's Board of Governors to decide the issue in October.

■ Lewi Pulkkinen can be reached at 360-416-2138 or by e-mail at lewi@skagitvalleyherald.com.



Affiliated Tribes of Northwest Indians

2004 Mid-Year Conference Lincoln City, Oregon

RESOLUTION #04 - 65

"THE EXAMINATION OF INDIAN LAW ON STATE BAR EXAMINATIONS"

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific Tribal concerns; and

WHEREAS, the Affiliated Tribes of Northwest Indians is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of Affiliated Tribes of Northwest Indians; and

WHEREAS, Tribal economic development and the resulting increase in interaction of Indian nations and people, with non-Indian entities and individuals both on and off of the reservation, has given rise to an array of business transactions, regulatory issues and litigation matters between Tribal and non-tribal parties; and

AFFILIATED TRIBES OF NORTHWEST INDIANS**RESOLUTION # 04 - 65**

WHEREAS, the American public and their attorneys do not generally understand the legal import of our Indian nations' inherent sovereign rights; nor do they understand precisely how tribal self-governance and self-determination, and the laws and ways of Indian nations, affect and intersect Anglo-American legal principles; and

WHEREAS, if attorneys for the American public, particularly federal, state and local government, better understood the legal concepts of Tribal self-governance and Tribal jurisdiction, there would be fewer disputes and government-to-government dialogue would be greatly enhanced; and

WHEREAS, in February 2002 the State of New Mexico became the first state to test the topic of Indian law on its bar licensing exam, with a view towards educating public and private legal counsel and, in turn, the American public about the legal rights of sovereign Indian nations; and

WHEREAS, the majority of American states, which host large populations of Indian people and/or a significant presence of Tribal lands, including Washington, Oregon, California, Idaho, Montana, Nevada, Alaska, Colorado, Arizona, New Mexico, Utah, North and South Dakota, Oklahoma, Minnesota, Wisconsin, Michigan, New York, Maine, Connecticut, Louisiana and Florida, should likewise include the topic of Indian law on their bar licensing examinations; now

THEREFORE BE IT RESOLVED, that ATNI does hereby support the Association of Washington Tribes, and the Association's friends and colleagues in the Northwest Indian Bar Association, the Washington State Bar Association Indian Law Section and Idaho State Bar Indian Law Section, and the National Native American Bar Association, in their endeavor to have the topic of Indian law tested by state bar associations, so the American public can better understand the inherent sovereign rights of our Indian nations; and

THEREFORE BE IT FURTHER RESOLVED, that ATNI does hereby seek the assistance and collaboration of the American Bar Association, and the bar associations, boards of bar examiners and Supreme Courts in states such as Washington, Oregon, California, Idaho, Montana, Nevada, Alaska, Colorado, Arizona, New Mexico, Utah, North and South Dakota, Oklahoma, Minnesota, Wisconsin, Michigan, New York, Connecticut, Maine, Louisiana and Florida, to carry out the provisions of this Resolution; and

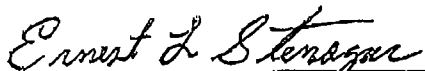
THEREFORE BE IT FINALLY RESOLVED, that this Resolution be immediately transmitted upon its effective date to the President and President-elect of the American Bar Association.

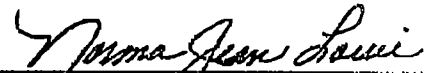
AFFILIATED TRIBES OF NORTHWEST INDIANS

RESOLUTION # 04 - 65

CERTIFICATION

The foregoing resolution was adopted at the 2004 Mid-Year Conference of the Affiliated Tribes of Northwest Indians, held at the Chinook Winds Casino and Convention Center in Lincoln City, Oregon on May 20, 2004 with a quorum present.


Ernest L. Stensgar, President


Norma Jean Louie, Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MOH-04-001

TITLE: The Examination of Indian Law on State Bar Examinations

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, Tribal economic development and the resulting increase in interaction of Indian nations and people, with non-Indian entities and individuals both on and off of the reservation, has given rise to an array of business transactions, regulatory issues and litigation matters between Tribal and non-tribal parties; and

WHEREAS, the American public and their attorneys do not generally understand the legal import of our Indian nations' inherent sovereign rights; nor do they understand precisely how tribal self-governance and self-determination, and the laws and ways of Indian nations, affect and intersect Anglo-American legal principles; and

WHEREAS, if attorneys for the American public, particularly federal, state and local government, better understood the legal concepts of Tribal self-governance and Tribal jurisdiction, there would be fewer disputes and government-to-government dialogue would be greatly enhanced; and

WHEREAS, in February 2002 the State of New Mexico became the first state to test the topic of Indian law on its bar licensing exam, with a view towards educating public and private legal counsel and, in turn, the American public about the legal rights of sovereign Indian nations; and

WHEREAS, the majority of American states, which host large populations of Indian people and/or a significant presence of Tribal lands, including Washington, Oregon, California, Idaho, Montana, Colorado, Arizona, New Mexico, Nevada, Utah, North and South Dakota, Oklahoma, Minnesota, Wisconsin, Michigan, New York, Maine, Connecticut, Louisiana and Florida, should likewise include the topic of Indian law on their bar licensing examinations.

EXECUTIVE COMMITTEE

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Eddie Tullis
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Zach Pahlmalmie
Prairie Band Potawatomi Nation

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Arian Melendez
Reno-Sparks Indian Colony

EXECUTIVE DIRECTOR

Jacqueline Johnson
Tlingit

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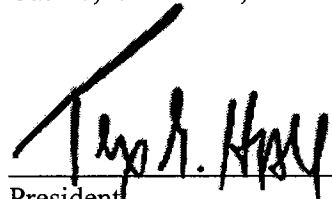
NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support the Affiliated Tribes of Northwest Indians and the Association of Washington Tribes, and their friends and colleagues in the Northwest Indian Bar Association, the Washington State Bar Association Indian Law Section and Idaho State Bar Indian Law Section, and the National Native American Bar Association, in their endeavor to have the topic of Indian law tested by state bar associations, so the American public can better understand the inherent sovereign rights of our Indian nations.

BE IT FURTHER RESOLVED, that the NCAI does hereby seek the assistance and collaboration of the American Bar Association, and the bar associations, boards of bar examiners and Supreme Courts in states such as Washington, Oregon, California, Idaho, Montana, Colorado, Arizona, New Mexico, Nevada, Utah, North and South Dakota, Oklahoma, Minnesota, Wisconsin, Michigan, New York, Connecticut, Maine, Louisiana and Florida, to carry out the provisions of this resolution.

BE IT FINALLY RESOLVED, that this resolution be immediately transmitted upon its effective date to the President and President-elect of the American Bar Association.

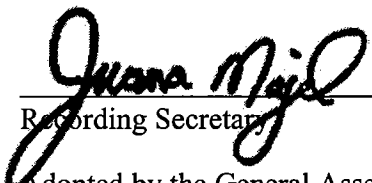
CERTIFICATION

The foregoing resolution was adopted at the 2004 Mid-Year Session of the National Congress of American Indians, held at the Mohegan Sun Hotel and Casino, Uncasville, CT on June 23, 2004 with a quorum present.



President

ATTEST:



Recording Secretary

Adopted by the General Assembly during the 2004 Mid-Year Session of the National Congress of American Indians, held at the Mohegan Sun Hotel and Casino, in Uncasville, CT on June 23, 2004.

Should Indian Law Be Tested on the Washington Bar Exam?

by Tim Woolsey

Recently, New Mexico became the first state to test American Indian law on its bar exam. Following this cue, in February, the Washington State Bar Association Indian Law Section joined with the Idaho State Bar Indian Law Section and the Northwest Indian Bar Association in adopting a resolution urging the Washington and Idaho Bar Associations to include Indian law on their respective bar exams.¹ This is a good idea that will help to maintain a minimum level of competency for Washington attorneys.

With the aftertaste of the Washington state bar exam still fresh, we members of the Washington Young Lawyers Division appreciate the considerable knowledge we absorbed for the bar (and perhaps too quickly forgot). However, we all missed out on the opportunity to demonstrate our competency in Indian law—an area essential to the practice of law in Washington. Incorporating Indian law into bar exam questions will not mean that we will all become Indian law experts; rather it will ensure that we can quickly recognize Indian law issues before we get our clients and ourselves in over our heads.

In law school, most of us learn only about two areas of law: federal law and state law. However this curriculum ignores what Justice Sandra Day O'Connor has called the "Third Sovereign."² Indeed, the original text of the U.S. Constitution recognizes independent tribal sovereignty.³ In interpreting the Constitution, the U.S. Supreme Court, in 1832, recognized that tribes represent distinct and independent political communities that maintain their own natural rights, sovereignty, and self-government.⁴ While the Court continues to struggle with upholding these principles, this unique legal status of tribes and native individuals creates unusual and distinctive problems that affect every area of law.

For example, if you practice in the business realm, the fact that Washington tribes contribute \$1 billion to the state's overall economy means that at some point you will probably need to deal with some aspect of In-

dian business. Nationally, Indian gaming alone is a \$15.9 billion a year industry. This, combined with booming tribal enterprise in other areas like energy, natural resources, and commercial property development are sure to continue to grow and constitute an ever-increasing, essential sector of the economy in states like Washington. In these business dealings, competent attorneys will recognize that issues concerning taxation, tribal sovereign immunity (which can even extend to public corporations chartered under tribal law), and jurisdiction will influence and govern the outcome of any litigation.

There are many other examples. For instance, if you are an employment attorney, tribal employment of around 15,000 tribal and non-tribal people in Washington could lead you into unique tribal employment laws and policies. In many family law cases, the Indian Child Welfare Act⁵ may control or you may need to look to individual tribal statutes. Washington tribes occupy more than 3.2 million acres of reservation lands and have unique fishing, hunting, and water rights that serve to influence a large portion of environmental and land use issues. Moreover, in many different types of cases you may find yourself in tribal court, with unique and varied rules. Perhaps most importantly, in Indian law cases you will find that both civil and criminal jurisdictional questions are complicated and perplexing until you acquire a basic understanding of the governing principles.

Including American Indian law on the bar exam will produce new attorneys that can spot issues and competently represent tribal and non-tribal clients in Washington. Because Native American legal issues are becoming more and more common, it is our professional responsibility to be skillfully and thoroughly aware of these issues to uphold minimum standards of competency. Also, by understanding Indian law, we will work to fulfill our aspirations to zealously advocate for all clients to the best of our ability. Furthermore, many native people continue to lack access to justice

and adding new, more knowledgeable attorneys to our ranks will work to further our duty to provide legal services to those in need.

Tim Woolsey has been a member of the WSBA since November 2002. In law school at SU he clerked for the Reservation Attorney for the Tulalip Tribes. He currently works for Homer Law, Chartered—a Washington, D.C., professional services corporation that represents tribal and non-tribal clients in Indian law matters, especially focusing on Indian gaming.

- 1 Available at: <http://www.wkgshare.com/niba/Resolution%20re%20Indian%20Law%20on%20Pacific%20NW%20Bar.pdf>.
- 2 See, Sandra Day O'Connor, *Lessons from the Third Sovereign: Indian Tribal Courts*. 33 *Tulsa L.J.* 1 (1997).
- 3 See, U.S. Const. Art. I, § 8, cl. 3; Art. II, § 2, cl. 2.
- 4 See, *Worcester v. Georgia*, 31 U.S. 515, 6 Pet. 515, 8 L. Ed. 483 (1832).
- 5 See, 25 U.S.C.A. §§ 1901-1963.

Correction

In the April 2004 edition of *WYLD*, we identified A.C. Senas as Mr. Senas. We should have referred to him as Mr. Senas. We regret the error.

Coming soon

WYLD Trustee Election Results

State Judicial Fall Elections
Are Fast Approaching
Will You Be Ready?

Indian law is crucial to this state

GABRIEL S. GALANDA

Lawyer

On Friday, another 500 citizens will successfully transition through our legal community's rite of passage – the state bar examination. The Washington State Bar Association, through authority delegated by the Washington Supreme Court, conducts the test bi-annually.

Aspiring lawyers must pass the exam, which tests, or threatens to test, 24 substantive areas of law. Bar takers must be prepared to analyze principles fundamental to the Anglo-American legal system, such as business law, family law, real property, torts and state and federal constitutional law.

The bar association tests these subjects to ensure that every attorney is competent to protect the essential legal rights of Washington citizens. However, there is an age-old, ever-evolving and increasingly prevalent body of law that is not tested.

The roots of these laws were planted throughout the Northwest long before Meriwether Lewis and William Clark discovered southern Washington in 1805. This code of law was so obviously prevalent in colonial America that the Founding Fathers wrote the framework for the law into the plain text of the U.S. Constitution.

Although inextricably woven into the fabric of our state and federal legal systems, this area of law remains missing from our state's bar exam. New Mexico recently became the first state to test this legal subject on its bar exam, and Washington should act quickly to follow that precedent. The unique blend of tribal, state and federal law is commonly known as "Indian law."

National and local governments alike – instructed by nearly two centuries of U.S. Supreme Court precedent, beginning in 1832 with *Worcester v. Georgia* – recognize Washington tribes as "distinct, independent political communities, retaining their original natural rights" in matters of local self-government. By 1886, the high court reiterated in *United States v. Kagama* that tribes are a "separate people, with the power of regulating

Litigation about the adoption of an Indian child, the probate of real property on tribal lands or an auto accident on the reservation potentially involves complex jurisdictional issues.

their internal and social relations." In the 1959 case, *Williams v. Lee*, the court made abundantly clear that tribes possess "the right . . . to make their own laws and be ruled by them."

Over the past decade, Washington tribes have exercised their inherent sovereignty to become an influential economic, legal and political force. United with corporate America, the tribes are now engaged in real estate development, banking and finance, telecommunications, wholesale and retail trade, and tourism. Consider these facts:

▶ In 2002, Washington's 21 gaming tribes generated \$648 million in revenue, contributing \$2.9 million to local government and state non-profit groups.

▶ Washington tribes employ nearly 15,000 Indian and non-Indian employees. By comparison, Microsoft employs 20,000 Washingtonians.

▶ Washington tribes occupy 3.2 million acres of land in the state.

A corollary to the dramatic rise in tribal economic development is the increased interaction of Washington tribes and non-Indians seeking business, employment or recreation on the reservation. In turn, a wide array of legal matters arises, interjecting Indian law issues into virtually every area of law.

Indian law principles underlie every business transaction involving Indians and their land. Thus, any attorney facilitating deals with tribes must have a basic understanding of Indian law. Indian lands within Washington are now being developed by Fortune 500's most powerful companies, including Walmart, AT&T, Home Depot and Bank of America.

The partnerships between Washington

tribes and such national corporations are generating billions of dollars in income and tax revenue, as well as significant employment opportunities, during downtrodden economic times. The federal circuit courts of appeals remain split regarding whether federal employment laws apply to tribal employers. The 10th and 8th circuits refuse to apply such laws as OSHA and ERISA to tribes, in deference to longstanding notions of tribal self-governance. The 9th, 7th and 2nd circuits disagree.

Until the high court resolves this conflict, Washington business and employment attorneys alike must understand precisely how Indian law affects the 15,000 state citizens working for tribes.

Indian law issues certainly are not confined to the tribal business and employment context. Litigation about the adoption of an Indian child, the probate of real property on tribal lands or an auto accident on the reservation potentially involves complex jurisdictional issues. Enforcement of a judgment in a consumer collection matter involving a tribal member or his reservation property presents procedural obstacles that do not exist under state law. A slip-and-fall case arising in a tribal casino will implicate, as a threshold issue, the unique defense of tribal sovereign immunity.

The applicability of state taxes on the sale to non-Indians of household goods at the Walmart on the Tulalip Reservation or a concert ticket at the Muckleshoot Tribe's White River Amphitheater requires a detailed reading of both taxation law and federal Indian common law. Even the development of non-Indian owned land near reservations or waterways may implicate tribal treaty-based rights.

The general practitioner or public lawyer in Washington will no doubt become involved in a case requiring an analysis of Indian law. In the best interest of Washington citizens, every lawyer licensed by the state bar association needs to understand basic Indian law. What better forum to achieve this than through the state bar exam.

Gabriel S. Galanda is chairman of the WSBA Indian Law Section and two-term president of the Northwest Indian Bar Association.

Williams, Kastner & Gibbs PLLC

A NORTHWEST LAW FIRM

Gabriel S. Galanda
Attorney at Law
(206) 628-2780
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June 28, 2004

VIA EMAIL & U.S. MAIL

Robert D. Welden
General Counsel
Washington State Bar Association
2101 4th Avenue, 4th Floor
Seattle, WA 98121

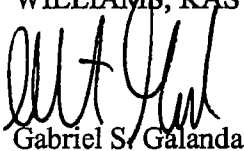
Re: WSBA Resolution
Indian Law on the Washington State Bar Examination

Dear Mr. Welden:

Per your request, enclosed please find the accompanying report to the Resolution regarding the need to have federal Indian jurisdictional issues tested on the Washington State bar examination. With the addition of the likes of King County Prosecutor Norm Maleng, whose signature page is also enclosed, a total of one-hundred twenty (120) WSBA members and bar leaders have endorsed the Resolution. Thank you once again for your time and attention to our submission.

Very truly yours,

WILLIAMS, KASTNER & GIBBS PLLC



Gabriel S. Galanda
Chair, WSBA Indian Law Section

GSG:gsg

cc via email: M. Janice Michels, WSBA Executive Director
WSBA President David W. Savage
WSBA President-Elect Ronald R. Ward
Committee of Law Examiners,
Attn: Commissioner Frank V. Slak, Jr.

This Resolution, which was endorsed by 120 WSBA members and state bar leaders, addresses the need to have federal Indian jurisdictional issues tested on our state's bar examination, as in New Mexico.¹ The goal of the Resolution is well-stated by Tim Woolsey in, "Should Indian Law Be Tested on the Washington Bar Exam?," in the June 2004 *De Novo*:

Including American Indian law on the bar exam will produce new attorneys that can spot issues and competently represent tribal and non-tribal clients in Washington. . . . [I]t is our professional responsibility to be skillfully and thoroughly aware of these issues to uphold minimum standards of competence . . . [and] to zealously advocate for all clients to the best of our ability.²

See also RPC No. 1.1 ("A lawyer shall provide competent representation to a client . . . [which] requires the legal knowledge . . . reasonably necessary for the representation.").

According to the National Conference of Bar Examiners and the ABA Section of Legal Education and Admission to the Bar:

The bar examination should test the ability of an applicant to identify legal issues . . . such as may be encountered in the practice of law, to engage in a reasoned analysis of the issues and to arrive at a logical solution by the application of fundamental legal principles . . . Its purpose is to protect the public . . .³

The ultimate objective of this Resolution is to protect the Washington public – Indian and non-Indian citizenry alike – from the unknowing or unwitting practice of Indian law.

Indian tribes are a "separate people, with the power of regulating their internal and social relations."⁴ Over the past decade, Washington's 29 federally-recognized tribes have exercised their inherent sovereignty and that regulatory authority to become an influential economic force. Consider that:

- Annually, Washington's tribes contribute \$1 billion to the State's overall economy.

¹ Other states currently considering whether to test Indian jurisdiction on the bar exam include Idaho and Oregon (which enjoy reciprocal admission with Washington), Montana and Oklahoma. See Kris Axtman, "New Status for Indian Law: It'll Be on the Bar," *Christian Science Monitor*, June 4, 2002, available at:

www.csmonitor.com/2002/0604/p03s01-usju.html; Jack McNeel, "Indian Law Practitioners Stress Importance of Land Into Trust," *Indian Country Today*, February 25, 2004 (discussing efforts of the WSBA and Idaho State Bar Indian Law Sections and the Northwest Indian Bar Association to have Indian law tested on Pacific Northwest bar exams), available at www.indiancountry.com/?1077574249.

² The entire article can be viewed at: www.wsba.org/media/publications/denovo/default1.htm; see also Lewis Kamb, "Burgeoning Field is Left Out of State's Bar Exam," *Seattle Post-Intelligencer*, October 13, 2003, available at: seattlepi.nwsource.com/local/143648_lawyerside13.html.

³ See Comprehensive Bar Admission Requirements 2004, at p. ix, available at: www.ncbex.org/pubs/pdf/2004CompGuide.pdf.

⁴ *U.S. v. Kagama*, 118 U.S. 375 (1886).

- Washington tribes currently employ nearly 15,000 Indian and non-Indian employees. By comparison, Microsoft employs 20,000 Washingtonians.⁵
- Washington tribes occupy 3.2 million acres of land in the State.⁶

A corollary to the rise in tribal economic development, is the dramatic increase in non-Indian citizens seeking business, employment and/or recreation on the reservation. In turn, a wide array of legal matters continually arise, thereby interjecting tribal jurisdictional issues into all areas of Washington law (including every subject currently tested on our bar exam).

Indian jurisdictional principles underlie every business transaction involving Indians and tribal land. With the likes of Wal-Mart, Home Depot and Bank of America now developing Washington reservations, and the resulting billions of dollars in revenue and thousands of jobs, our state's corporate lawyers must understand essential tribal jurisdiction.

What's more, Indian jurisdictional issues extend into everyday domestic and criminal matters. Litigation involving the adoption or custody of an Indian child, the probate of real property on tribal lands, an auto accident on the reservation, or a reservation-based felony or misdemeanor, may involve complex jurisdictional issues. Even a slip-and-fall case arising in a tribal casino will implicate, as a threshold issue, the unique defense of tribal sovereign immunity – a question of subject matter jurisdiction.

The general practitioner or public lawyer in Washington will no doubt encounter an Indian law case that implicates tribal jurisdiction. Indeed, the 120 WSBA members who recognize the need for our bar to understand tribal jurisdiction include civil and criminal counsel for municipal and county government, an Assistant U.S. Attorney, a State administrative law judge, counsel for local legal aid and non-profit organizations, and lawyers from virtually every sizeable law firm in the State.

Washington State bar leaders such as WSBA President Emeritus Dick Manning, King County Bar Foundation President Emeriti Dan Gandara and Steve Rovig, and King County Prosecutor Norm Maleng also signed the Resolution. The broad showing of support for the Resolution evidences that matters of Indian jurisdiction affect lawyers and clients of every type in Washington.

Our state's bar exam is, by design, the best forum to instill lawyers with knowledge reasonably necessary to ensure the protection of all Washington citizens' legal rights. To that end, the WSBA should become the second state bar to test issues of tribal jurisdiction.

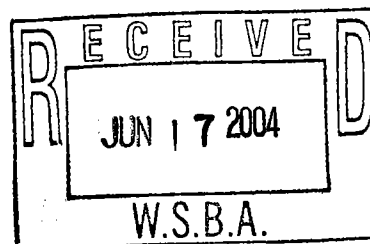
⁵ See Veronica E. Tiller and Robert E. Chase, *Economic Contributions of Indian Tribes to the State of Washington*, available at: <http://www.goia.wa.gov/econdev/index.html>

⁶ See Gabriel S. Galanda, "Indian Law is Crucial to this State," *Seattle Post-Intelligencer*, October 13, 2003, available at: seattlepi.nwsource.com/opinion/142764_indianlaw07.html

June 17, 2004

HAND DELIVERED

M. Janice Michels
Executive Director
Washington State Bar Association
2101 4th Avenue, 4th Floor
Seattle, WA 98121



Re: WSBA Resolution
Indian Law on the Washington State Bar Examination

Dear Ms. Michels:

Pursuant to Section F of WSBA Bylaw Article VII, we, the one-hundred fifteen (115) WSBA members who support and have signed the enclosed Resolution regarding the need to have federal Indian jurisdictional issues tested on the Washington State bar examination, hereby present that resolution to the WSBA Board of Governors for its consideration at the WSBA's annual business meeting on September 16, 2004.

The enclosed *Seattle Post-Intelligencer* article, "Indian Law is Crucial to this State," and feature in this month's *De Novo*, "Should Indian Law Be Tested on the Washington Bar Exam?" provide the required written explanation of the Resolution's purpose. The goal of the Resolution is well-pronounced in the *De Novo* piece:

Including American Indian law on the bar exam will produce new attorneys that can spot [critical jurisdictional] issues and competently represent tribal and non-tribal clients in Washington. . . . [I]t is our professional responsibility to be skillfully and thoroughly aware of these issues to uphold minimum standards of competence . . . [and] to zealously advocate for all clients to the best of our ability.

Additional information about the intent of the Resolution – i.e., to enhance the integrity and competence of the legal profession in Washington – is included in the WSBA Indian Law Section and Northwest Indian Bar Association's joint submission to the Board of Governors and Committee of Bar Examiners, dated February 27, 2004, which is also enclosed herewith.

Please note that the one-hundred fifteen (115) WSBA members who recognize the need for our bar to better understand pertinent Indian jurisdictional principles, include, e.g., civil and criminal counsel for municipal and county government, a U.S. Attorney, a State administrative law judge, Tribal court judges and justices, law school and undergraduate professors, counsel for local legal aid and non-profit organizations, and lawyers from virtually every sizeable law firm in the State.

M. Janice Michels

June 17, 2004

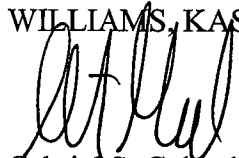
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Washington State bar leaders such as WSBA President Emeritus Dick Manning, and King County Bar Foundation President Dan Gandara and President Emeritus Steve Rovig, have also joined in support of the Resolution. The broad showing of support for the Resolution from various factions and interest groups in our bar, evidences that matters of Indian jurisdiction intersect every area of practice in Washington and potentially affect all citizens of our state, Indian and non-Indian alike.

We look forward to the Board of Governors' consideration of this Resolution at the WSBA's annual business meeting in September, and to continuing the dialogue on the matter within our bar in the interim. Thank you for your time and attention to this submission.

Very truly yours,

WILLIAMS, KASTNER & GIBBS PLLC



Gabriel S. Galanda

Chair, WSBA Indian Law Section

GSG:gsg

cc: WSBA President David W. Savage
WSBA President-Elect Ronald R. Ward
Robert D. Welden, WSBA General Counsel
Committee of Law Examiners,
Attn: Commissioner Frank V. Slak, Jr.

