



Chair
Lauren J. King

Chair-Elect
Claire Ross Newman

Secretary/Treasurer
Diana Bob

**Immediate Past
Chair**
Aubrey Seffemick

Trustees
Ryan Dreveskracht
Rebecca Jackson
Connie Sue Martin
Robin McPherson
Lauren Rasmussen
Michael Rossotto
Rachel Saimons
Lauren Sancken
Jane Steadman

Newsletter Editor
Anthony Broadman

BOG Liaison
Kim Risenmay

Young Lawyer Liaison
Greg Touchton

TO: WSBA Board of Governors

FROM: WSBA Indian Law Section – Executive Committee

DATE: July 20, 2016

SUBJECT: Proposed WSBA Policy re Religious Practices at WSBA events, including Indian Law Section events

Dear WSBA Board of Governors:

The Indian Law Section’s Board of Governors liaison, Kim Risenmay, recently informed us that the Board of Governors is considering two alternative policies at its upcoming meeting in Walla Walla: (1) prohibit any religious practice at any WSBA event, including any meetings or CLEs by WSBA Sections; or (2) allow limited religious practices at WSBA events under some fairly strict guidelines. The Executive Committee of the Washington State Bar Association’s (“WSBA”) Indian Law Section (“ILS”) strongly urges the WSBA Board of Governors not to prohibit religious practices at CLEs by WSBA Sections.

At the Indian Law Section’s annual CLE, a representative from a tribal community typically performs an opening blessing. This practice is traditional in tribal communities—the communities with whom practitioners of Indian law interact on a regular basis.

Indeed, the practice is so ingrained in tribal practice that tribal, state, and federal governments and governmental organizations have included traditional blessings in their protocols for meeting with tribal governments.

The National Congress of American Indians opens each resolution with the following phrase:

[W]e, 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.

NCAI Resolution Template (2016), <http://www.ncai.org/resources/resolutions-home> (emphasis added.)

At a field hearing in 2010 before the Senate Committee on Indian Affairs, the Chairman of the Committee of Indian Affairs respectfully and appropriately “call[ed] on the President of the Affiliated Tribes of the Northwest Indians from Portland, Oregon, Brian Cladoosby, to offer an opening prayer.” *See* Opening Statement of Chairman Dorgan (Aug. 10, 2010), available at <https://www.gpo.gov/fdsys/pkg/CHRG-111shrg63343/html/CHRG-111shrg63343.htm>.

In its Protocol Guidelines for Consulting with Indian Tribal Governments, the Bureau of Reclamation Native American and International Affairs Office states:

Prayers or Blessings Before the Beginning of Meetings. When hosting a meeting, many tribes will offer prayers or blessings at the initiation or conclusion of a meeting. These invocations may be handled in a variety of ways, depending upon the cultural traditions of the tribe. Frequently, a tribe will have an elder or spiritual leader bless the meeting with a prayer or traditional song, usually in the tribe’s language. **Showing respect for the tribe’s beliefs and practices, through appropriate behavior, is important for establishing trust and maintaining goodwill.**

Protocol, pp. 15-16 (Sept. 21, 2012), http://www.usbr.gov/native/policy/protocol_guidelines.pdf (emphasis added). The Washington State School Directors’ Association has published guidelines for “school district leaders seek[ing] to establish government-to-government relations with neighboring Tribal nations.” These guidelines state as follows:

Prayers/Blessings. It is often customary for Tribes to offer a prayer or blessing at the beginning or conclusion of a meeting. While the practice will vary from Tribe to Tribe, the blessing will be offered by an elder or spiritual leader, sometimes in song, and usually in the Tribe’s language. As with all such observances, **it is important to show respect for the blessing through appropriate behavior.**

Protocol Considerations, http://www.wssda.org/Portals/0/Documents/05thc_toolkit_protocol.pdf (emphasis added).

It is important for all entities and individuals, including lawyers, to understand this traditional tribal practice and treat it with respect. Incorporating a blessing at our CLE shows respect to tribal communities and the lawyers who work with them. It also introduces young practitioners to this traditional practice.

Blessings should be permitted at Indian Law Section CLEs for several reasons:

1. First, an outright ban on any religious practices at WSBA events is inconsistent with one of WSBA's published "Guiding Principles," which promotes "diversity, equality, and cultural understanding throughout the legal community." It is inappropriate for WSBA to claim intent to promote diversity and cultural understanding as one of its Guiding Principles, and to then forbid the Indian Law Section from practices that are an inherent and normal part of Native American culture. Furthermore, a policy banning such practices echoes the federal prohibition against Indian religious practices beginning in 1892 which lasted nearly a century and was supported by state-level persecution. In fact, Indian religious freedom was not legally guaranteed until the enactment of the American Indian Religious Freedom Act in 1978. 42 U.S.C. § 1996 *et seq.* As a result, it is particularly important that Indian cultural and religious traditions be recognized, and not muted or banned.
2. Second, barring the Indian Law Section from conducting its meetings in accordance with Native American culture is inappropriate because it effectively precludes full study and appreciation of Indian Law. As emphasized above, it is a common practice to open and close meetings with a prayer or short ceremony. To the extent such blessing or ceremony is viewed as a religious practice, it is well-established that the reference of religion in an educational environment does not automatically violate the Establishment Clause. For example, the Supreme Court has held that the Establishment Clause permits a state legislature to open its daily session with a prayer given by a chaplain paid by the State. Such a practice, the Supreme Court thought, was "deeply embedded in the history and tradition of this country." *Van Orden v. Perry*, 545 U.S. 677, 688 (2005) (quoting *Marsh v. Chambers*, 463 U.S. 783, 786, 792 (1983)).

Indeed, Courts have long emphasized the importance of academic freedom in deciding the appropriate curriculum in educational environments. *See Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970, n. 23 (9th Cir. 2011) ("The Establishment Clause does not wholly preclude the government from referencing religion ... Not only would such a drastic and draconian requirement raise substantial difficulties as to what might be left to talk about, but ... it would require that we ignore much of our own history and that of the world in general ... For instance, one could not discuss Egyptian pyramids, Greek philosophers, the Crusades, or the Mayflower if even incidental or colloquial references to objects or individuals of religious significance were constitutionally taboo."); *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1377 (9th Cir. 1994) (Court decided that it need not determine which religious rituals can be employed in public school curriculum, but noted that "having children act out a ceremonial American Indian dance for the purpose of exploring and learning about American Indian culture may be permissible even if the dance was [a] religious ritual. Similarly, a reenactment of the Last Supper or a Passover dinner might be permissible if presented for historical or cultural purposes.").

3. Third, recent world events, both in the United States and abroad, show an increasing level of hatred and violence prompted by a lack of understanding of other cultures. Such culture-based discrimination fosters hatred and violence within our country rather than the understanding and tolerance intended by our First Amendment protections. Learning about others' cultures and traditions is the best way to defuse such problems, especially where the individuals learning about the culture are devoting their careers to working with that culture. Witnessing traditional practices such as opening blessings is a critically important way for practitioners to understand the practices of the tribal communities they work with, even though those practitioners do not adopt those traditions into their own lives.

It is important to provide Indian Law practitioners with examples of how to respectfully and appropriately engage with tribal communities. Opening our CLE with a traditional Native American blessing demonstrates a protocol that has already been incorporated into governmental guidelines and policies regarding interacting with tribal governments. It also shows respect to the tribal communities who are the subject of the practice of Indian Law. It would be counterproductive if the WSBA prohibited traditional Native American practices at CLEs that are intended to improve practitioners' abilities to interact with Native American communities. Moreover, it is possible that Section members and other attorneys would decline attending the Indian Law Section's CLEs *because of* WSBA's policy that they perceive to be rejecting their heritage and the important role of Native tradition in their legal practice.

Therefore, the Indian Law Section urges the WSBA not to enact an outright ban on all religious practices. Instead, the WSBA should permit short blessings or ceremonies relevant to the practice area, as in the case of Native American blessings at an Indian Law CLE. Attendees of such events should be informed that the blessing is not part of the CLE and that they are not required to be present for the blessing to obtain CLE credit.

Sincerely,

The Executive Committee of the Indian Law Section