

Minutes from ISB Indian Law Section held on May 1, 2020 at noon MT.

Chairperson Julie Kane called the meeting to order. Talked about each listener calling their ISB numbers into Dayna Ferrero for CLE credit. Dayna's email was on the screen, but was read to the listeners who were not on video.

Kane noted that there She fist requested that we approve the minutes of the December 6, 2019 Indian Law Section meeting. She described the minutes as being an email to Dayna Ferrero listing the CLE attendees and describing the presentation by David Risley, who spoke on the topic of cyber security. The email had attachments of Risley's hand outs on 1) data intrusion and notices of intrusion; 2) ransomware; and 3) insurance coverage.

Motion: Shanna Knight; Second: Valerie Phillips to approve the December 6, 2019 minutes. The attendees all voted in support, the motion was carried.

Kane then spoke about the proposed FY 2020 budget submitted by Treasurer Peter Smith. The total budget is \$7,286.00.

Motion: Regina Hovet; Second: Billy Barquin to approve the FY 2020 Indian Law Section budget of \$7,286.00. Motion carried with no "no" votes.

Kane asked if anyone had any "Old Business" to discuss. No one did. Then, she moved into "New Business" and reminded folks about the ISB Annual meeting, which was, as far as she knew, still scheduled for July 22-24, 2020 at Fort Hall, Idaho; and that Jason Brown, an Indian Law Section member, would be a presenter at the conference. Courtney from ISB was unsure whether the Annual Meeting was still on, but pledged to get that information for us.

Kane then requested that, on behalf of U of Idaho College of Law Indian Law Professor Dylan Heddon-Nicely, the members consider a request to contribute to the "National Virtual Indigenous Law Graduation" to be held on May 29, 2020. More information is available at: <https://www.indigenoulawgraduation.com>.

Billy Barquin commented that he thought it was a good idea for our section to support such and event, and since U of Idaho was contributing \$500, the Indian Law Section should contribute \$500. There was a question asking for more information at which time Kane provided the website address.

Motion: Billy Barquin; Second: Dennis Voorhees to authorize the Indian Law Section to contribute \$500 to the "National Virtual Indigenous Law Graduation". Motion carried with no "no" votes.

Kane then introduced Traci Whelan, Assistant U. S. Attorney for the District of Idaho, for her CLE presentation titled "Practical Realities of Criminal Enforcement in Indian Country". (outline attached).

Ms. Whelan spoke about how tribal police officers are not considered Idaho “peace officers” under Idaho statutes. She also noted that at least the Kootenai and Nez Perce Tribes also had statutes preventing Idaho police officers from being recognized as tribal officers within their reservations. She explained that this clearly causes jurisdictional problems when there are crimes committed by non-Indians within the reservation and tribal officers are unable to arrest them. Another problem arises when a tribal member commits a crime and the first responder is a state deputy, who likewise would be unable to arrest.

She spoke about the practical impacts of these jurisdictional gaps and suggested that one way around the problem is a cross-deputization or mutual aid agreement. Ms. Whelan asked Billy Barquin to describe the situation on the Kootenai reservation. Billy stated that tribal officers are cross-deputized with the County Sheriff, with the Border Patrol and with the Forest Service. And, all of those officers are cross-deputized by the Tribe, so everyone works together. He said they are very close to having a kind of universal agreement where any of these entities would have jurisdiction throughout the area.

Ms. Whelan asked Bill Bacon, counsel for the Shoshone-Bannock Tribe whether they had tribal police or whether they relied on the BIA (Bureau of Indian Affairs) for law enforcement. Mr. Bacon confirmed that the Shoshone-Bannock Tribes have contracted law enforcement services from the BIA. Regina Hovet noted that the Shoshoni-Paiute at Duck Valley have BIA, rather than tribal police. Ms. Whelan talked about SLEC’s which are Special Law Enforcement Commissions, which tribal officers can apply to obtain, but not all officers can get an SLEC. Getting an SLEC allows the officer to cite Indians and non-Indians for federal offenses.

Ms. Whelan talked about the recent Missing and Murdered Indigenous Women (MMIW) movement. She said that Idaho has recognized May 5 as being MMIW day as acknowledgement that there has been a gap in reporting missing persons, and in following up on reports of missing persons on reservations. She expressed that this is a real problem and the U.S. Attorney’s Office is working hard to address the issue along with the State and Tribes. She mentioned that the fact that FBI agents assigned to certain reservation areas now get moved to other locations on a two-to-three year basis so that lack of continuity may contribute to the problem.

Billy Barquin commented that the Kootenai Tribe has citizens who are Canadian residents, Montana residents and Idaho residents, so their laws do not distinguish between Canadian-recognized tribes and federally-recognized tribes in terms of exercising jurisdiction over them. However, they are cognizant of State and federal statutes not applying the same way.

Ms. Whelan finished by describing what she would like to do, if she had more time and more funding. She would like to work on the underlying social issues leading to a person committing crimes; she would like to speak to kids; work more with “healing”, and do more listening. She really likes the Special Assistant U.S. Attorney (SAUSA) program and would like to promote that as a good way to address less severe federal crimes on the reservation.

After Ms. Whelan's presentation, Teresa Baker spoke about the ISB Annual Meeting in Fort Hall likely being postponed to next year. She said the Board would be meeting next week and may decide to offer the scheduled presentations (CLE's) virtually in July, so attorneys could view them on-line and get credit that way. They will know more after next week.

Kane then noted that the next Indian Law Section conference call will be Friday, June 5, 2020 at noon Mountain Time and Dylan Heddon-Nicely would be presenting a ½ hour CLE on the CSRBA, the water adjudication in the Coeur d'Alene River Sub-basin. Then, the conference call ended right at about the one hour mark.