

Indian Law Section

Minutes

November 6, 2020, Section Meeting and CLE

Attendees: Julie Kane
Valerie Phillips
Pat Costello
Billy Barquin
Natalie Camacho Mendoza
Dennis Vorhees
Jason Brown

Chairman Julie Kane called the meeting to order at 12:06 p.m. MT. Kane asked for approval of the minutes from last months' meeting on October 2, 2020. Pat Costello moved, and William Barquin seconded a motion to approve the October 2, 2020, minutes. The motion passed.

There was a discussion about the Chairman of the Child Protection Section, Galen Carlson's request that the Indian Law Section join them to sponsor an issue of the Advocate. Costello commented that he thought it was a good idea. Camacho Mendoza also felt that the Indian Law Section should join forces on sponsoring an issue of the Advocate. Kane commented that she had spoken with Shanna Knight earlier about a possible ICWA article and that she was open to writing an article for the Advocate. Brandelle Whitworth's name was also mentioned as a potential author. So, if the Section could get at least one and possible two others to draft articles, it would work. By consensus the Section gave Kane the go ahead to move forward with a joint sponsorship.

Kane then brought up the issue of electing officers for the Section. Kane explained that she was really having a difficult time recruiting someone to step up to volunteer for the Chairman positions. Valerie Phillips stated that she would like to be involved in some way, but she was all the way over in Illinois so it would be hard for her to set up Section meetings and to recruit CLE presenters from there. She said she would be willing to help. Kane suggested that perhaps she could start out being the Secretary or Treasurer and as she became more familiar with Section members, she could consider more. Costello and Camacho Mendoza also volunteered to help. Costello said he could be part of a "search committee" or a "nominations committee" to try to reach out to people we think would make good officers. He suggested that we talk after the meeting.

Under New Business, Costello asked if the Section could contribute to the Access to Justice Project. Since Kane wasn't sure about the exact budget, she was hesitant to commit. Costello volunteered to reach out to Peter Smith, the Section Treasurer, to see what our Section budget is for this year to determine if and how much of a contribution the Section could make. All were favorable toward some kind of contribution once we knew the budget amount. Camacho Mendoza suggested that we do the motion/second via email, once we have the information.

Kane launched into her presentation titled "The History of the Voting Experience for Indian People". She went through her power point presentation (attached). Barquin commented about his father, as a younger Indian man, feeling like he did not want to participate in state and federal elections. He also commented that some Tribes in Canada have treaty provisions forbidding them to vote in national elections.

After the CLE concluded at about 12:50 p.m. Kane, Costello, and Camacho Mendoza talked about developing a recruitment plan for new officers for the Indian Law Section. Costello felt that he could serve as Vice-Chairman, but that this group should try to find someone energetic and with enough extra time in their day to take on the Chairman responsibilities. They pledged to stay in touch.

The meeting concluded at 1:00 p.m.

THE HISTORY OF THE VOTING EXPERIENCE

FOR

INDIAN PEOPLE

JULIE KANE, MANAGING ATTORNEY

NEZ PERCE TRIBE

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THE CONSTITUTION OF THE UNITED STATES OF AMERICA

“REPRESENTATIVES AND DIRECT TAXES SHALL BE APPORTIONED AMONG THE SEVERAL STATES...ACCORDING TO THEIR RESPECTIVE NUMBERS, WHICH SHALL BE DETERMINED BY ADDING TO THE WHOLE NUMBER OF FREE PERSONS, INCLUDING THOSE BOUND TO SERVICE FOR A TERM OF YEARS, **AND EXCLUDING INDIANS NOT TAXED**, THREE-FIFTHS OF ALL OTHER PERSONS.” ARTICLE I, SECTION 2 (SEPTEMBER 17, 1787)

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THE CONSTITUTION OF THE UNITED STATES OF AMERICA

- REPRESENTATIVES AND DIRECT TAXES SHALL BE APPORTIONED AMONG THE SEVERAL STATES ACCORDING TO THEIR RESPECTIVE NUMBERS, ~~WHICH SHALL BE DETERMINED BY ADDING TO COUNTING~~ THE WHOLE NUMBER OF FREE PERSONS, ~~INCLUDING THOSE BOUND TO SERVICE FOR A TERM OF YEARS, AND IN EACH STATE, EXCLUDING INDIANS NOT TAXED,~~ THREE-FIFTHS OF ALL OTHER PERSONS. AMENDMENT XIV, SECTION 2 (JULY 9, 1868)

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FOURTEENTH AMENDMENT

ALSO MADE STATE CITIZENSHIP DERIVATIVE OF NATIONAL CITIZENSHIP (SO INDIANS BORN IN THE U.S. WERE ALSO BORN AS CITIZENS OF THEIR STATES.)

*INDIANS ARE ALSO MEMBERS OF THEIR TRIBE, WHICH ARE POLITICAL BODIES.

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INDIAN NATURALIZATION ACT OF 1890

GRANTED CITIZENSHIP TO NATIVE AMERICANS THROUGH AN APPLICATION PROCESS

TARGETED TO INDIANS IN "INDIAN TERRITORY", APPLICATION TO FEDERAL COURTS

ALLOWED FOR DUAL CITIZENSHIP

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INDIAN CITIZENSHIP ACT OF 1924

THE FOLLOWING SHALL BE NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH:

A PERSON BORN IN THE UNITED STATES TO A MEMBER OF AN INDIAN, ESKIMO, ALEUTIAN, OR OTHER ABORIGINAL TRIBE: PROVIDED, THAT THE GRANTING OF CITIZENSHIP UNDER THIS SUBSECTION SHALL NOT IN ANY MANNER IMPAIR OR OTHERWISE AFFECT THE RIGHT OF SUCH PERSON TO TRIBAL OR OTHER PROPERTY;

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WOMEN'S SUFFRAGE

- 1896 -IDAHO BECAME THE FOURTH STATE (BEHIND WYOMING, COLORADO AND UTAH) TO EXTEND SUFFRAGE TO WOMEN
- AFTER MANY ATTEMPTS, STARTING IN 1869 (WHEN WYOMING EXTENDING VOTING RIGHTS TO WOMEN, ADVOCATES CONTINUED TO TRY TO KEEP SUFFRAGE ON THE BALLOT, UNTIL IT FINALLY PASSED IN 1896, 24 YEARS BEFORE THE NINETEENTH AMENDMENT PASSED.

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THIS 1924 ACT EFFECTIVELY EXCLUDED THE WORDS "INDIANS NOT TAXED" IN DEFINING PERSONS WHO WERE ENTITLED TO THE RIGHTS OF CITIZENS

- HOWEVER, SOME STATES, INCLUDING IDAHO, CONTINUED TO EXCLUDE INDIANS FROM PARTICIPATING IN THE POLITICAL PROCESS.
- IT WASN'T UNTIL 1950 THAT IDAHO AMENDED THEIR CONSTITUTION TO ALLOW INDIANS TO HOLD PUBLIC OFFICE, SERVE AS JURORS AND VOTE.

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STATES STARTED FALLING IN LINE AFTER WORLD WAR II WHEN INDIAN SOLDIERS RETURNED FROM WAR AND WERE DENIED THE RIGHT TO VOTE.

- *HARRISON V. LAVEEN*, 196 P.2D 456 (ARIZ. 1948). TWO MOJAVE-APACHE TRIBAL MEMBERS, RESIDING ON THE RESERVATION, FILED SUIT TO COMPEL THE STATE OF ARIZONA TO REGISTER THEM TO VOTE.
- THE ARIZONA SUPREME COURT, FINDING THAT THE U.S. IS NOT THE "GUARDIAN" OF ENROLLED INDIANS IN THE TRADITIONAL SENSE, FOUND THAT THEY HAD A RIGHT TO VOTE:

"IN A DEMOCRACY, SUFFRAGE IS THE MOST BASIC CIVIL RIGHT, SINCE ITS EXERCISE IS THE CHIEF MEANS WHEREBY OTHER RIGHTS MAY BE SAFEGUARDED. TO DENY THE RIGHT TO VOTE...IS TO DO VIOLENCE TO THE PRINCIPLES OF FREEDOM AND EQUALITY."

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EVEN THOUGH NATIVE VOTING RIGHTS WERE LEGALLY UPHELD, DISCRIMINATION CONTINUED

- IMPACTS OF DISCRIMINATION ARE:
 - DISTRUST OF STATE OFFICIALS
 - UNWILLINGNESS TO COMPLY WITH IMPOSED PROCEDURES FOR REGISTERING
 - DEFIANCE OF THE VOTING PROCESS
 - FEELING THAT INDIVIDUAL INDIANS HAVE NO STAKE IN THE SYSTEM

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INDIAN VOTING RIGHTS CONTINUE TO BE CHALLENGED

- LACK OF A TRADITIONAL ADDRESS
- LACK OF POLLING PLACES
- LACK OF STRUCTURE FOR EARLY VOTING
- INACCURATE INFORMATION FROM POLL WORKERS
- UNDOCUMENTED ALLEGATIONS OF VOTER FRAUD WHEN CIVIL RIGHTS GROUPS ORGANIZED TO TRANSPORT INDIVIDUALS TO THE POLLS
- MAYBE LACK OF BLUE USPS MAIL REPOSITORIES?
- GERRYMANDERING

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IN THE 1990'S TRIBES BECAME MORE ORGANIZED AND ACTIVE IN CIVIC AFFAIRS

- TRIBAL GAMING WAS STARTING TO IMPACT GENERATIONAL POVERTY
- TRIBAL ACTIVISM INCREASED
- ENVIRONMENTAL AND ECONOMIC INTERESTS WERE AT THE FOREFRONT
- IT BECAME MORE NECESSARY TO ENGAGE STATE AND FEDERAL PARTNERS
- TRIBAL GOVERNMENTS ENCOURAGED ITS MEMBERS TO REGISTER TO VOTE

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FOR EXAMPLE

- IN THE LATE 1990'S TRIBES ORGANIZED A POLITICAL ACTION COMMITTEE CALLED "FIRST AMERICAN EDUCATION PROJECT" TARGETING U.S. SENATOR FROM WASHINGTON, SLADE GORTON, WHO WAS DEEMED BY NCAI AS "PUBLIC ENEMY #1"
- GORTON LOST THE 2000 ELECTION TO DEMOCRAT MARIA CANTWELL BY LESS THAN 1% OF THE VOTE.
- THIS WAS AN EXAMPLE OF TRIBES HAVING A DIRECT IMPACT ON ELECTED LEADERS WHO WERE MAKING DECISIONS CONTRARY TO TRIBAL INTERESTS.

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CIVIC ACTION BY TRIBES

- IS NOT ONLY HELPING TRIBES GUIDE ELECTED OFFICIALS/POLICY MAKERS; BUT ALSO
- STRENGTHENS DEMOCRACY IN GENERAL
- A TRUE DEMOCRACY DOES NOT DISENFRANCHISE CERTAIN VOTERS VIA RE-DISTRICTING, WITHHOLDING VOTING INFORMATION, AND OTHER UNETHICAL ACTIONS
- A TRUE DEMOCRACY INVITES ALL CITIZENS, INCLUDING INDIGENOUS VOTERS, TO THE DECISION-MAKING TABLE

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FINAL MESSAGE

- VOTE!
- ENCOURAGE YOUR FRIENDS AND FAMILY TO VOTE

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