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## Welcome from the Chair of the Indian Law Section

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# Welcome from the Chair of the Indian Law Section

Dylan R. Hedden-Nicely

On behalf of the Indian Law Section of the Idaho State Bar, welcome to the September edition of *The Advocate*. It has been my honor to serve on the Board of the Indian Law Section for the last five years; first as Vice-Chair and for the last two years as Chair of the section. I am privileged to have the opportunity to work with Vice-Chair Jason Brown and Secretary/Treasurer Peter Smith; as well as with several outstanding staff at the Idaho State Bar including Diane Minnich, Mahmood Sheikh, and Dayna Ferrero. Thank you to everyone for their support of the Indian Law Section.

The Indian Law Section is small but active. It is diverse in both composition and geography. Our members represent Indian tribal governments, agencies, and people; state and federal governments; as well as non-profit organizations and private industries that work within Indian Country. Geographically, our members reside throughout the Western United States but are principally located on or near one of the approximately ten Indian reservations in or near the borders of the State of Idaho.

The Indian Law Section last sponsored an edition of *The Advocate* in October 2016, on the eve of our last presidential election. In his welcome message of that edition, my predecessor and friend Helo Hancock

noted “[t]he timing of this edition of *The Advocate* is an interesting one . . . The nation is at a veritable crossroad. There are two distinct choices before the electorate for President of the United States and it is clear that either selection will take our country down a new and uncharted path.”

Much has indeed changed in Indian Country over the past two years. From Bears Ears National Monument to the Standing Rock Reservation, the change in administration has had a strong impact in Indian Country. There has been a substantial change in how the executive branch views its trust responsibility toward Indian tribes. That trust responsibility, and the fallout when it is not honored, is explored by two of our authors, Ritchie Eppink and David DeRoin. In their article, they discuss their experience at the Standing Rock Reservation where they defended protestors of the Dakota Access Pipeline.

Other administrative efforts have been more positive for Indian Country. One example is the long-overdue regulations by the Bureau of Indian Affairs regarding the Indian Child Welfare Act.<sup>1</sup> Although not part of this edition, Professor Elizabeth Brandt will provide an overview of those regulations, which will be available in a forthcoming edition of *The Advocate*.

Indian tribes have also been active in the courtroom over the past

two years. Since October 2016, the Supreme Court has twice taken up the question of tribal sovereign immunity; first, in *Lewis v. Clarke*<sup>2</sup> and again, in *Upper Skagit Indian Tribe v. Lundgren*.<sup>3</sup> The Supreme Court also affirmed (4-4) the Ninth Circuit’s decision in *United States v. Washington*, which held that the State of Washington’s installation of barrier culverts on salmon and steelhead bearing streams violated a number of treaties that reserved the right to fish at usual and accustomed places.<sup>4</sup>

Closer to home, the Idaho Supreme Court has heard two major cases involving Indian tribes since 2016. Most recently, the Court decided *Idaho v. George*, affirming the decision of the district court that it lacked criminal jurisdiction over a defendant of Indian descent, who—although not an enrolled citizen—was widely recognized to be a member of the Coeur d’Alene tribal community.<sup>5</sup>

The Idaho Supreme Court has likewise provided guidance on the Idaho judiciary’s responsibility to recognize tribal court judgments in a recent case entitled *Coeur d’Alene Tribe v. Johnson*.<sup>6</sup> The Idaho Supreme Court’s decision recognizing that tribal court judgments are entitled to comity in Idaho courts is a significant milestone in the relationship between the State of Idaho and the tribes of the Northwest. Peter Smith and Jillian Caires of Smith + Malek

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— attorneys for the Coeur d’Alene Tribe in that case — have written an article to explain the *Johnson* case and its effect in our state.

Finally, strides continue to be taken to encourage Native Americans to join the legal profession and to educate legal practitioners regarding the complex field of federal Indian law. For the last ten years, the University of Idaho has been at the forefront of this effort. In celebration of that milestone, I have written an article regarding the University of Idaho’s Native American Law Program. That article describes the program as well as its accomplishments over the past decade, and its continued relevance and evolution. It represents a celebration of the next generation of advocates in our State and region.

Despite the uncertainty on the national level, there is much to be excited about in Indian Country. Indian tribes are quietly building their homelands, their enterprises,

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and their relationships with outside businesses, states, agencies, and non-Indian stakeholders. Native people are stepping into the fore and taking their place on the political stage. Here, in Idaho, we have a gubernatorial candidate who would be the first female Native American governor in the history of the nation. The world continues to turn in Indian Country, and as the articles enclosed in this edition demonstrate, the laws surrounding the relationship between

states, tribes, and the federal government continue to evolve.

#### Endnotes

1. 25 C.F.R. § 23 (2017).
2. 137 S.Ct. 1285 (2017).
3. 138 S.Ct. 1649 (2018).
4. 853 F.3d 946 (9th Cir. 2017), *Aff’d*, 138 S.Ct. 1832 (2018).
5. The opinion is available at: <https://www.isc.idaho.gov/opinions/45196.pdf> (last visited August 16, 2018).
6. 162 Idaho 754 (2017).

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