



Special Prosecutor of the Navajo Nation Draft Report

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I. CORRUPTION MAKES ECONOMIC DEVELOPMENT MORE DIFFICULT

II. CASE STATUS

The Special Division of the Window Rock District Court appointed The Rothstein Law Firm to serve as the Special Prosecutor for the Navajo Nation to investigate and prosecute crimes by Navajo Nation officials involving:

1. OnSat or E-rate;
2. BCBS or the Dine' Development Corp.
3. Tribal Ranch Program;
4. Financial Assistance Program; or
5. Office of the Controller Accounting Practices

A. Criminal Cases

- 140 criminal complaints against 16 Council Delegates and two Navajo Nation employees for misuse of the Financial Assistance Program
- Thirteen former Council Delegates have been convicted of crimes as a result of guilty or no contest pleas
- Defendants charged with misusing Navajo Nation Financial Assistance money by paying the family of the Council Delegates
- Charges for bribery, false voucher, abuse of office, and conspiracy
- Guilty plea or plea of no contest included detailed explanations of how the Defendant misused the Financial Assistance Program
- Sentencing will be determined after pending criminal complaints are resolved
- 140 complaints allege criminal violations involving misuse of \$843,535 of Navajo Nation funds. Criminal complaints against former Council Delegates Hoskie Kee and Young Jeff Tom, Sr. and Council Delegate Mel R. Begay are awaiting trial

Criminal Complaints

Window Rock District Court

RESPONDENT	STATUS
Ernest D. Yazzie, Jr.	Guilty Plea
David L. Tom	No Contest Plea
Victoria Cecil	Guilty Plea
Leonard Teller	Guilty Plea
Raymond Joe	Guilty Plea
Harry J. Willeto	Guilty Plea
Jack Colorado	No Contest Plea
Harry Williams, Sr.	Guilty Plea
Harry Clark	No Contest Plea
Orlanda Smith Hodge	Guilty Plea
Laura Calvin	No Contest Plea
Lena Manheimer	No Contest Plea
George Arthur	Guilty Plea
Johnny Naize	Guilty Plea
Lawrence T. Morgan	Guilty Plea
Mel Begay	Pending

Dilkon District Court

RESPONDENT	STATUS
Hoskie Kee	Pending
Young Jeff Tom, Sr.	Pending

B. Ethics Cases

- Complaints against twelve current or former Council Delegates alleging violations of the Navajo Nation Ethics in Government Act
- Navajo Nation Office of Hearings and Appeals
- Council Delegates used the Financial Assistance Program to directly benefit the Council Delegates' immediate family in violation of the Ethics in Government Law
- Twelve Ethics Complaints have been adjudicated
- Council Delegates misused a total of \$271,573
- Ten former Council Delegates found to have violated the Ethics laws
- One Ethics complaint was dismissed, one Ethics complaint was settled
- Restitution amounts not yet determined

Ethics Complaints

Office of Hearings and Appeals

RESPONDENT	CASE NO.	STATUS
Omer Begay, Jr.	OHA-ER-SP-001-13	Plead
Raymond Berchman	OHA-ER-SP-002-13	Plead
Edward V. Jim, Sr.	OHA-ER-SP-003-13	Plead
Harriet Becenti	OHA-ER-SP-004-13	Dismissed
Willie Begay	OHA-ER-SP-005-13	Plead
Nelson Begaye	OHA-ER-SP-006-13	Settled
Alice White Benally	OHA-ER-SP-007-13	Plead
Roy Dempsey	OHA-ER-SP-008-13	Plead
Harry Hubbard	OHA-ER-SP-009-13	Plead
Roy Laughter	OHA-ER-SP-010-13	Plead
Woody Lee	OHA-ER-SP-011-13	Plead
David Shondee	OHA-ER-SP-012-13	Plead

III. HOW WERE CRIMES COMMITTED

A. Direct payment to member of Council Delegate's household

B. Bribery – favor for a favor:

[Excerpt from Ernest Yazzie Conspiracy Complaint]

18. An example of the conspiracy to commit bribery took place on July 17, 2007. On that date, Defendant Yazzie provided \$5,000 in Financial Assistance funds in three authorizations to Council Delegate David Tom's wife and two of his children. In return for that money, Council Delegate David Tom authorized a sum of \$5,000 that was divided between Defendant Yazzie's three minor children. The following chart details these illegal transactions:

Ernest Yazzie's payment to David Tom's Family				David Tom's payment to Ernest Yazzie's Family			
Request Date	To	For	Amount	Request Date	To	For	Amount
7/17/2007	Seve Tom	illegible	\$1,000	7/17/2007	ELY (D.O.B. 10/24/1996)	Medical bills, school clothes, and supplies	\$1,500
7/17/2007	CDT (D.O.B. 08/22/1990)	Pay for dental work	\$2,000	7/17/2007	EDY (D.O.B. 08/18/1994)	Traditional ceremony, school clothing & supplies	\$1,500
7/17/2007	Carolyn Tom	Pay medical bills, insurance	\$2,000	7/17/2007	EZY (D.O.B. 08/16/1989)	Financial Assistance for tuition fees, books, apartment	\$2,000
		TOTAL	\$5,000			TOTAL	\$5,000

23. As a result of this conspiracy, the Defendant Yazzie's immediate family received over \$99,000 in Financial Assistance funds from Council Delegate David Tom alone. The breakdown by family member is as follows:

A. Defendant Yazzie's son (EZY)	\$41,225
B. Defendant Yazzie's oldest daughter (EDY)	\$28,550
C. Defendant Yazzie's youngest daughter (ELY)	\$26,950
D. <u>Defendant Yazzie's wife</u>	<u>\$ 2,900</u>
Total	\$99,625

C. Abuse by Legislative Employees

D. Kickbacks to Delegates

IV. HOW DID THIS HAPPEN?

- Council Delegates abused discretion
- Eligibility not monitored
- Corrupt legislative accounting
- No Controller oversight
- Controller ignored reports of abuse
- No notice to Auditor General

V. CAUSES OF CORRUPTION

- Lack of internal controls and accountability
- Internal Controls Review
 - Lack of effective tone at the top supporting financial accountability
 - Inadequate qualified accounting staff
 - No Nationwide internal controls

- **Examples**

- Tribal Leases
- Business Loans
- Council Delegate loans/per diem/travel
- P. Card accountability
- Community Development/Capital Projects
- Grant Administration

VI. RECOMMENDATIONS

- Embezzlement of Navajo Nation Funds should be a crime
- Simplify Rules of Criminal Procedure
 - Allow Special Prosecutor to swear in Complaints
 - Allow Complaints with multiple counts
 - Adopt specific pretrial procedures with automatic disclosure by both sides
 - Clarify jury trial procedure including payment of jury fees and adoption of standard instructions
- Simplify ethics law and clarify penalties and procedure
- Strengthen qualifications for Controller and Accounting Staff
- Require Controller to adopt and monitor nationwide internal controls
- Create whistleblower statute to protect employees who report corruption

VII. *NAVAJO NATION V. BENALLY*

RESPONDENT	STATUS
Louis Denetsoie	Dismissed by Special Prosecutor
Harrison Tsosie	Dismissed by Special Prosecutor
Leonard Tsosie	Dismissed by Special Prosecutor
Lorenzo Bates	Dismissed by Special Prosecutor
Joe Shirley, Jr.	Dismissed by Special Prosecutor
Mark Grant	Dismissed w/o Prejudice
All Other Defendants	Dismissed

VIII. SPECIAL PROSECUTOR ACT 2 N.N.C. §§ 2021-2024

- A. 2 N.N.C. § 2021.A.** Attorney General conducts investigation.
- B. 2 N.N.C. § 2021.B.** Special Prosecutor Act applies to:
- President or Vice President
 - Staff of OP/VP
 - Chair of Council Standing Committee
 - Attorney General
 - Division Director or Deputy Director
 - Other official creating conflict of interest
- C. 2 N.N.C. § 2021.E.** If reasonable grounds, the Attorney General shall apply to the Special Division of the Window Rock District Court for appointment of a Special Prosecutor.
- D. 2 N.N.C. § 2023.** Special Prosecutor has all powers of Chief Prosecutor and Attorney General.