



Special Prosecutor of the Navajo Nation

Draft Report

OCTOBER 23, 2015

Navajo Nation Law CLE Conference
Sponsored by:
Indian Legal Program
ASU Sandra Day O'Connor College of Law

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I. CORRUPTION MAKES ECONOMIC DEVELOPMENT MORE DIFFICULT

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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

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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

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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. Willetto | 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 |

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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

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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 |

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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 |

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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. Defendant Yazzie's wife _____ | \$ 2,900 |
| Total | \$99,625 |

C. Abuse by Legislative Employees

D. Kickbacks to Delegates

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IV. HOW DID THIS HAPPEN?

- Discretionary Fund means discretion
- Eligibility not monitored
- Corrupt legislative accounting
- No Controller oversight
- Controller ignored reports of abuse
- Auditor General did not monitor

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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

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• **Examples**

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

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VI. RECOMMENDATIONS

- Embezzlement of Navajo Nation Funds is not a crime
- Revise Rules of Criminal Procedure
 - 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

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VII. NAVAJO NATION V. BENALLY

| RESPONDENT | STATUS |
|----------------------|-------------------------|
| Louis Denetsosie | Dismissed |
| Harrison Tsosie | Dismissed |
| Leonard Tsosie | Dismissed |
| Lorenzo Bates | Dismissed |
| Joe Shirley, Jr. | Dismissed |
| Edmund Yazzie | Settled |
| Mark Grant | Dismissed w/o Prejudice |
| All Other Defendants | Dismissed |

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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.