

5-11-2016

Time to empower tribal authorities

Kevin Washburn

University of New Mexico - School of Law

Follow this and additional works at: https://digitalrepository.unm.edu/law_facultyscholarship



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

Kevin Washburn, *Time to empower tribal authorities*, *Albuquerque Journal* (2016).

Available at: https://digitalrepository.unm.edu/law_facultyscholarship/538

This Article is brought to you for free and open access by the UNM School of Law at UNM Digital Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu, lsloane@salud.unm.edu, sarahrk@unm.edu.

<https://www.abqjournal.com/771928/time-to-empower-tribal-authorities.html>

Time to empower tribal authorities

By Kevin Washburn

**Albuquerque Journal
Wednesday May 11, 2016**

When a Navajo tribal member commits a serious felony against another Navajo on the remote Navajo Indian Reservation, the crime sets in motion not a tribal criminal investigation and tribal court proceeding but a federal investigation and a federal court proceeding under the federal Major Crimes Act.

For trial, the Navajo defendant, the Navajo victim, and the witnesses (all of whom are also likely to be Navajo) will be summoned to a federal district court far away from the reservation and the specific community where the crime occurred.

Unlike a felony involving only non-Indians, which would be routinely adjudicated at the local county courthouse, the Navajo felony will be tried in a distant federal court in Phoenix, Salt Lake City or Albuquerque.

Hundreds of miles of desert landscape and lonely highways separate the small, mostly rural Navajo communities where these federal crimes occur from the urban federal courts where they are tried. But even though this physical distance is tremendous, it is dwarfed by an even greater distance: The vast cultural gulf between the federal court and the tribal community.

When a Navajo tribal member commits a serious felony against another Navajo on the remote Navajo Indian Reservation, the crime sets in motion not a tribal criminal investigation and tribal court proceeding but a federal investigation and a federal court proceeding under the federal Major Crimes Act.

For trial, the Navajo defendant, the Navajo victim, and the witnesses (all of whom are also likely to be Navajo) will be summoned to a federal district court far away from the reservation and the specific community where the crime occurred.

Unlike a felony involving only non-Indians, which would be routinely adjudicated at the local county courthouse, the Navajo felony will be tried in a distant federal court in Phoenix, Salt Lake City or Albuquerque.

Hundreds of miles of desert landscape and lonely highways separate the small, mostly rural Navajo communities where these federal crimes occur from the urban federal courts where they are tried. But even though this physical distance is tremendous, it is dwarfed by an even greater distance: The vast cultural gulf between the federal court and the tribal community.

The federal court operates in a language that is foreign to many Navajos, thus the Navajo defendants, victims and witnesses may require interpreters to translate the proceedings.

Neither the judge, the court reporter, the prosecutor, the court security officers or the deputy marshals, nor the defense attorney or investigator are likely to be Navajo or understand or speak the Navajo language.

Perhaps even more importantly, the federal jury that hears the evidence is unlikely to include a Navajo, an Indian, or any other member of the community where the crime occurred.

I wrote those words more than 10 years ago and the justice system on the Navajo Reservation is just as alien to the Navajo people now as it was then.

For more than a century, it has been primarily the responsibility of the federal government to address crimes like the vicious murder of 11-year-old Ashlynnne Mike. And so these crimes keep occurring.

For decades, our laws have emasculated tribal governments and tribal authority. If tribal officials are denied the opportunity to solve these problems, and are not held accountable when they continue to occur, they will keep happening. The crimes on the Navajo Reservation cannot be addressed in Albuquerque or Phoenix. They must be addressed at the local level.

Only recently has Congress begun to recognize the importance of increasing tribal authority over reservation crimes.

During the Obama Administration, appropriations have increased by billions of dollars for Indian programs and health services, but tribes need money for public safety. In 2010, President Obama signed the Tribal Law and Order Act, which extended tribal criminal authority from misdemeanors to felonies, but tribal authority is still limited to only three years in prison per offense.

In 2013, Obama signed the Violence Against Women Act, which allowed tribes limited criminal authority over non-Indians, but only if the non-Indian victimizes a bona fide domestic partner on a reservation, such as a spouse.

The Navajo Nation has not had the opportunity to fully implement either law because they, frankly, lack adequate financial resources to do it.

As a result, crimes like the murder of Ashlynnne Mike continue to occur and continue to be prosecuted in Albuquerque or Santa Fe, more than 200 miles from where the crime occurred.

This is the outcome when the chief law enforcement officer for the Navajo Nation is a U.S. Attorney in Albuquerque or Phoenix. Federal law enforcement is not the answer to tribal crime — it is an impossible task for outsiders.

The problem of violence on Indian reservations will be solved only when tribal officials are given the authority and the resources to address these problems, and only when they are then held accountable by the press and their communities for seeing this important work done. Until then, tribal leaders are justified in pounding the table and blaming the federal government for these tragedies.

The remnants of colonization are strong. It will take years to undo. But the solution to this problem is tribal self-governance.

The federal government cannot solve serious problems on Indian reservations. After two centuries, the evidence is conclusive. But it can sure as heck get out of the way and let tribal governments do their jobs.

Copyright © 2017 Albuquerque Journal | Albuquerque, N.M