

# Navajo Nation Law & Court System

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Navajo Nation Judicial Branch

# Objectives

- Gain understanding of the Navajo Nation Court System
- Gain understanding of Navajo Nation Jurisdiction

# SUPREME COURT

- The Supreme Court is located in Window Rock, Arizona



# Four Branch Government

- Under the Diné bi beenahaz'áanii (Fundamental law of the Navajo), the Judicial Branch is part of a four branch government. The Executive, Legislative and Judicial Branches are well defined in Title 2 and Title 7 of the Navajo Nation Code. Title 1 speaks of the National Security Branch but it has not been well defined. It would certainly include law enforcement agencies of the Navajo Nation.
- Executive
- Legislative
- Judicial
- National Security

# Executive Branch



- President of the NN presides over the Executive Branch
- Executive Branch executes and enforces the laws
  - Conducts, supervises, coordinates personnel and programs of the Navajo Nation
  - He or she will represent the Navajo Nation and create public opinion and good will toward the Navajo Nation
- President and VP serve 4 years and no more than 2 terms of 4 years

# Legislative Branch

- Consists of the Navajo Nation Council and its entities
- Leader of the Council is Speaker of the Council
- Navajo Nation Council makes the laws
- 24 Delegates on the Navajo Nation Council
- Delegates serve 4 year terms
- Each Delegate serves several different chapters

# Role of Navajo Judiciary

- Unlike the larger society, all tribal lands and resources are held by the government for the benefit of the People, and therefore our very government belongs to the People to a far greater extent, and in a fundamentally different capacity.
- As an indigenous American government whose heritage is protected by the federal government, our judiciary has, from the very beginning, embraced its duty to serve as the guardian of our tribal sovereignty.
- We assert our sovereign principles and emphasize in our opinions the various bases for our sovereignty while also explaining our sovereignty's cultural and social context.

# Sovereignty Expressed Through Our Laws

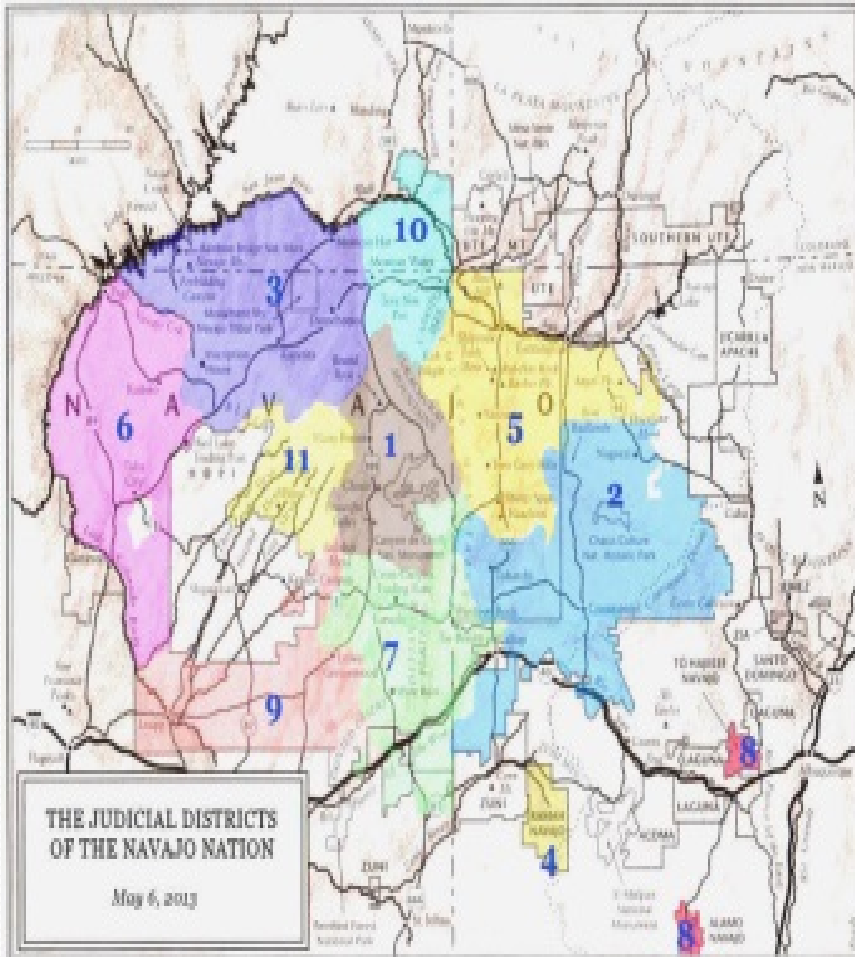
- Although patterned on the modern American adversarial court system, we embrace the principles of judicial independence, checks and balances, separation of powers, and anti-corruption principle, which is the bedrock of our fundamental laws.
- The laws that have established our judiciary “shall be so construed as to effectuate its general purposes and in such a manner as to assure judicial independence, the right of access to fair and independent remedies, the observance of *Diné bi beenahaz'áanii*, and the protection of the rights guaranteed by the Navajo Nation Bill of Rights.”



# *Diné bi beenahaz'áanii*

- *Diné bi beenahaz'aanii* are all the laws of the Navajo People, including the customs, values, usages and statutory laws of the Navajo people.
- *Diné bi beenahaz'áanii* and the Navajo Nation Bill of Rights require the Navajo Nation courts to safeguard the rights of individuals.

# Navajo Nation Court System



- Largest court system in the world
- Has its own bar association with admission criteria to practice law within the Navajo Nation
- Cases begin in the District Courts and may be appealed to the Supreme Court
- Handles over 90,000 cases per year

# Court Staff

- Judge
- Staff Attorney
- Probation Officer
- Traditional Program Specialist
- Court Administrator
- Court Clerks
- Office Technician
- Custodian

# Choice of Law, 7 N.N.C. 204

- Navajo Nation statutory laws and regulations
- *Diné bi beenahaz'aanii* (Navajo Fundamental Law, consisting of Traditional, Customary, Natural and Common Law) to guide the interpretation of Navajo Nation statutory laws and regulations and where such statutes or regulations are silent
- Federal laws or regulations as may be applicable
- Any matters not addressed by Navajo Nation statutory laws and regulations, *Diné bi beenahaz'aanii* or by applicable federal laws and regulations, may be decided according to comity with reference to the laws of the state in which the matter in dispute may have arisen.

# Jurisdiction of the Navajo Courts

- Navajo civil jurisdiction extends to all persons (Indian or non-Indian) who reside in Navajo country.
- Navajo criminal jurisdiction is over Indians only. The jurisdiction is exercised over all Indians within the Navajo Nation. Under the Navajo Code, 17 N.N.C. Sec. 203, that jurisdiction can be exercised outside the Navajo Nation when the offense involves a Navajo victimizing another Navajo.
- Our jurisdiction is calculated to ensure justice, strengthen our ability to enforce and apply the law as strong and independent courts.

# FEDERAL INDIAN LAW

- The case that deprives Indian Tribes of jurisdiction over non-Indian criminal defendants is *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). It is a highly controversial case which held that tribes have no inherent jurisdiction to punish non-Indians and thus lack criminal jurisdiction over non-Indians.
- This has been softened recently. Congress has allowed limited jurisdiction over non-Indians in domestic violence cases under the Violence Against Women Reauthorization Act of 2013 (“VAWA”). However, Congress requires tribes to meet certain due process standards and subject their court systems to unprecedented federal court oversight.

# Federal Indian Law Continued

While VAWA does allow limited prosecution of non-Indians involved in intimate relationships with natives, the Navajo Nation has not become a participating tribe due to concerns about financial costs of compliance and sovereignty concerns. The matter is still being debated. Thus, any criminal prosecutions of non-Indians is being conducted by the federal government. The federal government has jurisdiction in “Indian Country” as it is defined in 18 U.S.C. Sec. 1151. This includes all land within the exterior boundaries of the Navajo Nation including rights of way and dependent Indian communities outside the exterior boundaries.

# Civil Jurisdiction

- The seminal case of *Montana v. United States*, 450 U.S. 544 (1981) limited tribal government civil authority over non-Indians but allowed for such authority even when the non-Indians were on non-trust lands in two important factual situations:
- The exercise of authority was “necessary to protect tribal self government or to control internal relations.”
- The jurisdiction arose from a consensual relationship.



# RECENT DEVELOPMENTS

Presently, there is a case before the United States Supreme Court which arose after a Native American boy was sexually molested while working at a Dollar General store on Mississippi Band of Choctaw Indians reservation. The boy was molested by a supervisor.

Dolgencorp, Inc. and Dollar General Corp., were sued in tribal court and lost. The entities then asserted in federal court that the tribe did not have jurisdiction according to the *Montana* test. They lost in both the federal district court and the United States Fifth Circuit Court of Appeals, 746 F.3d 167.

# Recent Developments, Continued

- The Dollar General defendants appealed to the United States Supreme Court. Tribes were surprised and apprehensive about the United States Supreme Court hearing the appeal since under existing precedent, there did not appear to be any error created by the lower court.
- On June 23, 2016, the Supreme Court deadlocked 4-4, effectively letting the 5<sup>th</sup> Circuit decision stand.

# Tribal Justice System Needs

The Ramah Judicial District is in need of a new court facility to better serve its community. The current facility is too small for jury trials and the building has health and safety issues.



# TRIBAL JUSTICE SYSTEM NEEDS

The Ramah community has just finished a correction facility and hopes to soon be able to move the police department to the same area. The community has fostered a close relationship between law enforcement and the courts and also all the other stake holders in the criminal justice system. The Ramah Judicial District holds frequent resource meetings, which include all these stakeholders as well as federal, state and county law enforcement.

# Tribal Justice System Needs

We hope that the committee will support efforts such as cross-commissioning law enforcement officers, including addressing liability issues arising from such agreements. When addressing criminal activity, we want to function as one community.



# Conclusion and acknowledgments

- Thank you for listening to my presentation.
- My name again is Daniel Moquin and I can be reached at 505-775-3218 or [dgmoquin@yahoo.com](mailto:dgmoquin@yahoo.com)
- I want to thank three of my colleagues for their assistance with this presentation:
- Alisha Thompson, Jordan Hale and Glen Renner