

October 19, 2015

Chief Justice Patience Drake Roggensack
Associate Justices of the Wisconsin Supreme Court
Supreme Court of Wisconsin
110 East Main Street, Suite 440
Madison, Wisconsin 53703

Re: Rule Petition 14-02: In the Matter of the Petition to Amend/Dissolve Wisconsin Statute §801.54 Discretionary Transfer of Civil Actions to Tribal Court; and

Rule Petition 07-11C: In the Matter of the Review of the Discretionary Transfer of Cases to Tribal Court

Dear Chief Justice Roggensack and Associate Justices:

Regarding both Rule Petition 07-11C and Rule Petition 14-02, I do not believe that the people would benefit if any civil actions were to be transferred to the Tribal Court because our Tribal Court is inexperienced and judges are not qualified to serve on the bench. And it has been proven by the Justice Department that the crime rates experienced by Native Americans is two-and-a-half-times higher than those experienced by the general population. See the associated Press Review of U.S. Attorney Dennis K. Burke's news conference in Phoenix Arizona. (Enc. 1)

Regarding both Rule Petition 07-11C and Rule Petition 14-02, I do not believe that the Petition 14-02 to Amend/Dissolve Wisconsin Statute 801-54 Discretionary Transfer of Civil Actions to Tribal Court and petition 07-11C, the review of the discretionary transfer of cases to Tribal Court, should be acted on until the U.S. Government Accounting Office (GAO) report of December 13, 2010, has been considered. (Enc. 2)

The Honorable Byron L. Dorgan
Chairman
Committee on Indian Affairs
United States Senate

The Honorable John Barrasso
Vice Chairman
Committee on Indian Affairs
United States Senate

The Honorable John Thune
United States Senate

The Tribe is violating the Tribal Constitution. Two years ago I submitted a petition with over 600 signatures on it and they did not even respond to it. Article III, Section 4, states "50 qualified voters may, by written notice, call special meetings of the General Tribal Council." (Enc. 3)

The Tribe is overly plotting to deny me of my right to "report" to the people as authorized in our Constitution under the by-laws in Article 1, Section 5. (Enc. 4 and Enc.5)

At the request of Congressman Reid J. Ribble the Congressional Research Service studied our Constitution and reported, "It appears that your Constituent, Frank, as a member of the Oneida Nation of Wisconsin, has a right to free speech," yet almost two years later they will not act on my petition. (Enc. 6)

Regarding both Rule Petition 07-11C and Rule Petition 14-02, our Tribal legal system is so arrogant or corrupt that they only try to hide behind "sovereign immunity" even when I have told them about No. 11-5322, Marilyn Vann vs U.S. Department of the Interior" No. 1:03cv 01711 argued October 18, 2012, decided December 14, 2014, that "Government Officials can be sued in their official capacity without the Tribe itself as a party." (See Enclosures 7 & 8).

On November 14, 2014, the Wisconsin Law Journal reported it is hard to work with the Tribal Courts. Look at Statute 801.54 and the "Judicial Concerns" on page 19 of Enclosure 9.

Finally, regarding both Rule Petition 07-11C and Rule Petition 14-02, on August 2015, a local paper printed an article showing the treatment of Tribal members by the Oneida Tribal System. (Encs. 10 & 11).

Sincerely,



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FAILURE TO PROSECUTE

Tribal cases going unheard is a growing fear, reality across the U.S.

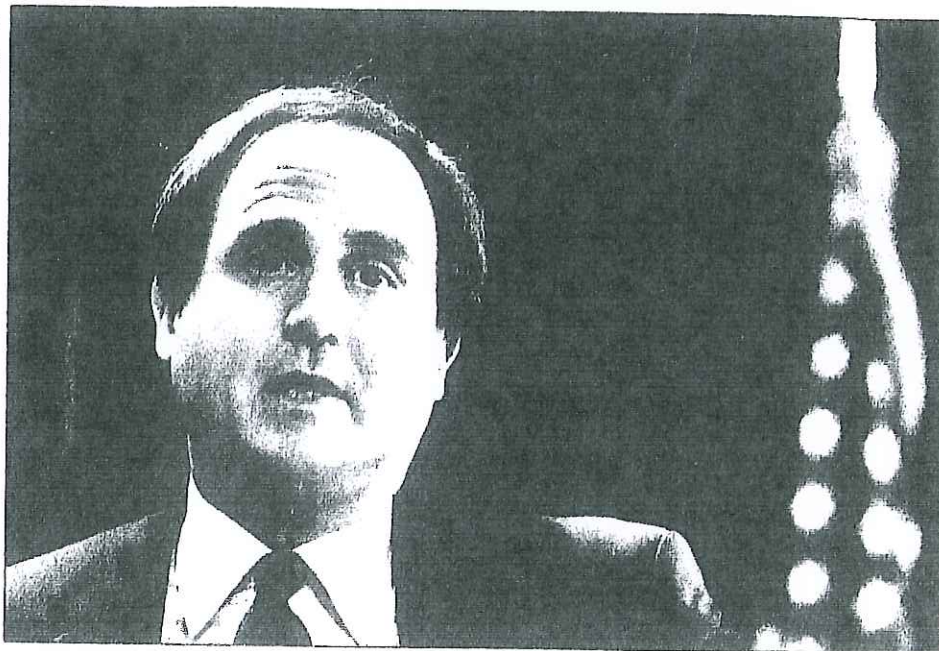
REASONS FOR DECLINATION

» 59 percent cited insufficient or inadmissible evidence. That could mean anything from inferior investigations by law enforcement to inadequate crime scene preservation.

» 27 percent cited witness problems, which can include witnesses recanting, being viewed as not credible, or simply disappearing.

» 16 percent cited a lack of jurisdiction, which can speak to the level of a crime. For example, the injuries of a detention sergeant beaten by an inmate weren't serious enough

AP



Dennis K. Burke, U.S. Attorney for the District of Arizona, speaks during a news conference in Phoenix. In the Arizona portion of the Navajo Nation, which also stretches into New Mexico and Utah, federal prosecutors declined to take 37 cases during a nine-month period last year, an Associated Press review found. **Matt York/AP**

The Justice Department has reported that the crime rates experienced by Native Americans are two and a half times higher than those experienced by the general population, and that violent crime happens on tribal lands at a rate of 101 per 1,000 persons.

**By Felicia Fonseca
and Sudhin Thanawala**

The Associated Press

WINDOW ROCK, Ariz. — There was swelling on the little girl's skull and hemorrhages around her brain. There was a tear between her right ear and scalp. The scars on her 36-pound body were consistent with burns from a space heater, a curling iron and hot noodles.

The mother said she had accidentally rolled over onto her daughter in bed, smothering her. The medical examiner concluded that the brown-eyed toddler with the wavy dark hair had been beaten, declaring her death a homicide.

Had 2-year-old Kiara Harvey died elsewhere, the case likely would have been handled by the county sheriff, or police and the local district attorney.

But Kiara was a Navajo and she lived on the expansive Navajo Nation. On tribal lands, only federal prosecutions can lead to serious penalties for major crimes involving Native Americans. Those prosecutors, however, end up declining to pursue half of the cases nationally.

"No one speaks for that baby," said Bernadine Martin, the Navajo Nation's chief prosecutor. "It's OK to kill her and go on because prosecutors apparently don't want to put a little more effort into investigations."

In the Arizona portion of the Navajo Nation, which also stretches into New Mexico and Utah, Kiara's case was one of 37 that federal prosecutors declined to take during a nine-month period last year, an Associated Press review found.

Among all tribes in Arizona during the same period, there were 122 such cases. The overwhelming majority were alleged sex crimes that included rape and abusive sexual contact, followed by assaults. Nineteen cases involving deaths were rejected.

The analysis found the reasons to be both complicated and frustratingly similar, and perhaps as exasperating to federal prosecutors as they are to tribal authorities. They cited poor evidence, reluctant witnesses and jurisdictional issues.

Federal authorities "want to prosecute the individual, they want to get a stiff sentence, they want to go to trial, so declining it is tough," said Arizona U.S. Attorney Dennis Burke, whose office issued the letter saying that it would not take the Kiara Harvey case.

"It's not a process that leaves anyone with any comfort," he said.

Whatever the reasons, no one disputes that many people suspected of violent crimes are walking free on reservations, or are lightly punished under tribal laws that allow only a year in jail — or up to three years if the tribe has trained judges and tribal courts can guarantee that defendants get legal aid.

The Arizona letters provide a window into a much larger government study of Department of Justice records in which 50 percent of the 9,000 cases filed from tribal lands during fiscal years 2005-09 were declined.

In the study, 42 percent of rejections were attributed to weak or insufficient admissible evidence; 18 percent to "no federal offense evident," and another 12 percent to witness problems.

In the Arizona review, the reasons — many cases cite more than one — were:

» 59 percent cited insufficient or inadmissible evidence. That could mean anything from inferior investigations by law enforcement to inadequate crime scene preservation.

» 27 percent cited witness problems, which can

include witnesses recanting, being viewed as not credible, or simply disappearing.

» 16 percent cited a lack of jurisdiction, which can speak to the level of a crime. For example, the injuries of a detention sergeant beaten by an inmate weren't serious enough to be a federal crime.

The Government Accountability Office's study was published after a change in federal law last summer meant to bolster justice on tribal lands. The report was produced at the behest of the U.S. Senate Committee on Indian Affairs led by then-Sen. Byron Dorgan, D-N.D.

Former U.S. attorneys testified that reservation cases often were not treated as a priority, Dorgan said in an interview before the bill was passed. "In many cases, it didn't get done. The result is that violent crime continues and those that commit them don't get prosecuted."

DOJ officials don't like being measured by declination rates.

"Unfortunately, federal declination numbers on face value, without full context, are not an appropriate measure of whether justice was served," DOJ spokeswoman Jessica Smith said. The numbers don't capture the reasons cases are rejected and miss those that are prosecuted outside the federal system, she said.

The declination rate for other federal cases, which can include terrorism, environmental violations or corruption, is not directly applicable since they are so different from the types of cases on tribal lands, said David Maurer, who helped author the GAO study.

The Justice Department has reported that the crime rates experienced by Native Americans are two and a half times higher than those

experienced by the general population, and that violent crime happens on tribal lands at a rate of 101 per 1,000 persons.

Federal prosecutors in South Dakota and Arizona had the largest number of cases reported on tribal lands. Each comprised some 24 percent of the total national caseload, according to the GAO report.

Arizona has 12 federally recognized tribes, with the Navajo Nation being the largest in population and land area. Federal prosecutors received 2,538 cases and declined 38 percent of them. South Dakota has seven federally recognized Native American tribes, including the well-known Oglala Sioux at Pine Ridge and Rosebud Sioux at Rosebud. Federal prosecutors there received 2,414 cases, declining 61 percent.

Brendan Johnson, the U.S. attorney for South Dakota, said a lack of manpower makes it more difficult to investigate and prosecute cases. "We need more police officers. We need more investigators," he said.

Johnson said a lack of collaboration between tribes and federal prosecutors is also to blame.

In the Navajo Nation capital of Window Rock, the Navajo prosecutor keeps the Kiara Harvey case rejection letter in a red folder on her cluttered desk. The letter offers details of Kiara's death in Cove, 145 miles to the north, on June 6, 2008:

Kiara woke up early that morning, crying, and followed her father into the living room as he was leaving for work. An aunt said he picked up the girl wearing a shirt, diaper and socks and took her to a bedroom where her mother and sister were sleeping.

When her mother tried to wake her around 8:30 a.m., Kiara was cold to the touch and her body was stiff, according to the initial report by tribal police — who arrived

75 minutes after the mother called. The officers wrote that they saw no signs of foul play, but noted bruising and burns on her body.

New Mexico medical examiner Ross Reichard, whose office was closest to Cove, ruled out the mother's assertion that she had accidentally smothered the child. The girl was "beaten by assailant(s)," he reported. But he said he couldn't rule out that the child was with her father at the time she was fatally injured.

Kiara's parents no longer live together but maintain contact for the sake of their children. Her mother, Norena Johnson, said in a phone interview. She declined to talk about her daughter's death.

Both parents deny any abuse, according to FBI records obtained by the AP as part of a Freedom of Information Act request.

Burke, the U.S. attorney in Arizona, wouldn't say when his office received the case from the FBI, but the bureau's records show that it was more than 19 months after Kiara's death. FBI agents — along with those from the Bureau of Indian Affairs — conduct most of the federal investigations on tribal lands.

"You have a situation where the only two people in the room are the parents, and being able to say we have enough on one as opposed to the other, that has to be really solid," Burke said. "It is really a disturbing situation, but it just doesn't get you a conviction."



Navajo Nation chief prosecutor Bernadine Martin looks through a folder of declination letters during a March break at a tribal conference at Isleta Pueblo, N.M. Susan Montoya Bryan/AP

BY THE NUMBERS

» Of the 12 federally recognized tribes in Arizona, Federal prosecutors received 2,538 cases and declined 38 percent of them

» South Dakota has seven federally recognized tribes, and Federal prosecutors there received 2,414 cases, declining 61 percent

» 42 percent of rejections were attributed to weak or insufficient admissible evidence

» 18 percent of declined cases were due to "no federal offense evident."

» 12 percent of cases were declined based on witness problems

(AMENDED) CONSTITUTION AND BY-LAWS OF
THE ONEIDA TRIBE OF INDIANS OF WISCONSIN

ARTICLE III GOVERNING BODY

the qualified voters who physically reside in either Brown or Outagamie Counties of Wisconsin by secret ballot (a) a chairman; (b) a vice-chairman; (c) a secretary; (d) a treasurer; (e) and five councilmen. These shall constitute the Business Committee and shall perform such duties as may be authorized by the General Tribal Council

A majority of the Business Committee including the chairman or the vice-chairman shall constitute a quorum of this body. Regular meetings of the Business Committee may be established by resolution of the Business Committee. Special meetings of the Business Committee shall be held upon a three-day advance notice by the chairman to all members thereof or upon written request of a majority of the Business Committee stating the time, place, and purpose of the meeting.

The General Tribal Council may at any regular or special meeting fill any vacancies that occur on the Business Committee for the unexpired term.

The General Tribal Council may at its discretion remove any official on the Business Committee by a two-thirds majority vote at any regular or special meeting of the Tribal Council, pursuant to a duly adopted ordinance. Such ordinance shall fix the specific causes for removal and insure that the rights of the accused are protected, including his receiving in writing a statement of the charges against him and assurance on sufficient notice thereof where he shall be afforded every opportunity to speak in his own defense.

Section 4. The General Tribal Council shall meet on the first Monday of January and July, the officials provided for in Section 3 of this Article shall be elected every three years in the month of July on a date set by the General Tribal Council. The General Tribal Council shall enact necessary rules and regulations governing the election of tribal officials. The first election under this amendment is to be held in the month of July immediately following the approval of this amendment by the Secretary of the Interior. The chairman or fifty (50) qualified voters may, by written notice, call special meetings of the General Tribal Council. Seventy-five (75) qualified voters shall constitute a quorum at any regular or special meeting of the General Tribal Council.

Article IV - Powers of the General Tribal Council

Section 1. Enumerated Powers. - The General Tribal Council of the Oneida Tribe of Wisconsin shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States:

- (a) To negotiate with the Federal, State, and local governments.
- (b) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.
- (c) To veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets of the tribe.
- (d) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Oneida Tribe of Wisconsin prior to the submission of such estimates to the Bureau of the Budget and to Congress.

BY-LAWS OF THE ONEIDA TRIBE OF INDIANS OF WISCONSIN

Article I-Duties of Officers

Section 1. Chairman of Council.-The Chairman of the Council shall preside over all meetings of the Council, shall perform the usual duties of a Chairman and exercise any authority delegated to him by the Council. He shall vote only in the case of a tie.

Section 2. Vice-Chairman of the Council.-The Vice-Chairman shall assist the Chairman when called upon to do so and in the absence of the Chairman, he shall preside. When so presiding, he shall have all the rights, privileges and duties as well as the responsibilities of the Chairman.

Section 3. Secretary of the Council.-The Secretary of the Tribal Council shall conduct all tribal correspondence and shall keep an accurate record of all matters transacted at Council meetings. It shall be his duty to submit promptly to the Superintendent of the jurisdiction, and the Commissioner of Indians Affairs, copies of all minutes of regular and special meetings of the Tribal Council.

Section 4. Treasurer of the Council.-The Treasurer of the Tribal Council shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Council, whether they be tribal funds or special funds for which the Council is netting as trustee or custodian. He shall deposit all funds in such depository as the Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his possession and custody, at each regular meeting of the General Tribal Council, and at such other times as requested by the Council or the business committee.

He shall not pay out or otherwise disburse any funds in his possession or custody, except in accordance with a resolution duly passed by the Council.

Section 5. Appointive Officers.-The duties of all appointive boards or officers of the Community shall be clearly defined by resolutions of the Council at the time of their creation or appointment. Such boards and officers shall report, from time to time as required, to the Council, and their activities and decisions shall be subject to review by the Council upon the petition of any person aggrieved.

JUNE 11-2014
B.C. MEETING TO STOP FRANK (L.E.)

TO ANN HOUSE

you will receive back um reports back from the three common ones legal, legislative, financial, um the legal opinion will identify um the requirements in order to take action and will generally include recommendations on whether or not action can be taken. The common misperception in a petition is that it calls the meeting at the request of the petitioner ah the times have changed since those ah original dates when that may have been the case ah and now there is a significant amount of information requested. When you receive a petition you request those reports and that would be the normal process that you follow regardless of the time demands within a petition document itself. Ed: Well ah I think a motion we need some kind of motion ah a motion, make a motion and tell him that we worked, I can write him another letter saying that ah according to the 10-day policy we are not able to put him on the agenda for June 16th. Ed: Vince: The motions still appropriate we should still process the petition ah you're communicating with him you're the chairman of the tribe you can do all that I mean we were are not going to able to help them out for ah the meeting that's coming up and then we should we could process. She didn't withdraw her motion though. That's what we should do we have a room full of people here we have other business to take care of. Ed: Patty: ~~Mr. Chairman~~, I think the resolve to this is to find a place in the presentation that we're planning to give to GTC ~~on Monday find a place for ah Frank Cornelius to also get on stage and give some kind of report.~~ Um, you know that's we don't need a motion or ah a petition to do that um so ~~that's that's one action step we can take~~ and the second action step we have to we have to deal with is this petition as submitted and as described I'll restate the original motion I made, we'll run it through the analysis process again. Um it won't be completed in time to address his deadline you know cause he specifically wants to be on one day's agenda um. Tina: Well it's not appropriate, um it's not appropriate for any tribe processes according to GTC rules and you know we can't _____ just because somebody wants us to. Patty: Well those are, I agree with everything ah someone's got to make a motion and and ah um set some direction here. David: I make a motion to um to accept it and move on to the process maybe he can't be on this agenda because of the 10-day notice policy but maybe he can be on the semi-annual or a later GTC meeting, that's my motion. Ed: a motion by David Jordan, (inaudible) accept it and go thru the process and bring back ah for 30 days. Ed: motion made David Jordan, seconded by Vince Delarosa, discussion? Ed: Chaz: I think in the end here you're missing a golden opportunity to address the whole restructuring of the General Tribal Council forum and also address the facilitation of that forum by whoever is chairing the meeting. If any of you really think that General Tribal Council member Frank Cornelius isn't going to speak on Monday I don't, I don't understand. Um so, assuming that he's going to speak regardless of your action how we're going to address that and whatever the content is of the petition which I've also seen

REID J. RIBBLE
8TH DISTRICT, WISCONSIN



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Congress of the United States
House of Representatives

COMMITTEE ON AGRICULTURE
SUBCOMMITTEES:
CONSERVATION, ENERGY, AND FORESTRY
LIVESTOCK, DAIRY, AND POULTRY
COMMITTEE ON THE BUDGET
COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
SUBCOMMITTEES:
AVIATION
RAILROADS, PIPELINES AND
HAZARDOUS MATERIALS
WATER RESOURCES AND ENVIRONMENT

June 19, 2014

Frank Cornelius
N6126 County Road E
De Pere, WI 54115-8558

Dear Frank:

Thank you for contacting my office with your inquiry on free speech as it pertains to the Oneida Nation of Wisconsin. I sent an inquiry to the Congressional Research Service and received the following reply:

“The Indian Civil Rights Act (ICRA) provides “No Indian tribe in exercising powers of self-government shall – (1) make or enforce any law ... abridging the freedom of speech, or of the press” 25 U.S.C. § 1302. The tribal constitution also guarantees freedom of speech in Article VI. Therefore, it appears that your constituent Franks, as a member of the Oneida Nation of Wisconsin, has a right to free speech. In order to challenge the actions of the tribal government, however, he would need to seek relief in tribal court. Therefore, it would be up to the tribal court to interpret ICRA and the tribal constitution.”

I hope this information is helpful. If you have any further questions, please do not hesitate to contact my office at 920-471-1950.

Sincerely,

A handwritten signature in black ink that reads "Reid J. Ribble".

Reid J. Ribble
Member of Congress

RJR:epb

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 18, 2012

Decided December 14, 2012

No. 11-5322

MARILYN VANN, ET AL.,
APPELLANTS

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:03-cv-01711)

Alvin Dunn argued the cause for appellants. With him on the briefs were *Jack McKay*, *Thomas G. Allen*, *Cynthia Cook Robertson*, and *Jonathan Velie*.

Ethan G. Shenkman, Attorney, U.S. Department of Justice, argued the cause for Federal Appellees. On the brief were *William B. Lazarus*, *Aaron P. Avila*, and *Kurt G. Kastorf*, Attorneys.

Jonathan P. Guy argued the cause for appellees Cherokee Nation, et al. With him on the brief were *Mark S. Davies* and *Christopher M. O'Connell*.

Before: TATEL, GARLAND, and KAVANAUGH, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge KAVANAUGH*.

KAVANAUGH, *Circuit Judge*: Before the Civil War, members of the Cherokee Nation had slaves. Those slaves were freed in 1866 pursuant to a treaty negotiated between the United States and the Cherokee Nation. The Treaty guaranteed the former Cherokee slaves and their descendants – known as the Freedmen – “all the rights of native Cherokees” in perpetuity. *See* Treaty with the Cherokee, art. 9, July 19, 1866, 14 Stat. 799. Those rights included the right to tribal membership and the right to vote in tribal elections.

At some point, the Cherokee Nation decided that the Freedmen were no longer members of the tribe and could no longer vote in tribal elections. A group of Freedmen eventually sued in the U.S. District Court for the District of Columbia, claiming that the Cherokee Nation had violated the 1866 Treaty.

Because the Cherokee Nation is a sovereign entity, it is entitled to sovereign immunity and may not be sued without its consent. *See Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 509 (1991); *Vann v. Kempthorne*, 534 F.3d 741, 746 (D.C. Cir. 2008). To avoid the sovereign immunity bar, the Freedmen plaintiffs sued not only the Cherokee Nation itself but also the relevant executive official, the Principal Chief, in his official capacity. Under Supreme Court precedent, that is the standard approach by which a party may obtain declaratory or injunctive relief with respect to a sovereign entity notwithstanding sovereign immunity. *See Ex parte Young*,

209 U.S. 123 (1908); *see also, e.g., Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949); *Shields v. Utah Idaho Central Railroad Co.*, 305 U.S. 177 (1938).

In opposition to the suit, the Cherokee Nation pointed out that it was entitled to sovereign immunity, but also that it was a required party to the suit under Federal Rule of Civil Procedure 19 and that the Principal Chief could not adequately represent the Cherokee Nation's interests.¹ Therefore, according to the Cherokee Nation, the suit had to be dismissed.

The District Court agreed with the Cherokee Nation. The District Court concluded that the Cherokee Nation was a required party for purposes of Rule 19, that the Cherokee Nation's interests could not be adequately represented by the Principal Chief, and that the case could not go forward. *See Vann v. Salazar*, 2011 WL 4953030, at *3-6, 9 (D.D.C. 2011).

¹ Federal Rule of Civil Procedure 19 provides in relevant part:

(a) PERSONS REQUIRED TO BE JOINED IF FEASIBLE.

(1) *Required Party*. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

We reverse. Applying the precedents that permit suits against government officials in their official capacities, we conclude that this suit may proceed against the Principal Chief in his official capacity, without the Cherokee Nation itself as a party.

The Freedmen have sued the Principal Chief in his official capacity under the doctrine of *Ex parte Young*, 209 U.S. 123. The *Ex parte Young* doctrine allows suits for declaratory and injunctive relief against government officials in their official capacities – notwithstanding the sovereign immunity possessed by the government itself. The *Ex parte Young* doctrine applies to Indian tribes as well. *Cf. Oklahoma Tax Commission*, 498 U.S. at 514; *see generally Larson*, 337 U.S. at 689-92; RICHARD H. FALLON, JR., DANIEL J. MELTZER & DAVID L. SHAPIRO, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 958-60 (5th ed. 2003).

The *Ex parte Young* doctrine is based on a “fiction” – namely, that “when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes.” *Virginia Office for Protection & Advocacy v. Stewart*, 131 S. Ct. 1632, 1638 (2011); *see Larson*, 337 U.S. 682; *Davis v. Gray*, 83 U.S. 203 (1872); *Osborn v. Bank of United States*, 22 U.S. 738 (1824); FALLON ET AL., THE FEDERAL COURTS AND THE FEDERAL SYSTEM 958-60. The doctrine is called a fiction because the suit in effect binds the government entity just as would a suit against the government entity itself. In such suits, the government in question stands behind the official “as the real party in interest.” *Davis*, 83 U.S. at 220. Indeed, an injunction entered against an officer in his official capacity is binding on the officer's successors. *See Fed. R. Civ. P. 65(d); Acheson v. Albert*, 195 F.2d 573, 576 n.9 (D.C. Cir. 1952) (“The judgment entered in the present case would no

doubt be *res judicata* on the law and facts as against the Secretary's successors in office."); 11A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2956 (2d. ed. 1995) ("A decree binding a public official generally is valid against that official's successors in office.").

As a practical matter, therefore, the Cherokee Nation and the Principal Chief in his official capacity are one and the same in an *Ex parte Young* suit for declaratory and injunctive relief. As a result, the Principal Chief can adequately represent the Cherokee Nation in this suit, meaning that the Cherokee Nation itself is not a required party for purposes of Rule 19. By contrast, if we accepted the Cherokee Nation's position, official-action suits against government officials would have to be routinely dismissed, at least absent some statutory exception to Rule 19, because the government entity in question would be a required party yet would be immune from suit and so could not be joined. But that is not how the *Ex parte Young* doctrine and Rule 19 case law has developed.

Nor is there any basis for distinguishing this case involving an American Indian tribe from a run-of-the-mill *Ex parte Young* action. Here, the named defendant – the Principal Chief – is the head of the executive branch of the Cherokee Nation. See CHEROKEE CONST., art. VII, § 1 ("The executive power shall be vested in a Principal Chief..."); *id.* art. VII, § 9 ("The Principal Chief shall cause the laws of the Cherokee Nation to be faithfully executed, and shall conduct in person" all "communications and business of the Cherokee Nation."). The claim here is that the Principal Chief – and through him, the sovereign tribe – is violating federal law. The defense is that the Principal Chief – and hence the sovereign tribe – is not violating federal law. This case presents a typical *Ex parte Young* scenario.

Our analysis is consistent, moreover, with the precedents of other courts of appeals. In line with the basic *Ex parte Young* principles, the Ninth Circuit and Tenth Circuit have similarly concluded that a tribe is not a required party under Rule 19 in suits naming a tribal official in his official capacity. In *Salt River Project Agricultural Improvement and Power District v. Lee*, the Ninth Circuit ruled that Navajo officials responsible for enforcing a challenged tribal law “adequately represent the Navajo Nation’s interests.” 672 F.3d 1176, 1180 (9th Cir. 2012). The court added that there was “no suggestion that the officials’ attempt to enforce the statute here is antithetical to the tribe’s interests” and “no reason to believe the Navajo official defendants cannot or will not make any reasonable argument that the tribe would make if it were a party.” *Id.* at 1180. In *Kansas v. United States*, the Tenth Circuit reached a similar conclusion, noting that “the potential for prejudice to the Miami Tribe is largely nonexistent due to the presence in this suit of” the “tribal officials.” 249 F.3d 1213, 1227 (10th Cir. 2001).

In light of our disposition, we need not reach the Freedmen’s argument that the Cherokee Nation waived its sovereign immunity by filing a related suit in Oklahoma. We reverse the judgment of the District Court and remand for further proceedings consistent with this opinion.

So ordered.



United States Court of Appeals, District of Columbia
Circuit.

VANN ET AL v. UNITED STATES DEPARTMENT OF THE INTERIOR

**Marilyn VANN, ET AL., Appellants, v. UNITED STATES DEPARTMENT OF THE
INTERIOR, et al., Appellees.**

No. 11-5322.

Argued Oct. 18, 2012. -- December 14, 2012

Before TATEL, GARLAND, and KAVANAUGH, Circuit Judges.

Alvin Dunn argued the cause for appellants. With him on the briefs were Jack McKay, Thomas G. Allen, Cynthia Cook Robertson, and Jonathan Velie. Ethan G. Shenkman, Attorney, U.S. Department of Justice, argued the cause for Federal Appellees. On the brief were William B. Lazarus, Aaron P. Avila, and Kurt G. Kastorf, Attorneys. Jonathan P. Guy argued the cause for appellees Cherokee Nation, et al. With him on the brief were Mark S. Davies and Christopher M. O'Connell.

Before the Civil War, members of the Cherokee Nation had slaves. Those slaves were freed in 1866 pursuant to a treaty negotiated between the United States and the Cherokee Nation. The Treaty guaranteed the former Cherokee slaves and their descendants—known as the Freedmen—"all the rights of native Cherokees" in perpetuity. See Treaty with the Cherokee, art. 9, July 19, 1866, 14 Stat. 799. Those rights included the right to tribal membership and the right to vote in tribal elections.

At some point, the Cherokee Nation decided that the Freedmen were no longer members of the tribe and could no longer vote in tribal elections. A group of Freedmen eventually sued in the U.S. District Court for the District of Columbia, claiming that the Cherokee Nation had violated the 1866 Treaty.

Because the Cherokee Nation is a sovereign entity, it is entitled to sovereign immunity and may not be sued without its consent. See *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 509, 111 S.Ct. 905, 112 L.Ed.2d 1112 (1991); *Vann v. Kempthorne*, 534 F.3d 741, 746 (D.C.Cir.2008). To avoid the sovereign immunity bar, the Freedmen plaintiffs sued not only the Cherokee Nation itself but also the relevant executive official, the Principal Chief, in his official capacity. Under Supreme Court precedent, that is the standard approach by which a party may obtain declaratory or injunctive relief with respect to a sovereign entity notwithstanding sovereign immunity. See *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908); see also, e.g., *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949); *Shields v. Utah Idaho Central Railroad Co.*, 305 U.S. 177, 59 S.Ct. 160, 83 L.Ed. 111 (1938).

In opposition to the suit, the Cherokee Nation pointed out that it was entitled to sovereign immunity, but also that it was a required party to the suit under Federal Rule of Civil Procedure 19 and that the Principal Chief could not adequately represent the Cherokee Nation's interests.¹ Therefore, according to the Cherokee Nation, the suit had to be dismissed.

The District Court agreed with the Cherokee Nation. The District Court concluded that the Cherokee Nation was a required party for purposes of Rule 19, that the Cherokee Nation's interests could not be adequately represented by the Principal Chief, and that the case could not go forward. See *Vann v. Salazar*, 2011 WL 4953030, at *3-6, 9 (D.D.C.2011).

We reverse. Applying the precedents that permit suits against government officials in their official capacities, we conclude that this suit may proceed against the Principal Chief in his official capacity, without the Cherokee Nation itself as a party.

The Freedmen have sued the Principal Chief in his official capacity under the doctrine of *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714. The *Ex parte Young* doctrine allows suits for declaratory and injunctive relief against government officials in their official capacities—notwithstanding the sovereign immunity possessed by the government itself. The *Ex parte Young* doctrine applies to Indian tribes as well. Cf. *Oklahoma Tax Commission*, 498 U.S. at 514, 111 S.Ct. 905; see generally *Larson*, 337 U.S. at 689-92; Richard H. Fallon, Jr., Daniel J. Meltzer & David L. Shapiro, *Hart and Wechsler's The Federal Courts and the Federal System* 958-60 (5th ed.2003).

The *Ex parte Young* doctrine is based on a “fiction”—namely, that “when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes.” *Virginia Office for Protection & Advocacy v. Stewart*, — U.S. —, —, 131 S.Ct. 1632, 1638, 179 L.Ed.2d 675 (2011); see *Larson*, 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628; *Davis v. Gray*, 16 Wall. 203, 83 U.S. 203, 21 L.Ed. 447 (1872); *Osborn v. Bank of United States*, 9 Wheat. 738, 22 U.S. 738, 6 L.Ed. 204 (1824); Fallon et al., *The Federal Courts and the Federal System* 958-60. The doctrine is called a fiction because the suit in effect binds the government entity just as would a suit against the government entity itself. In such suits, the

government in question stands behind the official “as the real party in interest.” Davis, 83 U.S. at 220. Indeed, an injunction entered against an officer in his official capacity is binding on the officer's successors. See Fed.R.Civ.P. 65(d); *Acheson v. Albert*, 195 F.2d 573, 576 n. 9 (D.C.Cir.1952) (“The judgment entered in the present case would no doubt be res judicata on the law and facts as against the Secretary's successors in office.”); 11 A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2956 (2d. ed. 1995) (“A decree binding a public official generally is valid against that official's successors in office.”).

As a practical matter, therefore, the Cherokee Nation and the Principal Chief in his official capacity are one and the same in an *Ex parte Young* suit for declaratory and injunctive relief. As a result, the Principal Chief can adequately represent the Cherokee Nation in this suit, meaning that the Cherokee Nation itself is not a required party for purposes of Rule 19. By contrast, if we accepted the Cherokee Nation's position, official-action suits against government officials would have to be routinely dismissed, at least absent some statutory exception to Rule 19, because the government entity in question would be a required party yet would be immune from suit and so could not be joined. But that is not how the *Ex parte Young* doctrine and Rule 19 case law has developed.

Nor is there any basis for distinguishing this case involving an American Indian tribe from a run-of-the-mill *Ex parte Young* action. Here, the named defendant—the Principal Chief—is the head of the executive branch of the Cherokee Nation. See Cherokee Const., art. VII, § 1 (“The executive power shall be vested in a Principal Chief .”); *id.* art. VII, § 9 (“The Principal Chief shall cause the laws of the Cherokee Nation to be faithfully executed, and shall conduct in person” all “communications and business of the Cherokee Nation.”). The claim here is that the Principal Chief—and through him, the sovereign tribe—is violating federal law. The defense is that the Principal Chief—and hence the sovereign tribe—is not violating federal law. This case presents a typical *Ex parte Young* scenario.

Our analysis is consistent, moreover, with the precedents of other courts of appeals. In line with the basic *Ex parte Young* principles, the Ninth Circuit and Tenth Circuit have similarly concluded that a tribe is not a required party under Rule 19 in suits naming a tribal official in his official capacity. In *Salt River Project Agricultural Improvement and Power District v. Lee*, the Ninth Circuit ruled that Navajo officials responsible for enforcing a challenged tribal law “adequately represent the Navajo Nation's interests.” 672 F.3d 1176, 1180 (9th Cir.2012). The court added that there was “no suggestion that the officials' attempt to enforce the statute here is antithetical to the tribe's interests” and “no reason to believe the Navajo official defendants cannot or will not make any reasonable argument that the tribe would make if it were a party.” *Id.* at 1180. In *Kansas v. United States*, the Tenth Circuit reached a similar conclusion, noting that “the potential for prejudice to the Miami Tribe is largely nonexistent due to the presence in this suit of” the “tribal officials.” 249 F.3d 1213, 1227 (10th Cir.2001).

In light of our disposition, we need not reach the Freedmen's argument that the Cherokee Nation waived its sovereign immunity by filing a related suit in Oklahoma. We reverse the

judgment of the District Court and remand for further proceedings consistent with this opinion.

So ordered.

FOOTNOTES

1. Federal Rule of Civil Procedure 19 provides in relevant part:(a) Persons Required to Be Joined if Feasible.(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:(A) in that person's absence, the court cannot accord complete relief among existing parties; or(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:(i) as a practical matter impair or impede the person's ability to protect the interest; or(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

KAVANAUGH, Circuit Judge.

Opinion for the Court filed by Circuit Judge KAVANAUGH.

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COURT REVIEW TROUBLES TRIBES

Justices due to consider case-transfer rule



Nona Danforth, a member of the Oneida Nation, says her petition to remove the right of state judges to transfer cases to tribal courts is rooted in her belief that tribal judges are not qualified to handle the work.

Eric Heisig
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A clash between a small group of Oneida Nation of Wisconsin members and tribal leadership has made its way to the state Supreme Court and could limit sovereignty for 10 other tribes.

The Oneida group, which seeks to stop

what its members say is a dangerous tribal judiciary, is made up of people who claim they were spurned by judicial officers in the eastern Wisconsin tribe. Members have raised concerns about, among other things, conflicts of interest in the courts and judicial qualifications.

They submitted a petition in July asking the state's highest court to take away circuit

court judges' rights to transfer civil cases to tribal courts because, the group argued, the tribal judges are incapable of properly handling the cases.

The petition targets Oneida Nation judicial officers. But such a change would have a scattershot effect throughout the state.

"They're not just messing with their tribe," said Ho-Chunk Nation Associate Judge



Staff photos by Kevin Harnack

Amanda WhiteEagle, who leads the Wisconsin Tribal Judges Association. "They're messing with 11 separate sovereigns."

Petitioner Nona Danforth, a member of Oneida Nation, said her request is not meant to affect the other tribes, but if it did, "then so be it."

"These judges are supposed to be qualified," Danforth said. "These people are not qualified at all."

Oneida Nation judicial leaders say the petitioners are pushing a plan that would not solve the alleged problems and is not wanted by the majority of tribal members.

"It would mean that all of the people, my people, on the reservation would have to travel either to Green Bay or Outagamie County for their court case," Oneida Nation

Judicial Officer Winnifred Thomas said. "It's a hardship that's placed on them."

The Supreme Court rule, statute 801.54, which allows transfers from state to tribal courts, was passed with a 4-3 vote by the justices six years ago. That close vote, tribal leaders have said, has them worried that the petition could prompt reconsideration and reversal, which they say would be a step backward for tribal sovereignty.

Tribal courts across the state have grown since the court passed the rule. Oneida Family Court Judge Rob Collins estimated that about half of the cases he handles are transfers from state courts, mainly from Brown and Outagamie counties. And proponents of the rule say state judges favor the transfers because they shift many cases away from those courts.

Members of the Indian Law Section of the State Bar are following the petition's progress. The tribal judges association and tribal leaders have attended the past two Supreme Court rules conferences to show their support for 801.54, though it was not discussed.

Statute supporters say they will keep showing up until the group's petition or the rule is discussed. The court's next rules conference is Nov. 17.

The push for sovereignty

The majority of cases transferred from state court involve child support. Since passage of the rule allowing transfers, most of the tribes have established child-support agencies and altered their laws to ensure the tribes have the procedures in place to handle the cases.

Oneida Nation in 2008 was the first to set up a child-support agency and has been a model for other tribes.

The idea behind the transfers is to let the tribes police matters involving their members. Proponents of sovereignty say a tribe is better equipped to handle decisions in a way that meets its cultural needs.

Some tribes, for example, offer services state judges may not know about, such as drug-treatment programs. And statute proponents say it is easier to collect child support, especially if the person paying works for the tribe, because the tribal courts can

Continued on page 18



The Oneida Tribal Judicial System seal hangs on a wall behind Judge Rob Collins in the tribe's courtroom.

Continued from page 17

garnish wages or the per capita payments each member receives.

"Our laws are obviously different than the state laws," WhiteEagle said. "We have our membership that has, maybe, some different cultural beliefs."

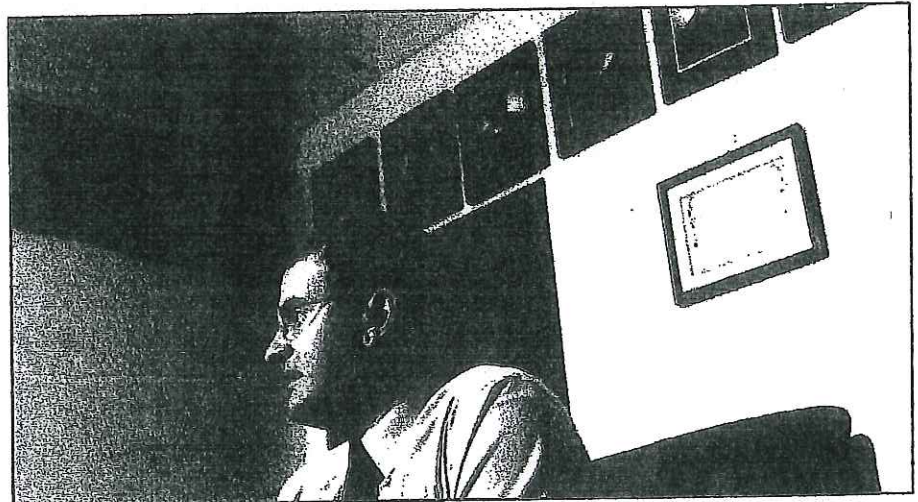
'Protect our children'

Six members of the Oneida Nation signed the petition to end case transfers. Two are young mothers, and one of those is Danforth, 26, mother to Yovanni Vega, 3.

Danforth said she became an outspoken critic of Oneida's tribal court after a three-judge panel awarded joint custody of Yovanni to her and her ex-boyfriend, Vicente Vega. She claimed she presented evidence that her boyfriend was abusive and an unfit parent but that the court ignored it.

"I literally felt like my kid was taken away from me," said Danforth, adding that she has custody of her son most of the time.

The case involving custody of Yovanni Vega was not a transfer from a state court. Danforth's action was filed in the tribal court and stayed there.



Rob Collins, Oneida Family Court judge, talks about changes to the Oneida court while flanked by photos of past family court judges.

Vicente Vega, 26, denied he was abusive and said Danforth "had absolutely no evidence" to show that. He also said Danforth opposes the tribe's judiciary because she lost in court and wants to do anything she can to change that outcome.

But Danforth, who is registered with the Supreme Court's clerk as the petitioning group's leader, said there are other young mothers who support change but did not

sign the petition because they are afraid of retaliation.

According to the petition, "We believe the government officials, relevant areas of the Oneida Tribe, the judicial system and its elected judicial officers, have failed to protect our children and families. For this reason, we have chosen to pursue this matter as a means to defend and protect our children and families to the best of our ability."



Oneida Nation Councilwoman Melinda Danforth oversees tribal matters from the administrative headquarters.

Judicial concerns

The group last called for change in July 2013, according to its petition, but claimed Oneida Nation leaders ignored that and previous requests.

Complaints about the tribe's court system, which has been in place since 1991, include judicial officers allegedly hearing cases involving family members and claims there were rulings that had no basis in law. Another petitioner, Linda Dallas, a former tribal judicial officer, said members of the judiciary often weigh what family a person comes from in making their decisions.

"I assure you," Dallas said, "there's people just like us in all the other tribes, too."

Petitioners also raised concerns about qualifications because Oneida Nation judicial officers previously were not required to have a college degree. Those concerns and a need to update tribal laws prompted Oneida's General Tribal Council in 2013 to approve overhauling the court system, said Councilwoman Melinda Danforth, who is a distant cousin to Nona Danforth's father.

The Oneida Nation is in the midst of that overhaul. Tribal leaders rewrote the judge qualifications, which now require at least a four-year degree, and revised the judiciary's ethics policy, both of which mean some judicial officers no longer will preside over cases. That includes Thomas, who does not have a college degree.

Instead of three-judge panels hearing cases at the trial level, as was customary under the old system, one judge will hear a case. If

the case is appealed, a three-judge appeals court will hear it unless an appellant requests a hearing by all five appellate judges.

Last year, the tribe hired a judge, Collins, an Oconomowoc native who worked for Brown County Corporation Counsel and who handles family court cases. On Sept. 27, the tribe held elections for new judges, and the new system will be in place by March 1.

"I think the tribal leadership ... really wanted to make sure that the family court had somebody who was a lawyer hearing the cases," Collins said. "I think that the absence of that was the cause of some issues in the past."

The changes have appeased some, such as Amanda Gerondale, an Oneida Nation member and 29-year-old mother of three. She said she worked with Nona Danforth early on because of the way Gerondale was treated by at least one former judge who she claimed favored men. Since Collins took over, though, Gerondale said she is happy with how her case has been treated, though her name remains on the petition.

"I'm actually very pleased with the court," she said. "I've been three times since [Collins has] been in there."

Because of complaints about the previous system, the tribe offered to have Collins preside over any cases heard under the old system. The judge said about eight people had their cases reheard.

Nona Danforth was not among them.

"It's not that I don't trust the guy that's in there," she said. "It's the people around there."

Leaders see success

Since 801.54 was enacted, thousands of cases have transferred to the tribal courts, WhiteEagle said. Neither she nor the Director of State Courts' office could provide exact numbers.

Donald Zuidmulder, chief judge for the Eighth Judicial Circuit, which covers Brown, Door, Kewaunee, Marinette, Oconto, Outagamie and Waupaca counties, said it appears the petition would "cut off the ability of the state courts and tribal courts to be respectful of one another and have a dialogue on these issues."

"That's troubling to me," he said.

Shorewood attorney John Swimmer, whose practice includes Indian law, said the transfer system is handled like any other motion practice, with responses and a judge's order. That ensures the decision is made for the right reasons.

"If you don't want your case going involuntarily, there are procedures in place," Swimmer said. "Most of the cases that go are voluntary transfers."

But the Supreme Court's votes on allowing transfers always have been close, including in 2010 when it tweaked the law to let child-support cases transfer, and in 2011, when it reaffirmed the rule.

When the court voted in 2011, the justices said they would review 801.54 in 2016. Those who want to weigh in on the rule have until Jan. 1, 2016.

WhiteEagle said she has not heard many complaints about the tribal courts. She said she would be more concerned if the complaints were coming from a larger group, but added, "in the back of my mind, sure I'm concerned."

Caroyl Long, the attorney for Oneida Nation's child-support agency, has been at the past two rules conferences. She and WhiteEagle said they expect supporters of the transfer rule to be at the next two Supreme Court rules conferences to show solidarity.

"You're going to either agree with tribal sovereignty or not," Long said.

Nona Danforth and Dallas, who were not at either of those conferences, said they were surprised their petition has received so much attention.

But despite the changes in Oneida's court, as well as the potential ramifications of abolishing the rule, Nona Danforth said it is only the beginning.

"We get through all the Supreme Court, I'm not done," she said. "They have to be held accountable."



GAO

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United States Government Accountability Office
Washington, DC 20548

December 13, 2010

The Honorable Byron L. Dorgan
Chairman
Committee on Indian Affairs
United States Senate

The Honorable John Barrasso
Vice Chairman
Committee on Indian Affairs
United States Senate

The Honorable John Thune
United States Senate

Subject: U.S. Department of Justice Declinations of Indian Country Criminal Matters

The Department of Justice (DOJ) has reported that the crime rates experienced by American Indians are two and a half times higher than those experienced by the general population in the United States. Specifically, from 1992 to 2001 American Indians experienced violent crimes at a rate of 101 violent crimes per 1,000 persons annually, compared to the national rate of 41 per 1,000 persons. The federal government plays a major role in prosecuting crimes committed in Indian country. For example, unless a federal statute has granted the state jurisdiction, the federal government has exclusive jurisdiction to prosecute non-Indians who commit crimes against Indians in Indian country, while the federal government and tribal governments both have jurisdiction to prosecute Indian offenders who commit crimes in Indian country. Federal prosecution, however, carries with it the possibility of greater terms of imprisonment, as tribal courts are statutorily limited to a maximum of 3 years imprisonment per offense, regardless of the severity of the offense, for example, a homicide.¹ Because of such jurisdictional and sentencing limitations, tribal communities rely on the federal government to investigate and prosecute a variety of crimes in Indian country.

Members of Congress have raised questions over recent press reports that federal prosecutors have declined to prosecute a significant percentage of Indian country

¹The Tribal Law and Order Act of 2010 (Pub. L. No. 111-211, tit. II, 124 Stat. 2258, 2261 (2010)) provides tribes with authority to sentence certain convicted Indian offenders for up to 3 years of imprisonment, provided that they afford additional pretrial and trial protections to safeguard the rights of the accused. See 25 U.S.C. § 1302. Before the passage of the act on July 29, 2010 the sentencing authority of tribes was limited to one year.

criminal investigations that have been referred to their offices, and you asked us to review this issue. This report addresses the following questions:

1) How many Indian country matters were referred to U.S. Attorneys' offices and what were the declination rates for those matters for fiscal years 2005 through 2009?

2) What are the reasons for the declinations as recorded in the Department of Justice's case management system?

To determine U.S. Attorney declination rates and the reasons for those declinations, we reviewed violent and nonviolent criminal matters from Indian country in DOJ's case management system, the Legal Information Office Network System (LIONS). Specifically, we consolidated records provided for fiscal years 2005 through 2009, the 5 most recent years of data available for violent and nonviolent crimes, into a single data set and analyzed the data to determine declination rates for Indian country matters. However, LIONS does not contain data on all criminal matters in Indian country. Specifically, Indian country matters may be categorized in LIONS as something other than "Indian country," and crimes committed in Indian country that are not referred to a U.S. Attorney's Office (USAO), for instance, crimes over which the state has jurisdiction, are not recorded in LIONS.² We interviewed cognizant DOJ officials about the data entry process for new matters, performed electronic testing for obvious errors in accuracy and completeness of the data, and reviewed LIONS documentation to determine that the data in LIONS was sufficiently reliable for the purpose of our review. We also interviewed staff from 4 of the 94 USAOs that had among the largest volumes of Indian country referrals from fiscal years 2005 through 2009. Since we selected a nonprobability sample of USAOs to interview, the information we obtained is not generalizable to all USAOs.³ However, the interviews provided insights into the factors that may contribute to the difference in declination rates for various types of criminal offenses.

We conducted our work from October 2009 through December 2010 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives.⁴ The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained and the analysis conducted provide a reasonable basis for any findings and

²For example, states have jurisdiction over crimes occurring in Indian country where both parties are non-Indians. In addition, the federal government has enacted statutes giving certain states authority to prosecute crimes committed by or against Indians in Indian country. See, e.g., 18 U.S.C. § 1162, which confers such jurisdiction for all, or parts, of Indian country in Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin.

³Results from nonprobability samples cannot be used to make inferences about a population, because in a nonprobability sample some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

⁴This is the first of two efforts related to tribal justice issues that we reviewed in response to your request during this time. The second effort is focused on the challenges that select tribes face in adjudicating Indian country crimes, and collaboration between the Department of the Interior and DOJ to support tribal justice systems. We expect to issue the final results from that effort in 2011.

conclusions in this product. See enclosure I for a more detailed discussion of our scope and methodology.

Results in Brief

In fiscal years 2005 through 2009, USAOs resolved about 9,000 of the approximately 10,000 Indian country matters referred to their offices by filing for prosecution,⁵ declining to prosecute, or administratively closing the matter.⁶ USAOs declined to prosecute 50 percent of the 9,000 matters. In addition:

- About 77 percent of the matters received were categorized as violent crimes, and 24 percent as nonviolent crimes.
- Declination rates tended to be higher for violent crimes, which were declined 52 percent of the time, than for nonviolent crimes, which were declined 40 percent of the time. According to staff from the USAOs, the difference in declination rates may be related to the evidence that is generally available for each type of crime, because, generally, less evidence is available for violent crimes.
- South Dakota and Arizona were the top two districts receiving Indian country matters, with 2,414 and 2,358 matters, respectively.
- The Federal Bureau of Investigation (FBI) and Bureau of Indian Affairs (BIA) were the most prominent referring agencies, with 5,500 and 2,355 matters referred, respectively. Matters referred by the FBI were declined 46 percent of the time by the USAO, and matters from BIA 63 percent of the time. According to USAO, FBI, and BIA officials, this may be attributed to differences in the types of crimes investigated by the two agencies and the agencies' policies on which matters to refer to USAOs.
- Two charge categories accounted for 55 percent of matters referred. There were 2,922 assault matters received (29 percent of the total), while the other leading charge was sexual abuse and related offenses, with 2,594 matters received (26 percent of the total). USAOs declined to prosecute 46 percent of assault matters and 67 percent of sexual abuse and related matters.

The Department of Justice's case management system, LIONS, cited 32 possible reasons associated with declinations of Indian country matters. Three of those reasons were associated with 65 percent of the declinations. They were "weak or insufficient admissible evidence" (42 percent), "no federal offense evident" (18 percent), and "witness problems" (12 percent).⁷

Background

Crimes committed in Indian country may be under the jurisdiction of federal, state, or tribal governments depending on (1) the identity of the offender and victim—that is,

⁵As of September 30, 2009, about 1,000 of the 10,000 matters were pending action by the USAOs.

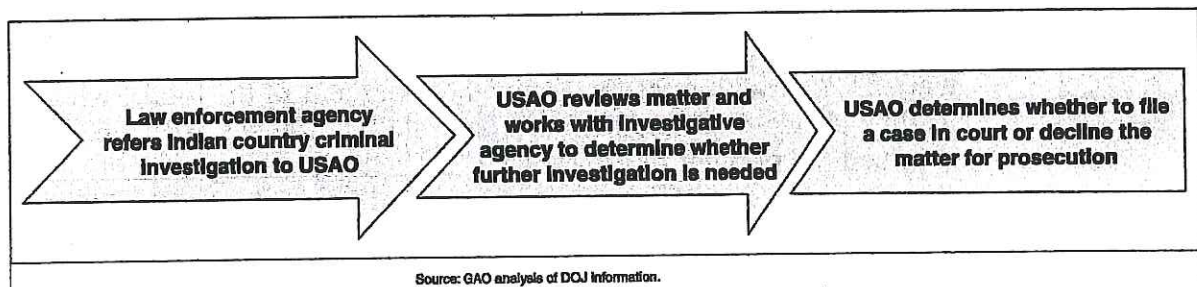
⁶Administratively closed matters were not declined, but were closed in LIONS for administrative reasons. These include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined.

⁷Up to three reasons may be associated with a declination; therefore, the sum of the individual percentages for the three reasons presented here exceeds 65.

Indian or non-Indian, (2) the nature of the alleged crime, (3) the state in which the alleged crime occurred, and (4) whether the crime was committed in Indian country as defined by federal statute.⁸ Depending on the specific combination of factors in a given crime, the U.S. Attorneys may have jurisdiction to prosecute crimes committed in Indian country.⁹

The USAO intake process for Indian country criminal matters begins when a law enforcement agency presents an investigation for possible prosecution. Most Indian country crimes are investigated and presented to the USAO by a tribal law enforcement agency, the FBI, or by criminal investigators from BIA. USAOs refer to all criminal investigations referred to them as “matters,” and categorize them as “violent” or “nonviolent” depending on the nature of the alleged crime.¹⁰ DOJ officials noted that receipt of a referral does not mean that a prosecutable case exists at the time the referral is made. Upon further investigation, USAOs may file the matter for prosecution as a case in court or decline to prosecute the matter.¹¹ When declining to prosecute a criminal matter, USAOs categorize the declination as an immediate declination or a later declination. An immediate declination occurs when the USAO does not open a file on a referral and does not pursue prosecution of the referral. A later declination occurs when the USAO opens a file on the referral, conducts more work on the matter than would be associated with an immediate declination, but ultimately does not pursue prosecution of the referral. Unless otherwise noted, we have combined immediate and later declinations into a single declination category in our analysis. The intake process for Indian country matters referred to USAOs is illustrated in figure 1 below.

Figure 1: Prosecution or Declination Process for Indian Country Matters Referred to a USAO



⁸The term “Indian country” refers to all land within the limits of any Indian reservation under the jurisdiction of the U.S. government, all dependent Indian communities within U.S. borders, and all existing Indian allotments, including any rights-of-way running through an allotment. See 18 U.S.C. § 1151.

⁹The tribal government also has jurisdiction to prosecute Indian offenders who commit crimes in Indian country, even in circumstances where federal jurisdiction exists.

¹⁰There are no fixed criteria for USAOs in categorizing violent versus nonviolent matters. DOJ officials told us that the categorization is made at the discretion of the prosecutor depending on the nature of the alleged crime and that categorization practices may differ among districts.

¹¹In the event USAO declines to prosecute a matter, it must coordinate with appropriate tribal justice officials regarding the use of evidence relevant to the prosecution of the case in a tribal court with concurrent jurisdiction, that is, declined cases involving Indian offenders. See 25 U.S.C. § 2809(a)(3).

USAOs Declined to Prosecute 50 Percent of the More Than 9,000 Matters Received in Fiscal Years 2005 through 2009 That Were Resolved

Approximately 10,000 Indian country matters were referred to USAOs in fiscal years 2005 through 2009, and USAOs declined to prosecute 50 percent of the more than 9,000 matters that were resolved. As of September 30, 2009, about 1,000 of the total matters received were considered pending because a USAO had not yet decided to file for prosecution, decline, or administratively close the matter.¹² Of the matters received, about 77 percent were categorized as violent crimes, and 24 percent as nonviolent crimes. Annual matters received for violent and nonviolent crime, as well as filing and declination information for those matters, are shown in table 1, below.

Table 1: Indian Country Matters Received, Fiscal Years 2005 through 2009

Fiscal year	Matters received			Matters filed for prosecution or declined			Not yet filed for prosecution or declined
	Violent ^a	Nonviolent ^a	Total received	Filed for prosecution ^b	Immediately declined	Later declined	
2005	1,876	479	2,342	977	663	682	20
2006	1,483	472	1,947	858	495	546	48
2007	1,488	489	1,963	1,018	331	544	70
2008	1,491	501	1,987	975	323	472	217
2009	1,342	429	1,767	756	201	249	561
Total	7,680	2,370	10,006	4,584	2,013	2,493	916

Source: GAO analysis of DOJ data.

^aSome matters are categorized as both violent and nonviolent. Therefore, the sum of the violent and nonviolent categories exceeds the total received.

^b"Filed for prosecution" includes matters that were not declined, but were closed in LIONS for administrative reasons. These administratively closed matters include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined.

The overall declination rate for Indian country matters was 50 percent for fiscal years 2005 through 2009, as shown in table 2, below. Note that trends cannot be discerned by comparing individual years because more matters were pending for recent fiscal years than for earlier fiscal years.

Table 2: Indian Country Matters Declined, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009

Fiscal year	Matters received	Matters filed for prosecution or declined ^a	Matters declined	Declination rate ^b
2005	2,342	2,322	1,345	58%
2006	1,947	1,899	1,041	55%
2007	1,963	1,893	875	46%
2008	1,987	1,770	795	45%
2009	1,767	1,206	450	37%
Overall	10,006	9,090	4,506	50%

Source: GAO analysis of DOJ data.

¹²We calculated the declination rate as the number of matters declined divided by the number of matters that were resolved—that is, filed for prosecution, declined, or administratively closed. We did not include pending matters given that action had not yet been taken on them. See enclosure I for a more detailed discussion of our methodology.

^a"Filed for prosecution" includes matters that were not declined, but were closed in LIONS for administrative reasons. These administratively closed matters include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined.

^bMatters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate. Trends cannot be discerned by comparing individual years because more matters were pending for recent fiscal years than for earlier fiscal years. As these pending matters are closed, the declination rates may change, particularly for recent fiscal years.

Overall, declination rates tend to be higher for violent crimes, which were declined 52 percent of the time in fiscal years 2005 through 2009, than for nonviolent crimes, which were declined 40 percent of the time, as shown in tables 3 and 4 below.

Table 3: Indian Country Matters Declined, Violent Crimes, Fiscal Years 2005 through 2009

Fiscal year	Matters received	Matters filed for		Declination rate ^b
		prosecution or declined ^a	Matters declined	
2005	1,876	1,864	1,095	59%
2006	1,483	1,454	805	55%
2007	1,488	1,434	732	51%
2008	1,491	1,343	669	50%
2009	1,342	898	370	41%
Overall	7,680	6,993	3,671	52%

Source: GAO analysis of DOJ data.

^a"Filed for prosecution" includes matters that were not declined, but were closed in LIONS for administrative reasons. These administratively closed matters include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined.

^bMatters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate. Trends cannot be discerned by comparing individual years because more matters were pending for recent fiscal years than for earlier fiscal years. As these pending matters are closed, the declination rates may change, particularly for recent fiscal years.

Table 4: Indian Country Matters Declined, Nonviolent Crimes, Fiscal Years 2005 through 2009

Fiscal year	Matters received	Matters filed for		Declination rate ^b
		prosecution or declined ^a	Matters declined	
2005	479	471	256	54%
2006	472	453	240	53%
2007	489	473	152	32%
2008	501	431	126	29%
2009	429	311	80	26%
Overall	2,370	2,139	854	40%

Source: GAO analysis of DOJ data.

^a"Filed for prosecution" includes matters that were not declined, but were closed in LIONS for administrative reasons. These administratively closed matters include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined.

^bMatters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate. Trends cannot be discerned by comparing individual years because more matters were pending for recent fiscal years than for earlier fiscal years. As these pending matters are closed, the declination rates may change, particularly for recent fiscal years.

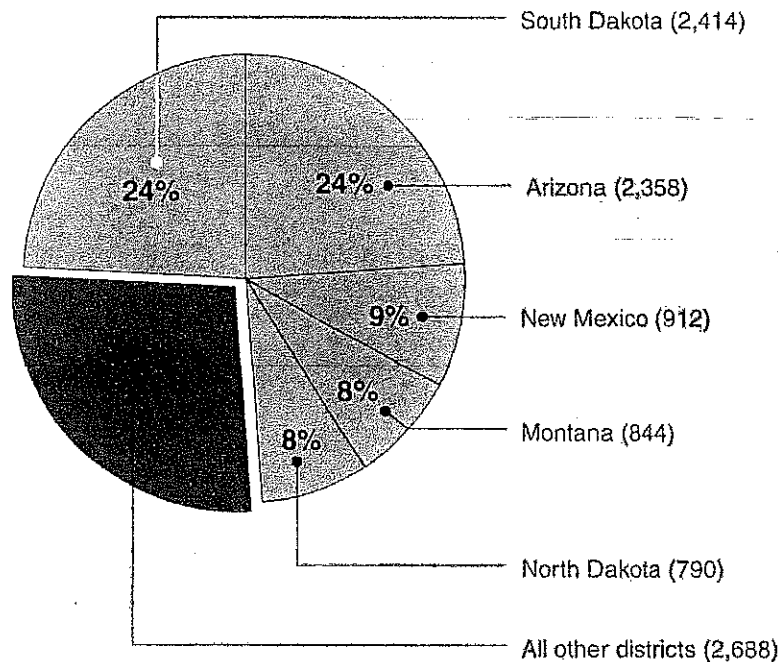
According to staff from the USAOs with whom we spoke, the difference in declination rates may reflect the amount and quality of evidence that is often available for each type of crime. Nonviolent crimes, such as the illegal sale of alcohol, tend to have more witnesses, while other nonviolent crimes such as fraud leave more of a "paper trail" than violent crimes. Violent crimes, however, frequently occur

outside the presence of witnesses, other than a typically fragile victim—for example, a child or a victim of domestic violence or sexual abuse—and lack documentary evidence. Furthermore, victims of violent crime may not have seen their attacker, may be too frightened to testify against him or her in court, or may have some form of domestic relationship with the suspect causing them to be unwilling to testify in court. The lack of evidence available for violent crimes tends to make them more difficult to prove and, therefore, may result in an increased rate of declination.

Five USAO Districts Account for 73 Percent of All Indian Country Criminal Matters Received

Fifty-one of the 94 USAO districts received Indian country matters from fiscal years 2005 through 2009, although 5 districts account for 73 percent of all Indian country criminal matters received, as shown in figure 2 below.

Figure 2: Indian Country Matters Received by USAO District, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009



Source: GAO analysis of DOJ data.

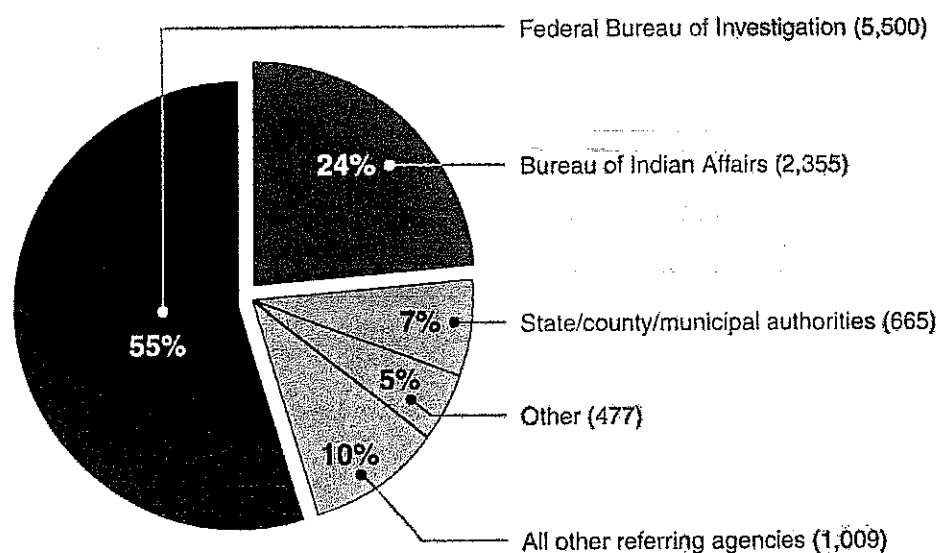
After North Dakota, which received 790 Indian country matters from fiscal years 2005 through 2009 and ranked fifth in the number of Indian country criminal matters received, the district with the next largest number of receipts was the Western District of Oklahoma with 301 matters. Twenty-six districts received between 1 and 10 Indian country matters over the period.

For more detail on the number of matters received and declination rates by USAO district, please see enclosure II, tables 7, 8 and 9.

Seventy-Nine Percent of Indian Country Matters Were Referred to USAOs by the FBI or BIA

The FBI and the BIA referred 79 percent of the Indian country matters to the USAOs. The FBI accounted for 55 percent of the total referrals, while the BIA accounted for 24 percent. Tribal law enforcement, the BIA, and the FBI share responsibility for investigating federal offenses in Indian country; however, the LIONS database does not contain a category specifically for referrals from tribal law enforcement authorities. DOJ officials told us that USAOs generally categorize referrals from tribal authorities under the "state/county/municipal authorities" category or the "other" category, and that categorization practices differ between districts. Figure 3, below, shows the number of Indian country matters received by USAOs by referring agency from fiscal years 2005 through 2009.

Figure 3: Indian Country Matters Received by Referring Agency, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009



Source: GAO analysis of DOJ data.

Note: "State/county/municipal authorities" and "Other" categories may include tribal authorities. "Other" is a category in LIONS to track all other agencies that do not have a separate category in the database. "All other referring agencies" combines several smaller LIONS categories in our analysis. Percentages do not add to 100 due to rounding.

USAOs declined 63 percent of Indian country criminal matters referred by the BIA and 46 percent of Indian country criminal matters referred by the FBI. Representatives from USAOs, BIA, and FBI told us that this difference in declination rates may be the result of differences in agency protocols for referring matters to a USAO. For example, while FBI officials said that they may elect not to refer matters that they believe lack sufficient evidence for prosecution, BIA officials said that they refer all matters that they investigate to the USAO. Also, one agency may not have a presence in a certain area, leaving the other to make all of the referrals to the USAO. For example, the FBI does not have a presence on some tribal land in Arizona, and so criminal matters from that area are referred by the BIA. Furthermore, FBI officials noted that in many districts USAO guidelines assign primary responsibility for investigation of certain types of crimes to either the FBI or the BIA. For example, the FBI may be primarily responsible for crimes with child victims while the BIA may be

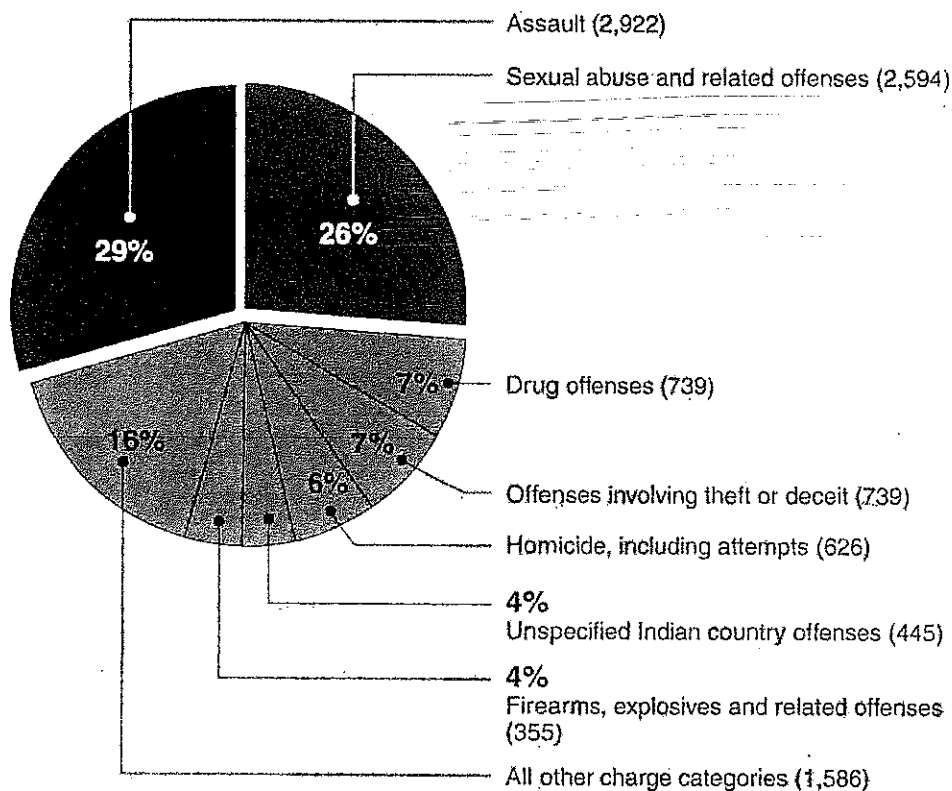
responsible for adult rape investigations. These differences in agency protocols for referring matters to a USAO, presence in certain areas of Indian country, and investigative responsibilities may affect the declination rates for the matters referred by the BIA and the FBI.

For more detail on the number of matters received and declination rates by referring agency for violent and nonviolent crimes, see enclosure II, tables 10, 11 and 12.

Assault and Sexual Abuse Charges Accounted for 55 Percent of Indian Country Matters Received

Assault and sexual abuse charges were the leading types of charges in Indian country and accounted for 55 percent of Indian country matters in LIONS, as shown in figure 4 below.

Figure 4: Indian Country Matters Received by Charge, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009



Source: GAO analysis of DOJ data.

Note: We used the category "Unspecified Indian country offenses" where the LIONS data did not include a specific charged offense but indicated that the alleged criminal conduct took place in Indian country. "All other charge categories" includes specific charges not included in this figure and pending matters where DOJ had not yet decided whether to charge or decline to prosecute. Percentages do not add to 100 due to rounding.

Of the two leading Indian country crime charge categories, USAOs declined to prosecute 67 percent of sexual abuse and related matters and declined to prosecute 46 percent of assault matters. USAO officials told us that the difference in declination rates between sexual abuse and assault matters may be the result of the difficulty in obtaining evidence and witnesses in sexual abuse investigations. For example, victims in sexual abuse crimes may not notify law enforcement officials of the crime

until long after it occurred, making the collection of nontestimonial, physical evidence difficult or impossible. In addition, sexual assault victims may be unwilling to testify against a perpetrator in court, particularly if they know the perpetrator and are facing pressure not to testify. USAO officials also noted that child victims, in particular, may have difficulty testifying in court against their abuser or experience difficulty in articulating what crimes were committed. In these instances, the matter would likely have to be declined.

For more detail on the number of matters received and declination rates by charge for violent and nonviolent crimes, see enclosure II, tables 13, 14, and 15.

Reasons for Declinations Varied, but "Weak or Insufficient Evidence" Was the Most Frequently Cited

There were 32 possible declination reasons that could be selected in LIONS and were associated with Indian country criminal matters,¹³ and 5 of the reasons were associated with 83 percent of the declinations.¹⁴ "Weak or insufficient admissible evidence" was the reason most frequently associated with declinations, as shown in table 5 below.

Table 5: Frequency of Declination Reasons, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009

Declination reason	Percentage of declinations citing reason ^a
Weak or insufficient admissible evidence	42%
No federal offense evident ^b	18%
Witness problems	12%
Lack of evidence of criminal intent	10%
Suspect to be prosecuted by other authorities	10%
All other declination reasons	26%

Source: GAO analysis of DOJ data.

^aUp to three reasons may be associated with a declination, therefore the sum of percentages exceeds 100.

^b"No Federal Offense Evident" may include matters declined because of jurisdictional issues.

DOJ officials have stated that lack of jurisdiction precludes USAO prosecution of certain Indian country crimes. For example, if a non-Indian commits a crime in Indian country and the victim of the crime is also non-Indian, the state rather than the federal government would have jurisdiction to prosecute. However, "Jurisdiction or Venue Problems" was cited in only 2 percent of declinations. At the same time, the selection of reasons for a declination is subject to the prosecutor's discretion and, according to DOJ officials, a prosecutor could choose to use an alternate reason, such as "No Federal Offense Evident," when jurisdiction or venue problems occur. "No Federal Offense Evident" accounted for 18 percent of the declination reasons, as shown in the table above. It is unknown what percentage of these cases may have

¹³LIONS tracks only the declination reasons chosen by the USAOs and not case-specific facts behind individual declinations.

¹⁴Up to three reasons may be associated with a declination; therefore, the sum of percentages for the top five reasons exceeds 83.

been declined because the federal government lacked jurisdiction or because the conduct did not meet other elements of the crime.

For a list of all of the reasons associated with declinations of Indian country matters, see enclosure II, tables 16, 17, and 18.

We provided a draft of this report to DOJ for review and comment. Their comments are reproduced in enclosure III. DOJ provided additional perspectives on the reasons why USAOs may decline to prosecute a criminal matter, and on their efforts to address public safety challenges in Indian country. DOJ also provided technical comments that we have incorporated where appropriate.

We are sending copies of this report to the appropriate congressional committees. We are also sending copies to the Attorney General of the United States and the Secretary of the Interior. This report will also be available at no charge on our Web site at <http://www.gao.gov>.

If you or your staff have questions concerning this report, please contact me at (202) 512-9627 or maurerd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in enclosure IV.



David C. Maurer
Director, Homeland Security and Justice

Enclosures (4)

Enclosure I

Scope and Methodology

To determine U.S. Attorney declination rates and the reasons for those declinations, we reviewed violent and nonviolent criminal matters from Indian country in the Department of Justice's (DOJ) case management system, the Legal Information Office Network System (LIONS). Specifically, we consolidated records provided from fiscal years 2005 through 2009, the 5 most recent years of data available for violent and nonviolent crimes, into a single data set and analyzed the data to determine declination rates for Indian country matters. We considered a matter to be not declined if any one defendant was prosecuted, even if the USAO had declined to prosecute other defendants or had previously declined the matter.

We also interviewed cognizant DOJ officials about the intake and data entry process for Indian country matters, performed electronic testing for obvious errors in accuracy and completeness of the data, and reviewed LIONS documentation to determine that the data we used were sufficiently reliable for the purposes of our review. Nevertheless, certain limitations apply to the Indian country data in LIONS because the system is designed for case management and not primarily for statistical analysis. Specifically, Indian country matters may be categorized in LIONS as something other than "Indian country." For example, a firearms offense involving Indians in Indian country may be categorized only as a firearms matter. Further, crimes committed in Indian country that are not referred to a U.S. Attorney's Office (USAO), for instance, crimes over which the state has jurisdiction, are not recorded in LIONS. Therefore, LIONS does not contain data on all criminal investigations in Indian country. Moreover, the manner in which LIONS is used in individual offices may vary over time in a way that could affect the declination rate, even without changes in Indian country crime frequency or prosecution practices. For example, DOJ officials told us that prior to 2007, the South Dakota USAO opened matters in LIONS to keep information about offenders for possible use if the offenders were later arrested for a prosecutable federal offense. Starting in 2007, the South Dakota USAO changed its LIONS practices and no longer entered those matters in LIONS, which would have the effect of decreasing that office's declination rate.

In addition, we interviewed staff from 4 of the 94 USAOs that had among the largest volumes of Indian country matters from fiscal years 2005 through 2009, the period for which we calculated declination rates. Since we selected a nonprobability sample of USAOs to interview, the information we obtained is not generalizable to all USAOs.¹⁶ However, the interviews provided insights into the factors that may contribute to the difference in declination rates for various types of criminal matters.

We calculated the declination rate for a given fiscal year as the proportion of resolved matters received in that year that were declined at any time during the five year period. A resolved matter is one that the USAO has decided to file for prosecution, decline, or administratively close. For example, we looked at the Indian country

¹⁶Results from nonprobability samples cannot be used to make inferences about a population, because in a nonprobability sample some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

matters that USAOs received in fiscal year 2006, and then determined what percentage of the resolved matters were filed for prosecution or administratively closed and what percentage were declined. If a matter was received in fiscal year 2006 and was immediately declined, it was included in the declination rate. Similarly, if a matter was received in fiscal year 2006 and was declined in fiscal year 2008, it was also included in the declination rate for fiscal year 2006 matters. Matters that USAOs had not yet resolved—that is, decided to file for prosecution, decline, or administratively close—were not included in the declination rate.

This approach for calculating declination rates contrasts with an alternate method that has been used by DOJ, in which the number of matters that were received in a given fiscal year is compared with the number of matters declined in that same year. Under this approach, a matter received in 2006 and declined in 2008 would be included in the 2008 declination rate. Furthermore, a matter received in 2008, but which was not filed for prosecution or declined, would also be included in the calculation of the 2008 declination rate. This approach is useful for describing the level of activity related to matters in a given fiscal year, one of the purposes for which DOJ uses the LIONS system, but does not reflect what happened to a matter over time.

In determining the declination rates by charge, we grouped Indian country matters into 19 broad charge categories, listed below in table 6. These categories reflect the lead charge assigned by a prosecutor at intake to indicate the most significant crime alleged.

Table 6: Charge Categories for Indian Country Criminal Matters	
Charge category	Description of charge category
Conservation and environmental offenses	Violations of resource conservation laws contained in Title 16 of the U.S. Code, such as laws protecting National Parks, forests, archeological resources, historic properties, fish, wildlife, and marine mammals; laws protecting public lands (Title 18, Chapter 91); water pollution control laws (Title 33, Chapter 26), and unlawful hunting, trapping, or fishing on Indian land (18 U.S.C. § 1165).
Offenses involving theft or deceit	Violations of 17 U.S.C. Chapter 5 (copyright infringement), and 18 U.S.C. Chapter 9 (bankruptcy fraud), Chapter 11 (bribery, graft, and conflicts of interest), Chapter 11a (failure to pay child support), Chapter 25 (counterfeiting and forgery), Chapter 31 (embezzlement and theft), Chapter 42 (extortionate credit transactions), Chapter 47 (fraud and false statements), Chapter 63 (mail and other fraud), Chapter 75 (passport and visa fraud), Chapter 103 (robbery and burglary), Chapter 107 (stowaways), Chapter 113 (stolen property), Chapter 114 (trafficking in tobacco contraband), and 26 U.S.C. Chapter 75 (tax offenses), and certain Indian-related theft offenses, i.e., 18 U.S.C. § 1163 (embezzlement and theft from tribal organizations), 18 U.S.C. § 1167 (theft from gaming establishments in Indian country), and 18 U.S.C. § 1168 (theft by officers or employees of gaming establishments on Indian lands).
Obstruction of justice offenses	Violations of 18 U.S.C. § 4 (concealment of a felony), 18 U.S.C. §§ 371-372 (conspiring to commit an offense against the United States or its officers), 18 U.S.C. § 1169 (failure to report child abuse in Indian country), as well as any offenses within the following Chapters of Title 18: Chapter 21 (contempt), Chapter 35 (escape from custody), Chapter 49 (fugitives from justice), Chapter 73 (obstruction of justice), Chapter 75 (perjury), Chapter 207 (release and detention pending judicial proceedings), Chapter 224 (protection of witnesses), Chapter 227

	(sentences), and chapter 229 (post-sentence administration).
Controlled substance offenses	Violations of the Controlled Substances Act of 1970, which is found in Title 21 of the United States Code, as well as violations of the alcohol prohibitions applicable to Indian country under Title 18, Chapter 53 (18 U.S.C. § 1154-1156).
Firearms, explosives, and related offenses	Violations of 18 U.S.C. Chapter 5 (arson), Chapter 40 (explosives), chapter 44 (firearms), and 26 U.S.C. Chapter 53 (certain firearms and destructive devices).
Sexual abuse and related offenses	Violations of 18 U.S.C. Chapter 109A (sexual abuse), Chapter 109B (sex offender registration requirements), Chapter 110 (child pornography), and Chapter 117 (involving transportation of the victim for illegal sexual activity).
Immigration offenses	Encompasses the general immigration penalty provisions (8 U.S.C. §§ 1324-1330).
Property damage or trespass offenses	Violations of 18 U.S.C. Chapter 65 (malicious mischief) and trespass offenses such as 18 U.S.C. § 1793, trespass on Bureau of Prisons land.
Gambling offenses	Violations of the following U.S. Code provisions: 15 U.S.C. § 1175, gambling devices prohibited and 18 U.S.C. § 1084, transmission of wagering information.
Racketeering offenses	Violations of 18 U.S.C. chapter 95, including 18 U.S.C. § 1951, interference with commerce by threats or violence; 18 U.S.C. § 1952, interstate and foreign travel or transportation in aid of racketeering enterprises; 18 U.S.C. § 1955, prohibition of illegal gambling businesses; 18 U.S.C. § 1956, laundering of monetary instruments; 18 U.S.C. § 1958, use of interstate commerce facilities in murder-for-hire; and 18 U.S.C. § 1959, violent crimes in aid of racketeering activity.
Homicide, including attempts	Violations of 18 U.S.C. chapter 51 (homicide). The offenses within this chapter include murder, manslaughter, and attempted murder or manslaughter, among other things
Assault	Violations of 18 U.S.C. Chapter 7. Within this category, assaults may range from simple assault, which is a misdemeanor with a maximum prison exposure of 6 months, to assault with intent to commit murder, which is a felony punishable by up to 20 years imprisonment.
Offenses involving threats, force or violence	Violations of 18 U.S.C. Chapter 41 (extortion and threats), Chapter 55 (kidnapping), Chapter 90A (protection of unborn children), and Chapter 110A (domestic violence and stalking).
Civil rights offenses	Violations of 18 U.S.C. Chapter 13, which addresses criminal violations of civil rights, such as conspiracy to injure citizens in the exercise of federal rights (18 U.S.C. § 241); willful deprivations of federal rights under color of law (18 U.S.C. § 242); and interference with federally protected activities (18 U.S.C. § 245).
Unspecified Indian country offenses	Encompasses LIONS charge values that correspond with the following Indian country provisions: 18 U.S.C. § 1151, which defines the term "Indian country," 18 U.S.C. § 1152, which establishes federal jurisdiction to prosecute a wide variety of crimes in Indian country such as arson, theft, receiving stolen goods, destruction of property, and robbery, provided that either the offender or the victim is an Indian, and 18 U.S.C. § 1153, which establishes federal jurisdiction to prosecute a wide variety of crimes committed by Indians in Indian country, such murder, manslaughter, kidnapping, maiming, incest, felony assault, felony child and a host of sex crimes. Because of the wide array of criminal conduct represented by these charge codes, it is not possible to identify the specific underlying offense, only that the offense charged was committed in Indian country.
Juvenile delinquency matters	Encompassed by 18 U.S.C., Chapter 403, which involves violations of federal law committed by persons younger than 18 years old.

Postal Service offenses	Violations of law applicable to the Postal Service, which are contained in 18 U.S.C. Chapter 83.
Pending matters	Matters where DOJ had not yet decided whether to charge or decline to prosecute.
Unknown offenses	Encompasses: (1) LIONS charge values for which we were unable to find an associated criminal provision in the U.S. Code; and (2) LIONS charge values that corresponded with a general provision in the U.S. Code such as 18 U.S.C. § 3, accessory after the fact, but did not identify the underlying offense, such as accessory after the fact to murder.

Source: GAO.

We conducted our work from October 2009 through December 2010 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives.¹⁶ The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained and the analysis conducted provide a reasonable basis for any findings and conclusions in this product.

¹⁶This is the first of two efforts related to tribal justice issues that we reviewed in response to your request during this time. The second effort is focused on the challenges that select tribes face in adjudicating Indian country crimes, and collaboration between the Department of the Interior and DOJ to support tribal justice systems. We expect to issue the final results from that effort in 2011.

Enclosure II

Indian Country Matters Received and Declination Rates

Tables 7, 8, and 9, below, show the number of Indian country matters received and declination rates by U.S. Attorney's Office (USAO) district from fiscal years 2005 through 2009. Table 7 includes both violent and nonviolent criminal matters, table 8 shows only violent criminal matters, and table 9 shows only nonviolent criminal matters.

Declination rates are calculated based on the number of matters actually filed for prosecution, declined, or administratively closed by the district office. Declination rates do not include matters that were still "pending," that is, that had not yet been filed for prosecution, declined or administratively closed. We did not calculate declination rates for districts with fewer than 50 matters filed for prosecution, declined or administratively closed from fiscal years 2005 through 2009 because a declination rate would have little meaning when based on such a small number of matters.

Table 7: Indian Country Matters Received and Declination Rates by USAO District, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009

USAO district	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
South Dakota	2,414	2,241	1,376	61%
Arizona	2,358	2,178	817	38%
New Mexico	912	746	301	40%
Montana	844	795	376	47%
North Dakota	790	750	478	64%
Oklahoma-Western	301	287	134	47%
Wyoming	225	194	98	51%
Idaho	217	200	119	60%
Washington-Eastern	199	183	132	72%
Nebraska	193	171	76	44%
Oregon	192	181	122	67%
Michigan-Western	164	139	52	37%
Nevada	163	151	84	56%
North Carolina-Western	131	125	53	42%
Colorado	119	106	38	36%
Mississippi-Southern	118	88	30	34%
Oklahoma-Eastern	93	66	33	50%
Minnesota	92	77	28	36%
Washington-Western	85	65	20	31%
Utah	83	78	22	28%
Wisconsin-Eastern	82	74	16	22%
Oklahoma-Northern	78	65	35	54%
Alaska	47	42	20	.
Michigan-Eastern	30	26	19	.
Iowa-Northern	12	12	6	.
Alabama-Middle	5	5	1	.
Connecticut	5	4	3	.
California-Southern	5	4	0	.

USAO district	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
California-Northern	4	3	2	.
New York-Northern	4	3	0	.
California-Eastern	4	2	2	.
New York-Western	4	2	2	.
Florida Southern	4	2	1	.
Louisiana-Western	3	3	2	.
Alabama-Southern	3	3	1	.
Texas-Southern	3	3	0	.
Virginia-Eastern	3	2	0	.
Wisconsin-Western	2	2	1	.
Maine	2	1	1	.
Iowa-Southern	2	1	0	.
District of Columbia	1	1	1	.
Missouri-Eastern	1	1	1	.
Ohio-Southern	1	1	1	.
Pennsylvania-Western	1	1	1	.
Rhode Island	1	1	1	.
Alabama-Northern	1	1	0	.
California-Central	1	1	0	.
Maryland	1	1	0	.
Puerto Rico	1	1	0	.
Tennessee-Western	1	1	0	.
Pennsylvania-Eastern	1	0	0	.
Overall	10,006	9,090	4,506	50%

Source: GAO analysis of DOJ data.

^aMatters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

Table 8: Indian Country Matters Received and Declination Rates by USAO District, Violent Crimes, Fiscal Years 2005 through 2009

USAO district	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
South Dakota	1,808	1,689	1,094	65%
Arizona	1,766	1,602	746	47%
New Mexico	907	744	300	40%
North Dakota	692	660	410	62%
Montana	646	622	292	47%
Idaho	189	174	100	57%
Wyoming	188	164	79	48%
Nebraska	174	155	69	45%
Oregon	166	157	103	66%
Washington-Eastern	161	149	103	69%
Oklahoma-Western	125	122	77	63%
North Carolina-Western	115	114	46	40%
Nevada	115	106	63	59%
Michigan-Western	101	82	33	40%
Colorado	96	86	30	35%
Minnesota	86	72	26	36%
Mississippi-Southern	76	59	18	31%

USAO district	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
Utah	73	69	20	29%
Wisconsin-Eastern	63	56	14	25%
Washington-Western	50	37	7	.
Oklahoma-Northern	23	20	12	.
Oklahoma-Eastern	18	16	9	.
Michigan-Eastern	15	13	10	.
Iowa-Northern	7	7	3	.
New York-Northern	3	3	0	.
Virginia-Eastern	3	2	0	.
Alaska	2	2	0	.
California-Eastern	1	1	1	.
District of Columbia	1	1	1	.
Louisiana-Western	1	1	1	.
Missouri-Eastern	1	1	1	.
New York-Western	1	1	1	.
Pennsylvania-Western	1	1	1	.
Rhode Island	1	1	1	.
Alabama-Southern	1	1	0	.
California-Southern	1	1	0	.
Puerto Rico	1	1	0	.
Tennessee-Western	1	1	0	.
Florida Southern	1	0	0	.
Overall	7,680	6,993	3,671	52%

Source: GAO analysis of DOJ data.

^aMatters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

Table 9: Indian Country Matters Received and Declination Rates by USAO District, Nonviolent Crimes, Fiscal Years 2005 through 2009

USAO district	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
South Dakota	619	565	291	52%
Arizona	594	578	71	12%
Montana	199	174	84	48%
Oklahoma-Western	177	166	57	34%
North Dakota	98	90	68	76%
Oklahoma-Eastern	75	50	24	48%
Michigan-Western	65	59	19	32%
Oklahoma-Northern	55	45	23	.
Nevada	49	46	21	.
Alaska	45	40	20	.
Wyoming	45	37	22	.
Mississippi-Southern	42	29	12	.
Washington-Eastern	38	34	29	.
Washington-Western	35	28	13	.
Idaho	28	26	19	.
Oregon	26	24	19	.
Colorado	26	23	10	.
Wisconsin-Eastern	19	18	2	.

USAO district	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
Nebraska	19	16	7	.
North Carolina-Western	16	11	7	.
Minnesota	15	14	7	.
Michigan-Eastern	15	13	9	.
Utah	14	12	2	.
Iowa-Northern	5	5	3	.
Alabama-Middle	5	5	1	.
Connecticut	5	4	3	.
New Mexico	5	2	1	.
California-Northern	4	3	2	.
California-Southern	4	3	0	.
Texas-Southern	3	3	0	.
Florida Southern	3	2	1	.
California-Eastern	3	1	1	.
New York-Western	3	1	1	.
Alabama-Southern	2	2	1	.
Louisiana-Western	2	2	1	.
Wisconsin-Western	2	2	1	.
Maine	2	1	1	.
Iowa-Southern	2	1	0	.
Ohio-Southern	1	1	1	.
Alabama-Northern	1	1	0	.
California-Central	1	1	0	.
Maryland	1	1	0	.
New York-Northern	1	0	0	.
Pennsylvania-Eastern	1	0	0	.
Overall	2,370	2,139	854	40%

Source: GAO analysis of DOJ data.

^aMatters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

Tables 10, 11, and 12, below, show the number of Indian country matters received and declination rates by referring agency from fiscal years 2005 through 2009. Table 10 includes both violent and nonviolent criminal matters, table 11 shows only violent criminal matters, and table 12 shows only nonviolent criminal matters.

Declination rates are calculated based on the number of matters actually filed for prosecution, declined, or administratively closed by the USAOs. Declination rates do not include matters that were still "pending," that is, that had not yet been filed for prosecution, declined or administratively closed. We did not calculate declination rates for referring agencies with fewer than 50 matters filed for prosecution, declined or administratively closed from fiscal years 2005 through 2009 because a declination rate would have little meaning when based on such a small number of matters.

Table 10: Indian Country Matters Received and Declination Rates by Referring Agency, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009

Referring agency	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
Federal Bureau of Investigation	5,500	5,008	2,323	46%
Bureau of Indian Affairs	2,355	2,087	1,305	63%
State/County/Municipal Authorities	665	598	303	51%
Other	477	467	387	83%
Drug Enforcement Administration	276	267	10	4%
Joint State/Local Led Task Force	119	108	26	24%
Bureau of Alcohol, Tobacco, Firearms and Explosives	103	89	31	35%
Immigration and Customs Enforcement	93	92	4	4%
Joint Federal Bureau of Investigation/State or Local Task Force	89	80	25	31%
Customs and Border Protection	60	59	2	3%
Other Department of the Interior	54	47	27	.
United States Marshals Service	27	25	2	.
Other Department of Justice	19	17	4	.
Postal Service	15	14	4	.
Fish and Wildlife Service	15	13	2	.
Office of the Inspector General—Health and Human Services	14	12	2	.
Joint Alcohol, Tobacco, Firearms and Explosives/State or Local Task Force	12	12	2	.
Joint United States Marshals Service/State or Local Task Force	11	8	5	.
National Park Service	9	9	3	.
Citizenship and Immigration Services	7	7	6	.
Transferred from other USAO	7	7	4	.
Indian Health Service/Public Health Service	7	6	1	.
United States Secret Service	7	5	2	.
Forest Service	7	2	2	.
Other Department of Housing and Urban Development	6	5	3	.
Office of the Inspector General—Department of Justice	5	3	0	.
United States Courts	4	4	1	.
Joint Drug Enforcement Administration/State or Local Task Force	4	4	0	.
Public Health Service	3	3	3	.
Bureau of Land Management	3	3	2	.
Social Security Administration	3	3	0	.
Office of the Inspector General—Department of Education	3	1	1	.
Air Force	2	2	2	.
Navajo and Hopi Indian Relocation	2	2	2	.
Other Department of Agriculture	2	2	2	.

Referring agency	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
Department of State	2	2	1	.
Office of the Inspector General—Postal Service	2	2	0	.
Other Department of Health and Human Services	2	1	1	.
Department of Education	1	1	1	.
Environmental Protection Agency	1	1	1	.
Food and Drug Administration	1	1	1	.
Joint Defense/State or Local Task Force	1	1	1	.
Metropolitan Police Department—District of Columbia	1	1	1	.
Veterans Administration—Utah	1	1	1	.
Bureau of Prisons	1	1	0	.
Farm Service Agency/Commodity Credit Corp	1	1	0	.
Federal Housing Administration	1	1	0	.
Internal Revenue Service	1	1	0	.
Other Department of Labor	1	1	0	.
Parole Commission	1	1	0	.
Tennessee Valley Authority Commission	1	1	0	.
Veterans Administration—New Mexico/Albuquerque	1	1	0	.
National Oceanic and Atmospheric Administration	1	0	0	.
Overall	10,006	9,090	4,506	50%

Source: GAO analysis of DOJ data.

^aMatters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

Table 11: Indian Country Matters Received and Declination Rates by Referring Agency, Violent Crimes, Fiscal Years 2005 through 2009

Referring agency	Matters received	Matters filed for prosecution, declined, or administratively closed	Matters declined	Declination rate ^a
Federal Bureau of Investigation	4,779	4,377	2,029	46%
Bureau of Indian Affairs	1,851	1,652	1,053	64%
State/County/Municipal Authorities	558	506	263	52%
Other	311	301	260	86%
Bureau of Alcohol, Tobacco, Firearms and Explosives	56	49	21	.
Joint Federal Bureau of Investigation/State or Local Task Force	34	27	13	.
Other Department of the Interior	17	16	11	.
Joint State/Local Led Task Force	16	11	4	.
United States Marshals Service	8	7	0	.
Other Department of Justice	6	6	2	.
Joint Alcohol, Tobacco, Firearms and Explosives/State or Local Task Force	6	6	1	.
Transferred from other USAO	4	4	3	.

Referring agency	Matters received	Matters filed for prosecution, declined, or administratively closed	Matters declined	Declination rate ^a
Immigration and Customs Enforcement	4	4	0	.
Indian Health Service/Public Health Service	4	3	0	.
National Park Service	3	3	1	.
Joint United States Marshals Service/State or Local Task Force	3	2	1	.
Public Health Service	2	2	2	.
Customs and Border Protection	2	2	0	.
Joint Drug Enforcement Administration/State or Local Task Force	2	2	0	.
United States Secret Service	2	1	1	.
Air Force	1	1	1	.
Joint Defense/State or Local Task Force	1	1	1	.
Metropolitan Police Department—District of Columbia	1	1	1	.
Navajo and Hopi Indian Relocation	1	1	1	.
Postal Service	1	1	1	.
Veterans Administration—Utah	1	1	1	.
Bureau of Prisons	1	1	0	.
Drug Enforcement Administration	1	1	0	.
Farm Service Agency/Commodity Credit Corp	1	1	0	.
Parole Commission	1	1	0	.
United States Courts	1	1	0	.
Veterans Administration—New Mexico/Albuquerque	1	1	0	.
Overall	7,680	6,993	3,671	52%

Source: GAO analysis of DOJ data.

^aMatters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

Table 12: Indian Country Matters Received and Declination Rates by Referring Agency, Nonviolent Crimes, Fiscal Years 2005 through 2009

Referring agency	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
Federal Bureau of Investigation	749	657	304	46%
Bureau of Indian Affairs	516	447	261	58%
Drug Enforcement Administration	275	266	10	4%
Other	167	167	127	76%
State/County/Municipal Authorities	110	95	40	42%
Joint State/Local Led Task Force	103	97	22	23%
Immigration and Customs Enforcement	89	88	4	5%
Customs and Border Protection	58	57	2	4%
Joint Federal Bureau of Investigation/State or Local Task Force	55	53	12	23%

Referring agency	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
Bureau of Alcohol, Tobacco, Firearms and Explosives	47	40	10	.
Other Department of the Interior	37	31	16	.
United States Marshals Service	19	18	2	.
Fish and Wildlife Service	15	13	2	.
Postal Service	14	13	3	.
Office of the Inspector General—Health and Human Services	14	12	2	.
Other Department of Justice	13	11	2	.
Joint United States Marshals Service/State or Local Task Force	8	6	4	.
Citizenship and Immigration Services	7	7	6	.
Forest Service	7	2	2	.
National Park Service	6	6	2	.
Joint Alcohol, Tobacco, Firearms and Explosives/State or Local Task Force	6	6	1	.
Other Department of Housing and Urban Development	6	5	3	.
United States Secret Service	5	4	1	.
Office of the Inspector General—Department of Justice	5	3	0	.
Bureau of Land Management	3	3	2	.
Indian Health Service/Public Health Service	3	3	1	.
Transferred from other USAO	3	3	1	.
United States Courts	3	3	1	.
Social Security Administration	3	3	0	.
Office of the Inspector General—Department of Education	3	1	1	.
Other Department of Agriculture	2	2	2	.
Department of State	2	2	1	.
Joint Drug Enforcement Administration/State or Local Task Force	2	2	0	.
Office of the Inspector General—Postal Service	2	2	0	.
Other Department of Health and Human Services	2	1	1	.
Air Force	1	1	1	.
Department of Education	1	1	1	.
Environmental Protection Agency	1	1	1	.
Food and Drug Administration	1	1	1	.
Navajo and Hopi Indian Relocation	1	1	1	.
Public Health Service	1	1	1	.
Federal Housing Administration	1	1	0	.
Internal Revenue Service	1	1	0	.
Other Department of Labor	1	1	0	.
Tennessee Valley Authority Commission	1	1	0	.
National Oceanic and Atmospheric Administration	1	0	0	.
Overall	2,370	2,139	854	40%

Source: GAO analysis of DOJ data.

*Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

Tables 13, 14, and 15, below, show the number of Indian country matters received and declination rates by charge category from fiscal years 2005 through 2009. Table 13 includes both violent and nonviolent criminal matters, table 14 shows only violent criminal matters, and table 15 shows only nonviolent criminal matters.

Declination rates are calculated based on the number of matters actually filed for prosecution, declined, or administratively closed by the USAOs. Declination rates do not include matters that were still "pending," that is, that had not yet been filed for prosecution, declined or administratively closed. We did not calculate declination rates for charge categories with fewer than 50 matters filed for prosecution, declined or administratively closed from fiscal years 2005 through 2009 because a declination rate would have little meaning when based on such a small number of matters. For a detailed explanation of the specific charges included in each charge category see table 6 in enclosure I.

Table 13: Indian Country Matters Received and Declination Rates by Charge Category, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009

Charge category	Matters received	Matters filed for		Declination rate ^a
		prosecution, declined or administratively closed	Matters declined	
Assault	2,922	2,922	1,341	46%
Sexual abuse and related offenses	2,594	2,594	1,745	67%
Pending matters ^b	990	75	0	0%
Drug offenses	739	739	136	18%
Offenses involving theft or deceit	739	738	359	49%
Homicide, including attempts	626	626	292	47%
Unspecified Indian country offenses	445	445	297	67%
Firearms, explosives and related offenses	355	355	120	34%
Unknown	200	200	71	36%
Obstruction of justice offenses	115	115	29	25%
Other offenses involving threats, force or violence	78	78	43	55%
Immigration offenses	67	67	3	4%
Juvenile delinquency matters	37	37	15	.
Conservation and environmental offenses	30	30	10	.
Civil rights offenses	25	25	22	.
Property damage or trespass offenses	21	21	12	.
Racketeering offenses	12	12	8	.
Postal Service offenses	9	9	2	.
Gambling offenses	2	2	1	.
Overall	10,006	9,090	4,506	50%

Source: GAO analysis of DOJ data.

*Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

^b"Pending matters" includes matters where DOJ had not yet decided whether to charge or decline to prosecute, and 75 matters (reflected in the second data column) that were subsequently filed for prosecution or administratively closed but for which charge information was not available in the data provided by DOJ.

Table 14: Indian Country Matters Received and Declination Rates by Charge Category, Violent Crimes, Fiscal Years 2005 through 2009

Charge category	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
Assault	2,869	2,869	1,316	46%
Sexual abuse and related offenses	2,450	2,450	1,655	68%
Pending matters ^b	752	66	0	0%
Homicide, including attempts	606	606	280	46%
Firearms, explosives and related offenses	266	266	90	34%
Unspecified Indian country offenses	253	253	130	51%
Unknown	131	131	42	32%
Offenses involving theft or deceit	128	127	51	40%
Other offenses involving threats, force or violence	71	71	38	54%
Obstruction of justice offenses	51	51	15	29%
Drug offenses	39	39	17	.
Juvenile delinquency matters	28	28	9	.
Civil rights offenses	21	21	19	.
Property damage or trespass offenses	8	8	5	.
Racketeering offenses	5	5	4	.
Immigration offenses	1	1	0	.
Postal Service offenses	1	1	0	.
Overall	7,680	6,993	3,671	52%

Source: GAO analysis of DOJ data.

^aMatters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

^b"Pending matters" includes matters where DOJ had not yet decided whether to charge or decline to prosecute, and 66 matters (reflected in the second data column) that were subsequently filed for prosecution or administratively closed but for which charge information was not available in the data provided by DOJ.

Table 15: Indian Country Matters Received and Declination Rates by Charge Category, Nonviolent Crimes, Fiscal Years 2005 through 2009

Charge category	Matters received	Matters filed for prosecution, declined or administratively closed	Matters declined	Declination rate ^a
Drug offenses	700	700	119	17%
Offenses involving theft or deceit	612	612	309	50%
Pending matters ^b	240	9	0	.
Unspecified Indian country offenses	193	193	167	87%
Sexual abuse and related offenses	157	157	96	61%
Firearms, explosives and related offenses	90	90	30	33%
Assault	75	75	35	47%
Unknown	71	71	29	41%
Immigration offenses	66	66	3	5%

Charge category	Matters received	Matters filed for		Declination rate ^a
		prosecution, declined or administratively closed	Matters declined	
Obstruction of justice offenses	64	64	14	22%
Conservation and environmental offenses	30	30	10	.
Homicide, including attempts	22	22	14	.
Property damage or trespass offenses	13	13	7	.
Juvenile delinquency matters	9	9	6	.
Postal Service offenses	8	8	2	.
Other offenses involving threats, force or violence	7	7	5	.
Racketeering offenses	7	7	4	.
Civil rights offenses	4	4	3	.
Gambling offenses	2	2	1	.
Overall	2,370	2,139	854	40%

Source: GAO analysis of DOJ data.

^aMatters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate.

^b"Pending matters" includes matters where DOJ had not yet decided whether to charge or decline to prosecute, and 9 matters (reflected in the second data column) that were subsequently filed for prosecution or administratively closed but for which charge information was not available in the data provided by DOJ.

Tables 16, 17, and 18, below show the reasons provided in LIONS for declinations of Indian country matters. Immediate and later declinations both require one reason to be provided. However, later declinations may also include up to two additional reasons. Therefore, the total number of reasons exceeds the total number of declinations. Table 16 includes reasons provided for both violent and nonviolent criminal matters, table 17 shows only reasons associated with violent criminal matters, and table 18 shows only reasons associated with nonviolent criminal matters.

Table 16: Frequency of Declination Reasons, Violent and Nonviolent Crimes, Fiscal Years 2005 through 2009

Declination reason	Number of declinations citing reason ^a	Percentage of declinations citing reason ^a
Weak or insufficient admissible evidence	1,878	42%
No federal offense evident	797	18%
Witness problems	537	12%
Lack of evidence of criminal intent	467	10%
Suspect to be prosecuted by other authorities	457	10%
Agency request	161	4%
Minimal federal interest or no deterrent value	150	3%
No known suspect	117	3%
Office policy (fails to meet prosecutive guidelines)	109	2%
Offender's age, health, prior record, or personal matter	94	2%

Declination reason	Number of declinations citing reason ^a	Percentage of declinations citing reason ^a
Jurisdiction or venue problems	91	2%
Staleness	84	2%
Civil, administrative, or other disciplinary alternative	80	2%
Lack of investigative resources	70	2%
Juvenile suspect	65	1%
Lack of prosecutive resources	58	1%
Suspect being prosecuted on other charges	55	1%
Suspect deceased	37	less than 1%
Suspect serving sentence	25	less than 1%
Statute of limitations	16	less than 1%
Opened in error/office error	12	less than 1%
Pretrial diversion completed	12	less than 1%
Petite policy	8	less than 1%
Suspect cooperation	8	less than 1%
Suspect a fugitive	6	less than 1%
Declined per instructions from DOJ	5	less than 1%
Local agency referral presented by federal agency	5	less than 1%
Restitution/arrearage payments made or being made	4	less than 1%
Department policy	3	less than 1%
By action of the grand jury (no true bill)	1	less than 1%
All work completed—to be used for miscellaneous matters	1	less than 1%
Suspect deported	1	less than 1%

Source: GAO analysis of DOJ data.

^aUp to three reasons may be associated with a declination. Therefore, the number of reasons cited exceeds the number of declinations for violent and nonviolent crimes of 4,506 and the sum of percentages exceeds 100.

Table 17: Frequency of Declination Reasons, Violent Crimes, Fiscal Years 2005 through 2009

Declination reason	Number of declinations citing reason ^a	Percentage of declinations citing reason ^a
Weak or insufficient admissible evidence	1,619	44%
No federal offense evident	609	17%
Witness problems	505	14%
Lack of evidence of criminal intent	374	10%
Suspect to be prosecuted by other authorities	354	10%
Agency request	121	3%
No known suspect	94	3%
Minimal federal interest or no deterrent value	91	2%

Declination reason	Number of declinations citing reason ^a	Percentage of declinations citing reason ^a
Offender's age, health, prior record, or personal matter	87	2%
Office policy (fails to meet prosecutive guidelines)	74	2%
Jurisdiction or venue problems	71	2%
Lack of investigative resources	62	2%
Staleness	58	2%
Civil, administrative, or other disciplinary alternative	52	1%
Juvenile suspect	52	1%
Lack of prosecutive resources	48	1%
Suspect being prosecuted on other charges	46	1%
Suspect deceased	31	less than 1%
Suspect serving sentence	21	less than 1%
Statute of limitations	10	less than 1%
Opened in error/office error	7	less than 1%
Petite policy	7	less than 1%
Suspect a fugitive	6	less than 1%
Declined per instructions from DOJ	5	less than 1%
Suspect cooperation	5	less than 1%
Pretrial diversion completed	4	less than 1%
Local agency referral presented by federal agency	3	less than 1%
All work completed—to be used for miscellaneous matters	1	less than 1%
Department policy	1	less than 1%
Restitution/arrearage payments made or being made	1	less than 1%

Source: GAO analysis of DOJ data.

^aUp to three reasons may be associated with a declination. Therefore, the number of reasons cited exceeds the number of declinations for violent crimes of 3,671 and the sum of percentages exceeds 100.

Table 18: Frequency of Declination Reasons, Nonviolent Crimes, Fiscal Years 2005 through 2009

Declination reason	Number of declinations citing reason ^a	Percentage of declinations citing reason ^a
Weak or insufficient admissible evidence	266	31%
No federal offense evident	190	22%
Suspect to be prosecuted by other authorities	104	12%
Lack of evidence of criminal intent	94	11%
Minimal federal interest or no deterrent value	59	7%
Agency request	43	5%

Declination reason	Number of declinations citing reason^a	Percentage of declinations citing reason^a
Office policy (fails to meet prosecutive guidelines)	35	4%
Witness problems	35	4%
Civil, administrative, or other disciplinary alternative	28	3%
Staleness	27	3%
No known suspect	23	3%
Jurisdiction or venue problems	20	2%
Juvenile suspect	13	2%
Lack of prosecutive resources	10	1%
Suspect being prosecuted on other charges	9	1%
Lack of investigative resources	8	less than 1%
Pretrial diversion completed	8	less than 1%
Offender's age, health, prior record, or personal matter	7	less than 1%
Suspect deceased	7	less than 1%
Statute of limitations	6	less than 1%
Opened in error/office error	5	less than 1%
Suspect serving sentence	4	less than 1%
Restitution/arrearage payments made or being made	3	less than 1%
Suspect cooperation	3	less than 1%
Department policy	2	less than 1%
Local agency referral presented by federal agency	2	less than 1%
By action of the grand jury (no true bill)	1	less than 1%
Petite policy	1	less than 1%
Suspect deported	1	less than 1%

Source: GAO analysis of DOJ data.

^aUp to three reasons may be associated with a declination. Therefore, the number of reasons cited exceeds the number of declinations for nonviolent crimes of 854 and the sum of percentages exceeds 100.

Enclosure III

Comments from the Department of Justice



U.S. Department of Justice

*Executive Office for United States Attorneys
Office of the Director*

*Main Justice Building, Room 2260 (202) 252-1000
950 Pennsylvania Avenue, N. W.
Washington, D.C. 20530*

DEC 03 2010

Mr. Glenn Davis
Assistant Director
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Re: U.S. Department of Justice Declinations of Indian Country Criminal Matters
GAO Engagement Code 440923

Dear Mr. Davis:

Thank you for the opportunity to comment on the report titled "U.S. Department of Justice Declinations of Indian Country Criminal Matters." The Executive Office for United States Attorneys (EOUSA) appreciates GAO's cooperation and efforts on this project. We hope this presentation of declination data will be used constructively to work toward solutions to reducing crime in Indian Country.

We particularly appreciate your team's efforts to present this data in appropriate context. For many of the reasons you have included in your report, the declination data generated by our current Legal Information Office Network System (LIONS) is not an appropriate measure of the dedication and commitment of the United States Attorneys' Offices (USAOs) in Indian Country. As the report recognizes, the receipt of a referral from a law enforcement agency does not mean that a prosecutable case exists. In fact the second most frequent reason given for declinations by the USAOs is "No Federal Offense Evident," i.e., the conduct alleged is not a violation of the Federal statutes setting forth the crimes which can be prosecuted by the United States in Indian Country. Yet another reason cited for declinations is that there is no legal jurisdiction over certain individuals or no legal venue to prosecute the crime in Federal court. In addition, as the report points out, the determination to decline to bring a Federal criminal prosecution does not mean that a crime is left unaddressed. Many cases are declined by the USAOs when the defendant is being prosecuted by other authorities, on other charges, or has been subject to other civil or administrative proceedings or a pretrial diversion program (similar to a period of probation).

The public safety challenges in Indian Country are not uniform. They vary widely from district to district - and from tribe to tribe - based upon unique conditions, a complex set of legal jurisdictional issues, geographic challenges, differences in tribal cultures, and the number of tribes and reservations within a particular district. The officer-to-population ratio still remains lower on Indian reservations than in other jurisdictions across the country, and law enforcement

agencies in Indian Country have the unique challenge of patrolling large areas of sparsely populated land. The uniformity of LIONS data and its suitability for statistical analysis are affected by the variances among districts and by the discretion afforded the 93 individual United States Attorneys to use the system to manage their offices to meet local priorities and needs. For example, individual offices may have different criteria for entering matters in LIONS. A change in a LIONS-generated declination rate may be entirely attributable to a change in the office's LIONS policy rather than as a result of any changes in the crime rate or prosecution practices or capabilities in that district. In addition, as the report acknowledges, variations in the practice of law enforcement agencies in referring cases to USAOs can also affect the declination rates of USAOs. As noted, some agencies may refer every allegation, even if unsupported, to a USAO (resulting in a declination), while other agencies may refer only those cases which they believe are fully investigated and ready for prosecution.

More importantly, the data contained in the report must be considered in the context of appropriate prosecutorial decision-making. The decision to charge someone with a crime and to seek to deprive the defendant of his or her liberty represents the exercise of power which must be used judiciously. With respect to all crimes, the United States Attorney's Manual and the Principles of Federal Prosecution provide that Department of Justice attorneys "should initiate or recommend Federal prosecution if he/she believes that the person's conduct constitutes a Federal offense and that the admissible evidence probably will be sufficient to obtain and sustain a conviction. Evidence sufficient to sustain a conviction is required under Rule 29(a), Fed. R. Crim. P., to avoid a judgment of acquittal. Moreover, both as a matter of fundamental fairness and in the interest of the efficient administration of justice, no prosecution should be initiated against any person unless the government believes that the person probably will be found guilty by an unbiased trier of fact." United States Attorneys' Manual Section 9-27.220 (Comment). Each case must be evaluated on the evidence available to the prosecutor. Accordingly, it would not be appropriate to use the data contained in this report to promote any type of prosecutorial quota system or incentives to prosecute a higher number of individuals.

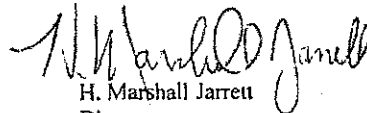
Similarly, the declination rates generated by LIONS data are not an appropriate measure of all the ongoing efforts by United States Attorneys to be actively engaged with their partners in tribal law enforcement. Last year, the Attorney General launched a Department-wide initiative on public safety in tribal communities. A component of that initiative is that every USAO with Indian Country in its district will engage annually in consultation with the tribes in that district, in coordination with the FBI, the Bureau of Indian Affairs, the U.S. Marshals Service, the Drug Enforcement Agency, and the Bureau of Alcohol, Tobacco, Firearms and Explosives, and, where appropriate, state and local law enforcement. In addition USAOs are currently implementing operational plans designed to foster ongoing government-to-government relationships with the tribes; to improve communications with tribal law enforcement regarding charging decisions; to initiate cross-deputization and Special Assistant United States Attorney agreements where appropriate; and to establish training for all relevant criminal justice personnel on issues related to Indian Country criminal jurisdiction and legal issues.

- 3 -

The public safety challenges confronting Indian Country are great, and the Department's enhanced efforts in Indian Country can be resource intensive. We are pleased that the FY 2011 President's Budget requests \$448.8 million in total resources for initiatives in Indian Country. New investments include significant grant resources for addressing a broad range of criminal justice issues and additional FBI agents to help tribal communities combat illegal drug use, trafficking, and violent crime.

The Department has a responsibility to build a successful and sustainable response to the scourge of violent crime on reservations. In partnership with tribes, our goal is to find and implement solutions to immediate and long-term public safety challenges confronting Indian Country. Thank you for your time and attention to this important matter.

Sincerely,



H. Marshall Jarrett
Director

Enclosure IV

GAO Contact

If you or your staff have questions concerning this report, please contact me at (202) 512-9627 or maurerd@gao.gov.

Staff Acknowledgments

In addition to the contact named above, William Crocker III and Glenn Davis, Assistant Directors, and Christoph Hoashi-Erhardt, Senior Analyst, managed this review. Ami Ballenger, Rebecca Rygg, and Candice Wright made significant contributions to the work. Christine Davis provided legal support. David Alexander and Minette Richardson assisted with the design, methodology, and data analysis. Katherine Davis provided assistance in report preparation.

(440923)

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Audio Of The July 8 & 22 Oneida Business Committee Regular Meetings (Because The OBC Is Too Dumb, Lazy, Arrogant, Corrupt And/Or Scared To Post OBC Meeting Videos On the Oneida Nation In Wisconsin's Website Anymore) [UPDATE: Proof That OBC LIED TO & ABOUT Frank Cornelius Sr. In Violation Of His Due Process Under The Indian Civil Rights Act; Special OBC Meeting Scheduled For 8 a.m. Monday August 17]

8th
August 2015

 Closed

Demonstrating what some Oneida Tribe members call the "piss-poor communication skills" (or PPCS) of Oneida Business Committee Secretary Lisa Summers (who is either woefully incapable of carrying out her duties or intentionally starving Tribe members of information) and the rest of the OBC, there have not been any videos of the bi-monthly Oneida Business Committee's Regular Meetings posted on the Oneida Tribe's own website since (drumroll...) **September of 2014!**

Think about that...

DESPITE a \$450 Million Tribal budget and paying Tribal employees to provide videos to enrolled Tribe members via the '[Member's Only](#)' section of the Tribe's website, **OBC Secretary Lisa Summers and the Oneida Business Committee have FAILED for ONE YEAR to provide access to OBC meeting videos on the Tribe's website.**

Until September 2014, videos of OBC Regular Meetings had been posted in the 'Members Only' section of the Oneida Tribe's website for years, along with videos of Community Discussions regarding topics to be addressed at upcoming General Tribal Council Meetings.

The OBC's Regular Meetings, held at 9 a.m. on the second & fourth Wednesday of every month, are open to the public and non-Tribal members are invited to attend and comment on the issues before the Oneida Nation in Wisconsin's Business Committee (as OBC Vice-Chair Melinda Danforth states in the audio of the July 8, 2015 OBC Regular Meeting linked below).

Which raises the question as to why the OBC Regular Meeting videos are being hosted in a 'Members Only' area of the Tribe's website in the first place...

unless someone wants to keep track of which Tribe members are trying to watch what videos and/or they're trying to prevent the general public from having access to recordings of public meetings.

Likewise, only enrolled members of the Oneida Nation in Wisconsin are allowed to download the Meeting Packets for OBC Regular Meetings from the Tribe's website after logging in.

Is that to keep track of which Tribe members are being politically active and to keep non-Tribe members in the dark?

What is the Oneida Business Committee trying so hard to hide?

As of the evening of August 8, 2015, the **OBC 'Videos' page** on the Oneida Nation in Wisconsin's website states (after logging in), "*The resource cannot be found*":

Server Error in '/' Application.

The resource cannot be found.

Description: HTTP 404. The resource you are looking for (or one of its dependencies) could have been removed, had its name changed, or is temporarily unavailable. Please review the following URL and make sure that it is spelled correctly.

Requested URL: /BC/Video/

Version Information: Microsoft .NET Framework Version:4.0.30319; ASP.NET Version:4.0.30319.34249

Looking for OBC Meeting Videos? Here's what a \$450 Million Tribal budget will get you!

In contrast, as a **FREE public service**, Oneida Eye is providing links to stream or download audio recordings of the **July 8, 2015** and of the **July 22, 2015** OBC Regular Meetings, as well as the July 22, 2015 OBC Regular Meeting packet and **August 12, 2015** OBC Regular Meeting packet due to the fact that the OBC did not finish addressing all of the items on the July 22 OBC Agenda and will have to address those items on August 12:

- [July 8, 2015 Oneida Business Committee Regular Meeting audio](#) (the action starts at the 9 minute mark)
- [July 22, 2015 Oneida Business Committee Regular Meeting audio](#) (the action starts at the 30 minute mark)
- [July 22, 2015 OBC Regular Meeting Packet](#)
- [August 12, 2015 OBC Regular Meeting Packet](#)

UPDATE 8/13/2015

At the **1 hr 36 min 40 sec** mark of the **July 22, 2015** OBC Meeting you can hear an **outrageous** discussion where **illegal** OBC member David 'Fleet' Jordan and OBC member Jenny Webster **repeatedly** tell Frank Cornelius Sr. that OBC Sec. Lisa Summers had told the OBC that Frank had not provided the OBC with copies of four proposed GTC Resolutions which Frank had gathered enough petition signatures to place on a GTC Meeting Agenda for GTC's consideration.

OBC Sec. Lisa Summers' Executive Assistant Lisa Liggins starts off the parade of OBC & Staff idiots who lie, OBC & Staff liars who are idiots:

Lisa Liggins: I'm not sure where the Resolutions are and that's the point of the memo from Sec. Summers. The memo from Sec. Summers indicates that the Resolutions have not been submitted. It's a continuation of a discussion that you guys had at the June 24 [OBC] Meeting. She was directed to meet with [Frank Cornelius Sr.]. She met with [Frank Cornelius Sr.] ith [OBC member] Jennifer Webster and, I believe, [OBC member] Tehassi Hill. They met, talked about the concerns of the [OBC]. [Frank] submitted a **Report** that's included in the handout. Additional copies are on the back table along with [Sec. Summers'] memo. The Report's included and there were no Resolutions.

OBC SECRETION LISA SUMMERS AND HER ASS-ISTANT LISA LIGGINS ARE BOTH LIARS AND/OR IDIOTS AND/OR WORSE!!!

As **PROOF**, here are copies of Frank Cornelius Sr.'s four proposed GTC Resolutions that are date-stamped **JUNE 26, 2015** by the OBC Secretary's Office:

- [Four Proposed GTC Resolutions by Frank Cornelius, Sr., Date Stamped June 26, 2015 By The OBC Secretary's Office:](#)
 - [Investigation Into Oneida Seven Generations Corporation](#)
 - [Enforcing Maximum Salaries For Oneida Seven Generations Corporation](#)
 - [Imposing A Tax On The Business Committee](#)
 - [Freedom of Speech, Press & Assembly](#)

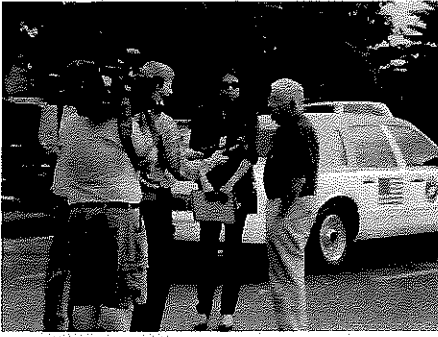
Oneida Eye **published** a post with the Report and the recommend four Resolutions by GTC's elected representative regarding the dissolution on June 29 after Frank Cornelius gave us a clean copy of what he had provided to the OBC Secretary's office and had them date stamp on June 26.

- [Oneida General Tribal Council Representative Frank Cornelius' Report On The Oneida Business Committee's Failure To Dissolve Oneida Seven Generations Corporation As Legally Ordered By GTC \[UPDATE: OBC Hires Failed OSGC Waste Gasification Project Manager Pete King III / King Solutions LLC As OSGC's New Managing Agent\]](#)

At one point during the insanely deceitful claims and false accusations by the OBC at the July 22 OBC Meeting, Frank Cornelius Sr., a retired Marine, having repeatedly and truthfully stated that he **had** provided the OBC with copies of his four proposed GTC Resolutions said in exasperation:

I'm 82 years old! I'm not going to live forever!

The ignorant & evil assholes on the Oneida Business Committee who are rooting for OSGC seem to be counting on that.



Frank Cornelius speaks to Green Bay Media on July 9, 2013, about his Petition to dissolve OSGC which GTC voted to do on December 15, 2013

Predictably, **professional liar, habitual criminal** and OBC member Brandon Stevens – who was previously the OBC Liaison to Oneida Seven Generations Corporation – tried to twist Frank Cornelius Sr.'s words by falsely and adamantly claiming over and over that Frank had not submitted any Resolutions. Then again, Brandon Stevens lying to promote & protect OSGC over and against the interests & expressed political will of GTC is about as shocking as the sun rising & setting.

OBC Chair Tina Danforth – another OSGC **cheerleader** who appears to be doing everything in her power to prevent the dissolution of OSGC despite being ordered to dissolve OSGC by GTC on **December 15, 2013** – is currently the OBC's Liaison to OSGC.

Are OBC Chair Tina Danforth and the rest of the OBC truly being kept in the dark and lied to about Frank Cornelius Sr.'s four Resolutions by OBC Secretary Lisa Summers and her Executive Assistant Lisa Liggins?

Or, as seems more likely, **are the OBC and OBC Chief Counsel Jo Anne House acting in a conspiracy together to defend OSGC by denying Frank Cornelius Sr. and the GTC their due process in violation of the Indian Civil Rights Act**, given that the GTC voted in December 2013 for Frank Cornelius Sr. to be allowed to **“assist and work with the OBC on [OSGC's] dissolution”** so that Frank could provide reports back to GTC which the OBC has consistently refused to allow Frank to do by using phony claims and outright lies?

Let's not forget the lies told by Former OBC Chair Ed Delgado when, as OBC Chair, he submitted a **Travel Request & Memorandum** for the February 26, 2014 OBC Regular Meeting Agenda stating:

I will be on vacation from March 3rd to 11th in Phoenix, Arizona. During that time I am requesting a rental car for one day to meet with petitioner Frank Cornelius who currently resides in Yuma, Az. which is 181 miles from Phoenix, Az. I am going to update Mr. Cornelius on the progress of the dissolution on Seven Generations.

Fmr. OBC Chair Ed Delgado's lies about needing to have the Tribe pay for his car rental so that he could visit Frank Cornelius Sr. in Arizona to keep GTC's appointed representative regarding OSGC's dissolution informed about the OBC's progress (or, as it turns out, lack thereof) can be seen at the **22 minute mark**, but you really should watch from the beginning because it is a *doozy!*:

That turned out to be a giant whopper given that (1) Ed 'Lying Dirtbag' Delgado refused to meet with Frank in Arizona despite Frank making himself available, and (2) instead of meeting with Frank as **he had told OBC and GTC members** he would in order to have part of his travel expenses paid for by the Tribe, Ed 'Lying Dirtbag' Delgado instead purchased a silver van that he drove from Arizona back to the Oneida Reservation.

Of course, Fmr. OBC Chair Ed Delgado and Fmr. OBC Treasurer & current OBC Chair Tina Danforth have been found by the Tribe's Appellate Court to have engaged in "harrasment" and "intimidation" of Tribal employees.

- [Ed Delgado Harasses & Intimidates Oneida Employee, But Dale Wheelock Wins Reinstatement, Back Pay & Benefits](#)
- [Dale Wheelock Vindicated By Oneida Appeals Commission To Be Reinstated As Executive Director Of Oneida Housing Authority By December 1, 2014](#)

In fact, due to the actions of Ed Delgado and Tina Delgado-Danforth, the Tribe paid a settlement to Dale Wheelock this year regarding [Brown Co. Case No. 2013CV1245](#).

All of this evidence demonstrates a pattern of how the OBC, with the advice and assistance of OBC Chief Counsel Jo Anne House, shows their supposed "Respect for Elders" (including veterans):

By LYING TO AND ABOUT ELDERS & GTC ADVOCATES IN PUBLIC AND ON THE RECORD DURING TRIBAL GOVERNMENTAL MEETINGS, and making them run around in circles so that the OBC can try to protect Oneida Seven Generations Corporation from the Oneida people, all the while violating Tribe members' rights which are protected by the *Indian Civil Rights Act*.

IT. WILL. NOT. WORK.

GTC VOTED TO DISSOLVE OSGC.

AND NOW WE NEED AN INVESTIGATION.

OSGC NEEDS TO DIE IN A FIRE.

YESTERDAY.

The topic of Frank Cornelius Sr.'s petition was supposed to be adressed again at the August 12, 2015 OBC Regular Meeting and was on the Agenda but... guess what?

The OBC never even addressed the topic let alone apologize to Frank for lying about him and to him and other GTC advocates during a governmental meeting on the official & public record.



[The OBC has scheduled the continuation of the discussion of this topic to a Special OBC Meeting on Monday August 17 at 8 a.m.]

Oneida Eye's analysis of the **July 22, 2015**, discussion (starting at the **2 hr 39 min** mark) regarding OBC's Emergency Amendments to the Election Law based on BIA Acting Deputy Regional Office Director Scott Sufficool's letter and the OBC ignoring appeal timeframes and failing to keep GTC aware of OBC's actions to address any 'threat' to GTC's health, safety & welfare is this:

Neither OBC Chair Tina Delgado-Danforth, nor OBC Vice-Chair Melinda Danforth, nor OBC Chief Counsel Jo Anne House were willing to address Mike Debraska's very simple question...

If OBC made Emergency Amendments to the Election Law at an Emergency OBC Meeting on **June 28, 2015** on the basis of BIA Regional Acting Deputy Director Scott Sufficool's letter dated **June 19, 2015** in order to allow 18-20 year olds to attend the **July 6, 2015** GTC Semi-Annual Meeting and to vote in the **July 11, 2015** Special Election due to some 'Emergency' threat to health, safety, or welfare, then **WHY didn't the OBC and their Chief Counsel at the very least inform the General Tribal Council of that 'Emergency' and the surrounding issues at the July 6, 2015 GTC Meeting if not ask GTC – the supreme governing body of the Tribe – to agree to retroactively approve the OBC's Emergency Amendments?**

Why didn't the OBC simply publish the **June 19, 2015 letter** from the BIA's Regional Office Acting Dept. Director Scott Sufficool and their **OBC Emergency Meeting Agenda and the OBC Emergency Amendments** to the Election Law on [the Tribe's Facebook page](#) if not just post it on the front page of the [Tribe's website](#)?

Wasn't it supposed to have been a **momentous** occasion?

Just as Cathy Metoxen asked about at the July 8 OBC Meeting, Brad Graham addressed at the July 22 OBC Meeting the phony claim by Vice-Chair Melinda Danforth that there was some kind of 'threat' that required holding an 'Emergency Meeting' to pass 'Emergency Amendments' to the Election Law on June 28 (but somehow was not important enough to inform General Tribal Council about at the July 6 GTC Meeting).

Vice-Chair Melinda Danforth's silly attempts to claim that 18-20 year olds not being able to vote or hold office via the July 11, 2015 Special Election somehow posed a threat to the health, safety & welfare of the Tribe is ridiculous.

OBC Chief Counsel Jo Anne House's long-winded attempt at trying to justify why OBC kept GTC in the dark regarding the need for 'Emergency' action is preposterous.

Neither one of them ever addressed Mike Debraska's simple question:

WHY DIDN'T THE OBC AND/OR THE OBC'S CHIEF COUNSEL TELL GTC ABOUT THE OBC'S JUNE 28th EMERGENCY AMENDMENTS TO THE ELECTION LAW AT THE JULY 6th GTC SEMI-ANNUAL MEETING IF THERE WAS ANY REAL & CREDIBLE 'THREAT' TO THE HEALTH, SAFETY & WELFARE OF THE TRIBE?

THE REAL ANSWER IS THIS:

IT IS THE GOAL OF THE ONEIDA BUSINESS COMMITTEE TO TAKE POWER AWAY FROM GENERAL TRIBAL COUNCIL AT EVERY TURN, AND THE OBC'S CHIEF COUNSEL IS HELPING THE OBC DO IT.

Remember: This is the *exact* same OBC and OBC Chief Counsel that arbitrarily & capriciously tried to exclude the Milwaukee-based Southeast Oneida Tribal Services (SEOTS) facility as a polling site in the inaugural election of the Oneida Judiciary until GTC voted to force the OBC to stop disenfranchising Oneida voters and include a SEOTS polling site in all future elections.

- **Much To The Oneida Business Committee's Chagrin (Some Cried), Oneida Nation In Wisconsin's General Tribal Council Voted To Include The Milwaukee Southeastern Oneida Tribal Services (SEOTS) Polling Site In All Future Tribal Elections**

In fact, at the March 28, 2015 GTC Special Meeting OBC members **Brandon Stevens, Ronald Tehassi Hill, Fawn Billie, and Jennifer Webster** openly voted *against* including the SEOTS polling site in all future elections and wanted instead to continue to allow the OBC to arbitrarily & capriciously decide whether to disenfranchise Oneida Tribal members on an election-by-election basis, just as the OBC had planned for the Special Election of the Oneida Judiciary. Losers.

- **An Open Letter To The BIA & Oneida Judiciary Appeals Court Chief Justice Gerald 'Jerry' Hill About The Delayed & Flawed Judiciary Special Election And The Illegal April 11, 2015, Oneida Business Committee Special Election**

It should also be noted that former Oneida Appeals Commission Hearing Officers **Jean Webster** and **Kathy Hughes**, and **Chris J. Cornelius**, openly and officially demonstrated their willingness to violate Frank Cornelius' and other GTC members' rights of due process which are protected by the *Indian Civil Rights Act*:

- **Oneida Tribal Appellate Body Remands Judiciary Election Case Back To Trial Body For Its Failure To Conduct A Hearing And Its Denial Of Due Process & Civil Rights in Docket # 14-AC-012, Frank Corlius, Michael Debraska, Leah Dodge, Brad Graham & John Orle v. Oneida Business Committee, Oneida Election Board & Oneida Law Office**

On August 20, 2014, the Appellants (Petitioners) filed a request for an Injunction/Temporary Restraining Order against the Respondents to postpone the August 23, 2014 Special Election [of the Oneida Tribal Judiciary until] the inclusion of the SEOTS polling site. They also requested a Declaratory Ruling that all Business Committee and Judiciary elections include the SEOTS polling site. The Trial [Body] answered the Injunction/Restraining Order by denial. The Declaratory Ruling request was not answered by the Trial [Body]. ...

The Trial [Body Hearing Officers, **Jean Webster** and **Chris J. Cornelius** and **Kathy Hughes**,] failed to provide an answer to the Appellants' request.

By the Trial [Body Hearing Officer]'s failure to conduct a hearing on issue[s] presented, we find a denial of [the Appellants'] due process rights was made. No hearing was held. ...

In respect to the Appellants (Petitioners') request for Declaratory Ruling, the Trial [Body] failed to conduct a hearing, no record was made. Within the founding General Tribal Council Resolution, 8-19-91-A, which established the [Oneida Appeals Commission] it indicates:

"Whereas, the Indian Civil Rights Act of 1968, 25 USC Section 1301-1303 supports the policy that all Indian Tribes exercising powers of self-government shall insure that individual rights are protected and that people have a right to "petition for redress of grievances."

- **Motion Filed For Recusal Of Oneida Trial Body Hearing Officers Who Violated Tribe Members' Civil Rights As Determined By Oneida Appellate Body Hearing Officers**

But that's not the only time that Oneida Appeals Commission Hearing Officers have abused their position against Frank Cornelius' and other GTC members' civil rights:

- **Saturday January 10 Special Election Cancelled By Appellate Body's Ruling That Trial Body's Decision Is "Clearly Erroneous" & "Against The Weight Of The Evidence"** regarding the opinion of Hearing Officers Jean Webster and Kathy Hughes and Sandra Skenandore in OAC **Docket # 14-TC-90, Franklin Cornelius, Michael Debraska, Leah Dodge & Bradley Graham v. Oneida Business Committee, Oneida Election Board & Oneida Law Office**

Perhaps the OBC didn't talk to GTC about the OBC's Emergency Amendments to the Election Law because they were afraid that – given the opportunity – GTC might have adopted **other amendments to secure and ensure the integrity of the vote.**, or vote to nullify the **illegal April 11, 2015 Special Election** to address the OBC vacancy.

Also – contrary to OBC Chief Counsel Jo Anne House’s false claim at the July 22 OBC Meeting that there was no other way to address the problem than ramming ‘Emergency Amendments’ through and keeping GTC in the dark about it – the OBC could have been informed GTC about the various issues that led to the OBC’s action and then GTC could have voted whether to delay the Special Election until the matters surrounding changes to the Oneida Constitution were finally resolved.

You’d think an Attorney/GTC Parliamentarian like Jo Anne House would know that and make GTC aware of the facts, but OBC Chief Counsel Jo Anne House is looking out for her real client’s interest, which is helping OBC take power away from GTC by keeping GTC in the dark about their rights and the OBC’s limitations and law violations.

WARNING TO GENERAL TRIBAL COUNCIL: JO ANNE HOUSE IS *NOT* YOUR ATTORNEY; SHE IS THE ONEIDA BUSINESS COMMITTEE’S ATTORNEY AND IS ACTING AS GTC’S ADVERSARY.

JO ANNE HOUSE IS AIDING & ABETTING (IF NOT DIRECTING) THE OBC IN THEIR EFFORTS TO KEEP GTC UNINFORMED WHILE UNDERMINING GTC’S AUTHORITY AS THE SUPREME GOVERNING BODY OF THE ONEIDA NATION IN WISCONSIN.

Oneida Eye reaffirms its position that the OBC’s **June 28, 2015 Emergency Amendments to the Election Law** were illegal because there was no true ‘threat’ to health, safety nor welfare of the Tribe nor Tribe members, and *if there had been* any ‘threat’ to the Tribe that required OBC to take ‘Emergency’ action then **OBC and OBC’s Chief Counsel had an obligation to fully inform GTC about that ‘threat’ at the July 6, 2015 Semi-Annual Meeting**, including providing GTC copies of BIA Regional Acting Deputy Director Scott Sufficool’s June 19, 2015 letter and the ‘Emergency’ Amendments.

- **Oneida Business Committee Passed An Illegal Emergency Resolution Amending Tribal Election Law Without Informing General Tribal Council**

But as OBC Vice-Chair Melinda Danforth admits during the July 22 discussion of the issues surrounding the OBC passing Emergency Amendments without informing their bosses – GTC – little more than a week later as to why they did so, the OBC relies upon the advice and consultation (and we suspect the **direction**) of the OBC’s Chief Counsel, Jo Anne House.

THE BLAME FOR KEEPING GTC IN THE DARK AT THE JULY 6 GTC SEMI-ANNUAL MEETING ABOUT THE OBC’S JUNE 28 ‘EMERGENCY’ ACTIONS FALLS SQUARELY ON EVERY OBC OFFICER & MEMBER AND ON THE OBC’S CHIEF COUNSEL.

Does the Oneida Business Committee have the courage to hold a quorum for the Regular Meeting scheduled for **9 a.m. Wednesday, August 12, 2015**?

Will the OBC find the courage to record and post their meeting videos again... ever?

SOLUTIONS:

- **OPEN-SOURCE GOVERNANCE**
- **DITCH LIARS & LOSERS**
- **GTC DEMANDS A PROFESSIONALLY TRAINED PARLIAMENTARIAN FOR GTC MEETINGS WHO IS NOT NOR HAS BEEN AN EMPLOYEE, CONTRACTED CONSULTANT, OBC MEMBER, OBC CHIEF COUNSEL, NOR ONEIDA LAW OFFICE PERSONNEL**
- **GTC HIRES ITS OWN LEGAL COUNSEL AS GUARANTEED BY THE ONEIDA TRIBAL CONSTITUTION, ARTICLE IV, *Powers of the General Tribal Council*, SECTION 1 (b): “To employ legal counsel, choice of counsel and fixing of fees“**

... BEFORE IT’S TOO LATE.

posted by the Editors

Tags: [Atty. William Cornelius](#), [BIA Regional Deputy/Active Director Scott Sufficool](#), [Bruce King](#), [Bureau of Indian Affairs](#), [Cathy Delgado](#), [Cathy Metoxen](#), [CFO Larry Barton](#), [Chief Counsel Jo Anne House](#), [Chris Cornelius](#), [Former & Illegal OBC member David Jordan](#), [Frank Cornelius](#), [General Tribal Council](#), [Green Bay Renewable Energy](#), [Indian Civil Rights Act](#), [Jean Webster](#), [Jeremy ‘Jerry’ Jourdan / JJ Construction](#), [Kathy Hughes](#), [Kevin Cornelius](#), [Lisa Liggins](#), [Mike Debraska](#), [Mike Metoxen](#), [Nathan King](#), [Native American Bank / NAB](#), [Native American Financial Officers Association / NAFOA](#), [OBC Chair Tina Danforth](#), [OBC member Brandon Stevens](#), [OBC member Fawn Billie](#), [OBC member Jenny Webster](#), [OBC member Ron ‘Tehassi’ Hill](#), [OBC Sec. Lisa Summers](#), [OBC Treas. Trish King](#), [OBC Vice-Chair Melinda Danforth](#), [Oneida Constitution](#), [Oneida Energy Blocker Corp.](#), [Oneida Energy Inc.](#), [Oneida Law Office](#), [Oneida Nation in Wisconsin / ONW](#), [Oneida Seven Generations Corporation / OSGC](#), [Owen Somers](#), [Paul Linzmeyer](#), [Pete King III / King Solutions LLC](#), [Tami Hill](#), [Todd Van Den Heuvel](#)

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« [Oneida Nation In Wisconsin’s Starting Wages For Gaming Employees By Job Title](#)

[Ernie Stevens Jr. – National Indian Gaming Association \(NIGA\) Chair & Spokesperson And Tribal Advisor To Consulting Firm Blue Stone Strategy Group LLC – Accused Of Receiving Kickbacks In ‘Racketeering Scheme’ With New Mexico State Auditor & Former State Senator Tim Keller Who’s A BSSG Principal & Trainer; FBI Investigating \[UPDATE: Court Filings Posted\]](#) »

Sorry, Comments are closed.

- **As It Happens**

Minutes

October 1, 2015

B. Petitioner Frank Cornelius: Special GTC meeting to address four resolutions

- 1) Audit of Oneida Seven Generations Corporation
- 2) Oneida Seven Generations Corporation Return Money to Tribe
- 3) Freedom of the Press
- 4) Tax Oneida Business Committee for Failure to Dissolve Oneida Seven Generations Corporation

Sponsor: Lisa Summers, Tribal Secretary

EXCERPT FROM AUGUST 26, 2015: Motion by David Jordan to accept the legislative analyses for resolution 1) Audit of Oneida Seven Generations Corporation, resolution 2) Oneida Seven Generations Corporation Return Money to Tribe, resolution 3) Freedom of the Press, resolution 4) Tax Oneida Business Committee for Failure to Dissolve Oneida Seven Generations Corporation, seconded by Jennifer Webster. Motion carried unanimously.

Excerpt from August 17, 2015: (1) Motion by Lisa Summers to take this item from the table, seconded by David Jordan. Motion carried unanimously. (2) Motion by Jennifer Webster to forward the four resolutions to the Legislative, Law, Finance offices for the appropriate analyses and for those analyses to be due at the September 9, 2015 regular Business Committee meeting, seconded by Lisa Summers. Motion carried unanimously. (3) Motion by Lisa Summers to request the Law Office provide a legal opinion about what occurs when a petition is submitted which does not have all the appropriate documentation that would go with the petition, seconded by Tehassi Hill. Motion carried with one abstention.

Excerpt from August 12, 2015: Motion by Lisa Summers to adjourn at 2:06 p.m. and to direct the Tribal Secretary to coordinate Business Committee special meeting date for the remainder of this agenda, seconded by Brandon Stevens. Motion carried unanimously.

Excerpt from July 22, 2015: Motion by Brandon Stevens to table this item to next regular Business Committee meeting, seconded by David Jordan. Motion carried unanimously.

Excerpt from July 8, 2015: Motion by Tehassi Hill to accept the update as information and defer this item to the July 22, 2015, regular Business Committee meeting as agreed upon by the Business Committee members and the petitioner, seconded by David Jordan. Motion carried unanimously.

Excerpt from June 24, 2015: Motion by Fawn Billie to defer this item to the next regular Business Committee meeting and direct the Secretary to work with the petitioner to find a solution to the concerns, seconded by Tehassi Hill. Motion carried unanimously.

Excerpt from May 27, 2015: Motion by David Jordan to direct the Secretary to reach out to Petitioner Frank Cornelius to request the four resolutions mentioned in the petition be submitted in 30 days, seconded by Lisa Summers. Motion carried unanimously.

Excerpt from May 13, 2015: (1) Motion by Trish King to acknowledge receipt of the petition submitted by Frank Cornelius, seconded by Fawn Billie. Motion carried unanimously. (2) Motion by Trish King to send the verified petition to the Law, Finance, Legislative Reference and Direct

Report Offices for legal, financial, legislative and administrative analyses to be completed; to direct the Law, Finance and Legislative Offices to submit the analyses to the Secretary within 60 days and a that a progress report is submitted in 45 days, seconded by David Jordan. Motion carried unanimously. (3) Motion by David Jordan to direct the Direct Report Offices to submit the appropriate administrative analyses to the Secretary within 30 days, seconded by Trish King. Motion carried unanimously.

Motion by Jennifer Webster to accept the update from Chief Counsel regarding legal analyses of resolution 1) Audit of Oneida Seven Generations Corporation, resolution 2) Oneida Seven Generations Corporation Return Money to Tribe, resolution 3) Freedom of the Press, and resolution 4) Tax Oneida Business Committee for Failure to Dissolve Oneida Seven Generations Corporation, seconded by Brandon Stevens. Motion carried unanimously. Amendment to the main motion by Melinda J. Danforth to provide a new due date of November 25, 2015, for the legal and financial analyses of resolution 1) Audit of Oneida Seven Generations Corporation, resolution 2) Oneida Seven Generations Corporation Return Money to Tribe, resolution 3) Freedom of the Press, and resolution 4) Tax Oneida Business Committee for Failure to Dissolve Oneida Seven Generations Corporation, seconded by Lisa Summers. Motion carried unanimously.