

**TRIP REPORT**  
**May 17, 1993 to May 20, 1993**

**NAVAJO JUSTICE**  
**A FACT FINDING MISSION**



**REPRESENTATIVES**

Department of Justice:

Stephen Kakfwi, Minister of Justice  
Miles Pepper, Assistant Deputy Minister  
John Dillon, Acting Director, Corrections Division  
Sandy Harris, Executive Assistant

N.W.T. Women's Organizations:

Bertha Allen, President, Native Women's Association  
Martha Flaherty, President, Pauktuutit Inuit Women's Association  
Susan Sammons, Member, Status of Women Council of the NWT

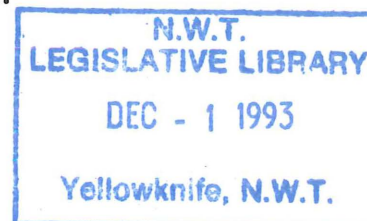
Members of the Legislative Assembly

Jim Antoine, MLA, Nahendeh  
Charles Dent, MLA, Yellowknife Frame Lake  
Jeannie Marie-Jewell, MLA, Thebacha  
Fred Koe, MLA, Inuvik  
Brian Lewis, MLA, Yellowknife Centre  
Tony Whitford, MLA, Yellowknife South

**PURPOSE**

The purpose of the visit was to let members of the Legislative Assembly and officials have the opportunity to see for themselves how one aboriginal first nation of the United States has taken over part of the administration of justice on its reservation.

The Navajo Nation Reserve includes 25,000 square miles of land encompassing four American states, primarily northern Arizona but also Colorado, Utah and New Mexico. There are between 200,000 to 300,000 people living on the Reserve. The Reserve is about a two hour drive from Phoenix, Arizona.



**JUSTICE SYSTEM****(a) Role of the U.S. Attorney for Arizona**

The U.S. Attorney for Arizona, Daniel Krauss, outlined the federal jurisdiction in relation to the Navajo Nation. As a result of decisions of the United States Supreme Court, the Navajo justice system has no jurisdiction in criminal matters involving non-Navajo.

In addition, the U.S. Attorney is charged with the prosecution of nearly all felonies on reservations as state law does not apply there. Felonies are crimes that would result in a fine greater than \$500 or a jail term greater than six months. This is expected to be increased to \$1,000 and one year. The three most common offenses were child abuse, vehicular homicide and assault.

Mr. Krauss's office provides training for the FBI in race relations and on gender bias. Apparently, there are very few FBI agents who are Navajo.

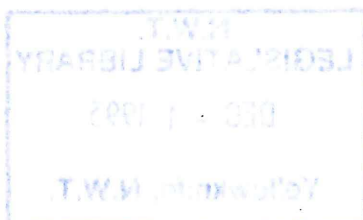
Dorothy Fulton, a lawyer in the Attorney General's office indicated that few women were involved in the law enforcement or judicial systems of the Navajo Nation. She also mentioned that notwithstanding that the reservations are "dry", alcohol is a big problem. The problem of child sexual abuse knows no boundaries. There have been a number of multiple assault cases in boarding schools and elsewhere.

**(b) Role of the Attorney General for Arizona**

Mr. Robert B. Carey, First Assistant Attorney General of Arizona, confirmed that the State of Arizona had little jurisdiction on the Navajo reserve. The State's jurisdiction was limited to cases involving non-Indian offenders and non-Indian visitors.

**(c) Role of the Attorney General of the Navajo Nation**

Mr. Herb Yazzie, Attorney General of the Navajo Nation, explained his role as chief legal adviser to the Government of the Navajo Nation. He also advises chapters which are local governments within the reserve. His office deals with litigation arising from employees' complaints, between the federal government and the Navajo Nation, between state governments and the Navajo Nation and from contracts.



In addition, it acts as a mediator between branches and provides formal opinions.

His department has sections that correspond with the departments of the government. Each is headed by an Assistant Attorney General. The department has a staff of approximately 200 of which 54 are attorneys. Except for the attorneys, the staff is mainly Navajo.

The Attorney General appoints the Chief Prosecutor who prosecutes throughout the reservation.

He stated that legal aid had been abolished and replaced by a system of public defenders. There is a public defender office at each district court. The public defender represents persons appearing in the district courts who cannot afford legal services.

The Attorney General is appointed by the President of the Navajo Nation confirmed by the Council (Legislative Assembly) and serves at the pleasure of Council. However, discussions were underway concerning the desirability of electing the Attorney General. The Attorney General is not required by law to report to Council or the President of the Navajo Nation, but sits with Council when it is in session. The President may request a briefing on any matter at any time. The members ask for advise from the Attorney General directly.

Finally, the Attorney General dealt with the Corrections system which he stated was inherited from the Bureau of Indian Affairs. The question being wrestled with was whether or not it should be retained. The Attorney General's office was trying to determine how much of the law could be decriminalized. Once that had been determined, the next question would be the use of community service as opposed to jail sentences. Mr. Yazzie explained that the U.S. prison system was punitive. The Navajo people wished to see rehabilitation - putting the offender back in harmony with nature and provision of restitution to the victim.

(d) Law Enforcement Officials

David K. Thomas, District Captain, and Bob Stewart, former Chief of Police, spoke on law enforcement.

The law enforcement program is responsible for the 200,000 to 300,000 Navajo living on the Reserve. Two sets of figures were given as to the strength of the police force. One stated that there were positions for 347 commissioned personnel but because of funding problems, 120 positions were vacant. The other stated that there were 196 officers of which 10% were women. The budget of \$17.3 million was funded by the Navajo Nation (\$3.8 million) and by the U.S. government (\$13.5 million).

The Navajo police enforced the law against the Navajo and "cited" non-Indians into their respective courts. The number of arrests cited by officials seemed large - 29,000 a year.

In the Chinle district alone, 14,000 cases were said to have gone through the court system in the last fiscal year.

There is a shortage of jail cells and existing facilities are very old. Some discussion is underway on privatizing the corrections system. Although specific details were never discussed, the Navajo Nation seems to be subject to a federal court order to upgrade the existing detention facilities.

## **THE COURTS AND THE LAW**

### **(a) Jurisdiction of the Courts**

Chief Justice Robert Yazzie outlined the three branches of the Navajo Nation's government. The Council is the legislative branch. There is an executive branch headed by the President and a judicial branch headed by a Chief Justice.

The Chief Justice outlined the jurisdiction of the Navajo Tribal Courts which had been established by the Navajo Tribal Council in the Navajo Tribal Code (NTC) as follows:

1. Territorial Jurisdiction: The territorial jurisdiction of the Navajo Courts is contained in 7 N.T.C. S254.
2. Subject Matter Jurisdiction: The subject matter jurisdiction of the Navajo Nation Courts is found in 7 N.T.C. S253. They may hear any civil case if the defendant is a resident of Navajo Indian Country or if the defendant committed an act within Navajo Indian Country which gave rise to the lawsuit. The courts

may also hear criminal cases for violation of the laws of the Navajo Nation. The sentencing power of the tribal courts in criminal cases is limited by the Indian Civil Rights Act.

3. **Personal Jurisdiction:** Personal jurisdiction is the power to bring a particular person before the courts and have matters pertaining to that person determined. The general personal jurisdiction of the Navajo Courts is found in 7 N.T.C. S253. The manner in which this jurisdiction is invoked in civil cases is by the filing and service of a proper complaint as regulated by the Rules of Civil Procedure adopted by the Navajo Nation Courts. Personal jurisdiction in criminal cases is limited to Indians by the U.S. Supreme Court in Oliphant v. Suguamish Indian Tribe.

There are district courts, family courts and small claims courts. The small claims courts have jurisdiction in matters involving amounts less than \$2,000.

(b) Applicable Law

The civil law to be applied by the Navajo Nation Courts is outlined in 7 N.T.C. S204. The applicable laws are the laws and customs of the Navajo Nation and applicable law of the United States.

The laws and customs of the Navajo Nation include traditional ways. These are not difficult to learn and are argued regularly by non-Navajo practitioners.

The statutory laws of the Navajo Nation are contained in the Navajo Tribal Code. Interpretations of those laws are found in Navajo cases. The opinions of the Navajo Nation Supreme Court are bound and published as the Navajo Reporter.

The Navajo customs and traditions and written decisions of the Navajo Nation Courts are known as the common law of the Navajo Nation.

(c) Practitioners

Only members of the Navajo Nation Bar Association (NNBA) may practice in the Navajo Tribal Courts. There are requirements an applicant must meet in order to become a member of the NNBA. A major requirement is passing the Navajo Nation bar examination which is given twice a year.

There are approximately 300 members of the NNBA. They consist of both attorneys (law school graduates) and advocates (non-law school graduates who have received advocate training or served an apprenticeship).

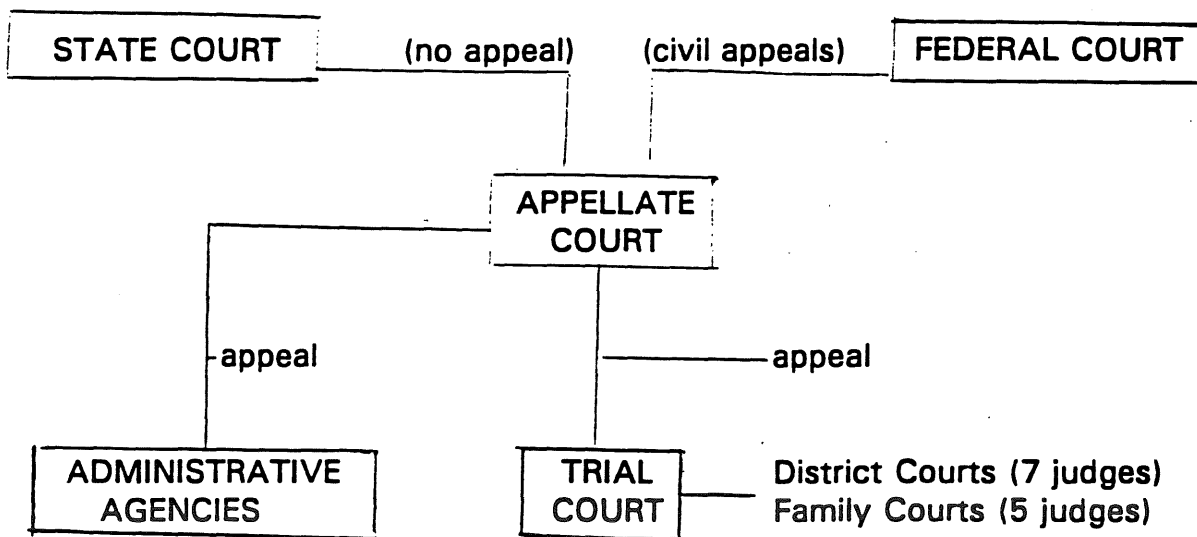
An attorney who is not a member of the NNBA may associate with a member for the purpose of a particular case.

The NNBA has various committees, one being a grievance committee which hears complaints against practitioners and takes disciplinary action when necessary.

Finally, the Chief Justice stated that most of the problems on the reservation were caused by poverty. One official had stated that the unemployment rate on the reserves was 39%.

(d) Appellate Jurisdiction

Mr. Justice Ray Austin outlined the appellate jurisdiction on the Navajo Nation. He drew a diagram as follows:



Half of the judges are women. To become a judge a person must apply and be selected. Applicants then go before a judiciary committee of the Council and their names are sent to the President. Applicants must be able to speak the Navajo language and know the culture. Every judge serves a two year probationary period. If the judge successfully concludes the probationary period, he or she remains a judge until attaining 70 years of age.

Mr. Justice Ray Austin then dealt with the origin of traditional Navajo law which emphasized responsibility and maintenance of harmony with oneself.

(e) Peacemaker Court

The presentation was disappointing because the presenter, Mr. Bluehouse, ran out of time and was unable to present the Peacemaker Court in action. He dealt with the philosophy and tradition behind the Peacemaker Court but not the operation of the court itself.

This special court is based on the selection of a Naat'aanii, or head, to arbitrate a dispute, resolve family problems and work with people who are problems in the community. Use of the Peacemaker Court is voluntary, unless the District Court orders the parties to participate in the peacemaker process. If no resolution is reached the parties may go to the District Court for resolution of the problems.

Peacemakers are selected from their communities. When Peacemaker Court is taking place, notice is given, everyone is welcome and is allowed to say what they wish, state their problems and state what they see as solutions to the conflict. There are no appeal cases heard in Peacemaker Courts. Peacemakers have to have power of persuasion. The average number of peacemakers in each chapter of the Navajo Nation is 3, so all together there are over 200 peacemakers in Navajo. Only a few of these are women.

Bertha Allen, Martha Flaherty and Susan Sammons requested a meeting with a representative of the women's group to obtain the women's perspective on the Peacemaker Courts. Jeannie Marie-Jewell, MLA, joined them for that meeting.

Susan Sammons reported the results of that meeting as follows:

"The group were told that many women do not believe that the Peacemaker Court should be used when dealing with violent offenses. There is a major problem in small communities where the Peacemaker is related to the offender. The average length of a Peacemaker court session is 3 hours - not quite enough time to resolve a domestic violence conflict!

Many battered women do not utilize the shelters on the reserves because of clan pressure and feelings of shame, and go off of the reserve for help. Three of the members of the Navajo Police have convictions for spousal assault. Three women have been killed by spouses who were members of the Navajo Police.

Nine out of every 10 sexual assault cases that go to court are thrown out because the Navajo Police had not collected the evidence properly.

Rampant child abuse goes unreported and children are often told to shut up about it."

## **LEGISLATIVE ASSEMBLY**

Ray Louis of the Legislative Branch made a presentation on the Legislative Branch in the Council chambers. There are 88 members of the Navajo Nation Council. The members are elected to serve a four year term. One of the members is chosen as speaker of the Council. The Speaker, as here, presides over the Council and is responsible for the administration of the affairs of the Council.

The Honourable Nelson Gorman, Speaker of the Navajo Nation Council, was presented with a Fort Liard birch bark basket and a book on the Northwest Territories.

Mr. Miles Pepper met with Claudeen Bates Arthur, Legislative Counsel to the Navajo Nation Council. Ms. Arthur's duties are similar to those of the Law Clerk of the Northwest Territories Legislative Assembly. At the time of the interview she was engaged in a Committee of the Assembly discussing the question of whether the Nation's senior police official served at the pleasure of the Assembly or of the President. The powers of the Legislative Branch in relation to the Executive Branch were, she explained, the subject of much debate. The question appears to have arisen from abuse of power by the President preceding the one now in office. There was insufficient time to pursue this question to any satisfactory conclusion.

## **DINE CULTURE**

Following the presentation on the Legislative Branch, Afton Sells spoke to the group on Dine Culture and Language. He explained the integration of Navajo culture and language into a philosophy that was not western in nature but Navajo. The philosophy emphasized independence, self-discipline, critical thinking, planning, endurance and spirituality.

This was further expanded upon at a meeting at the Navajo Community College in Tsaile, where the curator of the museum explained the creation of the four worlds of the Navajo.



**CONCLUSION**

The trip achieved its purpose of letting members of the Legislative Assembly and officials see for themselves how one Aboriginal First Nation of the United States had taken over part of the administration of justice on its reservation. Many of the problems on the reservation, child abuse, assault and liquor-related offenses were common to both jurisdictions. However, it was clear that the court system of the Northwest Territories, which applies to all residents equally, is considerably less complicated than that in effect on the Navajo reservation in respect of offenses.

The emphasis on knowledge of the laws and customs of the Navajo Nation, including traditional ways as part of the laws of the Navajo Nation, was stressed. Both the judiciary and the practising members of the Navajo Nation Bar Association must have a high level of knowledge of the laws and customs. To the writer, it emphasized the need for greater cross-cultural training within the NWT legal system for the members of the Bar and the judiciary.

Completed by Miles H. Pepper, Q.C.  
Assistant Deputy Minister  
Department of Justice

















