

August, 2002

Dear Friends and Colleagues:

I am pleased to provide you with our annual report on our continuing efforts to address crime in Indian Country. The Indian Country Report includes information on our office's prosecution and civil litigation arising in Arizona's Indian Country from July 1, 2001 to June 30, 2002.

We Have dedicated additional much needed resources to prosecute crimes in Indian Country. Four Assistant U.S. Attorney's (AUSAs) have joined our office and are assigned to prosecute a wide variety of federal violations, including violent crimes in Arizona Indian Country. These new AUSAs, *Kurt Altman, Dyanne Greer, John Johnson* and *Keith Vercauteran*, have well-rounded violent crime prosecution experience which will enhance our overall prosecution efforts in Central and Northern Arizona. In particular, *Ms. Greer* and *Mr. Johnson* have expertise in prosecuting crimes against children and we are using their experience to address crimes in the Northern Arizona region.

Additionally, in the Tucson Office, we have dedicated AUSAs *Sean Chapman* and *Lauren Anaya* to prosecute violent crimes and crimes against children in the Southern Arizona region. Each of these individuals has a proven record of experience, responsiveness and professionalism and will serve Arizona's Indian Country well.

While we have enhanced our prosecution efforts, our violent crime referrals continue to grow. Reports on the causes of crime in Indian Country continue to reveal that alcohol and illegal substance use are present in over half of the violent crimes committed against American Indians.¹ Although many Arizona Indian tribes ban alcohol sale and use within their territory, alcohol use is prevalent in an overwhelming number of violent crimes referred for federal prosecution. To address this problem, we have combined our prosecution resources with tribal and federal investigative agency resources to target the illegal sale of alcohol where prohibited. Targeted investigations and prosecutions have proven to be a successful deterrent to local offenses.

Finally, in the wake of September 11th this office, like many others, is aggressively pursuing terrorism as a priority. While we must all do our part to ensure that the tragedy that befell America never again occurs, we are mindful of our continuing trust responsibility to prosecute violent crimes in Arizona's Indian Country and we remain committed to meeting that responsibility. We look forward to working with you in our efforts.

I hope you will find the information in the Indian Country Report useful and informative. Thank you for your assistance and cooperation in addressing crimes in Arizona's Indian communities.

PAUL K. CHARLTON
United States Attorney

District of Arizona.

¹ *American Indians and Crime*, U.S. Department of Justice, Office of Justice Programs, By Lawrence A. Greenfeld and Steven K. Smith, February 1999, NCJ 173386.

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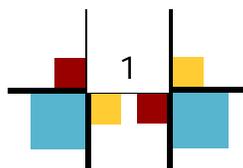
VICTIM RIGHTS & VICTIM ADVOCACY

The United States Attorney continues to place great emphasis on strong victim advocacy. In so doing, the Victim Witness Program Staff has increased in size and responsibility. Our staff has received crisis response training and will continue to develop their skills to enhance their victim advocacy role. Programmatic changes include immediate personal contact shortly after the crime occurs and direct victim services to victims of violent crimes. In addition to providing notification, staff now travel more often to meet directly with crime victims and has increased victim services to white collar and border crime victims. To better serve Indian communities, staff coordinate their efforts with federal, tribal and local law enforcement agencies and their respective victim advocates, and depend on law enforcement first responders to gather victim contact information to ensure immediate and adequate victim services.

Federal Crime Victims Served: During 2001-2002, the Phoenix and Tucson Victim Witness Offices provided assistance to over 4,942 victims and witnesses. Of that number, 577 were victims from Indian Country. In addition to services to victims of violent crimes, program staff provide services to victims of bank robberies, identity theft, postal crimes, border crimes, federal land crimes, telemarketing fraud and numerous other crimes.

The Victim Notification System: The Victim Witness staff is required to ensure that *all* victims of federal crimes are provided with current case information. Since September 2001, U.S. Attorney's Victim Witness Program throughout the country, the Federal Bureau of Investigations and Bureau of Prisons now use the Victim Notification System (VNS). Within each agency, the VNS system is a mandatory data based program intended to provide victim's immediate access to case information on a 24 hour basis. VNS relies upon timely data submission by the FBI, BOP, the federal district courts and federal prosecutors. VNS provides a Victim Identification Number and Personal Identification Number to allow each victim to access a Call Center (1-866-365-4968) for information on the defendant's status and current court information.

While VNS provides victims with an alternative method of obtaining case information, staff continues to ensure that victims who may be hampered in using VNS are informed of their rights. Staff provides resource referrals such as financial and counseling services and works in cooperation with Law Enforcement, tribal and federal service agencies, the Bureau of Prisons and other public programs to establish a continuum of service and information for federal crime victims. Victims with financial needs may receive assistance from a number of federal funding sources provided through the Victim Witness Program.





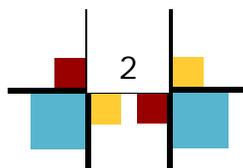
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Emergency Witness Assistance Program: This fund provides emergency financial assistance to threatened witnesses and/or their families during an ongoing investigation or case prosecution. EWAP has provided payment for relocation costs, house rentals, utilities, meals, hotel and travel related expenses, installation of a security system, cellular phones, clothing and emergency medical care. In the District of Arizona, EWAP has provided assistance to 20 victims/witnesses this past year. Since its inception, 61 threatened witnesses and their families have received assistance from EWAP.

Emergency Crime Victims Fund: The Office for Victims of Crime administers this very important fund. During 2000-2001, financial resources from this fund were authorized for travel and per diem expenses for crime victims to attend sentencings. Without these funds each assisted victim would not have been able to attend sentencing to allocute to the court.

Arizona Community and National Activity: The Victim Witness Staff continues to participate in statewide and national crime prevention and awareness activities year-round. During **2002 National Crime Victim's Rights Week**, staff promoted and participated in a candlelight vigil, a crime victims' rights rally and promoted awareness of federal crime victims' rights and programs. The United States Attorney participated in the **2002 National Crime Victims' Rights Week**, (April 21 - 27) by formally recognizing individuals from the District of Arizona who went above and beyond the call of duty in responding to and serving crime victims. The following individuals received recognition:

- **Jimmy Stout, U.S. Border Patrol Agent/Chaplain** was recognized for daily crisis intervention with victims of various criminal acts from high speed rollover accidents involving illegal immigrants to critical incident debriefings for those involved in various crime scenes. Agent/Chaplain Stout was called out to respond to the September 11th terrorist attacks. He provided assistance in tracking personnel who were on the ground in New York and Washington, D.C., and he coordinated efforts from the Command Center with Employee Assistance Program, Local, State CISD teams, the Red Cross Blood Drives and various public entities;
- **Douglas E. Lintner, Bradley J. Purscell, Raymond A. Duncan, Jr. Kent R. Hush, FBI Special Agents**, Gallup Resident Agency, were recognized for their special assistance to victims and witnesses. These agents routinely go beyond their assigned duties to ensure that victims' needs are met. For example, they often travel long distances to rural areas to arrange victim meetings and to inform victims of case status when victims lack transportation or telephone services;



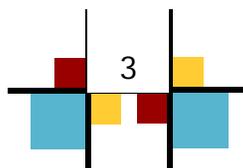
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- **Kevin J. Pakulniewicz, FBI Special Agent**, Yuma Office, was recognized for going above and beyond the call of duty to ensure the special needs of victims were met. In one case he investigated a child abuse case where the child endured excessive long term abuse. When the victim was placed in a local program that was unable to meet the needs of the child, he took immediate action to find an appropriate program to address her special needs;
- **Mrs. Sharon Knutson-Felix, President, Arizona Chapter of Concerns of Police Survivors**, is the widow of a Douglas, Arizona Department of Public Safety Officer who was the victim of homicide in 1998. Thereafter, Mrs. Knutson-Felix became actively involved in assisting families of fallen police officers by using her own traumatic experience to aid others in their time of need. After September 11th, she traveled to New York to assist families who had lost loved ones in that tragic event and she was instrumental in providing support to two families of agents who were fatal victims;
- **Ms. Hallie Bongar White, JD, Assistant Attorney General, Pascua Yaqui Tribe**, has provided free legal and technical assistance to Arizona tribes on domestic violence, sexual, child, disabled and elder abuse. She has drafted numerous tribal domestic violence and sexual assault codes and provided training to law enforcement on family violence. She is also active in violence prevention activities and an advocate of effective, grass-roots, culturally appropriate violence prevention strategies.

Each of these individuals exemplify public service at its best!

Victim Witness staff are routinely involved in prevention activities and public awareness campaigns for **Domestic Violence Prevention Month** in October and April, the blue ribbon campaign for **Child Abuse Prevention Month**. This year, in recognition of the Child abuse prevention month, we assisted the **Greater Phoenix Child Abuse Prevention Council** in its conference at the Glendale Civic Center. Also this year, Staff assisted the **Arizona Coalition for Victim Services** in planning the annual conference in June (at the Hon Dah Resort and Casino) which unfortunately had to be cancelled due to the devastating Chediski and Rodeo fires). Staff also provided an informative workshop on Federal Victim Witness Laws and Programs at the **National Organization for Victim Assistance (NOVA)** conference in Nashville, Tennessee.

Multi Disciplinary Teams: The U.S. Attorney General's Guidelines for Victim and Witness Assistance encourages United States Attorneys' staff to participate in **MDTs** in the local communities. Where no MDT exists, Justice Department personnel are encouraged to develop MDTs. The goals of an MDT are to: 1) minimize the number of interviews to which the child is subjected to reduce the risk of suggestibility in the interview process; 2) provide





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needed services to the child; and 3) monitor the child's safety and well-being. See Page 8 for a list of MDTs. MDT members include federal and tribal prosecutors, Victim Witness, Social Services, Law Enforcement, FBI, Medical and School Personnel and other service providers. The **Phoenix Area CPT/MDT** includes administrative level staff from the BIA, Social Services and Law Enforcement, Indian Health Service, Office of Health Programs, the Inter Tribal Council of Arizona, Inc., Arizona Department of Economic Security, Office of Indian Child Welfare Act, and the FBI. This MDT supports tribal, state and federal objectives and laws to ensure a continuum of child abuse and neglect services, including a system of detection, reporting, investigation and prosecution, treatment services, and prevention activities, including community education and child advocacy.

Four Corners Indian Country Conference: Last year, this annual conference (scheduled for September 12th and 13th) was cancelled due to the tragedy of September 11th. The conference ***“Interjurisdictional Cooperation: Keys to Justice for Victims”*** has been **re-scheduled for September 4th - 5th in St. George, Utah**. This conference, funded by the Office for Victims of Crime and the Executive Office of United States Attorneys, is widely attended by participants from Law Enforcement, Social Services, Victim Witness Services, Indian Health Services, and other disciplines from Arizona, Colorado, New Mexico, and Utah. Basic and advance workshops in Victim Services, Community, Law Enforcement, and Prosecutor tracks are provided.

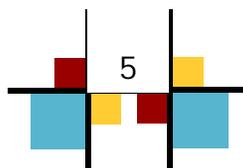
Training: Victim Witness Staff routinely train and provide information on federal victims' rights and the **Attorney General's Guidelines for Victim and Witness Assistance** to other agencies. Recently, new Criminal Investigators received this training at the November 2001 Introduction to Federal Criminal Process conference. Staff traveled to the Grand Canyon to train National Parks Service Law Enforcement personnel. Tucson staff has also received training to provide Good Touch /Bad Touch Training and have used these skills to provide training at San Xavier School on the Tohono O'odham Nation.

Federal Agency Coordination: To enhance service to victims, staff coordinate with Federal Victim Witness Coordinators of the **Federal Bureau of Investigation, Drug Enforcement Administration, Alcohol-Tobacco & Firearms, Bureau of Land Management, National Park Service, Forest Service, Postal Service, Secret Service, Immigration and Naturalization Service, Bureau of Prisons** and **Tribal Victim Witness programs**. Coordination is key to providing a continuum of services and avoiding duplication of efforts and resources. The Victim Witness staff also coordinates service provision efforts with local victim service providers who also provide services to victims within Indian Country. Staff also participate in the **Arizona Coalition for Victim Services, Arizona Crisis Response Team, Greater Phoenix Child Abuse Prevention Council, and Bank Safe**.



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The Victim Witness Staff: In Phoenix, our staff consists of *Betti A. Delrow*, Victim Witness Coordinator, *Mary Williams* and *Marc Tetzlaff*, Victim Witness Specialists, *Marlene Beall* and *Edith Robertson*, Victim Witness Assistants. In Tucson, *Dori Arter*, Victim Witness Specialist, *Mary-Anne Estrada*, Victim Witness Advocate provide victim witness services. Ms. Robertson recently joined the Victim Witness Staff after being employed with the Federal Bureau of Prisons. If you would like further information regarding the Victim Witness Program please call **Phoenix**, at (800) 800-2570 or (602) 514-7500. In **Tucson**, please call (888) 565-0631 or (520) 620-7300.

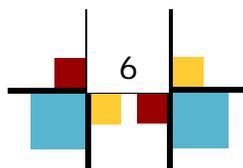


SPECIAL EMPHASIS AREAS

Child Abuse In Indian Country: The District of Arizona has long been dedicated to the prosecution of individuals who sexually assault children. For years these cases were prosecuted by attorneys in our violent crime section. In studying the types of issue raised in both the investigation and litigation of matters involving sexual predators and child victims, we came to realize that the district would be best served by bringing in prosecutors who specialize in these cases. The Phoenix office now has two experienced prosecutors who work exclusively on matters involving allegations of sexual assault. Both Dyanne Greer and John Johnson prosecuted in the Sex Crimes Unit of the Maricopa County Attorney’s Office prior to joining the U.S. Attorney’s Office. Ms. Greer has prosecuted child sex offenses for several years. She is a respected expert in the field of investigation of sexual offenses, and has lectured throughout the country on the subject. In addition to their prosecution duties, these assistants will also be actively involved in MDT coordination and agent training. While both Greer and Johnson are responsible for their own MDT groups they will also be visiting each of the MDT groups throughout the district to address participation, communication and specific cases. Similarly, in Tucson, AUSA Lauren Anaya has been tasked with prosecuting sexual predators and handling cases involving child victims. Previously, Ms. Anaya handled general federal prosecutions including violent crimes and border related crimes for the Tucson USAO, and previously with the U.S. Attorney’s Office for the District of New Mexico. Ms. Anaya is responsible for the Pascua Yaqui and Tohono O’odham MDT groups.

Each of these child crimes prosecutors are involved in training on topics related to the detection, investigation and prosecution of child crimes. Agent training sessions are being planned for the near future. These sessions will focus on the investigation of sexual assault cases so that the agents will understand the kind of information our prosecutors will need to successfully prosecute a sexual perpetrator. We are confident that the addition of these experienced prosecutors will help our office to better serve the concerns of sexual assault victims and the interests of justice.

Aggressive Response to Violent Crime Referrals: To ensure timely resolution to reports of Indian Country crimes, the violent crime group, Group I, has implemented the following procedure for non-reactive crimes (where a defendant does not pose a flight risk or a danger to the community): Within 30 days of receiving an investigative report, the assigned AUSA must either 1) charge the defendant; 2) decline the case in writing; or 3) make a written request to the investigating agency for further investigation or information to enable the AUSA to make a charging decision. Thereafter, the investigating agency has 45 days to provide the requested information. Upon receiving the information, the AUSA will promptly decide whether to charge or decline the case. If no information is provided, the matter will be declined. This system has resulted in expediting the time in which charging and declination decisions are made, directly benefiting the victims, law enforcement agencies and the affected communities. Reactive cases are still handled through the criminal complaint process.

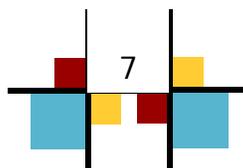


SPECIAL EMPHASIS AREAS

Alcohol “Bootlegging” Prosecutions: The prevalence of alcohol and substance abuse in violent crime cases occurring in Indian Country remains high. The United States Attorney’s Office has met with interested tribal law enforcement agencies to address the illegal sale of alcohol on Indian reservations where alcohol is prohibited and where a demonstrable need exists. For example, “Operation Bootleg”, was a four month undercover operation resulting in the arrest of 22 individuals on federal crimes for unlawful dispensing of intoxicating liquor and marijuana possession. “Operation Bootleg” was a carefully combined effort of the Federal Bureau of Investigations and the Navajo Department of Law Enforcement. The success of the operation was a direct result of the federal and tribal agency cooperatively sharing resources and manpower to investigate these crimes. Many area law enforcement reported that after the arrests occurred, there was a noticeable decrease in criminal activity.

Although many of those arrested received sentences of supervised release with the condition that they not possess or use alcohol, any subsequent offense is punishable by a term of imprisonment of 12 months in federal custody for violating supervised release conditions. For example, after several months on supervised release, one defendant, Herbert Begay, was arrested by the Navajo Department of Law Enforcement for selling alcohol from his home to juveniles. Mr. Begay was ordered to serve 12 months in federal custody for violating his supervised release conditions.

On the Arizona Border: In August, 2002, the *Arizona Border First Responders*, a self-appointed group of county, tribal, federal and state law enforcement agencies in southern Arizona, was established to address the increase in deaths and crimes in the southern Arizona desert and the costs associated with responding to and investigating these problems. With the aid of the U.S. Attorney’s Office LECC Coordinator, members of the *Arizona Border First Responders*, including Tohono O’odham Police Captain Richard Saunders, Yuma County Sheriff Ralph Ogden, Cochise County Sheriff Larry Dever and Pima County Deputy Sheriff Richard Carmona, traveled to Washington, D.C. to meet with the U.S. Department of Justice Officials and the Office of Justice Programs staff to discuss the impact of these desert deaths and crimes and their impact on the communities and law enforcement agency resources. The group continues to meet on a regular basis to coordinate responses and share information on the impact of border crimes.





MULTI-DISCIPLINARY TEAM LIST

AUSA	MDT	Contact Person	VW
	Phoenix Area	Dr. N. Burton Attico, IHS (602) 364-5157 or BIA Law Enforcement Office. (602) 379-6958	Betti Delrow
J. Johnson	Hualapai	Emma Clark, ICWA Caseworker, P.O. Box 397, Peach Springs, AZ 86434, (928) 769-2658	Mary Williams
	Colorado River	Janice Patch (928) 669-8365, CRIT Behavioral Health Services,	Marc Tetzlaff
M. Kemp	Dilcon, Leupp	Cecelia Kescole (928) 657-8032, F: 657-8041, Dilcon Family Service, HCR 63, Box 6089, Winslow, AZ 86047	Mary Williams
D. Greer	Havasupai	Phylliss Jones (928) 448-2661 and Bernita Paya (520) 448-2731 F: 448-2262, POB 10, Supai, AZ 86435	Mary Williams
	Hopi	Berdina Swimmer, (928) 737-2685, Hopi Guidance Center	Mary Williams
S. Smith	Gila River, Ak-Chin	Cheryl Koch-Martinez (520) 562-6202, Gila River Indian Community Law Office, POB 97, Sacaton, AZ 85247; cheryl.martinez@gric.nsn.us	Marlene Beall
P. Rood	San Carlos	Geri McBride (928) 475-2313, F: 475-2342, Social Services, P.O Box 0, San Carlos, AZ 85550	Mary Williams
C. Hyder	Ft. McDowell	Carmen Preciado, (480) 816-7191, Family & Community Services, POB 17779, Fountain Hills, AZ 85269 cpreciado@ftmcdowell.org	Marlene Beall
K. Vercauteran	Ft. Defiance	Lucinda Waseta, (928) 729-4013 F: 729-4069 Navajo DSW, POB 950 Ft. Defiance, AZ 86504	Marc Tetzlaff or Betti Delrow
K. Altman	Ganado	Marie Jim (928) 755-3790, 6205 F: 755-3428 Navajo DSW, POB 210, Ganado, AZ 86505	Marc Tetzlaff or Betti Delrow
S. Song	Chinle	Deanna Neswood-Gishey, (928) 674-2126, 2127, 2128, F: 674-2103 Navajo NCSAP, POB 2467, Chinle, AZ 86503	Marc Tetzlaff or Betti Delrow
R. Dokken	Kayenta/ Tuba City	Carmelita Endischee, (928) 283-3269, 283-3260 F: 283-3279, Navajo DSW, POB 2199, Tuba City, AZ 86045	Mary Williams
W. Stooks	Ft. Mojave	Marvel Shaffer-Goodman, 760-629-3745 F: (760) 629-6557, Needles CA 92363	Marc Tetzlaff
T. Simon	Salt River	Steve Achin, (480) 850-8470, F: 850-8952 Social Services, 10005 E. Osborn Rd., Scottsdale, AZ 85256 Steve.Achin@saltriver.pima-maricopa.nsn.us	Marlene Beall
V. Kirby	White Mountain Apache	Susan Casias, IHS Social Worker (928) 338-4911, IHS Hospital, Whiteriver, AZ 85941	Mary Williams
L. Anaya	Pascua Yaqui	Christie Rogers (520) 883-5036, Centered Spirit Mental Health Dept., Pascua Yaqui Tribe, 7474 S. Camino de Oeste, Tucson, AZ 85746	Dori Arter
L. Anaya	Tohono O'odham	Pete Delgado (520) 383-2221, Office of the Prosecutor, Tohono O'odham Nation, P.O. Box 837, Sells, AZ 85634	Dori Arter



Law Enforcement Coordinating Committee

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The United States Attorney's Office, District of Arizona's Law Enforcement Coordinating Committee efforts in 2002 will continue to include outreach and training for Arizona's law enforcement LECC members. Tribal law enforcement service outreach and inclusion remains a top priority for U. S. Attorney Paul K. Charlton, Chair of the LECC Executive Committee.

As part of the LECC community outreach efforts, special emphasis will be placed on the *Weed and Seed* strategy. Weed and Seed is a Department of Justice funded program to address crime at the grass roots level. It pulls together community, law enforcement and prosecution agencies to fight crime in a specific neighborhood affected by crime. Upon request, the U. S. Attorney's Office will provide information or make presentations to police agencies, including tribal agencies, interested in developing a Weed and Seed strategy. Though funding is limited and competitive, when developed, this strategy will assist in community revitalization as well as crime prevention. The LECC staff provided a briefing on the Weed and Seed strategy to representatives of the Indian County Intelligence Network at the July, 2002 Law Enforcement "Pow Wow" held in Flagstaff, Arizona.

Fiscal year 2002 has brought many challenges for all members of Arizona's law enforcement communities. With budget cuts and the increased needs of law enforcement, training will be a major focus of attention. In the coming year, new Department of Justice initiatives will provide more opportunities for line officers. The LECC will work toward making those opportunities accessible to the local law enforcement. The LECC Native American Issues Advisory Subcommittee, in conjunction with the Training and Conference Committee, will also look forward to developing "on-site" tribal training. Information sharing, program development, and support of tribal law enforcement issues remain the goal of the District of Arizona's Law Enforcement Coordinating Committee.

The LECC Native American Issues Advisory Subcommittee has been a vital part of the overall LECC mission to achieve understanding and coordination among Arizona's law enforcement. Chief Lawrence "Larry" Seligman, of the Tohono O'odham Police Department and Vice Chair of the Law Enforcement Coordinating Committee's Native American Issues Advisory Subcommittee, recently retired from service. As the Subcommittee Chairman, Chief Seligman was an integral participant in discussions and programs affecting statewide law enforcement and tribal communities.

On behalf of the District of Arizona's LECC Executive Committee and fellow members of the Native American Issues Advisory Subcommittee, LECC thanks Chief Seligman for a job well done. The efforts of LECC in Indian Country have been strengthened by his commitment. We hope that when a replacement for retired Chief Seligman is found, that the coordination and communication efforts of this subcommittee will continue to be a vital part of the LECC.

CIVIL DIVISION

The Civil Division is responsible for all civil litigation in Federal District Court, District of Arizona, and Arizona State Courts in which the United States and its interests, or that of its agencies and employees, are involved. Presently, the Civil Division is staffed by 15 Assistant United States Attorneys. Five of those attorneys work in the Affirmative Civil Enforcement Section where the United States is a plaintiff prosecuting cases on its behalf to secure monetary, injunctive or other affirmative relief. The remaining ten attorneys are assigned to the Defensive Section defending actions brought against the United States, its agencies or its employees.

For purposes of this report, most civil litigation involving Indian Country arises under the Federal Tort Claims Act ("FTCA"), principally due to the Congressional extension of FTCA coverage to Tribes, tribal organizations and/or tribal employees under the Indian Self-Determination Act ("ISDA") and the Tribally Controlled Schools Act of 1988.

Many Arizona tribes, including the Navajo Nation, the White Mountain Apache Tribe, the San Carlos Apache Tribe, the Salt River Indian Tribe and the Gila River Indian Tribe, have contracted with the Bureau of Indian Affairs ("BIA") to provide law enforcement and detention services. Many of the BIA funded schools have elected to become grant schools. Although the Indian Health Services ("IHS") continues to provide medical care for Native Americans on Indian Reservations, some tribes are considering self-determination contracts with the IHS to provide these services.

Federal law provides that certain tort claims, resulting from the performance of former BIA and IHS functions such as law enforcement, inmate detention or the provision of health services by an Indian tribe, tribal agencies and their employees, operating under a contract or compact, grant agreement, or any other agreement with the BIA or the IHS, must be filed as an action against the United States under the FTCA. Similarly, common law tort actions arising from education services provided by former BIA funded schools which elect to become a grant school pursuant to a contract with the BIA must be filed as an action against the United States under the FTCA.

Litigation of such common law negligence actions has involved novel issues. For example, does the tort law as developed by the state apply or does tribal law control. Compare *Bryant v. United States*, 147 F. Supp. 2d 953 (D.Ariz. 2000)(Arizona state law controls) with *Cheromiah v. United States*, 55 F. Supp. 2d 1295 (D.N.M. 1999)(tribal law controls). Another significant issue involves whether a Tribe or tribal organization's private insurance policy covers and can be responsible for pay-



CIVIL DIVISION

ment of tort liability damages arising from the performance of ISDA compacts or contracts (Section 638 activities) or stemming from FTCA - covered school negligence cases under the Tribally Controlled Schools Act of 1988. See *United States v CNA Financial Corporation*, 168 F. Supp. 2d 1109 (D.Alaska 2001)(holding that the United States was an implied insured under the tribal corporation's liability policy). A different and difficult issue exists under the "federal law enforcement officer" exception to suit under the FTCA [28 U.S.C. § 2680(h)]; that is, when and to what extent does the performance of law enforcement activities by tribal law enforcement officers under ISDA Section 638 contracts fall within the exception, thus preventing recovery by an injured plaintiff. Additionally, are there circumstances where the tribal employee's acts or omissions, serving as the basis of a negligence suit, are so far outside the course and scope of the employee's duties so as to be beyond the coverage of the FTCA. See *Red Elk v. United States*, 62 F.3d 1102 (8th Cir. 1995)(United States liable under FTCA for damages due to tribal police officer's rape of thirteen year old); *Buchanan v. U.S. Department of Health and Human Services*, 177 F. Supp. 2d 1105 (N.D. Cal. 2001) (United States could be held liable for motor vehicle accident involving a Guidiville Indian Rancheria tribal administrator who was transporting her son to a court-ordered drug test in a government vehicle, even though the United States asserted that the tribal administrator's duties did not include such transportation activities). Finally, under what circumstances can the United States argue that injuries at Indian gaming-related activities should be compensated by the Tribes themselves (or through their insurance) under a Tribal waiver of sovereign immunity under Indian Gaming compacts.

The above-stated issues, difficult enough by themselves, arise in the context of ordinary negligence cases. Increasingly, common law negligence theories are coupled in the same complaint, or in a parallel Tribal Court action, with monetary recovery sought from a tribal employee in his or her personal capacity. Because the United States' current position is that the "deemed federal employee" status accorded under the ISDA Section 638 or Tribally controlled Schools Act of 1988 statutes does not apply to actions based upon asserted violations of constitutional law, troublesome issues arise as to individual representation of tribal employees in such situations. Once again, the United States' current position is that such representation must be accomplished by the tribal government, the tribal government's liability carrier or, perhaps, private counsel retained by the individual defendants or through the individual's insurance carrier.

The U.S. Attorney's Office remains committed to the representation of tribes, their agencies, and employees in FTCA litigation. As part of its representation, the United States Attorney's Office continues to provide training programs to meet the needs of tribal police department, detention facilities and the grant schools. Contact AUSA Arthur G. Garcia at (602) 514-7745 or art.garcia@usdoj.gov for additional information.

GAYMAN v. COLORADO RIVER INDIAN TRIBE ET. AL.

The plaintiff is a non-Indian who claimed that he was falsely arrested and assaulted by employees of the Blue Water Resort and Casino. The plaintiff sued the Colorado River Indian Tribe (“CRIT”) because the Blue Water Resort and Casino are a wholly owned and operated enterprise of the Tribe. Because the defendant employees include an off-duty Colorado River Indian Tribe Police Department officer, the plaintiff also sued the Chief of Police for negligent training and supervision of the off-duty officer. Since the CRIT Police Department operates under an Indian self-determination contract with the Bureau of Indian Affairs (BIA) and the Chief of Police was acting within the contract, the United States was substituted for the Chief of Police as the defendant. The two primary issues before the district court are (1) the scope of a waiver of Tribal sovereign immunity in the State-Tribal Gaming Compact and (2) the scope of Federal Tort Claim Act (FTCA) coverage of the self-determination contract (commonly known as Section 638 contracts).

ADLEY v. VICTOR ET. AL.

The plaintiffs, the mother and daughter of the deceased, sued the United States and the San Carlos Police officer, for the negligent use of deadly force and the officer individually for violations of the constitutional rights of the deceased. Since the tribal police officer was acting within the scope of the Section 638 contract with the Bureau of Indian Affairs, the United States was substituted for the police officer as to the cause of action alleging negligence. In the constitutional tort action, the Tribal officer is represented by counsel hired by Tribal insurance. The defendant officer has moved to dismiss the constitutional tort action because (1) the plaintiffs have failed to exhaust their Tribal court remedies, (2) there is no federal constitutional tort action since the Tribal officer was enforcing Tribal law against a Tribal member on Tribal land and finally (3) only the Indian Civil Rights Act provides a remedy for violations of constitutional rights of Native-Americans on reservations and only the Tribal court has jurisdiction over Indian Civil Rights Act suits. The United States contends that the officer was justified in the use of deadly force under the circumstances of this case.

LINNEEN v. GILA RIVER INDIAN COMMUNITY ET. AL.

The plaintiffs, trespassers on the Gila River Indian Reservation, sued the United States alleging that the United States has supervisory power over the Gila River Indian Community, a BIA officer in his individual capacity and Gila River Community Tribal Ranger alleging negligence and violations of their constitutional rights in their detention by the Tribal Ranger for trespassing. In a companion case, the plaintiffs sued the Indian Community and its officer in their official capacity. That case was dismissed on the grounds of no



CIVIL DIVISION



waiver of Tribal sovereign immunity. The defendant United States contends that the United States did not have supervisory authority over the Gila River Indian Community; the BIA officer did not detain the plaintiffs and he did not supervise the Tribal ranger. The defendant BIA officer contends that he did not violate their constitutional rights. The defendant Tribal Ranger contends that the plaintiffs failed to exhaust their Tribal court remedies or the Tribal court dismissal is *res judicata*, and there is no federal constitutional tort action since he was enforcing Tribal law.

CRIMINAL DIVISION

The Criminal Division has three components: Violent Crime & Anti-Terrorism, White Collar Crimes and Drug & Immigration. The Violent Crime & Anti-Terrorism Group, or Group I, is responsible for prosecuting crimes in Arizona Indian Country pursuant to the Major Crimes Act and the Assimilative Crimes Statute and the Federal Juvenile Delinquency Act. Group I also prosecutes general federal crimes including firearms offenses, bank robberies, kidnapping and assaults on federal officers. The White Collar Crime Group, Group II, prosecutes crimes involving fraudulent schemes such as Medicare and Medicaid fraud, social security fraud and fraudulent investment schemes. The Drug and Immigration Group, Group III, prosecutes large scale drug trafficking offenses and illegal immigration re-entry and illegal immigrant smuggling offenses.

The cases listed below are representative of the cases handled by this office. Where a sentence is imposed, the sentence is governed by the federal sentencing guidelines established by the United States Sentencing Commission. The Commission is an independent agency of the judicial branch responsible for establishing sentencing policies for the federal judiciary. The sentence imposed is usually derived by the assigned offense level, the defendant's prior criminal history and specific offense characteristic of the crime.

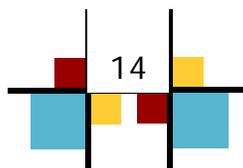
MURDER

UNITED STATES v. DELMER AUGUSTINE VAVAGES *25 years*
Charge: First Degree Murder

The 9-month-old victim was a ward of the Indian community and as such, was placed in the home of the defendant and his girlfriend. The defendant became angry when the victim would not stop crying. He shook and choked her and repeatedly threw her onto a bed. The victim lost consciousness and the defendant placed her in a crib. The victim died as a result of blunt force trauma. Defendant plead guilty to Second Degree Murder and was sentenced to 25 years in federal custody.

UNITED STATES v. MARCELINO FIGUEROA *Pending*
Charge: Second Degree Murder

The 22-year-old defendant was playing a form of "Russian Roulette" with his 16-year-old friend when the gun discharged. The defendant first lied to law enforcement about how the victim was shot. He then admitted that the two had been playing





CRIMINAL DIVISION



a game in which they would take turns pointing the gun at each other and pulling the trigger. The victim died from a single gunshot wound. The defendant pled guilty to Second Degree Murder and is pending sentencing.

UNITED STATES v. VERNON AUSTIN

178 Months

Charge: Second Degree Murder

The defendant was convicted after trial of Second Degree Murder. On August 29, 1999, the defendant reported to the superintendent of the Navajo National Monument that he needed help for someone who was having trouble breathing. The superintendent found that victim dead at the nearby home of the defendant's father. The defendant told authorities that everything was fine until the victim suddenly suffered a seizure and stopped breathing. A subsequent examination of the victim revealed no evidence of a seizure, however, marks, consistent with fingertips, were found on the victim's neck and it was determined that the victim died of manual strangulation. The defendant and the victim had been together for a couple years and had a history of domestic violence.

UNITED STATES v. DARREL BEAR EAGLE

168 Months

Charge: Second Degree Murder

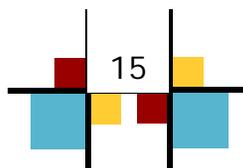
The defendant and the victim drank together on and off throughout August 6, 2001. In the evening, the two began to argue and the defendant was able to knock the victim down. While the victim was down, the defendant struck the victim multiple times in the head with the wooden handles of a pair of tree branch trimmers. The victim died as a result of blunt force trauma to the head. The defendant fled the scene and was apprehended trying to make his way to Nevada. The defendant pled guilty to Second Degree murder and was sentenced to serve 168 months in Bureau of Prisons custody.

UNITED STATES v. DON DAVIS

151 Months

Charge: Second Degree Murder

The defendant consumed alcohol with the victim and others which ultimately culminated in a disagreement and an initial assault between the victim and the defendant in which the defendant was injured. The defendant left the scene but later returned to the victim's home and stabbed her three times. The victim died as a result of her injuries. The defendant entered a guilty plea to Second Degree Murder and was sentenced to 151 months in prison followed by 5 years on supervised release.





CRIMINAL DIVISION



UNITED STATES v. DOUGLAS TREE

142 Months

Charge: Second Degree Murder

The defendant was taking care of his girlfriend's 18 month old daughter when the child became fussy. The defendant, in an attempt to control her, struck her in the mid-section with his palm. The child began to vomit and have trouble breathing. The defendant waited several hours for the mother to return home from work. She immediately took the child to the hospital. The child was hospitalized on life support, suffering from a perforated duodenum and a subdural hematoma. It was also determined that the child had a fractured clavicle and fractured ribs. The child later died from her injuries. The defendant pled guilty to Second Degree Murder.

UNITED STATES v. GABRIEL MARTIN

48 Months

Charge: Second Degree Murder

Defendant was convicted of voluntary manslaughter for stabbing and killing his brother during a fight. Evidence indicated that defendant's older brother, the victim, was beating the defendant. Defendant, during the fight, grabbed a kitchen knife and stabbed the victim three times. Defendant received a sentence of 48 months.

UNITED STATES v. BRUNO JAMES

253 Months

Charge: Second Degree Murder

Defendant, after a fist fight with the victim, chased and tracked the victim down in the snow. He then shot the victim several times killing him. Defendant pleaded guilty to murder in the second degree. The defendant was sentenced to 253 months in federal custody followed by 4 years on Supervised Release.

UNITED STATES v. AL'SHONNIE HATATHLIE

33 Years

Charges: Second Degree Murder

Use of a Firearm

The defendant was drinking with the victim when they began arguing. They eventually ended up at the defendant's home where they were met by the defendant's friend. The defendant asked his friend if he could drive he and the victim somewhere to drink more beer. The defendant hid a .22 caliber rifle inside of his jacket and undetected, later put the gun in the bed of the pickup. The group drove approximately 2-3 miles and the defendant told the driver to pull over. He then quickly exited the truck, went to the bed of the pickup and retrieved the rifle. The victim also got out of the truck and the defendant fired 2-3 shots to the front of the victim's body. The victim started walking away and the defendant got back in the truck, reloaded the rifle and told the driver to follow the victim. The victim was lying on the ground face down



CRIMINAL DIVISION



when the defendant left the truck, walked up to the victim and fired 3 shots to the back of the victim's head, killing him. The defendant later enlisted a couple of juveniles to help him bury the victim's body where he lay undiscovered for several months. The defendant entered a guilty plea to Second Degree Murder and Use of a Firearm.

UNITED STATES v. MANNY STEWART

198 Months

Charges: Second Degree Murder
Use of a Firearm

The 18-year-old defendant was in a gang dispute with the victim and his gang. As a retaliatory act, the defendant's gang came to the home where the victim and his friends were staying. The two gangs then started arguing and having physical fights. The defendant pulled out a gun and shot the victim, causing his death. The defendant pled guilty and was sentenced to 198 months in prison.

UNITED STATES v. HARRY YAZZIE

87 Months

Charge: Second Degree Murder

On or about July 7, 2001, Yazzie drove by his estranged wife's home near Tuba City, Arizona. He observed a car that he did not recognize parked outside, let himself into the house with a key he still had and confronted his wife, who was standing in the kitchen. She told him to whom the car belonged. The defendant became enraged, hit her and stabbed her in the hand which went through the hand and cut her chest. She suffered serious bodily injury as a result of the extreme physical pain. The defendant, still in a rage, went looking for the male car owner and found him in the bedroom. He physically assaulted the male and then chased the victim through the kitchen. As they reached the outside door, the defendant grabbed the male victim by his ponytail and stabbed him in the neck. They wound up outside. The defendant reentered the trailer, looking for his wife. The couple's children tried to stop their father but could not. One of the children retrieved a .22 caliber gun and shot Yazzie in the knee to protect the mother. Only then did the defendant stop. The neck wound suffered by the male victim caused him to lapse into a coma and ultimately led to his death. Yazzie entered a plea of guilty to Manslaughter and Assault with a Dangerous Weapon. He was sentenced to 87 months in custody followed by 3 years of supervised release.

UNITED STATES v. LESLIE VANWINKLE

151 Months

Charge: Murder Second Degree

Defendant was the son of the victim, a man in his seventies. Defendant, angry that his father had put his cat outside in the cold, beat the victim to death with his fists. Defendant was convicted of murder in the second degree and sentenced to 151 months of confinement.



CRIMINAL DIVISION

UNITED STATES v. PRESTON PETERS

18 Years

Charge: Second Degree Murder

The defendant and juvenile co-defendant entered the victim's home to threaten and harass someone that had previously caused them problems. They encountered the victim, an adult male, and shot and stabbed him. The defendant pled guilty to 2nd Degree Murder and 924(c), Possession of a Firearm During a Crime of Violence. He was sentenced to 18 years in prison.

MANSLAUGHTER

UNITED STATES v. LEANDER KAY JONES

10 Months

Charge: Involuntary Vehicular Manslaughter
Assault Resulting in Serious Bodily Injury

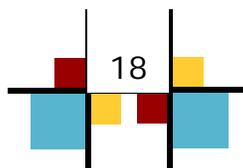
On January 1, 2001, the defendant and three juvenile males spent the day drinking and driving around the San Carlos Apache Indian Reservation. After dropping off one of the juveniles, the defendant lost control of his car on a curve. The defendant was unable to regain control of the car and continued to travel over 1,200 feet on the road and both shoulders. The car ultimately rolled over on the passenger side and hit a small tree. The victim, a 15 year old juvenile, was partially ejected from the vehicle. The victim died on the way to the hospital as a result of blunt force injuries. At the time of the crash, defendant was speeding and under the influence of alcohol and marijuana. The defendant pled guilty to involuntary manslaughter, was sentenced to serve 10 months in Bureau of Prisons custody, and ordered to perform 200 hours of community service.

UNITED STATES v. CHRISTOPHER CROMWELL

121 Months

Charge: Voluntary Manslaughter
Use of a Firearm in a Crime of Violence

On April 30, 2000, the defendant was at the home of the victim in McNary, Arizona, drinking alcohol. At some point, the defendant went home and continued drinking. His girlfriend, who was at the victim's home earlier, came home and found the defendant angry. The defendant found a .22 caliber rifle and pointed it at his girlfriend. She attempted to grab the rifle, however, he tossed her to the ground and went outside and fired the rifle. She and two other women left the home and joined the victim in the front of the house. The defendant followed them and fired the rifle into the ground near where the group was standing. The victim attempted to protect his wife by moving her out of the way and reaching for the rifle. The defendant caused the rifle to fire, killing the victim. The defendant entered a guilty plea to volun-





CRIMINAL DIVISION



tary manslaughter and use of a firearm in a crime of violence. He was sentenced to 37 months for voluntary manslaughter followed by 84 months for the firearms offense.

UNITED STATES v. GATEWOOD

51 Months

Charge: Voluntary Manslaughter (2 Counts)

On December 26, 1999 Gatewood had been drinking with the 20 and 21 year old victims and others at Little Bear Lake on the White Mountain Apache Indian Reservation. The defendant had consumed a large quantity of alcohol which placed his blood alcohol level well above the legal limit. The victims and the defendant left the lake. The defendant was driving well in excess of the posted 55 mph speed limit when he attempted to pass a second vehicle. The defendant lost control of the vehicle and it went off of the road, ejecting the defendant and the two victims. Both victims suffered serious injuries resulting in their death. The defendant had previously been convicted in tribal court of DUI in 1995 and 1999. He did not have a valid driver's license at the time. The defendant plead guilty to two counts of voluntary manslaughter.

ASSAULT

UNITED STATES v. DANIEL LUJAN DIAZ

Incompetent/Custody

Charge: Assault with Intent to Murder

The defendant was charged with Assault with Intent to Murder after stabbing an 18 year-old victim in the neck with a knife on July 25, 1999. The victim, who was left laying in his driveway with the knife lodged in his neck after the unprovoked attack, was rendered quadriplegic and is now dependent on a respirator. The defendant was found incompetent to stand trial due to mental illness (18 U.S.C. § 4246 and 4247) and thereafter committed to the custody of the Attorney General due to dangerousness (18 U.S.C. § 4246) where he will remain until he is no longer found to be a danger.

UNITED STATES v. BOYD BYLAS

16 years

Charge: Aggravated Assault

The defendant was charged with multiple counts involving the assault of his girlfriend on at least 4 different times. The pattern of domestic violence against his girlfriend occurred over an approximated 5 year term. One of the assaults involved the defendant hitting the victim in the head with a 12-inch rock and refusing to allow her to seek medical attention for 7 hours. The victim suffered large intersecting gashes on the side of her forehead running from above



CRIMINAL DIVISION



her hairline to the corner of her left eye. Other dangerous instruments involved in the assaults included a knife and an axe. The defendant pled guilty to one count involving the beating of the victim's head with a rock and one count involving him assaulting the victim with an axe. The court imposed the statutory maximum sentence of 120 months (10 years) in one count and a consecutive 72 months (6 years) in the other (the axe incident). Sentencing is pending.

UNITED STATES v. CHARLES DIXON *37 months*
Charge: Assault Resulting in Serious Bodily Injury

The defendant got into an argument with the victim at another person's residence. After being pushed out of the residence, the defendant returned and stabbed the victim in the lower abdomen. The victim's injuries were serious and he spent over a month in the hospital as a result. The defendant pled guilty to one count of Assault Resulting in Serious Bodily Injury and was sentenced to 37 months in prison followed by 3 years of supervised release.

UNITED STATES v. BARBARA HELEN NICKOLAUS *57 months*
Charge: Assault on a Federal Officer

The defendant led police on a high speed chase through the White Mountain Apache Reservation. At one point, the defendant's vehicle struck an officer's vehicle causing it to leave the highway and roll.

UNITED STATES v. TONY MIX *Life Imprisonment*
Charges: Kidnapping
Aggravated Sexual Abuse
Assault with a Deadly Weapon
(7 counts total)

The defendant was convicted on September 28, 2001 by a jury after trial. The defendant, who was in a relationship with the victim, repeatedly beat and sexually assaulted her over a two and one half hour period. The doctor who treated the victim stated "this is the worst case of domestic violence I have ever seen in a living victim." Evidence at the trial revealed that for over a seventeen year period, Mix had been involved in violent relationships with three different women, including the victim, where he regularly beat and sexually assaulted all of the women to the extent they had to be hospitalized, and all three women suffered severe physical and emotional damage.



CRIMINAL DIVISION



UNITED STATES v. OWEN JOSE

37 Months

Charge: Aggravated Assault

On July 2, 2000, the defendant became involved in a verbal confrontation with the victim on the Tohono O’odham Reservation. The argument escalated, and the defendant hit the victim on the head with a baseball bat, causing a massive skull fracture. He pled guilty pursuant to a plea agreement, and was sentenced to 37 months in prison on March 4, 2002.

UNITED STATES v. JUVENILE

26 Months

Charge: Aggravated Assault (Juvenile Delinquency)

On July 29, 2001, near Chui-Chu Village, on the Tohono O’odham Reservation, the defendant shot another tribal member with a .22 caliber rifle. The victim received a bullet wound to his upper chest. The bullet penetrated his chest and injured his lung. The defendant pled guilty to an act of juvenile delinquency on March 5, 2002, and was sentenced to 26 months in prison on May 16, 2002.

***UNITED STATES v. LIONEL HARVEY
RUMALDO PESHLAKAI***

30 Months

10 Months

Charges: Assault Resulting in Serious Bodily Injury
Assault With a Dangerous Weapon

Commencing on December 30, 1999 and continuing until December 31, 1999, Lionel Harvey and co-defendant Rumaldo Peshlakai were at a party at residence in Window Rock on the Navajo Indian Reservation. The party was also attended by the victim. During the party, Peshlakai accused the victim of being a gang member and spoke of his own affiliation with a rival gang. After midnight and outside the residence, Harvey and Peshlakai beat the victim about his head with their fists and hands. The two ultimately knocked the victim to the ground and proceeded to remove most of his clothing. The two then ran away leaving the victim unconscious, bleeding and partially naked in the street. The temperature was less than 32 degrees Fahrenheit at that time. The victim suffered significant head injuries during the assault. Harvey pled guilty to Assault Resulting in Serious Bodily Injury, was sentenced to serve 30 months in Bureau of Prisons custody and ordered to pay \$26,726 in restitution. Peshlakai plead guilty to assault with a dangerous weapon and was sentenced to 10 months. The assault ended the promising boxing career of the victim, a nationally ranked boxer in his age and weight class.



CRIMINAL DIVISION



UNITED STATES v. SHAWN KEE

63 Months

Charge: Assault with a Deadly Weapon

Defendant stabbed the victim in the chest with a knife causing life threatening wounds. Defendant was convicted at trial for assault with a dangerous weapon and assault resulting in serious bodily injury. He was sentenced to a term of 63 months confinement. This case is currently on appeal to the Ninth Circuit Court of Appeals.

UNITED STATES v. SHAWN BULLIS

18 Months

Charge: Assault Resulting in Serious Bodily Injury

During the period of September 1 through November 30, 2000, the victim, an infant girl, resided with the defendant. One day during this period, the victim became restless and the defendant, the victim's mother, became overwhelmed with attempting to care for the infant and her four older brothers and sisters. While attempting to manage this situation in the family home, the defendant became mad and recklessly squeezed the baby's left arm just below the elbow with her right hand and thumb. At that instant, the defendant was trying to wrap the baby in a blanket. The victim suffered a fractured arm as a result of the defendant's conduct. The defendant pled guilty to Assault Resulting in Serious Bodily Injury and was sentenced to serve 18 months in Bureau of Prisons custody.

ABUSIVE SEXUAL OFFENSES

UNITED STATES v. BENJAMIN SNYDER

120 Months

Charges: Aggravated Sexual Abuse of a Minor
Aggravated Sexual Abuse

During the period of July 24, 2000 through August 3, 2000, the defendant's wife was out of town working as an emergency medical technician. During the same period, the victim, a juvenile girl aged 16, was in the defendant's care in his home in Chinle, Arizona. While the two were in the defendant's home, the defendant used force to rape the young girl. The defendant told the victim not to tell her mother about the incident. The victim did not tell any one about the incident for several months because she had previously seen the defendant beat his wife and was afraid of him. The defendant pled guilty to Aggravated Sexual Abuse and was sentenced to serve 120 months in Bureau of Prisons custody.



CRIMINAL DIVISION



UNITED STATES v. WOODY GUSTINE DAVIS

108 Months

Charge: Aggravated Sexual Abuse

Defendant was convicted of aggravated sexual abuse for molesting the 9 year old victim. He was sentenced to 108 months of confinement.

UNITED STATES v. JUVENILE

(Until age 21) 39 Months

Charges: Attempted Aggravated Sexual Abuse

Abusive Sexual Contact

Assault with a Dangerous Weapon with Intent to do Bodily Harm

The juvenile gained entry into the victim's apartment by pretending he was being chased and stating that he needed to use the telephone to contact the police. Once inside the victim's residence, the defendant grabbed the victim and held a butterfly knife to her face and neck. The defendant repeatedly threatened to "shank" the victim, and to slit her throat. The defendant grabbed some masking tape and forced the victim into her bedroom. The defendant fondled the victim's breasts and vagina. The defendant continued to hold the victim at knife point and threatened to put his mouth on her vagina and to force her to perform oral sex on him. The defendant plead guilty and was sentenced to imprisonment up to his 21st birthday, a period of 39 months.

UNITED STATES v. MICHAEL MATTIAS

12 months and 1 day

Charge: Sexual Abuse of a Minor

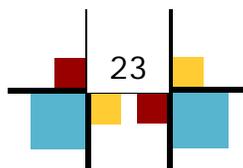
The defendant noticed his 14 year old cousin waiting for the school bus, and offered her a ride to school. The defendant drove to a secluded area and stopped the car. The defendant put his hand down the victim's pants and inserted his finger in her vagina. The victim was scared and unable to respond. The defendant plead guilty and was sentenced to a term of imprisonment of 12 months and 1 day, followed by 3 years supervised release, with sex offender conditions.

UNITED STATES v. DANIEL RIOS

5 years imprisonment

Charge: Probation Revocation of Sex Offender

The defendant was convicted in 1988 of several counts of abusive sexual contact with children under the age of 12. The defendant plead guilty and was sentenced to 5 years imprisonment on one count to which he plead guilty, and 3 years imprisonment on a second count to which he plead guilty, the terms of imprisonment to run consecutively. In addition, the was sentenced to 5 years probation on another two counts to which he plead guilty, the terms of probation to run concurrent to each other and to commence upon his release from imprisonment.





CRIMINAL DIVISION



On January 9, 2001, the United States Probation Department filed a petition to revoke the defendant's probation. The petition alleged that the defendant violated his conditions of probation by being in possession of numerous sexually stimulating materials including child movies, certain books and magazines, and a photo album containing photographs of the defendant's victims. The defendant admitted using these items as masturbation props. The petition also alleged that the defendant violated his conditions of probation by having contact with children under the age of 18 and not reporting this contact to his probation officer. Specifically, the defendant entered a public restroom with the intention of observing a child's penis. The defendant admitted to purposely brushing against a child exiting the restroom in an attempt to become sexually stimulated.

After over a year of protracted litigation, the court found that the defendant had violated the conditions of his probation. On April 29, 2002, the court sentenced the defendant to a term of 5 years imprisonment.

UNITED STATES v. JOSE HECTOR CELAYA

60 Months

Charge: Aggravated Assault

The defendant shot the victim when he entered his home. The victim accused the defendant of molesting his sister and was telling the defendant to leave his sister alone. The defendant pulled out a gun and shot the victim, causing serious bodily injuries. The defendant pled guilty to Aggravated Assault and was sentenced to 60 months in prison.

UNITED STATES v. JOSE MATTIA

5 years probation

Charge: Abusive Sexual Contact

On March 19, 2001, defendant plead guilty to Count 2 of the indictment charging Abusive Sexual Contact in violation of 18 U.S.C. §§ 1152 and 2243(a)(3). On September 24, 2001, he was placed on supervised probation for 60 months, and ordered to live at a community treatment center for one year. The court imposed sex offender treatment conditions, including risk assessment and physiological testing; no victim contact, group and individual counseling, drug and alcohol treatment, and was ordered to abstain from the use of alcohol.

AGGRAVATED SEXUAL OFFENSES

UNITED STATES v. IVAN RAY BEGAY

302 months

Charge: Aggravated Sexual Abuse (8 counts)

The defendant repeatedly sexually assaulted the two victims in their home during a night of terror. One of the victims had a tribal protective order against the defendant at the time of the assaults. The defendant entered a guilty plea to 8 counts of Aggravated Sexual Abuse. The initial sentencing guideline range was from 188 to 235 months. The court decided to make an upward departure from the guideline range based on the heinous nature of the numerous assaults against both victims and the serious psychological harm done to one victim.

UNITED STATES v. JUSTIN TULLY TRACEY

210 months

Charge: Aggravated Sexual Abuse

The defendant was an officer (“roadman” or medicine man) in the Native American Church. The defendant abused his position in the Native American Church to gain the trust of a child. He entered a guilty plea to aggravated sexual abuse of a child under 12 years of age. The defendant was sentenced to 210 months (17 ½ years) in federal custody.

UNITED STATES v. SINKA LITTLEFISH

18 months

Charge: Aggravated Sexual Abuse
Aggravated Sexual Contact

The defendant was indicted for aggravated sexual abuse and aggravated sexual contact on a female victim who was 8 to 9 years old at the time of the offenses. The defendant pled guilty to Abusive Sexual Contact and was sentenced to 18 months imprisonment.

UNITED STATES v. RICHARD GEORGE STANDING ELK

12 months, 1 day

Charge: Abusive Sexual Contact

The 18-year-old defendant was charged with the sexual touching of a 5-year-old child. The defendant pled guilty to Abusive Sexual Contact and was sentenced to 12 months and one day imprisonment.



CRIMINAL DIVISION



UNITED STATES v. JOSEPH NUNEZ

18 Months

Charge: Sexual Abuse of a Minor

The 24-year-old defendant had consensual intercourse with a 14-year-old girl. The defendant pled guilty and was sentenced to 18 months in prison.

UNITED STATES v. E. RUSSELL HAUPAL WHITE

13 Months

Charge: Sexual Abuse of a Minor

This defendant was drinking and using drugs with the victim and other friends. The victim became intoxicated and passed out. The defendant had sexual intercourse with her. The defendant alleged that the intercourse was consensual. The defendant pled guilty to Sexual Abuse of a Minor and was sentenced to 13 months in federal custody.

PROBATION/SUPERVISED RELEASE VIOLATIONS

UNITED STATES v. SAMUEL WOOD

24 Months

Charges: Involuntary Manslaughter (3 Counts)

In February 2000, the defendant was sentenced to serve 18 months in Bureau of Prisons custody for three counts of involuntary vehicular manslaughter. The original offense occurred after the defendant lost control of a car and crashed after drinking. Three of the defendant's passengers were killed as a result of the crash. During the period of July 1, 2001 through May 15, 2002, the defendant failed to comply with the terms of his supervised release on two occasions. The defendant admitted to violating the terms of supervised release on each occasion and was ultimately sentenced to serve a total of 24 additional months in Bureau of Prisons custody.

UNITED STATES v. JOHN DOE

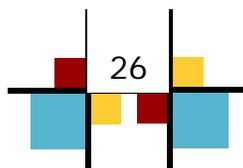
43 months

Charges: Assault Resulting in Serious Bodily Injury (2 Counts)

Assault With a Dangerous Weapon (2 Counts)

(Juvenile Delinquency)

In March 2000, the juvenile offender pled guilty to two acts of juvenile delinquency, Assault Resulting in Serious Bodily Injury, and was sentenced to probation until the age of 21 with a special condition that he reside in a residential treatment center for 24 months. The original offense involved the juvenile's beating of two women about their heads with a metal pipe. The juvenile was under the influence of alcohol during the assaults. In April 2002, the juvenile was found to have violated the terms of his probation and was sentenced to serve 43 months in Bureau of Prisons custody.





CRIMINAL DIVISION



UNITED STATES v. BRILL ANTONE

18 Months

Charge: Sexual Contact with a Minor

Defendant was convicted of sexual conduct with a minor in violation of 18 U.S.C. §§ 1153 and 2243(a) on Aug. 12, 1998. He was sentenced to BOP for one year and one day and placed on 3 years supervised release. On May 8, 2001 a petition to revoke his supervised release was filed; on Aug. 2, 2001 an evidentiary hearing was held and the government proved the violations. On Sept 6, 2001, the supervised release was revoked and the defendant was committed to the BOP for an additional term of 18 months, with the Court's recommendation that he participate in programs for both substance abuse and sex offender counseling.

UNITED STATES v. MARTIN ANGELO CAPONE

11 Months

Charge: Second Degree Murder

On July 30, 1990, the defendant was sentenced for the second degree murder of his wife. He was imprisoned for 10 years and placed on 5 years supervised release. On August 8, 2001, a petition to revoke his supervised release was filed alleging the use of alcohol and driving while under the influence of alcohol. On September 27, 2001, defendant admitted all of the allegations in the petition. On October 29, 2001, defendant's supervised release was revoked and he was sentenced to an additional term of 11 months imprisonment. Following his release, he was placed on an additional term of 48 months supervised release, with the special conditions that he consume no alcohol and participate in substance abuse testing and treatment. The additional term of supervised release is important to help defendant address his 40 year history of substance abuse.

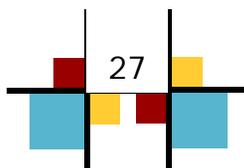
MISCELLANEOUS

UNITED STATES v. WAYNE EVANS

15 months

Charge: Embezzlement of Tribal Funds

The defendant pled guilty to embezzling \$1.597 million dollars from the Tohono O'odham Nation between 1994 - 1997. The defendant was the general manager of the Farming Authority for the Nation when he authorized payment of \$1.597 million to a corporation which he controlled, which allegedly made repairs to farms on the Tohono O'odham Nation. The defendant also failed to report the income he received in connection with the transactions on his 1996 tax return. The defendant was committed to serve 15 months in federal custody and ordered to pay restitution in the amount of \$158,000.





CRIMINAL DIVISION



UNITED STATES v. DEBRA L. TELESE

Sentence Pending

Charge: Larceny

The defendant pled guilty to Larceny Committed on an Indian Reservation in connection with her embezzlement of over \$164,000 from her employer. During her plea hearing, the defendant admitted that while employed as a manager at Ernie's Smoke Shop, on The Yavapai Apache Indian Reservation, near Camp Verde, she was entrusted with depositing the daily receipts into the store's merchant account. During a period from August 2001 through November 2001, Telese admitted, she took the cash from 67 of the daily deposit bags, rather than deposit it into the store's account. The cash embezzled from Ernie's, a family owned business, totaled \$164,329.58. Sentencing is pending in this matter.

UNITED STATES v. STEVEN STAYNER ET. AL.

Various Fines & Restitution

Charges: Lacey Act

Airborne Hunting Act

The Lacey Act is a Federal wildlife law which makes it unlawful to transport, sell, receive, acquire or purchase wildlife which was taken, transported, possessed, or sold in violation of State, Federal, or Indian tribal laws or regulations. The Airborne Hunting Act is a Federal wildlife law which makes it unlawful to shoot animals from an aircraft or to harass animals with an aircraft. The Airborne Hunting Act Regulations prohibits a person, while on the ground, from taking or attempting to take wildlife by means, aid, or use of an aircraft.

The defendant and 10 others were sentenced for various violations of federal wildlife laws stemming from an investigation dubbed "Operation Navajo Buck". The eleven paid a total of \$84,000 in fines, restitution, and penalties and one aircraft was forfeited by the court. The investigation, which began in 1998, focused on several big game guides, based in Utah, Arizona, and New Mexico, who were suspected of unlawfully using aircraft prior to and during hunting seasons to locate deer and elk for hunting clients in Northern Arizona. The investigation also focused on illegal guiding and hunting on the Navajo Indian Reservation. The following individuals were convicted of a Federal criminal violation for unlawful hunting on the Navajo Indian Reservation and sentenced as follows: **Dan Smith, Jr.**, San Jose, CA, was ordered to pay a \$5,000 fine and \$25,000 restitution to the Navajo Department of Wildlife. In a related civil action the Court ordered the forfeiture of a powered parachute aircraft seized from **Smith, Jr.** in April of 2000. **Steven Stayner**, Mesa, AZ, was ordered to pay a \$1,000 fine. A Federal civil action seeking the forfeiture of a powered parachute aircraft owned by **Stayner**, for alleged violations of the Airborne Hunting Act, is currently being litigated; **Kenneth Clint Heiber**, Red Bluff, CA, was ordered to pay a \$5,000 fine and \$25,000 restitution to the Navajo Department of Wildlife. In addition **Heiber** was ordered to abandon a trophy mule deer killed



CRIMINAL DIVISION

on the Navajo Indian Reservation in December, 1997, and subsequently seized by Agents of the U.S. Fish and Wildlife Service in March of 2000; **Joseph Aggi**, Red Bluff, CA, was ordered to pay a \$2,000 fine and ordered not to hunt for a period of two years; **Samuel S. Jaksick, Jr.**, Reno, NV, was ordered to pay a \$4,500 fine and \$7,500 restitution to the Navajo Department of Wildlife; **Julius Fortuna**, Phoenix, AZ, was ordered to pay a fine of \$2,500; **A. Paul Stewart**, Phoenix, AZ, was ordered to pay a fine of \$2,500. A Federal civil action seeking the forfeiture of a powered parachute aircraft owned by **Stewart**, for alleged violations of the Airborne Hunting Act, is currently being litigated; Mule deer videographer **Ryan S. Hatch**, Kanab, UT, was convicted of a criminal violation of the Lacey Act related to the taking of a mule deer on the Navajo Indian Reservation in 1997. Hatch was sentenced to five years probation and ordered to pay a \$1,000 fine. His conditions of probation require that he be in full compliance with State, Federal, and Tribal regulations when conducting hunting related activities including scouting for game or video taping; The following individuals paid Federal Notices of Violation for unlawful hunting on the Navajo Indian Reservation as follows; **Daniel Smith, III**, San Jose, CA, \$5,000; **Lary Nicolds**, Garland, UT, \$500; **Mark Lefevre**, Tropic, UT, \$500.

CRIMINAL PROSECUTIONS

From July 1, 2002, to June 30, 2002, the United States Attorney's Office for the District of Arizona handled 467 cases that were indicted, plead, declined or sentenced. The following tables summarize those cases by category and tribe. The total population of each tribe is listed to the right of each tribe's name. The population figures were provided by the Inter-Tribal Council of Arizona.

Ak-Chin 666

Abusive Sexual Offenses	2
Aggravated Assault	2
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	1
CASE TOTAL	5

Colorado River 3,440

Abusive Sexual Offenses	1
Aggravated Assault	3
Arson	0
Burglary/Robbery	1
Embezzlement	0
Manslaughter	1
Murder	1
Theft From Gaming Establishment	0
**OTHER	1
CASE TOTAL	8

Cocopah 901

Abusive Sexual Offenses	0
Aggravated Assault	0
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	1
CASE TOTAL	1

Fort McDowell 904

Abusive Sexual Offenses	1
Aggravated Assault	1
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	2
Murder	0
Theft From Gaming Establishment	1
**OTHER	0
CASE TOTAL	5

** The "Other" category includes crimes such as Receiving Stolen Property Within Special Jurisdiction (18 U.S.C. § 662); Firearms Offenses (18 U.S.C § 922); Archeological Resource Protection Act offenses (16 U.S.C. § 470); Arson (18 U.S.C. § 81); and Retaliating Against a Witness (18 U.S.C. § 1513).

CRIMINAL PROSECUTIONS

Fort Mohave 1,068

Abusive Sexual Offenses	0
Aggravated Assault	0
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	0
CASE TOTAL	0

Havasupai 650

Abusive Sexual Offenses	0
Aggravated Assault	3
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	1
CASE TOTAL	4

Gila River 11,500

Abusive Sexual Offenses	4
Aggravated Assault	6
Arson	0
Burglary/Robbery	1
Embezzlement	0
Manslaughter	1
Murder	8
Theft From Gaming Establishment	1
**OTHER	3
CASE TOTAL	24

Hopi 10,747

Abusive Sexual Offenses	6
Aggravated Assault	7
Arson	1
Burglary/Robbery	0
Embezzlement	0
Manslaughter	2
Murder	0
Theft From Gaming Establishment	0
**OTHER	1
CASE TOTAL	17

CRIMINAL PROSECUTIONS

Hualapai 2,210

Abusive Sexual Offenses	1
Aggravated Assault	6
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	1
CASE TOTAL	8

Navajo (AZ) 275,000

Abusive Sexual Offenses	60
Aggravated Assault	45
Arson	2
Burglary/Robbery	8
Embezzlement	5
Manslaughter	17
Murder	45
Theft From Gaming Establishment	0
**OTHER	42
CASE TOTAL	224

Kaibab-Paiute 231

Abusive Sexual Offenses	0
Aggravated Assault	0
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	0
CASE TOTAL	0

Pascua Yaqui 12,918

Abusive Sexual Offenses	2
Aggravated Assault	9
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	1
**OTHER	1
CASE TOTAL	13

CRIMINAL PROSECUTIONS

Quechan 2,831

Abusive Sexual Offenses	0
Aggravated Assault	0
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	0
CASE TOTAL	0

San Carlos 11,328

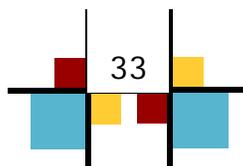
Abusive Sexual Offenses	5
Aggravated Assault	8
Arson	2
Burglary/Robbery	1
Embezzlement	0
Manslaughter	5
Murder	7
Theft From Gaming Establishment	0
**OTHER	5
CASE TOTAL	33

Salt River 6,481

Abusive Sexual Offenses	4
Aggravated Assault	13
Arson	1
Burglary/Robbery	1
Embezzlement	0
Manslaughter	4
Murder	3
Theft From Gaming Establishment	0
**OTHER	4
CASE TOTAL	30

San Juan Paiute 300

Abusive Sexual Offenses	0
Aggravated Assault	0
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	0
CASE TOTAL	0



CRIMINAL PROSECUTIONS

Tohono O'odham 23,572

Abusive Sexual Offenses	20
Aggravated Assault	12
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	2
Murder	5
Theft From Gaming Establishment	0
**OTHER	9
CASE TOTAL	48

White Mountain Apache 12,869

Abusive Sexual Offenses	10
Aggravated Assault	10
Arson	0
Burglary/Robbery	1
Embezzlement	0
Manslaughter	1
Murder	1
Theft From Gaming Establishment	0
**OTHER	7
CASE TOTAL	30

Tonto Apache 110

Abusive Sexual Offenses	0
Aggravated Assault	0
Arson	0
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	0
CASE TOTAL	0

Yavapai Apache 1,638

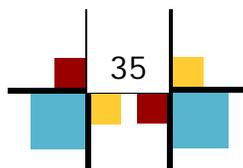
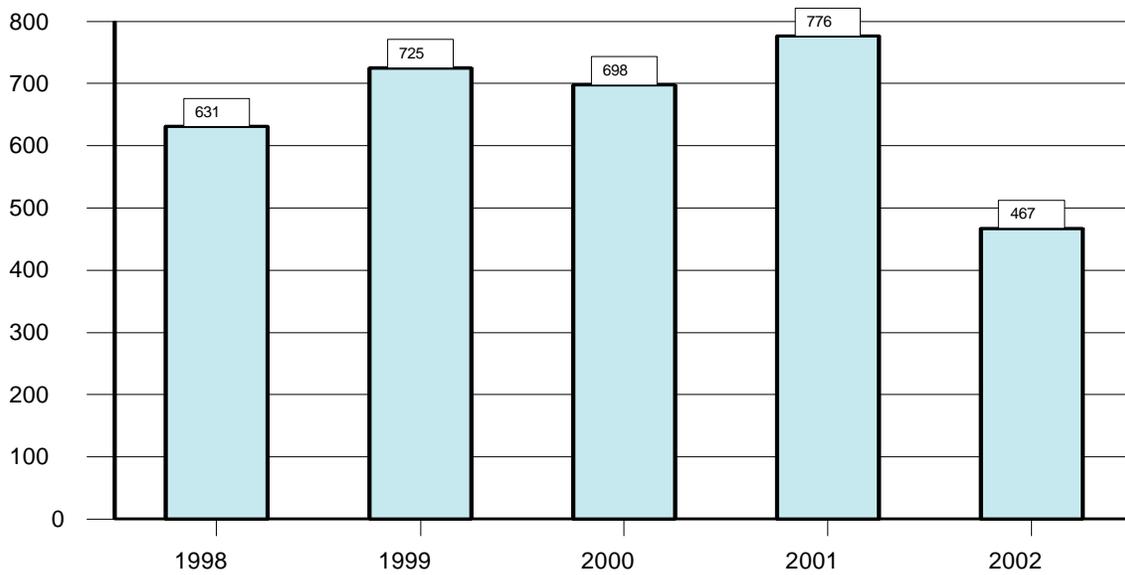
Abusive Sexual Offenses	0
Aggravated Assault	3
Arson	0
Burglary/Robbery	2
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	1
CASE TOTAL	6

CRIMINAL PROSECUTIONS

Yavapai-Prescott 154

Abusive Sexual Offenses	0
Aggravated Assault	1
Arson	1
Burglary/Robbery	0
Embezzlement	0
Manslaughter	0
Murder	0
Theft From Gaming Establishment	0
**OTHER	1
CASE TOTAL	3

Summary of Annual Indian Country Prosecutions





CONCLUSION

The staff of the United States Attorney's Office for the District of Arizona remain committed to addressing all federal crimes that occur in Arizona's Indian Country. We have implemented new policies and procedures to ensure a timely response to violent crime victims and to the offender. We have continued to engaged in open dialogue with Arizona's federal and Indian tribal law enforcement agencies, prosecution offices, social service agencies and tribal courts in an effort to establish a cooperative responses to crime in Indian Country.