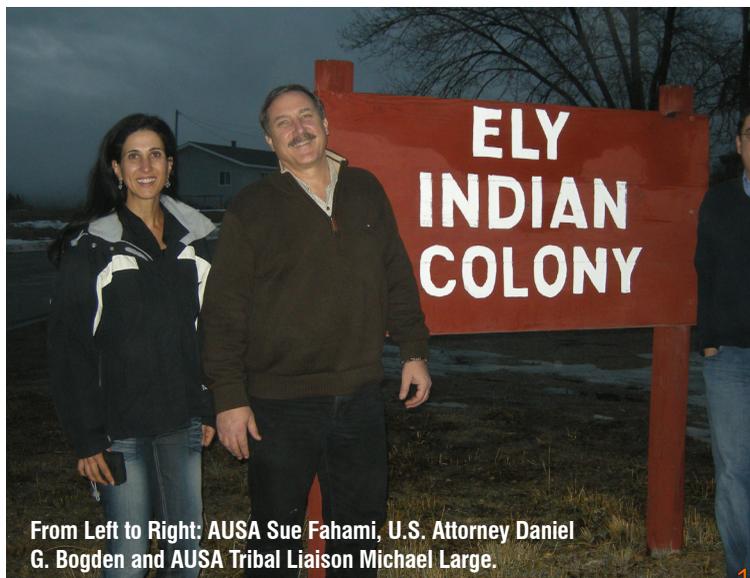


# A SNAPSHOT OF INDIAN CRIMINAL LAW IN THE DISTRICT OF NEVADA

BY SUE FAHAMI, ASSISTANT UNITED STATES ATTORNEY

Nevada, the seventh-largest of the United States, is geographically vast, and the federal government administers 87 percent of its land. Few Nevadans realize there are 26 Native American Tribes dispersed throughout the state on 31, mostly isolated, reservations and colonies. Most of these communities are in northern Nevada, far removed from Reno/Carson City and Las Vegas, the two metropolitan areas where 90 percent of Nevadans reside. Most of the other 10 percent of people within the district – including almost all Native Americans – live in the remote reaches of Nevada’s vast rural counties.



From Left to Right: AUSA Sue Fahami, U.S. Attorney Daniel G. Bogden and AUSA Tribal Liaison Michael Large.

The main office of United States Attorney’s Office (USAO) for the District of Nevada is located in Las Vegas. Its 40 attorneys primarily serve the four southernmost counties: Clark, Esmerelda, Lincoln and Nye. The Reno branch office, with 11 attorneys, primarily serves 13 counties: Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, Washoe and White Pine. Since the majority of the Native American tribes are located in the north, the Reno branch office prosecutes federal crimes that occur on the Indian lands and also provides outreach to these areas.

The USAO is the *only* prosecution authority in the district for federal crimes occurring on Indian reservations and colonies. The USAO’s Indian Country (IC) program is a defined office priority. The IC program includes:

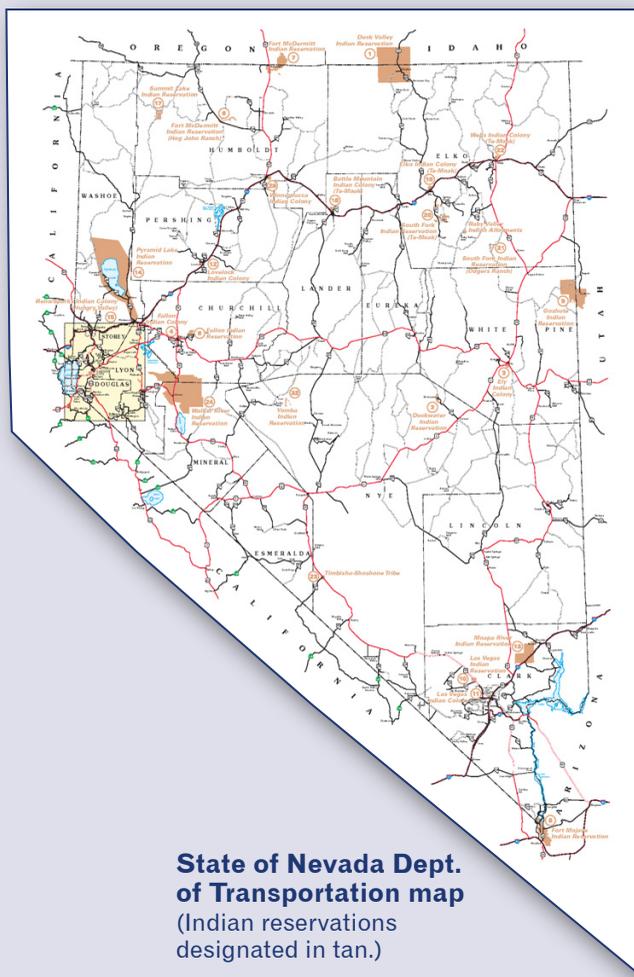
- (1) Prosecution of crimes occurring on Indian reservations and colonies and within their communities (*see 18 U.S.C. § 1151, et seq.*);
- (2) Improvement of law enforcement and community policing;
- (3) Community outreach; and
- (4) Regular visits to the many reservations and colonies.

The USAO’s IC program also provides outreach for the purpose of assisting tribal authorities in governance and improvement of law enforcement and community policing. The types of case submitted for prosecution vary greatly. The majority of IC cases involve aggravated assaults and/or sexual abuse.



## Federally Recognized Tribes in the State of Nevada

- Duck Valley Sho-Pai Tribe
- Duckwater Sho-Pai Tribe
- Ely Shoshone Tribe
- Fallon Paiute Tribe
- Fort McDermitt Paiute Shoshone Tribe
- Fort Mojave Indian Tribe
- Goshute Business Council
- Las Vegas Paiute Tribe
- Lovelock Paiute Tribe
- Moapa Band of Paiutes
- Pyramid Lake Paiute Tribe
- Reno-Sparks Indian Colony
- Summit Lake Paiute Tribe
- Te-Moak Tribe of Western Shoshone
- Battle Mountain Band Council
- Elko Band Council
- South Fork Band Council
- Wells Band Council
- Walker River Paiute Tribe
- Washoe Tribe of Nevada & California
- Carson Colony Community Council
- Dresslerville Community Council
- Stewart Community Council
- Winnemucca Colony Council
- Yerington Paiute Tribe
- Yomba Shoshone Tribe



Jurisdiction to prosecute crimes in Indian country is based upon the unique sovereign relationship between the federal government and Indian tribes. Congress has criminalized certain acts that take place in Indian country. The USAO prosecutes all readily provable felony and misdemeanor cases arising in IC that are within the jurisdiction of the office. Historically, federal courts have had criminal jurisdiction over felony cases arising in Indian country involving felonies where either the defendant or the victim is an Indian or both the defendant and the victim are Indian. Federal courts also have criminal jurisdiction over misdemeanors where the defendant is a non-Indian. Tribal courts have had criminal jurisdiction, with a few exceptions, involving misdemeanors where both the defendant and victim are Indian. The passage of the Tribal Law and Order Act (TLO) in 2010 gave tribal courts the option to impose a prison sentence of up to three years on a tribal conviction, in cases

where the maximum penalty used to be a one-year sentence. State courts have criminal jurisdiction, with a few exceptions, over misdemeanors and felonies where both the defendant and the victim are non-Indian.

When someone commits a crime in Indian country, several questions must be answered to determine which prosecuting agency has jurisdiction to prosecute:

- First, did the offense occur on an Indian reservation or colony?
- Second, is the defendant Indian or non-Indian? Is the victim Indian or non-Indian?
- Third, is the crime a misdemeanor or a felony?

Answering these questions determines who can bring charges and prosecute the offender. Sometimes more than one entity will have jurisdiction to prosecute. In that event, all entities

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with concurrent jurisdiction will usually confer and reach agreement on the best course of action.

Three federal statutes establish the framework for resolving the jurisdictional questions that arise when prosecuting crimes in Indian country. The first is Title 18, Section 1151 of the United States Code, which defines the term “Indian country” as follows: Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country,” as used in this chapter, means:

- (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
- (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
- (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The second controlling federal statute is Title 18, Section 1152, which generally determines what body of criminal law applies under what circumstance. Section 1152 states:

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

Finally, Title 18, Section 1153 of the United States Code addresses the types of crimes subject to prosecution in Indian Country. Section 1153 states:

- (a) Any Indian who commits an offense against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnaping,



Stuffed eagle in the Moapa Band's administrative building.

maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

- (b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

Reading Section 1153 invites an obvious question: Who is an Indian for purposes of prosecuting crimes that occur in Indian country? Surprisingly, no statute provides an answer, and this question is subject to judicial interpretation. The most common way to answer this question is to determine whether or not an individual is a member of a federally recognized tribe. However, it is important to note, an individual may be considered to be an Indian even if he or she is not a member of a federally recognized tribe. The Supreme Court, in *United States v. Rogers*, 45 U.S. 567 (1846) created a two prong test:

- 1) degree of blood (slight degree is sufficient); and

- 2) whether the person is recognized as an Indian by the tribe or the federal government.

The second prong of the *Rogers* test is outlined in *United States v. Bruce*, 394 F. 3d 1215, 1224 (9th Cir. 2005) and discussed in *United States v. Maggi*, 598F.3d1073, 1080-82 (9th cir. 2010). Four factors are considered:

- 1) tribal enrollment;
- 2) government recognition formally and informally through receipt of assistance reserved only to Indians;
- 3) enjoyment of the benefits of tribal affiliation; and
- 4) social recognition as an Indian through residence on a reservation and participation in Indian social life.

The chart below is a summary of jurisdictional parameters for prosecution of cases arising from Indian country.

### SUMMARY OF FEDERAL, STATE AND TRIBAL JURISDICTION IN INDIAN COUNTRY

OFFENDER	VICTIM	JURISDICTION
Indian	Indian	<ul style="list-style-type: none"> <li>• Federal jurisdiction for felonies (1153 only).</li> <li>• Tribal jurisdiction for misdemeanors.</li> </ul> Since the passage of the TLO, tribes now have felony jurisdiction in some cases (max. penalty of three years imprisonment-total of nine per incident).
Indian	Non-Indian	<ul style="list-style-type: none"> <li>• Federal jurisdiction for felonies (can use assimilated crimes).</li> <li>• Tribal jurisdiction for misdemeanors.</li> </ul> Since the passage of the TLO, tribes now have felony jurisdiction in some cases (max. penalty of three years imprisonment-total of nine per incident)
Non-Indian	Indian	<ul style="list-style-type: none"> <li>• Federal jurisdiction for both felonies and misdemeanors (can use assimilated crimes).</li> </ul>
Non-Indian	Non-Indian	<ul style="list-style-type: none"> <li>• State jurisdiction for both felonies and misdemeanors.</li> </ul>
Indian	Victimless Crime	<ul style="list-style-type: none"> <li>• Primarily tribal jurisdiction.</li> <li>• Federal jurisdiction in some cases.</li> </ul>
Non-Indian	Victimless Crime	<ul style="list-style-type: none"> <li>• Primarily state jurisdiction.</li> <li>• Federal jurisdiction in some cases.</li> </ul>



**SUE FAHAMI** worked for the State of Nevada Public Defender’s Office from 1996 until 1998, when she moved to the White Pine County District Attorney’s Office. After a successful campaign in 1998, she served as the White Pine County District Attorney until 2001. In December of 2001, she accepted a position as an assistant United States attorney in the District of Nevada, Reno Branch Office, where she currently serves as the Reno branch chief.