

**TESTIMONY OF ARIZONA STATE REPRESENTATIVE ALBERT HALE**  
**“TLOA – JURISDICTION IN INDIAN COUNTRY”**

**JANUARY 13, 2012**  
**TALKING STICKS RESORT AND CASINO**  
**SCOTTSDALE, ARIZONA**

**I. BACK GROUND INFORMATION.**

The Panel is entitled “Jurisdiction in Indian Country”. The panelists will be asked to touch on the current tribal court systems and the difficulties they encounter; the effect that the Tribal Law and Order Act’s increased sentencing authority will have on the courts, funding issues, etc.

The Tribal Law and Order Act of 2010 (Pub.L. 111-211, H.R. 725, 124 Stat. 2258, was enacted July 29, 2010, and signed into law by United States President Barack Obama.

**II. TESTIMONY.**

Ya’a’teeh doo a’heehee. I am Albert Hale. Among my People, the Navajo People, I am called “Ahbihay”.

I am of the “Salt” (Ashii’i) clan, born for the Bitter Water (To’dichiini) clan. My maternal grandfather is of the “Walk Around You” (Ha’na’ghaani) clan. My paternal grandfather is of the “Tall House” (Kiiya’aani) clan. I am “Diné”, a descendent of these clans.

I currently serve in the Arizona State House of Representatives representing Legislative District 2. In addition to the City of Flagstaff, my District includes five Indian Nations: the Navajo Nation, the Hualapai Indian Nation, the Havasupai Indian Nation, the Hopi Indian Nation and San Juan Paiute Indian Nation.

I am a past-President of the Navajo Nation having served in that capacity in the mid-1990s. I have practiced law for over thirty years in the Navajo Nation and various Indian Nation courts, New Mexico state courts and in Federal Courts. For several years, I served as a Judge Pro Temp in the Laguna Pueblo Court, Laguna New Mexico.

As a sovereign nation, the Navajo Nation has its own independent court system. The Navajo Nation court system is the largest Indian Nation court system in the country.

The courts are divided into ten judicial districts to serve the vast Navajo Nation. Each judicial district has a district judge and a family court judge. The judicial districts provide support to community-based peacemaking services, which follow the traditional model of Diné dispute resolution. Currently there are seventeen (17) District and Family Court judges sitting. Most, though not all, are members of the Navajo Nation Bar Association. In FY 2011, the Navajo Nation Courts heard over 75,000 cases.

The appellate court is a full time Supreme Court, comprised of two Associate Justices and headed by a Chief Justice. The decisions of the Navajo Supreme Court are published in the Navajo Reporter, which presently has eight volumes. The Supreme Court opinions and information about the Navajo Nation Courts may be found at [www.navajocourts.org](http://www.navajocourts.org). In FY 2011, The Navajo Nation Supreme Court heard approximately 183 cases.

Practitioners in Navajo Nation courts, with a slight *pro hac vici* exception, must be members of the Navajo Nation Bar Association. For bar admission purposes, the Navajo Nation Bar Association administers a two day bar exam given twice yearly. There are approximately 470 members in the NNBA counting active, inactive, and judicial members. There are about 225 active members. The Navajo Nation Bar Association has a yearly Continuing Legal Education requirement for active members, similar to the requirements for members of state bars. An active Disciplinary Committee regulates member professional conduct.

During the last few years, the Navajo Nation courts struggled with two issues of importance. The first is the incorporation of Diné Fundamental Law into Navajo Nation law. Navajo custom and tradition have always been a part of the law used in Navajo Nation courts. However, in 2002, the Navajo Nation Council codified Diné Fundamental Law and directed that Diné Fundamental Law take precedence in the court decision making. Since then, the trial courts and the Navajo Supreme Court have attempted to carry out that directive. That has created some uncertainty as to what the law is, as there are differing opinions among Navajos as to what is Diné Fundamental Law. Other than the general principles which are codified, Diné Fundamental Law is not written.

The interpretation and incorporation of Diné Fundamental Law was a significant element in the second major issue. That issue involved a power struggle between the Navajo Nation Courts and the Navajo Nation Council. The issue ultimately resulted in the diminishment of the Navajo Nation Council from an eighty-eight member body to a twenty four member body. Briefly stated, the dispute began with an initiative taken to the Navajo People by the Navajo Nation President. The initiative was to reduce the size of the Council. The Council, through pro-tracked litigation and various Council actions, attempted to stop and then circumvent the initiative vote, which approved the Council reduction. The Navajo Nation Supreme Court upheld the right of the People to reduce the size of the Council. However, the fight consumed the Navajo Nation government for about two years.

I had a number of thoughts upon the passage of the Tribal Law and Order Act (TLOA) in 2010. First, I was encouraged that the federal government, after all these years, finally heard our pleas and took concrete and positive steps to address many of our criminal justice concerns. The lack of comprehensive and consistent criminal prosecutions in Indian Country has created a climate of lawlessness among deviants, and fostered a belief that wrong acts have no consequences. The increased sentencing authority given to Indian Nation courts holds promise that we, locally, will have more tools to address criminal conduct and to counteract that scofflaw attitude.

The lack of sufficient, adequate juvenile detention facilities and adult jails has handicapped Indian Nation law enforcement for years. On the Navajo Nation we felt this gap personally. In 2007 we had an electrical fire in the Chinle jail causing its temporary closure. At the same time overcrowding in other facilities created an environment where female inmates were put in solitary confinement cells – two sleeping on the floor and one on a bench. This is unacceptable! As a result, inmates were given early release or minimal sentences. Although the Chinle facility eventually reopened, the conditions of this facility and others on the Navajo Nation remain in deplorable condition, barely able to house inmates. The federal money to be provided through the TLOA shows promise for addressing these gaps.

The Navajo Nation and all Indian Nations need to assess how their justice systems are operating and evaluate the impact they have. Our communities' safety relies upon this critical information. Although the Navajo Nation collects data, the increased data collection requirements and the focus on tribal justice holds promise for the future as well.

My next thought, as a former Navajo Nation President and a sitting Arizona state legislator, was "How will this be paid for in a time of great economic distress?"

The TLOA will translate into increased prosecution of serious crimes through Indian nations courts. The Navajo Nation and other Indian nations will need more judges, more courtrooms, larger courthouses, more prosecutors, a larger probation department, a larger public defender's office, and more private defense counsel. The new enhanced sentencing responsibilities will mean more prisoners including more serious criminals who previously would have been housed in federal facilities. This will require more and better trained detention officers and larger and more secured facilities. All of these essentials will be paid for out of Navajo Nation funds - funds that are already stretched way too thin.

Juvenile justice and the accompanying juvenile detention facilities have always been woefully inadequate on the Navajo Nation. Any help would be an improvement. With only two facilities with beds to serve the entire Navajo Nation we are in dire need. The Navajo Nation is a young nation - with the average age being 24 years (2010 Census) - and our youth need intervention services. But again, there are costs. Funds are needed for additional juvenile courts, judges and personnel, juvenile probation officers and juvenile detention officers to man the still-to-be built juvenile detention facilities.

As a leader, I have heard many federal promises over the years. The TLOA contains significant fiscal promises to fund the needed physical improvements in the Indian justice system. But, those promises are authorizations, not appropriations. We must have appropriations to implement the authorizations. Otherwise nothing will change.

My next thought, as an occasional defense attorney, is what will my clients be facing?

Some of the existing Navajo Nation courtrooms do not have space for juries. Jury trials have been very, very rare in the Navajo system. There is no maintained system for jury calls. Few of the judges have any experience with juries, and most have little experience with major criminal adjudications. The existing adult probation personnel have little experience supervising serious criminals. Spending up to nine years in a Navajo Nation jail is much different, a much worse punishment, than spending nine years in a federal facility. Those deficiencies will need to be addressed, and quickly.

These shortcomings were graphically illustrated over the past year. A Special Prosecutor was appointed by the Navajo Nation Council several years ago, initially to investigate alleged misdeeds by the Navajo Nation President. His duties were expanded to include alleged Council misdeeds. As a result of his investigations, the Special Prosecutor found what he believed to be a significant misuse of Navajo Nation funds by most of the Council delegates. He brought criminal charges against most of the delegates shortly before the last election. Most delegate defendants requested jury trials, and there came the rub. The trial court system was not able to process the large number of complex criminal cases in a timely fashion. Ultimately, the Special Prosecutor dismissed the criminal cases and reinstituted them as a single civil case. That civil case is presently pending.

Implementation of the TLOA is why we are here today. To fully take advantage of the TLOA, the Navajo Nation and other Indian nations need to amend their criminal code to provide for the enhanced sentencing alternatives now authorized by federal law. Without those amendments, the increased sentences will not happen. Without adequate facilities to handle the increased prosecutions and the consequent increase in inmates, I can anticipate that the Navajo Nation and other Indian nations will hesitate to make those changes.

Spending scarce Navajo Nation resources on jails and courthouses has always been a difficult political sell. That will remain the case. Which comes first, the promised federal dollars or the stepped up Navajo criminal prosecutions, remains to be seen.

We will need to step up training for all the participants in the criminal justice system, from judges through prosecutors, defense counsel, detention personnel and probation officers.

The challenges before us are significant, but we welcome the opportunities. After all this is our Nation; this is our People. The problems that we are trying to solve are our problems.

We understand that these problems affect the future of our Nations and our People. We have the ability to solve them. We just need the tools to solve them our way, according to our traditions and our teachings.

The teaching of our elders is that we should not make laws to regulate our children. If and when we do, it is a reflection of our failing as parents. As parents, we have failed to teach and instill in our children the foundation necessary for them to have self-respect, to respect and treat others with respect, and to follow the “sacred pollen path”, a path of peace and harmony. We pray that our children are restored to that sacred path.

Our elders also teach that we should not make too many laws and regulations for ourselves. If we do, we will become entangled in its web. I dare say that Indian People of this Land have more laws and regulations directed at them than any other people on the face of Mother Earth. We even have an entire Title in the United States Code dedicated to us, Title 25 of the United States Code.

Under law we are treated as sovereign nations for some purposes; for others, we are treated as mere social organizations and associations. The inclusion of “Tribal” in TLOA gives me the impression that the United States sees us as tribes, not as sovereign nations. To me, the word “tribal” is inconsistent with sovereignty.

I urge the United States government to make a definitive decision that we are sovereign nations or that we are not. We can no longer live in uncertainty; uncertainty of what the future holds for us, our children and our nations.

For Native American people, we are sovereign, we are nations, we are people! Accept and treat us that way and much will be solved.

As Native American people, we have survived many broken promises. It remains to be seen if the TLOA promises are also broken. But I can assure you Native American People are ready, willing and able to do their part to ensure that these promises are kept.

I thank the Commission for coming to Indian County to gather information that may be helpful to the implementation of TLOA. You now have the information, our expectation is that you will do something useful with it. We are ready to help.

THANK YOU.

MAY THE HOLY PEOPLE BE WITH YOU AND YOUR LOVED ONES,  
ALWAY.