

Role of the United States Attorney's Office in California Indian Country

United States Attorney's Office,
Eastern District of California
Phil Ferrari
FAUSA and Tribal Liaison

United States Attorney's Office

- **Judiciary Act of 1789**
 - "...to prosecute in [each] district all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned."
- **Principal litigator for the U.S. Attorney General**
 - 93 U.S. Attorneys in U.S. and its territories

Role of the U.S. Attorney

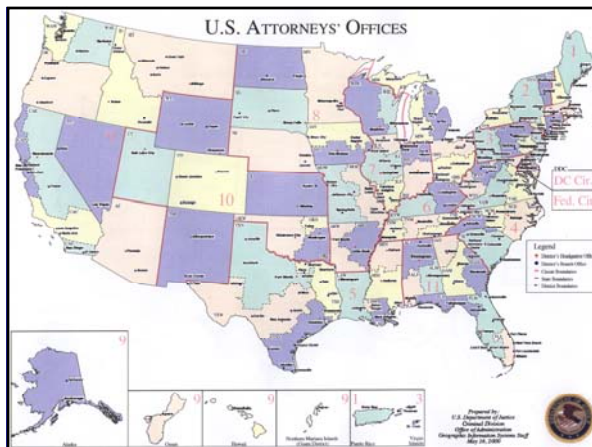
- Three statutory responsibilities (USC Title 28, Section 507)
 - Prosecution of criminal cases brought by Federal government
 - Prosecution and defense of civil cases in which U.S. is a party
 - Collection of debts owed to Federal government which are administratively uncollectible

Selection Process For U.S. Attorney

- Nominated by President
- Confirmed by the U.S. Senate
- Serves 4 year term
- Typically resign or asked to resign when new administration comes into office

Assistant U.S. Attorneys

- Assistant United States Attorneys are hired by the U.S. Attorney and appointed by the Attorney General
- Civil service protection
- Only the appointed U.S. Attorney serves at the pleasure of the President





EDCA

- 34 Counties
 - Relationships with local Law Enforcement
- 8 million People
- 43 Federally Recognized Tribes
- 21 Tribal Casinos

DOJ Policy

- Unique Legal Relationship
 - Government to Government
 - Requires Consistent & Effective Communication
- Respect and Promote Tribal Sovereignty
- Commitment to Tribal Self-determination, Tribal Autonomy, Tribal Nation-building, and Maximizing Tribal Control Over Governmental Institutions in Tribal Communities

Tribal Liaison

- Each USAO that is home to a Tribe(s) asked to designate an AUSA to serve as Tribal Liaison.
- Serve as a POC
 - Law Enforcement Matters (Federal and State)
 - Tribal Law Enforcement
 - BIA Commissions / Training
 - District-Wide Law Enforcement Coordination

Tribal Liaison Cont.

- Civil Matters
 - Process Issues
- Federal Government Contacts
- Grant Opportunities
- CONSULTATION

Eastern District of California Phil Ferrari (916) 554-2744

- (S) Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo, and Yuba.
- (F) Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne.

**EDCA Law Enforcement
Coordinator**

- Tim Johnstone (916) 554-2701
 - Contacts throughout District
 - Can assist in identifying grant opportunities
 - Law Enforcement Summit
 - Law Enforcement Bulletins

**Northern District
Annemarie Conroy
(415) 436-7200**

- Del Norte, Humboldt, Mendocino, Lake, Sonoma, Napa, Marin, San Francisco, Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, San Benito, and Monterey.

**Central District
Sean Peterson (Riverside)
(213) 894-2400**

- Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

Southern District
Carla Bressler-Keehn
(619) 557-5610

- San Diego and Imperial.

Public Law 280

- CALIFORNIA
- Alaska
- Minnesota
- Nebraska
- Oregon
- Wisconsin

Generally Applicable Jurisdiction

- Section 1152 – Exclusive Federal Jurisdiction
- Section 1153 – Murder, Manslaughter, Kidnapping, Assault, Arson, Burglary, Robbery and other crimes prosecuted in Federal Courts, using State law.

PL 280 Jurisdiction

- Sections 1152 & 1153 do not apply
- Federal Criminal Jurisdiction: Applies Uniformly Throughout California (including Indian Country)
- State Criminal Jurisdiction: Applies in Indian Country, so long as statute is criminal/prohibitory as opposed to civil/regulatory (*Cabazon*, 480 U.S. 202)

Prosecution Priorities

- Less than 2 AUSAs per county in EDCA
- Prioritize use of resources based upon national directives and local conditions
- In each case, determine whether there is a “Substantial Federal Interest”

Blue Collar Federal Crimes – Nationwide Jurisdiction

- * 21 USC § 841 – Narcotics
- * 18 USC § 922(g) – Firearms
- * Human Trafficking / Child Exploitation Offenses



White Collar Federal Crimes – Nationwide Jurisdiction

- 18 USC § 666 Theft of Gov't Funds
- 18 USC §1028 Identity Theft
- 18 USC §1956 Money Laundering
- 18 USC § 1341 Mail Fraud
- 18 USC § 1343 Wire Fraud
- 18 USC § 1001 False Statements
- 18 USC § 1956 Money Laundering
& § 1957



THEFT OR BRIBERY CONCERNING PROGRAMS RECEIVING FEDERAL FUNDS-- 18 U.S.C. § 666

- To protect the integrity of the vast sums of money distributed through Federal programs, Congress enacted 18 U.S.C. § 666. The section is designed to facilitate the prosecution of persons who steal money or otherwise divert property or services from state and local governments or private.
- 18 U.S.C § 666 prohibits the embezzlement, stealing, obtaining by fraud or . . . intentional misapplication of property having a value of \$5,000 or more by an agent, typically an employee, of an organization or of a state, local or **Indian tribal government agency** that receives \$10,000 or more annually in Federal assistance.
- The maximum penalty is imprisonment for 10 years and a fine of the greater of \$100,000 or twice the amount obtained in violation of the section.

Indian Country Offenses

- * 18 U.S.C. 1159 – Misrepresentation of Indian Produced Goods
- * 18 U.S.C. 1165 – Hunting, Trapping or Fishing on Indian land
- * 18 U.S.C. 1169 – Obligation to Report Child Abuse
- * 18 U.S.C. 1170 – Trafficking in Native American Remains / Cultural Items

Gaming Related Federal Statutes

* 18 U.S.C. § 1167 – Theft from an Indian Gaming Establishment

- * Use This Statute For Player/Patron Related Thefts
- * Less Than \$1000 = Not more than one (1) year imprisonment.
- * More Than \$1000 = Not more than ten (10) years imprisonment.

* 18 U.S.C. § 1168 – Theft by Officer or Employee Of Indian Gaming Establishment

- * Use This Statute For ANY Casino Employee/Licensee
 - * Non-employees may be charged under §1168 if aiding and abetting or part of a conspiracy. *U.S. v. Bryant*, 664 F.3d 831 (10th Cir. 2012)
- * Less than \$1000 = Not more than five (5) years imprisonment.
- * More than \$1000 = Not more than twenty (20) years imprisonment.



18 U.S.C. § 1163 Embezzlement and Theft from a Tribal Organization

- Makes embezzlement, theft, criminal conversion, and willful misapplication of funds belonging to a tribal organization a Federal crime.
- It is a felony if the amount taken exceeds \$1000, and is subject to imprisonment for a maximum of 5 years, a fine pursuant to 18 U.S.C. § 3571, or both.
- If less than \$100 is involved, the maximum penalty is one year, and/or a fine under 18 U.S.C. § 3571.
- Note: This statute applies to both Indians and non-Indians, and need not be committed in Indian country.

Recent EDCA 1163 Prosecutions

- * *U.S. v. Volen, et al*: Developer hired by United Auburn Indian Community to construct school, community center and offices. Submits false and inflated invoices which are approved by two UAIC employees, who receive kickbacks from developer.
- * All three defendants sentenced to significant prison terms, and ordered to pay \$17 million in restitution to UAIC.
- * *U.S. v. Black*: Finance Director for Pit River Tribe charged with embezzling over \$80,000 from Tribe.
 - * Allegation only / Defendant presumed innocent.

Archeological Resources Protection Act (ARPA)

- * Under ARPA, certain activity on public or Indian lands is prohibited:
 - * a. Excavation, removal, damage, alteration, or defacing
 - * b. Of any archaeological resource
 - * c. Located on public or Indian lands
 - * d. Without special permit or exemption
- * Certain activity off public lands involving the sale of archeological resources is prohibited
- * Violations under ARPA must be intentional violations: "Any person who knowingly violates"- 16 U.S.C. § 470ee (d)
- * Multiple Exceptions

Recent EDCA ARPA Cases

- * *U.S. v. Bourne* (2016): Involving artifacts from Humboldt-Toiyabe National Forest and Death Valley (Timbisha Shoshone)
- * *U.S. v. Harp* (2016): Involving depredation of petroglyphs in Sequoia National Forest (Tubatulabal)
- * *U.S. v. Starks* (pending): Involves alleged removal of Native American artifacts from Lone Pine area of Inyo County
- * *U.S. v. Cassayre* (2013): Involving artifacts from BLM lands in Modoc County (Pit River)
- * *U.S. v. Korb* (2011): Involving artifacts from Death Valley National Park

Child Exploitation Offenses

- * Child Pornography & Sexual Exploitation of Children
 - * Often there is Federal jurisdiction
 - * Generally requires some inter-state nexus

Human Trafficking

- * "Human Trafficking" is the obtaining or maintaining of another person in a condition of compelled labor or service.
- * Key is compulsion, through force, fraud or coercion
- * Labor and/or Sex Trafficking
- * Victims Often Hesitant to Come Forward

Intra-Tribal Conflicts

- * Respect for Sovereignty Means General Policy of Non-Intervention
- * Top Priority in ALL Cases is Public Safety

QUESTIONS?

