

**Hon. Diane J. Humetewa**  
**United States District Court Judge, District of Arizona**

**Before the**  
**Subcommittee on Courts, Intellectual Property, and the Internet**  
**Committee on the Judiciary**  
**United States House of Representatives**

**“The Need for New Lower Court Judgeships, 30 Years in the Making”**

**February 24, 2021**

## Introduction

Chairman Johnson, Ranking Member Issa, Chairman Nadler, Ranking Member Jordan, and Members of the Subcommittee on Courts, Intellectual Property, and the Internet, I am honored to testify before you on the dire need for more district court judges in Arizona, and how these positions affect Indian Country in Arizona.

I am Diane J. Humetewa. I was unanimously confirmed as an Arizona District Court judge in 2014. Before taking the bench, I served as an Assistant United States Attorney, prosecuting violent crimes, including crimes in Indian Country. I served as the confirmed United States Attorney for the District of Arizona from 2007-2009. I was appointed and served as a Hopi Tribal Appellate Court Judge from 2003-2007 and acted as the tribe's Acting Chief Prosecutor in 2011. The majority of my legal practice has been in the Arizona federal court and tribal courts. And a majority of that work involved federal civil and criminal Indian law issues.

In March of 2019, the Judicial Conference of the United States ("JCUS") delivered several recommendations to Congress. Therein, JCUS recommended adding four new district judges to the District of Arizona and making Arizona's one temporary judgeship permanent. I support these recommendations and ask that you do as well, particularly considering the critical need for a federal district judge's presence to serve the five counties and ten Indian Nations in northern Arizona.

The District's need for additional judgeships is not new. The last time a new judgeship in Arizona was authorized was 19 years ago. Although that position was designated as temporary, the judiciary has successfully sought an extension every year since. In addition, following review of Arizona's response to the judiciary's comprehensive biennial judgeship surveys, the JCUS has consistently recommended Congress authorize between three and six new judgeships for Arizona since 2003. These recommendations are based on the District's burgeoning caseload, consistently ranked as one of the busiest in the country.

For the 12-month period ending September 30, 2020, Arizona ranked fifth in the nation for criminal felony filings, and 16th for civil case filings. The 2021 biennial survey of judgeship needs, which was completed by the court in early 2020, resulted in reaffirming our request for four new permanent judgeships and conversion of our

temporary judgeship to permanent. We anticipate that the JCUS will again support this request and recommend to Congress some number of new judgeships for Arizona in 2021.

This dire need for judgeships stems from Arizona's unique geography,<sup>1</sup> the tribal presence in Arizona, and the state's continued population growth. According to a February 2020 Congressional Research Service report, the Bureau of Land Management, the Forest Service, the Fish and Wildlife Service, the National Park Service, and the Department of Defense control 38% of Arizona's total land mass.<sup>2</sup> That is over 28 million acres under federal superintendence. That does not account for the additional 19,775,958 million acres (or 27% of Arizona's land mass) of Tribal lands that fall under Arizona federal court jurisdiction.<sup>3</sup> In addition, Arizona shares approximately 370 miles of its border with Mexico.

According to 2019 population estimates from the United States Census Bureau, Arizona is among **the top three** fastest growing states in the country in terms of numeric and percent growth. Maricopa County, Arizona's largest county by population, was the fastest growing county in the United States by numeric growth, adding over **668,000** residents between 2010-2019. Arizona's population grew by **23.8%** between 2000 and 2010, increasing from 5,160,000 in 2000 to 6,392,288 by 2010. Arizona's population grew by another **15.8%** between 2010 and 2020, reaching approximately 7,400,000 by 2020. And its economy has been spurred by new areas of growth in the Aerospace, Technology, Health Care, and Bioscience industries.<sup>4</sup>

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<sup>1</sup> See Exhibit A: Federal Lands and Indian Reservations in Arizona.

<sup>2</sup> CAROL VINCENT, ET AL., CONG. RSCH. SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 7 (2020), <https://fas.org/sgp/crs/misc/R42346.pdf>.

<sup>3</sup> U.S. FOREST SERVICE, FOREST SERVICE NATIONAL RESOURCE GUIDE TO AMERICAN INDIAN AND ALASKA NATIVE RELATIONS D-3 (1997), <https://www.fs.fed.us/spf/tribalrelations/documents/publications/NtlResourceGuide/tribexd.pdf> (citing Bureau of Indian Affairs, Acreages of Indian Lands by State (1990)).

<sup>4</sup> *Industries in Arizona | Key Sector Opportunities for Industries in AZ*, ARIZ. COM. AUTH., <https://www.azcommerce.com/industries>.

## **The Fifth Highest Caseload in the Country**

Given this growth, our civil caseload continues to evolve in its legal complexity and volume. The judiciary's Federal Court Management Statistics for the 12-month period ending September 30, 2019, showed Arizona had a weighted caseload of 800 filings per district judge, which is the 5th highest in the country. Arizona's weighted filings were 86% higher than the general standard of 430 cases per judgeship and 50% higher than the national average of 535.<sup>5</sup> Arizona is a border state, and it is possible that criminal filings may level off a bit this year because of the new administration's policies on illegal border crossing. And yet even still, Arizona is a growth state with a decades-long trend of increasing case filings over multiple administrations and immigration policy changes. Arizona has a steady caseload related to illegal re-entries, alien, drug and firearm smuggling, and an increased civil habeas corpus caseload. Moreover, the weights assigned to illegal entry and reentry cases are somewhat nominal, so the demands of Arizona's complex civil and criminal dockets are expected to remain substantial.<sup>6</sup> The authorization of new Article III judgeships would bring the workload of Arizona's district judges into alignment with other federal judges throughout the country.

You have surely heard lawyers talk about "the disappearing trial." In my experience, the large volume of cases require judges to encourage parties to resolve their disputes and motions without oral argument and short of trial. Local rules and procedures have been implemented to help judges manage large caseloads. As a result, parties' abilities to appear in federal court are greatly diminished. This is not the judicial system that the United States Constitution envisions, nor is it what one considers when pursuing a judgeship.

## **The Indian Country Caseload**

How does the lack of adequate district court judges impact Indian Country? First, population growth is not unique to our urban or rural communities. It is also true for

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<sup>5</sup> These statistics dropped in 2020 due to the COVID-19 pandemic, but filings will surely resume or even exceed their pre COVID-19 rates in the future. For example, the District suspended all federal grand jury proceedings due to the pandemic which are expected to resume in March. See General Orders 20-12 (March 16, 2020); 21-02 (January 11, 2021).

<sup>6</sup> For example, the January 20, 2021, Memorandum of the Department of Homeland Security has been interpreted by the U.S.I.N.S. as mandating 8 U.S.C. §1326(a) and (b)(1) detainees be released and placed on U.S. Court supervision rather than be presented for deportation proceedings. See *Texas v. United States*, 2021 WL 247877 (S.D. Texas Jan. 26, 2021).

Indian Country. There are twenty-two tribal nations in Arizona. Two of the nation’s largest tribes, the Navajo Nation and the Tohono O’odahm Nation, are in Arizona. Recent data from the U.S. Census Bureau and the Arizona Office on Tribal Relations reflects sustained and significant growth in Arizona’s tribal nations over the past twenty years, as seen in the sample below:<sup>7</sup>

	<b>2000 population</b>	<b>2010 population</b>	<b>2017 population (est.)</b>	<b>Percent growth</b>
<b>Navajo Nation (in AZ)</b>	101,835	104,565	110,000	8%
<b>White Mt. Apache</b>	12,429	13,409	15,487	24.6%
<b>Hopi</b>	6,496	7,185	9,268	42.6%
<b>Salt River Pima- Maricopa</b>	6,405	6,289	7,727	20.6%

Moreover, the number of Arizonans identifying as Native American/American Indian grew at a similar rate to Arizona at large, growing **20.8%** from 292,552 in 2000 to 353,386 in 2010. The American Indian population in Arizona grew another **20.3%** between 2010 and 2019, reaching an estimated 424,955. For most Indian tribes, the median population age is much lower than Arizona’s population at large. Arizona’s tribal population is also highly mobile in that many tribal members work or attend school off of Indian lands, but they maintain homes and families in Indian Country. Population growth on tribal lands is significant because it, too, equates to more federal cases being filed in our civil and criminal dockets.

As you know, in states like Arizona, Montana, South Dakota, and others in the judicial circuits, **the district court is the felony criminal court for tribal nations.** The

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<sup>7</sup> U.S. Census Bureau Dept. of Intergovernmental Affairs: Tribal Affairs. <https://www.census.gov/tribal/>.

Arizona district court adjudicates enumerated crimes arising in Indian Country<sup>8</sup> under the Major Crimes Act.<sup>9</sup> Congress has also enacted specific federal felony offenses that apply to Indian Country, including felony child abuse and neglect,<sup>10</sup> sexual abuse offenses,<sup>11</sup> and domestic violence offenses.<sup>12 13</sup> Historically, the U.S. Attorney's Office in Arizona has had the highest number of such prosecutions in the Nation. That distinction continues through today. Since approximately 2002, the U.S. Attorney's Office has dedicated prosecutor resources to prioritize these crimes in Indian Country.

The need for district judge resources in Northern Arizona is especially great. The Northern Arizona region of the district court comprises the Apache, Coconino, Mohave, Navajo, and Yavapai counties. Those counties are also home to ten Indian Nations. Flagstaff, located in Coconino county, houses Northern Arizona's only federal court dedicated to criminal cases. Flagstaff is also the largest and most populous city in Northern Arizona. The U. S. Census Bureau estimates that the population of Flagstaff increased by 13.7% between April 1, 2010 and July 1, 2019, which is on par with the state population growth of 13.9% for that same period, and it far exceeds the national average of 6.3%.

A full-time federal magistrate judge has been present in Flagstaff for many years to handle misdemeanor cases and the preliminary stages of felony cases (including a preliminary hearing and detention hearing) that arise in the Grand Canyon National Park, Glenn Canyon National Recreation Area, Lake Powell, Lake Mohave, and other federal jurisdictions in Northern Arizona, including Indian Country. If a felony case proceeds beyond the preliminary stages (i.e., the case is not pled down to a misdemeanor), then the case must be transferred to Phoenix for adjudication by a district court judge. In addition, magistrate judges lack authority to dispose of civil cases without consent of the

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<sup>8</sup> 18 U.S.C. § 1151.

<sup>9</sup> 18 U.S.C. § 1153.

<sup>10</sup> 18 U.S.C. § 1153(a); Adam Walsh Child Protection and Safety Act of 2006, Pub.L. No. 109-248, § 215, 120 Stat. 587, 617 (2006).

<sup>11</sup> Chapter 109A Offenses include Aggravated Sexual Abuse, Sexual Abuse, Abusive Sexual Contact.

<sup>12</sup> Chapter 110A Offenses include Interstate Domestic Violence, Interstate Stalking and Interstate Violation of Protection Order. Recent amendments to VAWA contemplated whether federal district courts have a role to play in reviewing tribal court convictions of non-Indian defendants prosecuted pursuant to SDVCJ. On April 4, 2019, The Violence Against Women Reauthorization Act of 2019 ("VAWA 2019") was introduced in the Senate. VAWA 2019 required appellate courts to hear appeals and render decisions on tribal appellate decisions no later than 90 days after a defendant requests an appeal. The bill included a provision allowing convicted defendants to skip tribal appellate courts and appeal directly to the federal court system.

<sup>13</sup> *Id.* at § 804(g)(1)-(h)(1).

parties, which is rare. Consequently, all civil disputes arising out of Northern Arizona are also assigned to Phoenix district judges for all pre-trial and trial activities.

The criminal filings in Northern Arizona increased 13% between 2016 and 2019, and the civil case filings increased 21% during that same period. The two largest contributors to the federal case load in Northern Arizona are the multiple reservations across the region and Grand Canyon National Park. The weighted caseload for Northern Arizona has been well above the national average of 535 for years. For example, in 2019, the weighted caseload for that area was 774.6.

The growth in population and criminal filings in Northern Arizona over the years has resulted in the establishment of a comprehensive federal law enforcement infrastructure in Flagstaff. The FBI, DEA, USMS, USAO, FPD, U. S. Probation, and U. S. Pretrial Services all have offices with full time staff in Flagstaff to serve the needs of Northern Arizona's communities. In 2019, Section 82 of Title 28 was amended to add Flagstaff as an official place of holding court in Arizona, which statutorily authorizes federal district court trials to be held in that location.<sup>14</sup> If Northern Arizona were to be designated as its own small judicial district, it would qualify for at least one new judgeship under the U. S. Judicial Conference standard.

The criminal activity in Northern Arizona is unfortunately quite common, and it has been increasing over the years. Federal crime data has long suggested that Indian reservations have higher rates of violent crime than the national average, especially when it comes to violence and sexual offenses against women. I left the U.S. Attorney's Office in 2009. Since then, and during my time on the district court bench, I have witnessed a new trend of crimes in Indian Country, specifically, crimes arising under the general federal criminal statutes, such as the distribution of controlled substances like methamphetamine, possession of child pornography, firearms offenses, and alien smuggling offenses. Plainly, crimes impacting metropolitan and urban centers are no longer unusual in tribal communities. Congress recognized this problem and recently enacted the Tribal Law and Order Act,<sup>15</sup> Not Invisible Act, Savanna's Act, and the POWER Act, all of which aim to address the epidemic of violence affecting Native Americans.

How do all of these dynamics relate to a district judge's ability to administer justice in and for Arizona's tribal nations? Each of my colleagues takes their oath to "administer

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<sup>14</sup> The Bill to accomplish that amendment had the bipartisan support of Arizona's entire Congressional delegation.

<sup>15</sup> P.L. 111-211; 25 U.S.C.A. § 2801 et. seq.

justice without respect to persons, and do equal right to the poor and to the rich” seriously. This oath assumes everyone has equal access to the federal court. But because Arizona’s courtrooms are situated in major metropolitan areas, many citizens in remote areas, whom our courts must serve, face logistical challenges. For example, when a federal felony crime occurs on the Navajo or White Mt. Apache Nation, it may not be immediately discovered or investigated. If it is, the lack of federal law enforcement resources can result in delayed investigations, which leads to delayed evidence collection and witness identification. The result is a delayed or declined prosecution decision. Further, when an investigation is complete, the grand jury proceedings take place in Phoenix or Tucson, several hours away from the tribal community.

If charges are ultimately brought, the pre-trial, trial and sentencing proceedings usually take place hundreds of miles away from the accused’s family, the victims, and the impacted community. Moreover, the demographic reflected in a grand jury or trial jury pool seldom resembles the accused’s peers or the population in the affected communities. My colleagues and I attempt to address these issues by moving our trial proceedings to Flagstaff, where we use our Magistrate Judge courtroom.<sup>16</sup> While this makes it more convenient for the accused’s family, the victims, tribal and federal law enforcement, and the northern Arizona jury pool,<sup>17</sup> it does impact our daily judicial responsibilities. For one week or more, we relocate our judicial chambers, travel 148 miles north, and attempt to address our remaining docket remotely. Some of my colleagues find this work arrangement impractical for a variety of reasons.

While adding new federal judges may not cure the systemic resource issues, it would make the overall caseload more manageable, which, in turn, would result in more judges handling northern Arizona cases *in* northern Arizona. As a result, the federal judicial system would be more accessible to its citizens and the federal and tribal agencies that need it.

The practical effect of this large civil and criminal caseload on any one judge cannot be ignored. Civil cases have wholly different issues at stake when compared with our criminal docket, where the accused is often indigent and undereducated. Criminal case adjudication requires additional attention, time, and patience. I appreciate the work that

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<sup>16</sup> Since 1999, there have been numerous calls by the northern Arizona communities to establish a district court in Flagstaff, Arizona. See Exhibit B.

<sup>17</sup> The Northern Arizona jury pool is drawn from citizens of Mohave, Yavapai, Coconino, Navajo and Apache Counties. Ten Indian Nations are present within those Counties.



our Administrative Office of U.S. Courts must do to ensure that each judicial district and circuit receive “adequate” resources. But, the geographic distances, population and industry growth, and federal jurisdiction to hear tribal cases impact the ground-work necessary to administer justice and cannot be discounted. For example, the District of Arizona has over 25% of all American Indians/Alaska Natives in the federal court system under its supervision. Arizona ranked as the third highest district for supervision violations during 2013 through 2017, with 6,526 violations.<sup>18</sup> The District of Arizona is ranked first in the entire system for Presentence Investigation Reports for Part A violence offenses and sex offenses, as well as first in the number of post-conviction risk assessment high-risk cases, mental health, and substance use disorders. It is also ranked second system-wide for co-occurring disorders and is in the top three districts nationally for the immigration caseload. And, Arizona was one of the districts with the largest number of individuals on supervision, but also with one of the largest number of violations - unfortunately, we were in the top 50% in both categories.<sup>19</sup>

What does this mean in practical terms? Federal location monitoring may be feasible in Phoenix but not in Fort Defiance, a four-hour drive away. Re-entry and rehabilitation centers may be abundant in Tucson, but they are not accessible for citizens of the Hopi or Hualapai tribe, a five-hour drive away. A federal judge in Chicago may summon a supervised release violator to appear before him the next day to address a relapse, a request that a federal judge in Phoenix cannot make of a supervisee from the White Mt. Apache or Navajo Nation. In addition, our Indian Country caseload often requires that our Courts receive tribal court records from twenty-one tribal court systems to adequately understand the background of the individuals appearing before us before sentencing. These tribal court systems are often not equipped to electronically share that information, which pose additional challenges for our courts.

We envy our colleagues in other districts who use “drug court” programs, or diversion programs for first time felony offenders. There are enormous benefits to these preventative programs. For example, if a tribal member, born, educated and permanently residing in his or her Indian community, was directed toward a drug court instead of federally prosecuted for selling small quantities of controlled substances in the community, the member could avoid a federal term of incarceration and all of its

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<sup>18</sup> July 2020 Report of the U.S. Sentencing Commission on “Federal Probation and Supervised Release Violations.”

<sup>19</sup> *Id.*

attendant impacts. But, again, commitment to these programs takes time, patience, and work hours. And time is a luxury this District does not have.

These dynamics stretch our judicial resources to their limits. Likewise, our current caseload makes meaningful court supervision of those on supervised release impracticable. As a result, I fear more tribal members are at a greater risk to recidivate.

### **Other Judicial Responsibilities**

Finally, over the years, the Congress and the Executive branches of government have tasked federal district court judges who have Indian Country jurisdiction with additional responsibilities. Our judicial responsibilities are also impacted by these other “non-judicial” requirements, such as compliance with the Civil Justice Reform Act, the Power Act, and various annual reporting statutes. The Civil Justice Reform Act<sup>20</sup> requires that district court judges report civil motions that are fully briefed and are pending for six-months or more, and civil cases pending for three or more years. My colleagues and I all take our Congressional reporting requirements seriously. So, it is commonly known that judges are highly focused on submitting a “clean report,” which requires that priority be given to these civil cases, which are often the most complex cases on our docket. In 2017, the Power Act<sup>21</sup> was enacted to address domestic violence in Indian Country. This is a unique requirement for district courts with jurisdiction over Indian Country, such as Arizona. The Power Act mandates the chief judge for each judicial district across the United States to: (1) sponsor public events in partnership with a state, local, tribal, or territorial domestic violence service provider/coalition; (2) conduct a public event promoting pro bono legal services for Indian or Alaska Native victims and survivors; and (3) provide an annual report to the Administration Office. Judges must also annually report on orders authorizing the interception of wire, oral or electronic communications<sup>22</sup>, applications for delayed-notice of search warrants<sup>23</sup>, and report pursuant to the Crime Victims’ Rights Act<sup>24</sup>, to name a few.

The Arizona district judges recognize Congress’ need for this information, especially in regard to the prevention of violent crimes, including domestic violence, and

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<sup>20</sup> 28 U.S.C. § 476.

<sup>21</sup> “Pro bono Work to Empower and Represent Act of 2018,” S. 717; passed by the 115th Congress (2017-2018).

<sup>22</sup> 18 U.S.C. § 2519(3).

<sup>23</sup> 18 U.S.C. § 3103a.

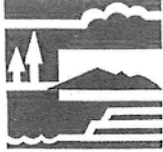
<sup>24</sup> 18 U.S.C. § 3771.

to promote access to the federal courts. We see, first-hand, what crime does to the victim, the accused, and the community. And, we know that an involved judiciary can make a large impact. But, simply put, there are just not enough judges in Arizona to currently meet *all* of the demands and responsibilities of Article III and the many mandates of the U.S. Congress or program goals of the Executive.

In closing, I ask you to consider that our nation's "system of justice" relies on federal court judges to administer justice. The judiciary in the District of Arizona desperately needs new permanent judgeships. The district's caseload shows little sign of subsiding, and it continues to strain our existing resources. The status quo simply cannot meet the Constitutional mandate to administer meaningful justice for all of its citizens.



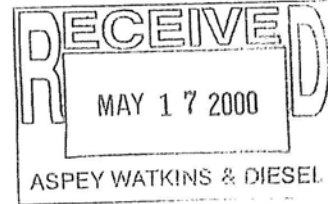
Exhibit B



COCONINO COUNTY ARIZONA  
OFFICE OF THE COUNTY MANAGER

May 15, 2000

Dora H. Harrison  
County Manager

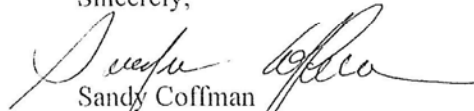


Mr. Louis M. Diesel  
Aspey, Watkins & Diesel  
123 N. San Francisco Street  
Flagstaff, Arizona 86001

Dear Mr. Diesel:

Enclosed is Resolution 2000-28 adopted by the Coconino County Board of Supervisors on May 1, 2000, in support of establishment of a United States District Court in Flagstaff, Arizona. Copies of this Resolution were sent to Senators Jon Kyl and John McCain.

Sincerely,

  
Sandy Coffman  
Executive Secretary  
County Manager's Office

219 E. CHERRY AVE. • FLAGSTAFF, AZ 86001-4695  
(520) 779-6690 FAX (520) 779-6687

COCONINO COUNTY BOARD OF SUPERVISORS

RESOLUTION 2000- 28

IN SUPPORT OF ESTABLISHMENT OF A UNITED STATES DISTRICT COURT IN  
FLAGSTAFF, ARIZONA

WHEREAS, all federal cases must be filed in Phoenix and tried either in Phoenix or Prescott, both distant from the communities of Northern Arizona; and

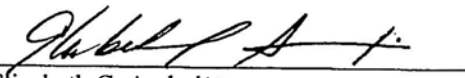
WHEREAS, there is a hardship on the victims, families and all parties involved to journey to Phoenix or Prescott for trial; and

WHEREAS, privately owned office space is available in downtown Flagstaff for expansion of the federal court;

NOW THEREFORE BE IT RESOLVED, that the Coconino County Board of Supervisors supports the establishment of a United States District Court in Flagstaff, Arizona.

BE IT FURTHER RESOLVED, that Coconino County urges Arizona's congressional representatives to take any and all reasonable and necessary action which may be necessary to implement the same, including but not limited to the amendment of 28 U.S.C. 82 to include Flagstaff as part of the Judicial District of Arizona.

Signed and sealed this 1<sup>st</sup> day of May, 2000.

  
Elizabeth C. Archuleta  
Chairperson, Board of Supervisors

Attest:

Andrea Paul - Deputy  
Clerk of the Board

FMA

ASPEY  
WATKINS  
& DIESEL  
ATTORNEYS  
P.L.L.C.

September 22, 1999



123 N. San Francisco St.  
Flagstaff, Arizona 86001  
(520) 774-1478

Hon. Stephen M. McNamee  
Chief Judge  
United States District Court  
District of Arizona  
230 North First Avenue  
Phoenix, AZ 85025

Sedona Office  
120 Soldier Pass Road  
Sedona, Arizona 86336  
(520) 282-5955

**Re: Amendment of 28 U.S.C. § 82 to include Flagstaff**

Cottonwood Office  
709 E. Mingus Ave.  
Suite 101  
Cottonwood, Arizona 86326  
(520) 639-1881

Dear Judge McNamee:

Frederick M. Aspey \*\*  
Harold L. Watkins\*  
Louis M. Diesel  
Bruce S. Griffen  
Donald H. Bayles, Jr. \*\*†  
Kaign N. Christy\*  
John J. Dempsey ††  
Zachary J. Markham  
James E. Ledbetter\*\*  
Whitney Cunningham\*\*  
Pernell W. McGulie\*\*\*  
Stephen A. Thompson  
Janet Altschuler  
Justin G. Vaughn  
Brett M. Hager

Thank you very much for speaking to me recently regarding the amendment of 28 U.S.C. § 82. As you may recall, I am Chairman of the Coconino County Bar Association committee which was formed in 1985 to facilitate the establishment of a United States District Court in Flagstaff. Over the years, our committee has had numerous discussions with various public officials and groups regarding the need for a United States District court in Flagstaff. As you know, Flagstaff is the regional hub for Northern Arizona and is located near to the Navajo and Hopi Indian Reservations. The Navajo Indian Reservation is one of the largest reservations in the United States extending throughout much of Northeastern Arizona, a portion of Western New Mexico and Southern Colorado. The distances are vast and travel is sometimes very difficult. Currently, major crimes occurring on the reservations are prosecuted in the United States District Court in Phoenix. On occasion they are handled in Prescott. Civil matters involving native american issues are frequently heard in United States District Court in Phoenix. Because the distances are so great, it is difficult for victims, families of defendants, witnesses and civil litigants to participate in a meaningful way in the various proceedings. A particularly good example was the criminal prosecution of former Navajo Tribal Chairman, Peter McDonald. I am reliably advised that during his trial in Prescott, many native americans had to camp out at a lake near Prescott for many months in order to attend the various proceedings. This created great hardship. It has been our committee's belief that the location of a federal court in Flagstaff would alleviate many of these concerns.

John Verkamp  
of Counsel

As we discussed, I have spoken with Joe Lodge, an Assistant U. S. Attorney with the U. S. Attorney's office in Phoenix, regarding the issue. He apparently is involved in many of the cases arising on the reservations in Northern Arizona. He advises that of all the criminal cases prosecuted nationwide in Indian country, 26% arise in Northern Arizona. There are apparently 16 F.B.I. agents assigned to investigate such cases in

\*Also admitted in California  
\*\* Also admitted in Navajo and Hopi Courts  
\*Also admitted in Texas  
Certified as a Specialist in:  
† Injury and Wrongful Death  
†† Real Estate



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Kaign N. Christy\*  
John J. Dempsey ††  
Zachary J. Markham  
James E. Ledbetter \*\*  
Whitney Cunningham\*\*  
Pernell W. McGuire\*\*\*  
Stephen A. Thompson  
Janet Alschuler  
Justin G. Vaughn  
Brett M. Hager

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of Counsel

\*Also admitted in California  
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†† Real Estate

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September 21, 1999  
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Northern Arizona and yet there is no full-time prosecutor located in Flagstaff. Presently, there is a United States Magistrate's Court in Flagstaff. The U. S. Attorney has an office but no full-time prosecutor. The Federal Probation Department and Pre-Trial Services are also located in Flagstaff. All of these offices are housed in a building at 123 North San Francisco Street, Flagstaff, Arizona. The courtroom has already been constructed, is currently being utilized by the Magistrate and for bankruptcy proceedings and would be available for use by a District Court judge. There is even an office for such a judge and his staff. Judge Bilby utilized the facilities prior to his untimely death. One of the impediments, however, is 28 U.S.C. § 82. The statute provides that Arizona shall constitute one judicial district and that court shall be held at Globe, Phoenix, Prescott and Tucson. We have asked Senator Kyle to submit legislation to add Flagstaff to the list of cities wherein court can be held. Please note that the other cities would not be deleted. This would eliminate the problem which presently exists whereby cases cannot be tried in Flagstaff except by mutual consent of the parties.

I recently had dinner with Kelsey A. Begaye, President of the Navajo Nation, to discuss this issue. He personally supports the establishment of a United States District Court in Flagstaff and advised me that he would be willing to submit a resolution to the Tribal Council for adoption demonstrating its support as well. I also attended the Annual Conference and Meeting of the Navajo Nation Bar Association on June 10 and 11, 1999 in Flagstaff and a resolution was adopted supporting the establishment of a full-time United States District Court in Flagstaff and the amendment of 28 U.S.C. § 82 to include Flagstaff as part of the judicial district in Arizona. Our committee has submitted proposed resolutions to the Flagstaff City Council and the Coconino County Board of Supervisors supporting the establishment of a United States District Court in Flagstaff and have been advised that it is likely that the resolutions will be adopted. The Coconino County Bar Association has previously approved such a resolution. I have discussed the issue with Jose Rivera, U.S. Attorney for the District of Arizona, and he has indicated to me that if a federal District Court was established in Flagstaff that he would staff the U.S. Attorneys Office located there on a full-time basis.

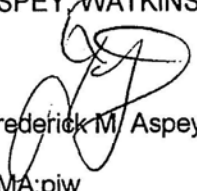
As you can see, there appears to be a great deal of support for the proposal. I have spoken with Stephen Higgins, an attorney with Senator Kyle's office, and he advises that there is a subcommittee meeting coming up on December 1, 1999 of the Judicial Conference. If you could send a letter supporting the amendment of 28 U.S.C. § 82 to include Flagstaff as part of the judicial district in Arizona, I am advised that it is likely that the legislation can be passed. I understand that you and Senator Kyle speak from time to time concerning matters affecting the judicial district in Arizona. Our committee

Hon. Stephen McNamee  
September 21, 1999  
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would appreciate it if you would discuss this issue with him. I also understand that the issue has precipitated discussion among the various district court judges in Arizona and that there is general awareness of the problem. In our committee's view, the time has come to amend the statute. Your help in accomplishing this goal would be very greatly appreciated. Thanks again for your interest in this very important issue which impacts so many in Northern Arizona. If you need additional information, let me know.

Best wishes,

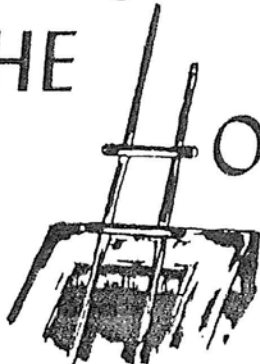
ASPEY, WATKINS & DIESEL, P.L.L.C.



Frederick M. Aspey

FMA:pjw  
cc: Senator Jon Kyle

# THE HOPI TRIBE



Ivan L. Sidney  
CHAIRMAN

Clifford T. Balenquah  
VICE-CHAIRMAN

April 17, 1985

In reply refer to:

Mr. John Verkamp  
Coconino County Attorney  
Coconino County Court House  
Flagstaff, AZ 86001

RECEIVED  
APR 19 1985  
COCONINO COUNTY  
ATTORNEYS OFFICE

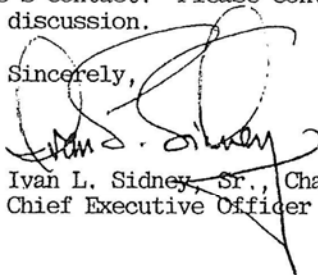
Dear Mr. Verkamp:

I am in receipt of your letter regarding the feasibility of establishing a United State Federal District Court in Flagstaff.

I would not hesitate to support this concept for a majority of the Hopi Tribes litigative actions are through the federal court. As stated in your letter a federal court in Flagstaff would be of great benefit to the Hopi Tribe.

To further pursue this idea, I am appointing Mr. Michael O'Connell, Resident Counsel to be the Hopi Tribe's contact. Please contact him at 734-2441, Ext. 164 for any further discussion.

Sincerely,

  
Ivan L. Sidney, Sr., Chairman  
Chief Executive Officer

cc: Law & Order Committee  
Resident Counsel