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Looking for Balance in Navajoland

As corruption charges plague the West's largest tribe, reformers struggle for traction.

By Marilyn Berlin Snell. Page 12.

Navajo Monster Slayers

As corruption charges plague the West's largest tribe, reformers struggle for traction

WINDOW ROCK, ARIZONA

The Navajo Nation Council Chamber is a rounded bit of beauty inspired by the traditional Navajo hogan. It's set against a natural arch of sandstone that gives Window Rock its name, a wide and frequently dramatic sky, and temporary government-office barracks that have been at their task several decades too long. The odd cow or horse sometimes wanders loose nearby, foraging for grass.

On a windy day last April, at a meeting of the 22nd Navajo Nation Council, the building was a refuge from swirling cottonwood debris and blasts of red dust. Inside, a storm of a different nature was brewing. Dipping in and out of English and Navajo, the Council delegates — legislators for the largest tribe in the West — were in heated debate. From the public gallery, I couldn't hear the official interpreter well enough to understand the particulars; my earpiece kept shorting out. But the overall theme — a conflict over the shape and character of the Navajo government — was clear, right down to the chamber's seats.

Most of the delegates' plush black-leather chairs were empty — a powerful reminder that a majority of *Diné*, or "The People," as the Navajo call themselves, want change. This Council, elected last

November, was the first to reflect a successful 2009 ballot initiative to consolidate chapters, or legislative districts, and drastically reduce the governing body's size from 88 delegates to 24. A delegate's proposal to further reorganize Council duties and powers had ignited the current debate.

There is no Navajo C-SPAN, and the tribally owned *Navajo Times* publishes just once a week, so people who want the blow-by-blow have to attend the sessions, held for one week four times a year. And it's not easy. The Navajo Nation sprawls across 27,000 square miles of northern Arizona, northwestern New Mexico and southeastern Utah, and travel is complicated by poor roads, expensive gas and a lack of public transportation.

Two Navajo activists sat next to me. Norman Patrick Brown, 51, wore turquoise earrings; his long hair was pulled back and secured by the red bandanna around his forehead. With his wrestler's physique, he seemed ready for a take-down. He translated the proceedings in a whisper and editorialized: "The old guard is still in the majority and we're watching them very closely."

"I learned accountability when I was young, listening to my elders, herd-

ing sheep," said 56-year-old Ed Becenti softly. His salt-and-pepper hair was thick and short, and he looked fit in his running shoes and jeans. "We had 75 head, and at the end of the day we did a full count. If one was missing, my grandmother would get a flashlight and wouldn't come back until she found that sheep."

If sheep were dollars, 36 million of them would be missing on the Navajo Nation today. Becenti and Brown and their allies — including a tough special prosecutor from Washington, D.C. — want to know what became of that money. The previous Council allegedly



tapped a “slush fund” — discretionary funds intended for the reservation’s neediest people — to benefit their own families and friends, while the Navajo president and others looked the other way. The questions, and the push for reform, reach into both the president’s office and the judicial branch, and include renewed calls to create a Navajo Constitution to guide the relatively young government.

Above the thinned ranks in the council chamber, a long mural painted in 1935 encircles everyone. It portrays the history of the Navajo, beginning with images of women grinding corn. Then

rugs are woven, sheep herded, crops watered, horses fed. In several battle scenes, Navajo warriors wield bows and arrows against white men with guns. The Long Walk of 1864, when the U.S. Army forced many Navajos to walk to Fort Sumner, N.M., is painted along the south wall. Hundreds died, yet many survived and returned to their homeland — a triumph that’s also celebrated. The story in the mural reminds everyone that the Navajo Nation is a sovereign entity — with its own dramatic history, creation stories, and distinctive ideas about government and justice.

If democracy is the United States’

guiding principle, the Navajos’ is *hózhó*. There is no exact English translation, but “balance” and “harmony” come close. This ideal permeates how Navajo laws are made and justice meted out — not eye-for-an-eye punishment, but restitution and the restoration of harmonious relationships. *Hózhó* requires constant stock-taking, the thoughtful weighing of one’s own behavior and that of the tribe. Anything that causes imbalance, disharmony or discord is *naayee*, the Navajo word for “monster.” Changing Woman, who created humans, had two sons who are central to the Navajo pantheon because they were the first monster slayers.

Navajo Council watchdogs Norman Patrick Brown, left, and Ed Becenti, outside the Navajo Nation Council Chambers in Window Rock, Arizona.

DIEGO JAMES ROBLES



An updated mural showing current events would depict a battle as ferocious as any in history. This time around, though, both the *naayee* and their slayers are Navajo. And the timing is striking: The Navajos are reshaping their own dysfunctional government even as Washington, D.C., seizes up in ineffectual gridlock. The reform effort proceeds in fits and starts, but it's the biggest upheaval here since 1989, when the Navajo government tore itself into pieces and a political riot left two people dead. At its heart, it's about the desire to finally create an effective, modern democracy that emphasizes traditional Navajo values. It's a battle for balance — for *hózhó*.

WHEN SPANISH COLONIZERS roaming the Southwest encountered the Navajo

in the 17th century, they did not find a tribe ruled by a centralized authority. Navajos had allegiances to immediate family and clan and neighbors, more than to the tribe as a whole. The headmen among the disparate groups didn't rule by lineage or election. They came to power because they were wise, or skilled at hunting, or had ceremonial knowledge. And they could lose that power quickly if they fell out of favor, according to Peter Iverson's landmark 1983 book, *The Navajo Nation*. Back then, it was easy to throw the bums out.

But when oil was discovered on the reservation in 1922, decentralized decision-making made it harder for outside interests to access those resources. So the federal commissioner of Indian Affairs (the precursor to the Bureau of

Indian Affairs), without Navajo consultation, established procedures to create the first versions of the Navajo Tribal Council. At times, early on, the feds selected delegates based on their level of assimilation, Westernized education and belief that the traditional Navajo way blocked progress. Even when delegates were elected by Navajos, they could be removed for cause by the secretary of Interior — pretty much guaranteeing they would go along with whatever the feds wanted. At the first Council meeting in 1923, reports David Wilkins in his 2003 book, *The Navajo Political Experience*, the 24 delegates “unanimously approved a resolution — drafted in Washington — which gave (the commissioner) the authority to sign all oil and gas leases ‘on behalf of the Navajo Indians.’”

From the 1920s to the 1980s, the tribal government made a series of questionable deals with companies seeking coal as well as oil and gas. Yet there were also attempts to establish political checks and balances. Beginning in 1938, Navajo voters selected a chairman and vice chairman to preside over the Council, and in the 1950s, the Council established a court system. A Tribal Code — laws modeled after federal codes — soon followed. A Navajo Constitution was proposed on three separate occasions but not adopted; voters were confused about how it would impact Navajo life, and one effort failed simply because the Council never put the draft constitution before voters for ratification.

The Council, which increased to 88 delegates as a result of the reservation's population growth and reapportionment, drafted and approved the tribal budget and passed laws. But power began to shift in the 1970s, when the Council gave a charismatic, ambitious chairman, Peter MacDonald, the authority to appoint members to standing committees. (Imagine if the U.S. president could appoint members of key congressional committees.) MacDonald became “the most powerful Indian in America,” in the words of the Associated Press, over the course of his four nonconsecutive terms. As master of his nation's legisla-

Most of the plush chairs in the Navajo Council Chamber are empty, since a 2009 ballot initiative reduced the number of delegates from 88 to 24.
DIEGO JAMES ROBLES





Scenes from the mural that covers the wall of the Navajo Council Chamber.
DIEGO JAMES ROBLES

tive priorities, he asserted tribal sovereignty against federal authority. He also launched economic development schemes to try to ease the reservation's widespread poverty, and further tipped the balance of political power in his favor, with moves such as temporarily shuttering the *Navajo Times*, which had been a frequent MacDonald critic.

But then MacDonald overreached: He convinced the Council to buy the 491,000-acre Big Boquillas Ranch, near the Grand Canyon, for \$33.4 million. A reporter was tipped off that he'd received kickbacks and bribes in connection with the deal. The U.S. Senate began hearings in 1988, and a fractious tribal Council voted to place him on involuntary administrative leave. He refused to give up power, and tensions erupted into a melee at tribal headquarters: A crowd of his supporters roughed up some outnumbered policemen, and two of the crowd were killed by police bullets. (MacDonald was ultimately convicted in both tribal and federal court for election-law violations, bribery and corruption; he served eight years in prison before being pardoned by President Clinton.)

To check the virtually unlimited power MacDonald had amassed as chairman, the delegates amended Title 2 of the Navajo Nation Code in 1989. They replaced the offices of chairman and vice chairman with a less powerful president and vice president. The new president would not run the legislative branch. That role was given to the speaker of the Council, who is chosen by fellow delegates.

These amendments were seen as a stopgap measure to guide the tribe out of chaos and hold the nation together until the *Diné* could decide for themselves what kind of government they wanted. Until the 2009 special election, however, they didn't have the chance.

Meanwhile, there were increasing indications that the Council delegates had begun to abuse their power and spend lavishly, including controversial trips to Las Vegas and Hawaii justified as tribal business. In 2007, a vast majority of delegates voted for a special amendment, tacked on to a measure funding summer



Navajo Tribal Chairman Peter MacDonald in early 1989, just weeks before he was suspended in the face of federal and tribal charges for various offenses. He later served eight years in federal prison. ASSOCIATED PRESS

youth employment, to allocate \$50,000 to buy gold rings for all the delegates, to commemorate their service.

IN 2009, NAVAJO VOTERS unhappy with the delegates' service approved two ballot initiatives designed to shift the balance of power again. They not only reduced the number of delegates; they also gave the president a line-item veto over specifics in the annual budget passed by the Council. Yet a majority of delegates refused to reduce the Council's size. They cited a law — Section 102 of the Navajo Nation Code — that was enacted by a previous Council session to stabilize the fragile government in the wake of the 1989 crisis. It required that any change in the government's structure had to be approved by a majority of registered voters in each of the 110 chapters. It wasn't surprising that the popular vote fell short of that "supermajority" threshold, because only about half the Navajo Na-

tion's 110,000 registered voters cast ballots during regular elections; the special initiative vote came out 25,206 to 16,166. A good-faith law written to protect the *Diné* was being used against them.

Council supporters had also filed a lawsuit attempting to force the Navajo Nation to abide by the supermajority law. In May 2010, the Navajo Nation Supreme Court refused to do that. In his ruling, Chief Justice Herb Yazzie noted that the supermajority "is an extraordinary majority impossible to be obtained."

The Supreme Court voided Section 102 and effectively overruled the Council by relying on Navajo Fundamental Law. In traditional Navajo philosophy, Holy Beings handed down foundational doctrines like *hózhó* that form the basis for Fundamental Law. These doctrines are increasingly being interpreted and incorporated into Navajo jurisprudence. In this case, the court ruled that the Council upset the balance of Navajo society by neutralizing the ability of voters to choose the type of government they wanted. As Chief Justice Yazzie put it: "The People's laws are superior to the statutory laws enacted by the Council."

The Navajo Supreme Court took another gutsy stand in July 2010, ruling that Joe Shirley, who had served two terms as president, could not seek a third consecutive term — enforcing limits the Council had created after the struggle with MacDonald. The chief justice is nominated by and serves at the pleasure of the president, and his appointment must be confirmed by the Council. In his tussles with the two other branches of government, Yazzie appears to have had the Holy Beings on his side.

Navajo news organizations heralded these events: The 2009 popular vote was "the first time the Navajo People themselves enacted new Navajo Nation law through the initiative process," according to *Kayenta Today*, a newspaper and blog covering the reservation. And Yazzie's enforcement of the popular vote was the court's "most wide-ranging" decision and "changed the course of Navajo history forever," according to the *Navajo Times*.

I spoke with Yazzie in his Supreme

"The people's laws are superior to the statutory laws enacted by the Council."

—Navajo Supreme Court Chief Justice Herb Yazzie, emphasizing the importance of Navajo traditions



Houses in the Two Grey Hills area of the Navajo Reservation, (above), represented by Council Delegate David Tom, right, shown here at the Navajo Tribal Council meeting in July. Tom has been charged with diverting nearly \$280,000 of tribal funds to himself and his family.

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Court offices, located in a strip mall on Route 264. He has a wide face and gray hair. His black cowboy boots were well broken-in and nicely veined from long-time use. "There is a basic provision in the Navajo Nation Code that says the Council is the governing body of the Navajo Nation. People have noted that that has been used to stifle their rights," he said. "They see ... that the Council, in its own self-interest, reads that to mean that all government power comes from them. And when the court interprets that provision and says, 'No. The power of governance comes from the people,' a lot of members of the Council don't like that."

AS THE POLITICAL STORM CLOUDS gathered in 2010, then-Navajo Attorney General Louis Denetsosie recruited an Anglo, Alan Balaran, as a special prosecutor. Balaran was supposed to look into two controversies: how the Council had spent millions of dollars, and several badly failed business ventures that originated in President Shirley's office. Balaran, a Washington, D.C., lawyer, had an im-

pressive résumé. In the early 2000s, he was the “special master” in Blackfeet Indian Elouise Cobell’s massive class-action lawsuit against the Department of Interior over the inept leasing of millions of acres of Indian Trust lands for drilling, mining and grazing. Balaran dug up evidence of Interior’s misdeeds on many reservations, including the Navajos’. (The Interior Department finally settled the case two months ago, agreeing to pay \$3.4 billion to individual Natives across the country.)

Balaran speaks to the public through communiqués and indictments, and avoids talking on the record to journalists. But I will risk his wrath to report that he has a strong Brooklyn accent, a penchant for well-placed profanity, and a palpable disdain for rule-breakers. His critics call him messianic. He works long and lonely hours next to the Navajo Council Chamber, in a borrowed barracks-office at the Department of Justice, which pays his salary. His family and private law practice remain in D.C. as he labors to untangle tribal affairs. In October 2010, before the Council was downsized, he filed criminal complaints against 78 of the 88 Navajo Nation delegates.

The charges were various combinations of fraud, forgery, theft, conspiracy and abuse of office. Over the course of five years, according to Balaran, delegates engaged in shameless self-dealing — even siphoning money from a fund intended to buy eyeglasses for poor Navajos, to fill the coffers of their families and friends.

Council Delegate David Tom represents the chapters of Red Valley Tse’alanaozt’i’i, Sheepsprings, Beclabito, Gadiiahi/To’Koi and Toadlena/Two Grey Hills where, legend has it, Spider Woman first taught Navajos to weave their exquisite rugs. He was charged with diverting \$279,175 to himself and his extended family, the largest haul of any delegate. In his photo on the Council website, he wears a tuxedo rather than the typical delegate’s uniform (a basic suit with a handcrafted turquoise bolo tie and necklace). He did not return *High Country News’* calls and emails asking for comment.

“The directness with which the Delegates and their staff stole millions of dollars earmarked specifically for the poor was notable not only for its brazenness but for its callous disregard of the needs of their indigent constituents,” Balaran stated.

Economics drive both the alleged corruption and the push for reform. Most of the 300,000 Navajos live on the reservation, and delegates’ constituents are mostly poor: Whereas delegates’ annual salaries are a modest \$25,000, plus per diem perks for travel to Window Rock and various committee meetings, the average per capita income for Navajos is abysmally low (about \$7,000). More than 40 percent live below the poverty line, and over 18,000 households lack basic infrastructure such as electricity.

Reservation unemployment stands,



Council Delegate Russell Begaye, left, in Shiprock, which was a vibrant commercial center when he was growing up there. Now, he says, people have to leave the reservation to shop.

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officially, at just over 50 percent, according to the Navajo Nation. The actual unemployment rate, as the tribal Division of Economic Development (DED) has acknowledged, is much higher: over 70 percent. A person must be actively looking for a job to be included in the labor force; if you’re not looking — as is the case with many on the reservation, since there are no jobs — you’re not considered unemployed. According to the DED’s 2009-’10 status report, the service sector, which includes schools, hospitals and motels, was the largest employer, with 15,215 jobs, about 49 percent of the Navajo labor force. The government employed 8,214 people, or 26.6 percent. There were only a few hundred jobs in basic industries like manufacturing and agriculture.

Delegates don’t campaign for office as Republicans or Democrats. Russell Begaye, a newly elected delegate from the Shiprock area, told me that what mattered was “family and clan connections and serving the people.” A successful delegate needs to know how to work the system. “It’s hard to defeat an incumbent. You control the resources and can dole them out. If you can help somebody, they remember it a long time. So you can actually buy votes in a way.” This may explain why David Tom was re-elected last November, after he was indicted. And it may also help explain why Begaye, who had never before run for office, won.

Begaye was born and raised in Shiprock, N.M., hauling water and using horses to plow his family’s farm. He left the reservation for college, graduated from UCLA, and worked his way up in the building industry, founding his own firm in Atlanta. He returned in 2007, to find a reservation changed in all the wrong ways. Shiprock used to be a viable commercial center near Farmington, but now it, like the rest of the reservation, is mired in hard times.

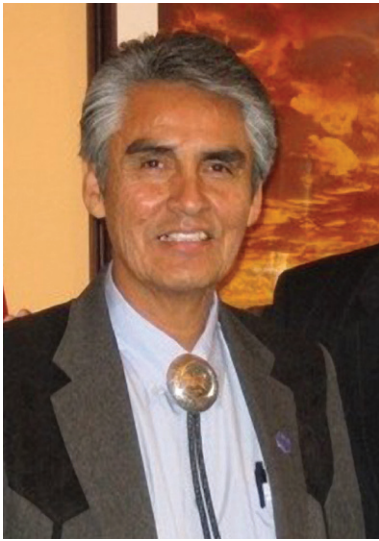
“When I was growing up, we had a First National Bank in Shiprock. We had several sit-down restaurants, two hotels;

it was a thriving community,” Begaye said. Now, people have to leave the reservation to shop. “There’s just an outflow of revenue from Shiprock into surrounding towns.”

Only around 36 percent of all Navajo monies are spent on the reservation, according to a recent study. Businesses avoid the reservation, in part because of bureaucratic red tape. In a speech to the Navajo Nation Council, Arizona Sen. John McCain, R, observed that “it takes three to five years to get the governmental approvals necessary to open a dry-cleaning shop in Window Rock. The same approvals can be obtained in Flagstaff (Ariz.) in just three days. Now, why on earth is this tolerated? What kind of business climate is that?” McCain made the criticism in 1996, but it is telling that the Navajo Nation’s 2009-’10 Comprehensive Economic Development Strategy Report continues to cite it.

Begaye is a businessman, and it irked him that favors were handed out on a piecemeal basis while overall development floundered. He campaigned on “creating opportunity.” Although an unknown, he won, he said, by buying an hour of radio time on the Navajo Nation’s KTNN and inviting young Navajos to come talk about success. “A 19-year-old told us about starting his own business; a young girl had got her M.D. I just lined ’em up and let them tell their stories.”

Many tribes struggle with lousy economies and flawed political systems that were established by the federal government, of course. But Begaye studied economic success stories, especially the Mississippi Band of the Choctaws, whose visionary leaders made constitutional reforms in the 1970s, strengthening the executive branch and making other changes that helped the tribe become an economic powerhouse. “The Choctaws went from being one of the state’s poorest communities to being a big employer. They brought in industry of all kinds. So



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REX LEE FOR NAVAJO NATION PRESIDENT

Former Navajo Nation President Joe Shirley, left, was targeted by a prosecutor's lawsuit in July, which alleged that he failed to carry out his fiduciary duty to the tribe. Current President Ben Shelly, center, and Vice President Rex Lee Jim were both elected last November, despite being under investigation for theft of tribal funds. They later settled and repaid funds to the tribe.

now I'm in Shiprock, and I'm thinking, 'I've seen it and I know it's possible.'

SPECIAL PROSECUTOR Balaran continued to dig into President Shirley's role in doling out discretionary funds, as well as his involvement in two companies with tribal contracts, OnSat and Biochemical Decontamination Systems (BCDS), but was hampered by Shirley's refusal to release some documents. BCDS had planned to build a manufacturing plant on the reservation, and the tribe was the only stockholder that contributed capital; the company defaulted on loans and left the tribe saddled with debts of more than \$4.7 million. OnSat was one of Shirley's pet projects, hired to install public Internet access at all chapterhouses and emergency response agencies. A 2007 tribal audit found the company overcharged the tribe by more than \$600,000.

The Navajo Nation on the whole has a poor record backing enterprises. The board members of its economic development agencies often lack experience and professional business credentials. Shoddy business plans and a lack of due diligence contribute to problems, the Navajo auditor general has said, adding that even a basic Internet search for information on BCDS head Hak Ghun — aka Hak Soo Dickenson — would have discovered that he was one of seven people charged in federal court in New York with defrauding investors out of \$11 million in 1984.

President Shirley's vice president, Ben Shelly, was also caught in Balaran's net — charged with the theft of \$8,850 when he was a council delegate. Yet even while Shelly was under that cloud, last November, Navajo voters elected him as the new tribal president. They also elected former delegate Rex Lee Jim, charged with conspiracy and the theft of \$3,200, as the new vice president. A kind of gender bias might help explain those results: Shelly ran against a woman, Lynda Lovejoy, a New Mexico state senator. Though Navajo society is matrilineal and Shelly himself had argued that lead-

ership ability, not gender, is important, there's a strong prejudice against women being in charge. During the campaign, several traditional Navajos were quoted in the press, blaming Lovejoy's presidential bid for upsetting nature and causing a tornado.

Just before their inauguration in January, Shelly and Jim settled the charges against them, agreeing to repay the money and work with Balaran to enact reforms. Repeated inquiries, asking President Shelly's office to provide specifics about the promised reforms, were never answered.

In my research for this story, I did my best to avoid the stable of outside experts who are often quoted about the need to reform many tribes' governments. During interviews in Window Rock, Navajos invariably said, "You need to talk to Ray" to understand what's happening. Ray Austin was a Navajo Nation Supreme Court justice for 16 years, and is now a professor in the Indigenous Peoples Law and Policy Program at the University of Arizona law school. He's been at the forefront in developing tribal courts and tribal law. Due to his severe hearing loss, he and I conversed by email.

Some Navajos defend the delegates' allegedly criminal actions by saying they were honoring the doctrines of *hózhó* as well as *k'é* (peacefulness and solidarity) and *k'éí* (kinship). Essentially, the money was doled out to keep things harmonious. Austin, a longtime advocate of using foundational doctrines to guide modern self-governance, would have none of it. "There is nothing wrong with helping kin and clan relatives in time of need," he said. "A person can give money (or things of value) to assist kin and clan relatives, but the money given is personally owned, not money that comes from the public treasury. ... The delegates' conduct, if true, is corruption."

The tribe is experiencing the "growing pains of a nascent government," Austin wrote, adding that the current scandals would generate new laws and policies that would prevent similar trou-

bles in the future. *Hózhó* is still at work, then, just not in the way the delegates' defenders contend.

REFORMER ED BECENTI, who's trained in computer repair, emails his observations on council meetings to a long mailing list via frequent "Rezztone" blasts. He also thinks that the delegates are misusing the revered doctrines. "Once they get into office, they go into this power thing, like they're somebody special and they can do whatever they want. And they use the Navajo language to do what they do. They softened us to stealing people's money by using words like *k'é*. It's just an escape from their mistakes."

His friend Norman Brown (they met during the early 1970s heyday of the American Indian Movement) also assails "the 88," as he calls the previous Council. "The 88 was a continuous party, and now we're \$25 million in the hole," Brown told me, referring to the tribe's current deficit out of a total general fund budget of about \$170 million for 2012. The head of the Navajo Office of Management and Budget blames Council overspending for the deficit, according to the *Navajo Times*. General fund revenues come mostly from oil, gas, coal and taxes. The external budget, which is generated from outside revenues, is much heftier (in 2009 it was \$408 million) and comes mostly from federal, state and private grants.

"We are at a real critical phase," said Brown, a filmmaker who lives in Gallup, N.M. "And I don't think this government in its present form has the ability to solve these problems."

Delegate Leonard Tsosie, a member of the 88 who voted against the notorious commemorative gold rings, was re-elected to the new Council — "the 24." He sponsored the April legislation to further reform it, which passed after four days of wrangling. It will create a "committee of the whole," where all delegates debate legislation before it comes to the chamber floor in a way more akin to traditional, consensus-building forms of Navajo decision-making. Further restructuring of government is necessary, but decisions about that must be left to the *Diné*, Tsosie said. He and other delegates, including Russell Begaye, are working toward that. "We don't have three hogans," or three branches of government; "we have one," said Tsosie.

The reform movement also seeks to draft a Navajo Constitution, to write down the Navajos' founding principles so that everyone is on the same page. Ivan Gamble, a writer who dropped out of law school and returned to his home in Lechee, Ariz., in 2005, is a leader of that effort. Where Tsosie is reserved in the traditional Navajo way, Gamble, 33, has an in-your-face style. He has enthusiastically pushed for a constitution for six years, using both Facebook and footwork, walking across the reservation to make his pitch. "I carried a petition asking for a constitution and got 9,000 sig-

natures. I talked at schools. The young people pick it right up. I don't think our generation is big on protesting but they will certainly talk about it online, and it spreads even faster that way," Gamble told me one afternoon in Window Rock. Three former Navajo Nation presidents are founding members of Gamble's constitutional committee.

"Constitutions weren't a Western discovery," Gamble said. "The Iroquois developed the first written constitution. As a matter of fact, that American version that 56 white dudes wrote? A lot of its defining characteristics come from the Iroquois." For one thing, the Iroquois Constitution — called the Great Law of Peace, and drafted by the tribe in what is now upstate New York, sometime between 1000 and 1400 — guaranteed freedom of religion, something Gamble wants to enshrine in a Navajo Constitution as well. As Navajo Fundamental Law makes its way into current laws and regulations, some protections are needed, because the Navajo Nation is religiously diverse and includes followers of various Christian denominations, as well as Mormons and members of the Native American Church. "We have the definitions and the problems of a nation now," Gamble said, "and one of the defining characteristics of a nation is a constitution."

What would a truly Navajo government look like? Gamble won't say; that's also up to the *Diné* to decide, he believes. He thinks that each of the 110 chapters should select a representative to attend a constitutional convention. They would meet for a week, debating and honing ideas, then break for a week and return to their chapters to discuss all that had been proposed. The back-and-forth would continue for 60 days. Then they'd be sequestered for a week to prepare a unified document. "Everybody then votes on it — the entire Navajo Nation," he said.

As Navajo reformers work to answer the age-old question Thomas Jefferson wrestled with — "What kind of nation?" — Special Prosecutor Balaran remains in the trenches. In May, Chief Justice Yazzie gave him permission to withdraw the outstanding criminal complaints against all but a few of the previous council's delegates and refile them as civil complaints so that the cases could move more expeditiously. And in the Navajo way, the goal of the civil litigation would be restitution of the missing dollars rather than punishment.

Then, on July 28, Balaran dropped another bombshell. He filed the sweeping lawsuit in Navajo District Court as promised, but added still more names, including all the delegates in the previous Council of 88 and the current attorney general, Harrison Tsosie. Balaran charged that a total of \$36 million had been handled improperly, and each delegate had "unlawfully" diverted about \$250,000 to "families, friends, other delegates and their friends." This time, Leonard Tsosie was also caught in the net.



LEIGHT. JIMMIE. NAVAJO TIMES

The lawsuit called for "the immediate removal from office of those Defendants still occupying positions of authority." Tsosie didn't return phone calls asking for comment; in a press conference, he and several others refused to resign.

Balaran's lawsuit charged former President Shirley with breach of his fiduciary duty for, among other things, "sanctioning the passage of dozens of unlawful budget appropriations that resulted in the unlawful conversion of tens of millions of dollars of Navajo Nation funds" and for failing to stop the Council's discretionary spending spree. In an ironic twist, Balaran also charged that the man who had hired him, former Attorney General Louis Denetsosie (who resigned in January), had withheld evidence related to Shirley's business dealings and then hid the fact that he hired an outside law firm to defend Shirley against the special prosecutor's investigation. Denetsosie told the *Navajo Times* that "there is no merit whatsoever" to the claims against him.

In all, Balaran's lawsuit targeted 142 people, including 50 "John Does" to be named later. It described a "wholesale pattern and practice of corruption conceived and coordinated by the branches and agencies of the Nation" — a violation, said the Brooklyn-born outsider, of Fundamental Law.

Becenti's Rezztone email about the big lawsuit encouraged Navajos to meet with the special prosecutor to report other violations. In a voice uniquely his,

Becenti wrote: "We are also wanting to (produce) a COUNTER RADIO statement to wot da (delegates) are ranting about ... but we hav to raise at least \$1,800 to do dis. I do acknowledge dat there are some GREAT council delegates right now who are not involved in dis mess ... but dey need to step-up to da plate on behalf of the grassroots folks who elected dem in da first place."

Even with the turmoil over the big lawsuit, on Aug. 1 the Council voted unanimously to remove the federal Bureau of Indian Affairs from the process of approving mineral leases — another step on the path to Navajo sovereignty. "Navajo people need to form a government using Navajo culture, sense of place, and spirituality," Ray Austin told me. "We need to have a 'cultural match.' I believe there should be a foundational, written governing instrument. Call it a constitution, governing *Diné* laws, The Great Law, whatever, but it should outline the government and its powers."

Russell Begaye is enthusiastic about the future of the Navajo Nation but sobered by the challenges. "Right now, we are just shuffling things around, but we need to get serious about structuring a government that will really work," he said. "If people are interested in helping to build a nation, one that really fits our culture, now is the time." □

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An officer stands guard as Special Prosecutor Alan Balaran (blue shirt) and investigators from the tribal attorney general's office conduct a search-and-seizure warrant in May at the Office of the Management and Budget and Controller in Window Rock.



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