

**UNITED STATES ATTORNEY'S OFFICE
FOR THE WESTERN DISTRICT OF
NEW YORK**



**INDIAN COUNTRY
OPERATIONAL PLAN:
SENECA, TONAWANDA BAND OF SENECA,
THE TUSCARORA, AND THE CAYUGA INDIAN
NATIONS**

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**MICHAEL DIGIACOMO
United States Attorney
Western District of New York**

Introduction

This revised plan addresses public safety and the fair administration of justice in tribal communities within the Western District of New York. Such objectives are important to both the United States Department of Justice, the United States Attorney's Office for the Western District of New York ("USAO"), and the four federally recognized tribes which have a presence in the District. These tribes, all members of the Haudenosaunee, or Iroquois Confederacy, consist of the Seneca Nation of Indians, the Tonawanda Band of the Senecas, the Tuscarora Nation of Indians, and the Cayuga Indian Nation (hereinafter "the Nations").

Accomplishment of these objectives requires the dedicated leadership of the USAO, the Nations, and the various federal, New York State, and local agencies which provide law enforcement and other services in the Western New York region. While collaborative working relationships among tribal, federal, state, and local law enforcement partners already exist, these relationships should continue in order to improve the quality of life in tribal communities.

The following Western District of New York Indian Country Operational Plan ("the Operational Plan"), developed after consultations with the tribal governments and taking into account the considerable historical experience of the USAO, reflects these principles and seeks to achieve these goals. Among other things, the Operational Plan establishes regular government-to-government meetings, which will foster positive relationships among the Nations, the USAO, and pertinent federal, state, and local agencies. The meetings will also serve as an opportunity for the participants to express ideas for greater engagement and/or assistance, improving the overall well-being of the region.

Background

The Haudenosaunee ("People of the Long House"), also known as the "Iroquois Confederacy," is an alliance of native nations united for hundreds of years by religion, tradition, beliefs, and cultural values. The tribes which constitute the Iroquois Confederacy are the Senecas, Cayugas, Onondagas, Oneidas, Mohawks, and the Tuscarora Nation of Indians.

Seneca Nation of Indians

The Seneca Nation of Indians - one of four federally recognized tribes with a presence in the Western District of New York - were the westernmost tribe of the Iroquois Confederacy. At the time of first European contact, the villages of the Senecas were east of the Genesee River, extending from the Genesee Valley to the watershed between Seneca Lake and Cayuga Lake (the beginning of Cayuga territory). See *Seneca Nation of Indians v. State of New York*, 206 F.Supp.2d 448, 457-60 (W.D.N.Y. 2002). Today, the Seneca primarily reside on two distinct reservation lands located approximately thirty miles apart on the Allegany Territory in Cattaraugus County, and the Cattaraugus Territory in Erie, Cattaraugus, and Chautauqua Counties.

Prior to settlement by colonists, the Seneca dominated trade and traffic at the western edge of the Iroquois territory, leading to a description of the Seneca as “Keepers of the Western Door.”¹ Like other Iroquois tribes, the Seneca historically lived in longhouses, which were long, narrow bark-covered dwellings that housed several families from the same clan. Everything that the Seneca used in their daily life came from the land through farming, hunting, or fishing.

Traditional Seneca culture was, and continues to be, defined by the clan system. Now, the Seneca have a constitutional form of government, which includes elections held every two years.² The Presidency of the Seneca Nation rotates between a resident of the Allegany and the Cattaraugus reservations. Currently, there are approximately 8,500 enrolled members of the Seneca Nation of Indians.³

Tonawanda Band of Senecas

In 1794, the Six Nations signed a treaty with the United States at Canandaigua, New York, establishing peace and friendship between the United States of America and the Six Nations, and affirming Haudenosaunee land rights in the State of New York. *See Citizens Against Casino Gambling in Erie County v. Hogen*, 2008 WL 2746566, *6 n.10 (W.D.N.Y. 2008).

In 1838, the United States entered into the Treaty of Buffalo Creek with nine Indian nations of New York, including the Seneca Nation. The treaty was part of the United States Indian Removal program, intended to encourage Native American peoples from eastern states to move west of the Mississippi River. Under the treaty, the Ogden Land Company agreed to purchase four remaining Seneca reservations in New York and use the proceeds to pay for the nation's relocation. *Id.* at 7.

Four years later, the Treaty of Buffalo Creek was modified by the Treaty with the Seneca of 1842, which reflected that the Ogden Land Company had purchased only two reservations, including the Tonawanda Reservation, while the Senecas retained the Cattaraugus and Allegany reservations. *Id.* The Seneca of the Tonawanda Reservation, located in eastern Erie County, meanwhile, protested that they had not been consulted on either treaty, nor had their chiefs signed either treaty. *Seneca Nation of Indians v. New York*, 206

¹ The Mohawks, who lived near the Hudson River, were called “Keepers of the Eastern Door.”

² In 1848, the Seneca Indians of the Cattaraugus and Allegany reservations held a constitutional convention. They adopted a new form of constitution and a representative government which included tribal elections of chiefs. *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 877 n.1 (2d Cir. 1996).

³ Neither of the remaining federally recognized tribes in the District, the Tonawanda Band of Senecas nor the Tuscarora Nation, will make public their number of enrolled members.

F.Supp.2d at 525, n.54. Accordingly, the Tonawanda Band of Senecas refused to leave their reservation and seceded from the main Seneca nation shortly thereafter.

In 1857, the Tonawanda Band of Seneca Indians secured federal recognition as an independent Indian nation. With its share of proceeds from an earlier land sale, the Tonawanda Band bought back most of the Tonawanda Reservation. It organized under a traditional government and retained the traditional governing institution of the Confederacy: the tribal Council of Chiefs (“the Council”), which carries out the views of the tribe on matters of internal governance, based on consensus. The clan mothers retain the power to remove a Chief and, in consultation with members of the clan, provide recommendations to the Chief on matters of tribal government. The clan mothers cannot disregard the views of the clan, nor can the Chiefs disregard the recommendations of the clan mothers.

Tuscarora Nation

Members of the Tuscarora Nation originally lived in what is now North Carolina until the early eighteenth century. At that time, in approximately 1722, a portion of the tribe traveled north to seek refuge among the Haudenosaunee, while others remained behind. The Tuscarora were invited to join the Haudenosaunee Confederacy, becoming its sixth nation. The Tuscarora Nation maintains a traditional clan system and is governed by the chiefs of the tribes. The Tuscarora Reservation is located in Niagara County, New York.

Cayuga Indian Nation

The Cayuga Nation reservation is based in Seneca County in the Western District of New York, and Cayuga County in the Northern District of New York. Originally, the Cayuga Nation territory consisted of 1,700 square miles from Lake Ontario to Pennsylvania. After signing the 1789 Treaty of Albany and the 1794 Treaty of Canandaigua (Treaty of the Six Nations), the Cayuga Nation retained approximately 64,000 acres along the western and eastern shores of Cayuga Lake (with approximately 22,000 acres in Seneca County, and 42,000 acres in Cayuga County). Subsequent to the 1794 treaty, the State of New York purchased all of the Cayuga Nation land. Today, while the Nation does not retain title to much of the reservation, the entire 64,000 reservation remains Indian Country. *See Cayuga Nation v. Tanner*, 6 F.4th 361 (2d Cir. 2021).

Since approximately 2005, the Cayuga Nation has sought to obtain ownership and title to land within the 64,000 acre reservation boundary and enter the land into trust through applications to the Department of the Interior. On March 29, 2023, the Bureau of Indian Affairs (“BIA”), within the Department of the Interior, granted the Cayuga Nation’s application to accept approximately 114 acres of land in Cayuga County into trust.

Beginning in approximately 2005, the Cayuga Nation was engaged in an internal leadership dispute between two competing factions, the “Halftown Council” and the “Traditional,” “Unity,” or “Jacobs” Council (“Traditional Council”). The leadership

dispute involved long-running disputes over the right to control property and operate businesses on tribal lands within the reservation boundaries. The competing factions sought relief in both New York State and federal courts. Between 2016 and 2019, the Bureau of Indian Affairs and Department of Interior reviewed the dispute, and ultimately “recognized the Halftown Council as the Nation’s government for all purposes.”⁴

In 2024, the Department of Justice deferred to the BIA decision recognizing the Halftown Council as the Cayuga’s government, and the granting of the land trust application. *See Cayuga Nation v. USA, et al.*, 23-CV-03408 (D.D.C.). Nevertheless, the dispute between the Halftown and Traditional factions continues, with the parties continuing to pursue litigation in tribal, state, and federal courts against representatives and allies of the Traditional Council. *See e.g., Cayuga Nation v. Dustin Parker, Nora Weber, et al.*, Docket 22-cv-128 (N.D.N.Y.) (cross-complaint civil RICO action against individuals and businesses (i.e. Pipekeepers dispensary) operating within the Cayuga Nation reservation territory).

The State of New York vis-a-vis the Tribes

Pursuant to Title 25, United States Code, Section 232, New York Penal Law applies to criminal offenses committed by or against Indians on Indian reservations within the State of New York. New York State courts have jurisdiction over such offenses to the same extent that they have jurisdiction over offenses committed elsewhere within the State. Passed in 1948, 25 U.S.C. § 232 conferred criminal jurisdiction over crimes committed by Indians in Indian Country to the State of New York. However, it did not extinguish either federal or tribal jurisdiction over crimes committed in Indian Country by or against Indians. *See United States v. Cook*, 922 F.2d 1026 (2d Cir. 1991).

Over the years, disputes have arisen between New York State and the Haudenosaunee, centering, in part, on the state’s ability to collect excise taxes on cigarettes sold on reservations, the appropriate level and forum for regulation and criminal investigation of licensed and unlicensed marijuana dispensaries on the reservations, and the location of a portion of the New York State Thruway on Seneca Territory.

Meeting Between the USAO and Tribal Government Representatives

Since 2010, members of the USAO, as well as representatives of the Federal Bureau of Investigation, the New York State Police, and various local law enforcement agencies, have met with representatives of the Seneca Nation, the Tonawanda Band of Senecas, the Tuscarora Nation, and the Cayuga Nation of Indians. These meetings provide a forum for leaders of the Nations to articulate their concerns and seek assistance from the USAO and involved law enforcement agencies. The USAO continues to maintain availability and open lines of communication with each of the tribes located within the District. In general, the

⁴ Letter from Tara Sweeney, Assistant Secretary for Indian Affairs, Nov. 14, 2019.

Nations have expressed satisfaction with their respective relationships with the USAO.

Tuscarora Nation and Tonawanda Band of Senecas: The USAO and leadership and legal representation for the Tuscarora Nation and the Tonawanda Band of Senecas have maintained open communication over the years and all parties remain committed to ensuring continued coordination when the need arises.

Seneca Nation: Over the past year, the Seneca Nation has participated in several meetings with the USAO and both federal and local law enforcement. The USAO has engaged productively with the Senecas in increasing communication and partnership towards more effective methods for combatting and addressing drug trafficking and violent crime on Seneca Nation lands. The Seneca Nation has expressed interest in pursuing a law enforcement compact or memorandum of understanding to more specifically address these issues. In the interim, the USAO has worked to increase communication and information sharing among federal and local law enforcement partners to address the law enforcement needs of the Seneca Nation.

Cayuga Nation: On July 12, 2024, the USAO, along with other federal partners, participated in a meeting with the Halftown Council as the representative of the Cayuga Nation. The Nation expressed general satisfaction with its relationship with the USAO. It discussed interest in expanding 911 and first responder access, law enforcement training opportunities, and other resources to support the Cayuga Nation police force. The Nation has raised concerns over the method for regulating and prohibiting unlicensed marijuana dispensaries and private businesses within the Cayuga Nation reservation land across Seneca County (within the Western District of New York) and Cayuga County (within the Northern District of New York) and are pursuing litigation in Federal, State and Tribal courts against offending businesses.

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Tribal Liaison AUSA

The United States Attorney has designated a Tribal Liaison to serve as the point of contact with the Nations located within the Western District of New York. The Tribal Liaison works to maintain communication with tribal representatives, ensure coordination amongst and between relevant parties, and foster the government-to-government relationship with each of the Nations located within the District. The duties of the Tribal Liaison include the following:

- Provide timely and up-to-date advice to the United States Attorney on matters affecting the Nations and tribal issues affecting the United States;
- Serve as the District's official liaison among federal, state, and local officials and the Nations on federal Indian law matters, including implementation of Executive Order 13175/Justice Manual § 9-20.240 ("Tribal Consultation

Policy”) on government-to-government relations with tribes;

- Maintain regular contact with Nation leaders regarding the status of issues presented to the USAO;
- Research and advise the United States Attorney as needed on historical and developing federal Indian law issues;
- Represent the USAO on federal, state, and tribal task forces concerning issues affecting the Nations;
- When requested, provide and coordinate information and training to Nation leaders, local law enforcement, and other appropriate tribal, state, local, and federal personnel on legal issues affecting the Nations;
- Handle any legal matters that have a substantial effect on Indian Country; and
- Review the policies and procedures of tribal agencies, federal criminal investigative agencies, and other federal agencies with a focus on identifying opportunities to positively impact justice services in Indian Country.

Communication

USAO leadership will continue to consult with tribal leaders and tribal communities to identify and work to address issues of public safety, fair administration of justice, and quality of life, and will work to facilitate the free and open flow of information between and among tribal communities and any relevant federal, state, local, or tribal law enforcement officials engaged in addressing public safety concerns.

The USAO will promptly inform tribal law enforcement of a decision to decline to prosecute or terminate the prosecution of an alleged violation of federal law in Indian Country and will coordinate with those officials on the use of evidence relevant to the case. Decisions to charge cases will also be communicated and copies of publicly filed charges will be provided to tribal leadership.

Tribal communities will be kept apprised of Indian Country public safety efforts. USAO press releases regarding publicly filed charges, dispositions, and sentences will, where appropriate, cite participation by tribal leadership. The USAO will ensure tribal leadership is kept informed about public developments in matters impacting their communities and will evaluate the role of tribal participation in public announcements involving tribal communities.

If desired by tribal leaders, the USAO will participate in an annual tribal community forum on public safety issues.

Investigations

A primary goal of this Operational Plan is to enhance law enforcement coordination in Indian Country investigations. The USAO will encourage early coordination between federal, state, and local law enforcement, as appropriate, in investigations involving tribal communities. Similarly, tribal representatives will be encouraged to coordinate with federal, state, and local law enforcement, as appropriate, as early as possible in investigations within their purview or impacting their communities.

The USAO will coordinate with participating law enforcement and the appropriate District Attorney to determine the most appropriate forum for prosecution, taking into consideration relevant local, state, and federal statutes; tribal ordinances and codes; sentencing guidelines and punishment provisions; charging practices; custodial resources; and other factors that bear on the determination of case responsibilities. The goal will be to ensure that offenders are prosecuted in a jurisdiction that can impose penalties that are sufficient to address the nature and severity of the involved criminal conduct.

Assessment of WDNY Indian Country Public Safety Risks

The USAO, in consultation with tribal leadership, has identified the following primary Indian Country public safety risks:

1. Drug trafficking on reservation land and within tribal communities, including the existence of unlawful marijuana dispensaries;
2. Drug and alcohol addiction;
3. Violent crime;
4. Child abuse and child protection concerns, including risk of runaways,
5. Human trafficking;
6. Domestic violence;
7. Mental health issues; and
8. Poverty.

There are no formally recognized tribal law enforcement agencies in the Western District of New York. The Cayuga Nation has worked to stand up and employ a tribal police department staffed by retired local and state law enforcement officials and run by former federal law enforcement official Michael Dubois. The Seneca Nation employs Tribal Marshals, who are currently not considered law enforcement officers. The Seneca Nation

has expressed interest in seeking training and certification for their Marshals to expand their law enforcement capabilities. For child protective services and victim/witness services, all Nations rely on New York State.

Victim Advocacy

All federal agencies involved in the detection, investigation, or prosecution of crime must use their best efforts to ensure that crime victims are notified of and accorded their rights under the law (18 U.S.C. § 3771 and 42 U.S.C. § 10607). Because the USAO, law enforcement agencies, and the Nations may all have victim advocates, it is important to coordinate efforts to serve victims, and to consider federal, state, and tribal requirements.

Training

The USAO will work with tribal leaders and representatives to develop training programs for USAO personnel and federal, state, and local law enforcement to promote a better understanding of the history, culture, and practices of the Seneca, Tonawanda, Tuscarora, and Cayuga people, as well as programs to better educate the tribal community concerning the USAO's federal law enforcement mission and the rationale behind law enforcement operations and practices near the border.

Outreach

Increasing public safety in tribal communities requires effective enforcement and prosecution, but also effective education and prevention. The USAO will work with tribal leaders and tribal representatives to develop education and prevention strategies, including implementation of drug education programs.

Violence against Women and Children

Addressing violence against women and children in Indian Country is a Department of Justice priority and a serious concern. In New York State, such cases generally are handled by District Attorneys' offices in state or local courts. The USAO will work with tribal leaders, tribal representatives, and District Attorneys to ensure that all reports of sexual assault and domestic violence are investigated when there is credible evidence that such crimes have been committed, and that:

- Medical professionals and law enforcement personnel have rape kits readily available; and
- Facilities are identified where adult victims will have access to competent and compassionate medical professionals with the requisite skill to perform forensic medical examinations.

Implementation of Savanna's Act

Research shows that violence against American Indian and Alaska Native women in the United States is a crisis. Cases of missing or murdered indigenous women persist nationwide, and concerns have been raised about the challenges of cross-jurisdictional cooperation and a lack of comprehensive national data on cases. Savanna's Act, which was signed into law in 2020, required all United States Attorneys to develop "regionally appropriate guidelines to respond to cases of missing or murdered Indians." In New York State, pursuant to Title 25, United States Code, Section 232, the state has assumed responsibility for the prosecution of criminal violations of New York State Penal Law in Indian Country. Nevertheless, the USAO has and will continue to work closely with state and local law enforcement officials to implement and enforce Savanna's Act.

To that end, the USAO has created a comprehensive list of inter-jurisdictional contacts to facilitate the prompt notification of missing or murdered indigenous women to various law enforcement and tribal representatives (attached hereto as **Appendix A**). Also attached to this Operational Plan are appendices that offer best law enforcement practices concerning: (1) initial reports of missing or murdered indigenous women and preliminary investigation (**Appendix B**); (2) responding to reports of missing or murdered indigenous women (**Appendix C**); and (3) ongoing investigations (**Appendix D**).

Conclusion

The USAO takes seriously its federal trust responsibility and its obligation to pursue justice in Indian Country. To those ends, the USAO has worked diligently to increase public safety and the quality of life in tribal communities and will continue to do so.

Through implementation of the above updated Operational Plan, including regular consultation with tribal leaders, training, victim witness support, and the collaboration and cooperation of the Nations with federal, state, and local law enforcement communities, the USAO is confident that the twin goals of improved public safety and improved quality of life will be attained.