

MEMORANDUM OF UNDERSTANDING:
INVESTIGATIVE RESPONSIBILITIES FOR INDIAN COUNTRY
AT THE MASHANTUCKET PEQUOT RESERVATION

This Memorandum of Understanding is made by and between the United States Attorney's Office for the District of Connecticut; the Federal Bureau of Investigation ("FBI"); the Bureau of Indian Affairs ("BIA"), Office of Law Enforcement Services; and the Mashantucket Pequot Tribal Nation (the "Tribe").

1. PURPOSE AND GOALS.

This Memorandum of Understanding ("MOU") sets forth written investigative procedural guidelines pursuant to 25 U.S.C. §§ 2801, *et seq.* and 25 U.S.C. §§ 3201 *et seq.*, for criminal matters that arise within the "Indian Country" jurisdiction of the Tribe (hereafter "Mashantucket Pequot Indian Country"). This MOU is not intended to affect or relate in any way to the allocation of criminal jurisdiction between the Tribe, the United States, and the State of Connecticut (the "State"). This MOU also is not intended in any way to limit or proscribe the criminal jurisdictional authority of the Tribe.

These investigative guidelines apply to investigations of all federal criminal violations arising in Mashantucket Pequot Indian Country over which the United States District Court for the District of Connecticut has jurisdiction under statutory authority and case law, as amended and expanded from time to time. These guidelines concern investigative responsibilities and are not the same as the prosecutive guidelines issued by the United States Attorney's Office that outline the types of cases that will generally be accepted for federal prosecution.

These investigative guidelines are set forth only as a matter of internal guidance for the Tribe, the United States Attorney's Office, and the respective agencies. These guidelines are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any party to civil or criminal litigation with the United States. These guidelines are not subject to disclosure upon demand by any attorney involved in litigation with the United States, or any other person unless disclosure is otherwise required by law.

The goals of these guidelines are to protect and provide for the safety of the victims of crime in Indian Country, including in particular child victims, and to identify and prosecute the offenders.

2. JURISDICTIONAL ISSUES.

A. Mashantucket Pequot Indian Country.

The term "Indian Country" is a term defined in 18 U.S.C. § 1151 that describes the geographic area over which a tribe and the United States may assert criminal jurisdiction. It is defined as "all land within the limits of any Indian reservation" including "dependent Indian communities" and Indian allotments. For purposes of this MOU, Mashantucket Pequot Indian Country is the area within the exterior boundaries of the Mashantucket Pequot Reservation and any "dependent Indian communities," within the meaning of 18 U.S.C. § 1151, over which the Tribe may have jurisdiction.

B. Federal Crimes Addressed in this MOU.

This MOU governs federal criminal violations arising within the Indian Country jurisdiction of the Mashantucket Pequot Tribe over which the United States and/or the Tribe has jurisdiction. These crimes are: (1) crimes covered under the Major Crimes Act, 18 U.S.C. §

1153; (2) crimes covered under the General Crimes Act, 18 U.S.C. § 1152; (3) federal crimes of general applicability; and (4) criminal offenses that apply specifically within Indian Country.

1. **Major Crimes**. The United States has jurisdiction for “major crimes” that arise in Indian Country under the Major Crimes Act, 18 U.S.C. § 1153. This statute covers several specific “major crimes” committed by Indians in Indian Country. The crimes listed in § 1153 are:

1.	Murder	18 U.S.C. § 1111
2.	Manslaughter	18 U.S.C. § 1112
3.	Kidnapping	18 U.S.C. § 1201(a)(2)
4.	Maiming	18 U.S.C. § 114
5.	Sexual Abuse (Chapter 109A, Title 18)	18 U.S.C. §§ 2241-45
6.	Incest	18 U.S.C. § 1153(b); Conn. Gen. Stat. Ann. § 53a-191
7.	Assault - intent to commit murder	18 U.S.C. § 113(a)(1)
8.	Assault - dangerous weapon	18 U.S.C. § 113(a)(3)
9.	Assault - resulting in serious bodily injury	18 U.S.C. § 113(a)(6)
10.	Assault - individual under 16	18 U.S.C. § 113(a)(7)
11.	Arson	18 U.S.C. § 81
12.	Burglary	18 U.S.C. § 1153(b); Conn. Gen. Stat. Ann. §§ 53a-100 -103a
13.	Robbery	18 U.S.C. § 2111
14.	Felony Theft	18 U.S.C. § 661

The United States’ jurisdiction over these crimes within Mashantucket Pequot Indian Country may be concurrent with that of the State. Under the Mashantucket Pequot Indian Claims Settlement Act, 25 U.S.C. §§ 1751-1769, “the reservation of the Tribe is declared to be Indian Country subject to State jurisdiction to the maximum extent provided in [25 U.S.C. § 1321 et seq.]” 25 U.S.C. § 1755. See also State v. Spears, 662 A.2d 80, 234 Conn. 78 (1995).

The United States’ jurisdiction also is concurrent with that of the Tribe. At least one court has held that tribes have concurrent major crime jurisdiction with the United States. See Wetsit v. Stafne, 44 F.3d 823 (9th Cir. 1995). The Tribe may punish such crimes by a maximum fine of \$5,000 and/or a maximum of one year of imprisonment. See 25 U.S.C. § 1302.

The United States, the State, and the Tribe all have some jurisdiction over major crimes within the Mashantucket Pequot Indian Country. The parties to this MOU will work with the State to ensure that these major crimes are investigated and prosecuted thoroughly and efficiently according to their respective jurisdictions' authority.

2. General Crimes Act. The United States also has jurisdiction under 18 U.S.C. § 1152, a statute that is referred to as the General Crimes Act, the Federal Enclave Act, or the Indian Country Crimes Act, over non-major crimes committed between Indians and non-Indians (interracial crimes). This statute provides that the "general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, . . . shall extend to the Indian Country." The original purpose of this Act was to apply to all non-Indian crime in Indian Country. However, in the early case of United States v. McBratney, 104 U.S. 621 (1881), the Supreme Court held that state courts had jurisdiction over crimes by non-Indians against non-Indians. Today, it is recognized that the General Crimes Act applies to non-major crimes by non-Indians against Indians; and to non-major crimes by Indians against non-Indians.

In the case of the Mashantucket Pequot Tribe, however, there is some question whether the United States' jurisdiction survived passage of the Mashantucket Pequot Indian Claims Settlement Act, 25 U.S.C. §§ 1751-1760. As noted above, the Settlement Act expressly provides that "the reservation of the Tribe is declared to be Indian Country subject to State jurisdiction to the maximum extent provided in [25 U.S.C. § 1321 et seq.]. 25 U.S.C. § 1755. See also State v. Spears, 662 A.2d 80, 234 Conn. 78 (1995). Section 1321 refers to the assumption of criminal jurisdiction by the State which provides, in relevant part, "The consent of the United States is

hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State . . . the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.” 25 U.S.C. § 1321(a). There is no mention of the United States retaining general crimes jurisdiction under 18 U.S.C. § 1152. Because the extent of the United States’ jurisdiction in this area is unclear, this MOU does not mandate that federal law enforcement authorities participate in the investigation and prosecution of such offenses. However, the Tribe and the State, to the extent they wish, may consult with the FBI and the United States Attorney’s Office with regard to these non-major crimes.

3. Crimes of General Applicability. There are a number of crimes that are subject to the United States’ jurisdiction within Indian Country simply because they are uniquely federal crimes, regardless of whether the perpetrator or victim is Indian and regardless of the situs of the crime. The following is a list of some of these crimes that is by no means exhaustive:

<u>Code Section</u>	<u>Description of Crime</u>
16 U.S.C. § 3372	Lacey Act (control of illegally taken fish and wildlife)
18 U.S.C. § 666	Theft or bribery concerning programs receiving federal funds
18 U.S.C. § 922	Unlawful acts relating to firearms
18 U.S.C. § 1956	Money laundering
18 U.S.C. § 1961	Racketeer Influenced and Corrupt Organizations Act (RICO)
18 U.S.C. § 2261	Interstate domestic violence
21 U.S.C. § 841(a)(1)	Controlled Substances - Distribution and Possession with Intent to Distribute

The prosecution of these and many other crimes of general federal applicability falls within the exclusive jurisdiction of the United States.

4. Specific Indian Country Crimes. A number of other criminal statutes contained in

the United States Code relate specifically to Indian Country. The following is a list of some of these crimes and the section of the United States Code where they are found.

<u>Code Section</u>	<u>Description of Crime</u>
16 U.S.C. § 470ee	Archaeological Resource Protection Act
18 U.S.C. § 1154	Intoxicants dispensed in Indian Country
18 U.S.C. § 1155	Intoxicants dispensed at school site
18 U.S.C. § 1156	Intoxicants dispensed unlawfully
18 U.S.C. § 1158	Counterfeiting Indian Arts and Crafts
18 U.S.C. § 1159	Misrepresentation of Indian produced goods and products
18 U.S.C. § 1160	Property damaged in committing offense
18 U.S.C. § 1163	Embezzlement and theft from Indian Organization
18 U.S.C. § 1164	Destroying boundary and warning signs
18 U.S.C. § 1165	Hunting, trapping or fishing on Indian land
18 U.S.C. § 1166	Gambling in Indian Country
18 U.S.C. § 1167	Theft from gaming establishments
18 U.S.C. § 1168	Theft by officers or employees of gaming establishments
18 U.S.C. § 1169	Reporting of child abuse
18 U.S.C. § 1170	Illegal trafficking in Native American human remains and cultural items.

The United States has exclusive jurisdiction over these crimes.

3. INVESTIGATIVE RESPONSIBILITIES.

A. General Considerations.

This MOU is intended to provide investigative authority guidance for the various law enforcement agencies of the United States and the Tribe to determine which agency or agencies should conduct investigations of alleged criminal violations occurring in Mashantucket Pequot Indian Country. Until the status of the defendant, victim, and land is definite, we cannot know whether the offense will be prosecuted in tribal, state, or federal court.

In addition, these guidelines recognize a distinction between the reactive law enforcement work that must take place immediately upon the discovery that a crime may have occurred and the subsequent investigation leading to the prosecution of a criminal offense. We recognize that

uniformed officers - - tribal police, state police, and municipal police - - often are called on to perform reactive police intervention in matters that are eventually prosecuted in federal court.

We respect the work of the uniformed officers and are confident that they will act with complete professionalism.

We also recognize that Tribal Investigative Officers and Police Officers commissioned as Special Law Enforcement Commission Officers of the Bureau of Indian Affairs act as federal officers under federal law when responding to or investigating federal crimes occurring in Mashantucket Pequot Indian Country.

These guidelines are not intended to restrict necessary reactive police work but are rather designed to address the investigative stage of federal criminal prosecutions. These guidelines should not be interpreted to limit the actions of any law enforcement officer, uniformed or otherwise, in the performance of his or her duty to enforce the criminal laws of the jurisdiction he or she is sworn to serve and protect.

The parties to this MOU recognize that the Bureau of Alcohol, Tobacco and Firearms ("ATF"), the United States Drug Enforcement Administration ("DEA"), and other federal law enforcement agencies will be notified by the FBI or the United States Attorney's Office concerning certain of the offenses set forth below. In some instances, ATF, DEA, or another federal law enforcement agency may be assigned lead or concurrent investigative responsibility in accordance with FBI procedures and/or applicable Memoranda of Understanding between the FBI and such other agencies.

B. Major Crimes.

Whenever any of the parties to this MOU receives information which indicates that one

of the offenses defined as a major crime under 18 U.S.C. § 1153 may have been committed in Mashantucket Pequot Indian Country, or may be in progress or being planned in Mashantucket Pequot Indian Country, the party receiving such information shall notify all other parties to this MOU of such information as soon as practicable. To effectuate this requirement, the party agencies will establish appropriate points of contact and contact telephone numbers to ensure accessibility.

Investigative responsibility, as between the federal agencies and the Tribe, for these offenses will be allocated as follows:

Crime	Lead Agency	Supporting Agencies
Murder	FBI	Tribe, BIA
Manslaughter	FBI	Tribe, BIA
Kidnapping	FBI	Tribe, BIA
Maiming	FBI	Tribe, BIA
Sexual Abuse	Tribe, BIA	FBI
Incest	Tribe, BIA	FBI
Assault - intent to commit murder	FBI	Tribe, BIA
Assault - dangerous weapon	FBI	Tribe, BIA
Assault - resulting in serious bodily injury	FBI	Tribe, BIA

Assault - individual under 16	FBI	Tribe, BIA
Arson	Tribe, BIA	FBI
Burglary	Tribe, BIA	FBI
Robbery	Tribe, BIA	FBI
Felony Theft	Tribe, BIA	FBI

The lead agency will direct the investigation, submit the case report, retain all evidence, maintain evidentiary chain-of-custody, unless otherwise agreed to by the respective agencies, and assist the United States Attorney's Office at any stage of court proceedings. All agencies that are parties to this MOU will collectively be responsible for providing quality service to the victims of federal crimes in Mashantucket Pequot Indian Country. This allocation of responsibilities is not intended to detract from the State's responsibilities for investigating such offenses.

C. Crimes of General Applicability.

Whenever any of the parties to this MOU receives information which indicates that one of the offenses of general applicability over which the United States has exclusive jurisdiction may have been committed in Mashantucket Pequot Indian Country, or may be in progress or being planned in Mashantucket Pequot Indian Country, the party receiving such information shall notify all other parties to this MOU of such information as soon as practicable. As stated above, the party agencies will establish appropriate points of contact and contact telephone numbers to ensure accessibility.

Investigative responsibility for the following, non-exclusive list of crimes of general

applicability will be allocated as follows:

Crime	Lead Agency	Supporting Agencies
Lacey Act, 16 U.S.C. § 3372	Tribe, BIA	FBI
Theft or bribery concerning programs receiving federal funds, 18 U.S.C. § 666	FBI	Tribe, BIA
Unlawful acts relating to firearms, 18 U.S.C. § 922	FBI	Tribe, BIA
Money laundering, 18 U.S.C. § 1956	FBI	Tribe, BIA
Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961	FBI	Tribe, BIA
Interstate domestic violence, 18 U.S.C. § 2261	FBI	Tribe, BIA
Controlled substances - distribution and Possession with intent to distribute, 21 U.S.C. § 841(a)(1)	FBI	Tribe, BIA

For all other cases, the determination of which agency will be the lead agency shall be made as soon as possible after any of the parties to this MOU receives information indicating that a crime may have been committed, or may be in progress or being planned. If the investigation in question is reactive, the agency first on the scene shall secure the crime scene immediately.

Criteria to consider in making the decision as to which agency shall be the lead agency should include (in no particular order of priority):

- Which agency received the first notification of the crime;
- Which agency responded first to the crime scene;
- Physical proximity of investigators and their offices to the crime scene;

- The availability of investigators to initiate immediate investigation of the crime;
- The availability of investigative resources to sufficiently and thoroughly investigate the crime;
- Relative agency and individual investigator familiarity with the locality, the persons involved in the crime, the language spoken by victims and witnesses, and any special cultural aspects that might affect the investigation;
- The availability of special equipment or technical expertise;
- The potential for personal involvement of agency personnel in matters relating to the offense, such as familial relationships with victims, witnesses, or suspects; and
- The potential effects of relationships between the investigating agency and tribal or federal government entities, such as funding or chain-of-command relationships.

If the involved agencies are not able to reach agreement, then the FBI will act as the lead agency in any matter concerning a crime of general federal applicability.

The lead agency will direct the investigation, submit the case report, retain all evidence, maintain evidentiary chain-of-custody, unless otherwise agreed to by the respective agencies, and assist the United States Attorney's Office at any stage of court proceedings. All agencies that are parties to this MOU will collectively be responsible for providing quality service to the victims of federal crimes in Mashantucket Pequot Indian Country.

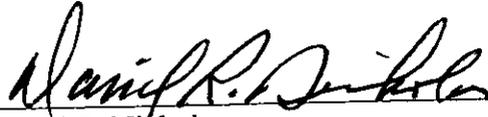
D. Specific Indian Country Crimes.

Investigative responsibility for the following specific Indian Country crimes will be allocated as follows:

Crime	Lead Agency	Supporting Agencies
Archaeological Resource Protection Act	Tribe, BIA	FBI
Intoxicants dispensed at school site	Tribe, BIA	FBI
Intoxicants dispensed unlawfully	Tribe, BIA	FBI
Counterfeiting Indian Arts and Crafts	Tribe, BIA	FBI
Misrepresentation of Indian produced goods and products	Tribe, BIA	FBI
Property damaged in committing offense	Tribe, BIA	FBI
Embezzlement and theft from Indian Organization	FBI	Tribe, BIA
Destroying boundary and warning signs	Tribe, BIA	FBI
Hunting, trapping, or fishing on Indian land	Tribe, BIA	FBI
Gambling in Indian Country	Tribe, BIA	FBI
Theft from gaming establishments	Tribe, BIA	FBI
Theft by officers or employees of gaming establishments	Tribe, BIA	FBI
Reporting of child abuse	Tribe, BIA	FBI
Illegal trafficking in Native American human remains and cultural items	Tribe, BIA	FBI

The lead agency will direct the investigation, submit the case report, retain all evidence, maintain evidentiary chain-of-custody, unless otherwise agreed to by the respective agencies, and assist the United States Attorney's Office at any stage of court proceedings. All agencies that are parties to this MOU will collectively be responsible for providing quality service to the victims of federal crimes in Mashantucket Pequot Indian Country. The allocation of responsibilities is not intended to detract from the State's responsibilities for investigating such offenses.

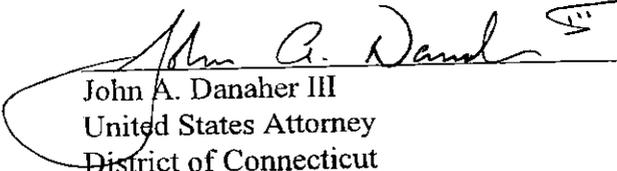
The agencies which are parties to this agreement will implement internal written procedures necessary to fulfill their obligations under this agreement. The agreement shall remain in effect until terminated by one or more of the agencies by providing written notice to the other agencies.



 David R. Nicholas
 District Commander, Eastern Region
 Bureau of Indian Affairs

10/31/02

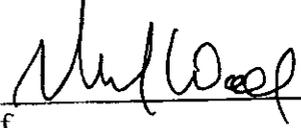
 Date



 John A. Danaher III
 United States Attorney
 District of Connecticut

11/6/02

 Date



 Michael J. Wolf
 Special Agent in Charge
 Federal Bureau of Investigation

12/5/02

 Date



 Kenneth M. Reels
 Chairman
 Mashantucket Pequot Tribal Nation

10-30-02

 Date



 Daniel S. Collins
 Chief
 Mashantucket Pequot Tribal Police Department

10/29/02

 Date