

An American Tragedy:
The Story of Johnny Lynn Old Chief

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According to a writer summarizing a recent report by the Bureau of Justice “Native Americans are incarcerated at a rate 38% higher than the national average and Native American youths are 30% more likely than whites to be referred to juvenile court than have charges dropped. That same report also notes that Native Americans are more likely to be killed by police than any other racial group, according to the Center on Juvenile and Criminal Justice.¹ This same report also notes that “Native Americans fall victim to violent crime at more than double the rate of all other US citizens, according to BJS reports. Eighty-eight percent of violent crime committed against Native American women is carried out by non-Native perpetrators.”²

As most cases in the criminal justice system these individuals who make up these statistics are reduced, by and large, to nothing more than a statistical flashpoint and then forgotten. This article will attempt to place a name and a face with one of those forgotten Native Americans who were caught up in the “reservation to prison pipeline” for most of his juvenile and adult lifetime. Life on a reservation is a stark and vivid contrast to the life most non-native Americans lead. Monotony, alcohol, unemployment, are constants of reservation life and the lives of those Native Americans who life on reservations. The reservation lifestyle is vastly different from the rest of the non-member, i.e. non-Native

¹ Flanagin, Jake, *Reservation to Prison Pipeline: Native Americans Are the Unseen Victims of a Broken US Justice System*, <http://qz.com/392342/native-americans-are-the-unseen-victims-of-a-broken-us-justice-system/>

² Id.

Americans and the way Native Americans are treated by the justice system is different as well. Native Americans are considered to be citizens of the United States and members of their tribal nations, however, when it comes to the federal criminal justice system, they have become a special category and treated much differently than other groups who fall under the control of the federal justice system and the federal prison system.

According to the National Congress of American Indians “[N]ative peoples and governments have inherent rights and a political relationship with the U.S. government that does not derive from race or ethnicity. Tribal members are citizens of three sovereigns: their tribe, the United States, and the state in which they reside. They are also individuals in an international context with the rights afforded to any other individual.”³ However, this sovereignty does not extend into the criminal justice system, or so it would seem.

This article will attempt to focus on one individual who has spent his entire life under the control of the federal government and who epitomizes the tragedy of the duality of the reservation system and the criminal justice system. The federal Census Bureau recognizes over 567 different tribes in the United States. The United States Constitution recognizes the Indian Tribes as sovereign nations,⁴ however, on June 2, 1924, that Congress granted United States citizenship to Native Americans born in the United States. But even after the Indian Citizenship Act⁵ passed, some Native Americans weren’t allowed to vote because the right to vote was governed by state law.

³ See, “*Introduction to the Indian Nations in the United States*,” Introduction 2016.

⁴ United States Constitution Article I, Section 8 “Congress shall have the power. . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;”

⁵ 43 U.S. Stats. At Large, Ch. 233, p. 253 (1924)

The subject of this article came into general public view in January, 1997, when the United States Supreme Court issued an opinion dealing with judicial abuse of discretion regarding the admission or rejection of relevant evidence. That would not be so noteworthy except for the fact that it was the first decision by the Court which even attempted to define and place limitations on a trial judge's use of his or her discretion in evidentiary matters. As noted in the opinion, the principal issue in the case was the scope of a trial judge's discretion under Federal Rule of Evidence 403. FRE 403 which authorizes a judge to exclude even relevant evidence if its "probative value is substantially outweighed by the danger of unfair prejudice. . ."⁶ The central focus of that issue, in the Court's opinion, dealt with the term "unfair prejudice." This case has become the case most often cited when lawyers request that a judicial decision based on discretion be reviewed by appellate courts. Ironically, the facts of the case are hardly touched upon in the Court's language addressing what is fair and what is unfair with regard to a particular defendant.

Justice Souter, writing for the majority of the Court, noted that whenever a particular item of relevant evidence raises a danger of unfair prejudice, the trial judge, in deciding whether to exclude that evidence pursuant to the authority of Rule 403, would have to "make these calculations with an appreciation of the offering party's need for evidentiary richness and narrative integrity in presenting a case. . ."⁷ In the Old Chief case, this issue boils down to whether or not the prosecution needed the underlying facts of one of Johnny Lynn Old Chief's prior convictions in order to make its case. This article will not attempt to fathom the depths of the legal issues in that question, but rather, it will attempt to present the history of Johnny Lynn Old Chief's life and whether or not that "evidentiary richness and narrative integrity" should or should not have been a part of his prosecution. The Supreme Court, in the Old Chief case, decided that the facts of Johnny Lynn Old Chief's prior

⁶ Johnny Lynn Old Chief v. United States, 519 U.S. 172, 179, 136 L.Ed.2d 574 (1997)

⁷ Id. at page 183.

criminal conviction was not necessary because of a reasonable alternative offered by Old Chief's attorneys.

Historically, a judge's discretion has been defined as:

[n]ot an arbitrary power, but one which must be exercised wisely and impartially. In its practical application [...] judicial discretion is substantially synonymous with judicial power. . . . The term 'discretion' has been defined to be an impartial discretion, guided and controlled in its exercise by fixed legal principles; a legal discretion to be exercised in conformity with the spirit of the law, and in a manner to sub serve and not to defeat the ends of substantial justice.⁸

In legal opinions, there is perhaps no term more blithely used and so little understood than the phrase "abuse of discretion." It would shock the average non-lawyer to realize fully the enormous power that trial judges have in exercising their individual discretion over the lives and affairs of individuals who appear before them. The only oversight of the extent to which a trial judge may exercise his or her discretion in matters such as the admissibility of evidence, the scope of questioning of witnesses, the length of time allocated to trial preparation, and whether a defendant is sentenced to a term of incarceration within the guidelines provided by a legislative body, is an appellate court's determination of whether the trial judge, in any particular matter, may have unfairly "abused" his or her discretion. Only in the rarest instances will an appellate court find that a trial judge has abused (or misused) his or her discretion. As noted, it was not until the late 1990's that the United States Supreme Court even attempted to render a meaningful decision on what constitutes an "abuse of discretion."⁹

⁸ Griffin v. State, 12 Ga. App. 615 (1913).

⁹ Old Chief v. United States, 519 U.S. 172 (1997).

The terms “discretion” and “abuse of discretion” have been discussed since the very earliest of our judicial times. Lord Camden, one of our most distinguished professional ancestors, once noted that, “The most odious and dangerous of all laws would be those depending on the discretion of judges [and] that the discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature can be liable.”¹⁰

Another legal scholar in the early formation of our legal system and the rules of evidence, Sir Edward Coke, is reported to have written that “Discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colorable glasses and pretenses, and not to do according to their (the judges’) wits and private affections.”¹¹ The allocation of discretion to trial judges assumes that judges will act in accordance with due process fairness as required by constitutional mandates (at both the state and federal levels of the judiciary). Both the Fifth Amendment and the Fourteenth Amendment of the United States Constitution demand that individuals be afforded due process.

At the intersection of due process and discretion is the concept of fairness. Courts across our nation have uniformly held that “the requirement of due process is a requirement of *fundamental fairness*. [However] there is no fixed standard that applies in all cases. Instead, due process implies a flexible standard that varies with the nature of the interests affected and the circumstances of the deprivation.”¹² This article will attempt to focus on the

¹⁰ State v. Cummings, 36 Mo. 263 (1954).

¹¹ Kaufman, Henry P., “Judicial Discretion,” 17 Am. Law Review, 567-73 (1883). (Kaufman noted that judicial discretion arose from the exercise of the kingly prerogative when the judicial was really a part of the executive power.

¹² Furey v. Temple University, 884 F. Supp. 223, United States District Court for the E.D. of Pennsylvania (2012)

“fairness” issues associated with the abuse of discretion standard and that focus will use the case of Johnny Lynn Old Chief as a vehicle for that analysis. Was he treated fairly by the courts or is he just another example of the horrible way our country has treated Native Americans over the centuries?

Many courts across the nation have held that “the Due Process Clause of the Fifth Amendment and the rules of evidence are not synonymous.” (cites omitted). “Rather, ‘the Due Process Clause is the baseline standard with which a statute must comply to remain fundamentally fair, and the rules of evidence are a set of heightened procedural rules that go beyond the minimum standards required by the Fifth Amendment.’”¹³ A reasonable explanation of the full definition of “due process” would be “fairness.” Whether a decision is fair, in far too many instances, depends on how a judge exercises his or her discretion.

Whether a decision is “fair” or not is vested in the trial judge and that judge’s decision (about what is fair or unfair) is part of the extremely broad discretion given to him or her. Thus, a trial judge’s determination that a particular action will not be overruled unless it is clear that he or she has abused that discretion in arriving at that discretionary decision.¹⁴ Just what does the term “fairness” mean in the legal setting? The final arbiter of that and other legal questions is always going to be the appellate courts and ultimately the United States Supreme Court. However, as noted previously, the Court has only taken up that question, in substance, once in its history and that is the case involving Johnny Lynn Old Chief. As noted in the introduction, this article will attempt to present a picture of the person behind the case styled “Old Chief v. United States of America” and what little we know about the “richness and narrative integrity” of his life.

¹³ United States v. Taylor, 302 F. Supp. 901 United States District Court N.D. Indiana (2003)

¹⁴ Mister v. State, 286 Ga. 303 (2009)

The road to the United States Supreme Court began in northern Montana with a raucous Native American member of the Blackfeet Nation named Johnny Lynn Old Chief. On October 23, 1994 Johnny Lynn Old Chief was arrested for the second time (as an adult) by the officers of Bureau of Indian Affairs and charged with the crime of assault with a dangerous weapon and of the offense of being a felon in possession of a firearm, using or carrying a firearm during the commission of a violent crime.¹⁵ This case and the issue of what is and what is not an abuse of discretion in evidentiary matters eventually led to the United States Supreme Court's decision under discussion in this article. The crime which started this case to the United States Supreme Court occurred one month and six days after Johnny Lynn Old Chief had been released from federal custody on a 1989 conviction for assault resulting serious bodily injury.¹⁶

The charges arose after a wild and drunken all-day Saturday party in the town of Browning, Montana, the home of the Blackfeet Nation Tribal Council.¹⁷ Johnny Lynn Old Chief, after a one punch fist fight at a local bar, set in motion the legal case that would put the question of what is "fair" and what is an "abuse of discretion" before the United States Supreme Court.

Johnny Lynn Old Chief's almost life-long battle with the United States judicial system began as so many other encounters between the United States government and Native Americans had begun, on the vast plains of Montana near the Great Rocky Mountains. Johnny Lynn Old Chief is a member of one of the largest tribes of Native American

¹⁵ The information contained in this memorandum were taken from several sources, including, trial court transcripts and exhibits from Johnny Lynn Old Chief's various appeals and from the website devoted to the Museum of the Plains Indian Artist Association.

¹⁶ Brief of Appellee, United States of America, v. Johnny Lynn Old Chief, C.A. 95-30283, In the United States Court of Appeals for the Ninth Circuit (1996)

¹⁷ The Blackfeet Indian Reservation is home to the 17,321-member Blackfeet Nation, one of the 10 largest tribes in the United States. Established by treaty in 1855, the reservation is located in northwest Montana. See, <http://blackfeetnation.com/>

Indians, the Black Foot Indian Tribe. As will be noted later in this article in more detail, Johnny Lynn Old Chief and his many relatives lived in and around Browning, Montana where, as an adult, he earned a living working on the fire lines for the Federal Bureau of Land Management¹⁸ and occasionally earning money as an amateur boxer. It does not require too much conjecture to imagine a Johnny Lynn Old Chief two hundred years ago, as a North American Plains Indian, riding across the northern Montana plains in search of the bison that are now raised on ranches to feed easterners.

Johnny Lynn Old Chief, rightly or wrongly, is a sad stereotype of the condition of so many Native Americans who have been forced to live for over a century on “Indian Reservations.” Johnny Lynn Old Chief and many of his family members grew up in Browning, Montana (population 1,065). One of his cousins works for the local welfare agency and another works for at the local hospital in the town of Browning. The town of Browning is a 0.3 square miles on the Blackfeet Indian Reservation. The City of Browning, Montana was incorporated in 1919 and is located about 4,375 feet above the sweeping plains of northern Montana in the foothills of the Rocky Mountains. The Town is 13 miles east of what the Blackfeet call the “Backbone of the World”, the Rocky Mountains.

The small town of Browning is divided by Highway 2 and that highway is the only connection between Browning and the rest of Montana, or for that matter the rest of the world. Driving into Browning from the southeast, the town appears to be nothing more than a spread of old houses and abandoned stores. Just before entering the town limits, there is a casino and grocery store and very little of anything else. As the highway continues into the town, there is a middle school and several abandoned businesses, services stations,

¹⁸ According to the job description advertised by the Department of Interiors Bureau of Land Management, the Montana and Dakotas, a fire fighter is required to be “highly motivated with a strong work ethic strongly committed. Firefighting is a full time job that requires an enormous amount of time and fire fighters must be physically fit when reporting to work and not afraid to sleep in the dirt and be unable to shower daily. See, <http://www.blm.gov/mt/st/en/prog/fireaviation/bdc/jobs.html>

and other once locally owned stores. When the highway turns northwest, you can begin to see poorly constructed houses or mobile homes stretching out north and south of Highway 2. In less than a quarter mile, the town limits end and you will find another casino, a Holiday Inn Express, and the Junction Café. There is nothing more than a tribal hospital just north of the highway, a Blackfeet Indian Trading Post, and more homes in disrepair.

Few members of the tribe leave Browning except to spend extended periods of time in federal prisons like Johnny Lynn Old Chief. When asked if he had lived in Browning his whole life, one member of the tribe responded “except for the time I lived somewhere else.”¹⁹ This is the world in which Johnny Lynn Old Chief lived except for the time he lived as a resident of the U.S. government’s federal prison system.

Johnny Lynn Old Chief’s life on the Blackfeet Nation Reservation is, in many ways, typical of the lives of so many Native Americans. The 1972 Montana Constitution (continuing from previous state constitutions in Montana) provides that the “The Enabling Clause” of the United States Constitution²⁰ explicitly acknowledged Congress’s absolute control and jurisdiction over all Indian land, including state authority to tax the land, and forever disclaiming title to lands owned or held by or reserved for an Indian or for Indian tribes. Article X, section 1(2), of the 1972 Montana Constitution recognizes “the distinct and unique cultural heritage of the American Indians” and commits the state in its educational goals to “the preservation of their cultural integrity”. Montana is alone among the 50 states in having made an explicit constitutional commitment to its Indian citizens.²¹ However,

¹⁹ Conversation with Ernie Heavy Runner at the Junction Café on July 29, 2016.

²⁰ The section of a constitution or statute that provides government officials with the power to put the constitution or statute into force and effect. Seven of the amendments to the U.S. Constitution contain clauses that give Congress the power to enforce their provisions by appropriate legislation.

²¹ “*Tribal Nations of Montana: A Handbook for Legislators*,” Published by the Montana Legislative Council. Rep. Bob Gervais, Chairman of the Committee on Indian Affairs, at page 4 (1995)

that commitment is, in many ways, a hollow shell and of no real benefit to Native Americans like Johnny Lynn Old Chief.

For centuries the northern plains of the State of Montana were the homes of the Northern Plains Tribal people including the Blackfeet, Crow, Northern Cheyenne, Sioux, Assiniboine, Arapaho, Shoshone, Nez Perce, Flathead, Chippewa, and Cree. These Native Americans roamed freely on lands which they called their own, living as a Plains people, far away from the coming of the Europeans and Manifest Destiny.²² However, after the European descendants began to move onto these lands, life became a round of seemingly endless conflicts between these tribes with the United States government.

In 1877, the legendary Chief Joseph of the Nez Perce Indian Nation fought his tribe's last battle with the United States Army just east of the present day site of the Black Foot Indian Reservation in northern Montana. After eluding the pursuing army troops from Utah, Chief Joseph, in an attempt to move his tribe into Canada and out of reach of the army troops pursuing him, camped with his people near the Bear Paw Mountains, just south of the Canadian border. Chief Joseph thought that is site would provide refuge for his people from the continuing efforts to place them in subjugation and condemn these Native Americans to live on designated reservations.

Unfortunately for Chief Joseph and his people, he was not prepared for the tenacious pursuit of the U.S. Army and the United States government's intent to remove or conquer all of the plains tribes living in Montana and in the Dakotas. After a prolonged battle (which actually ended in a draw) Chief Joseph gave up and provided history with a remarkable coda to his hope of living freely on the plains of the Northwest. In surrendering himself and his people to the army, Chief Joseph told his warriors:

²² Eric Foner and John A. Garraty, Editors, *"The Reader's Companion to American History,"* Houghton Mifflin Harcourt Publishing Company (1991).

I am tired of fighting. Our chiefs are killed.... The old men are all killed.... It is cold and we have no blankets. The little children are freezing to death. My people, some of them, have run away to the hills and have no blankets, no food; no one knows where they are, perhaps freezing to death. I want time to look for my children and see how many of them I can find. Maybe I shall find them among the dead. Hear me, my chiefs; I am tired; my heart is sick and sad. From where the sun now stands, I will fight no more forever.²³

Chief Joseph surrendered at a site just south of the present intersection of U.S. Highway 2 and U.S. Highway 87. That is the same Highway 2 that runs through the middle of Browning, Montana, about a hundred miles to the west. U.S. Highway 2 runs through the middle of Browning, Montana, Johnny Lynn Old Chief's hometown. While the story of Johnny Lynn Old Chief might be a hundred years removed from the lament of Chief Joseph that all the "chiefs are killed," Johnny Lynn Old Chief's life of defeat is one more example of the never-ending results of Chief Joseph's defeat.

Browning, Montana is the largest community on the Blackfeet Indian Reservation. The 1.5-million acre Blackfeet Indian Reservation includes most of Glacier County and the reservation itself is home to about 8,600 members of the Blackfeet Nation, the largest tribe in Montana. Although, Browning is the hub of the Blackfeet Reservation and the home of several tribal offices and a Blackfeet Indian Trading Post not everyone who lives in Browning are Native Americans. Non-Native Americans are referred to as "non-members"²⁴ and not permitted to participate in tribal council elections.²⁵ Major uses of the

²³<http://www2.gsu.edu/~eslmlm/chiefjoseph.html>

²⁴ See, *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). United States Federal Courts have consistently held that Native American Nations lack inherent sovereign authority over non-Indian (non-member) criminal offenders.

²⁵ Conversation with Ernie Heavy Runner, July 29, 2016.

land around Browning include ranching and farming, with the principle crops being wheat, barley and hay. Upon leaving Browning on U.S. Highway 2 there are herds of domesticated bison being raised for the trendy restaurants in the east.

Further south, near Big Sky, Montana is the home of the Flying D Ranch, Ted Turner's 113,613-acre ranch used for, among other things to raise bison for his "Montana Grills" across the United States.²⁶ Only one of his "grills" is in Montana and that is in the city of Bozeman in the Baxter Hotel.²⁷ Leaving Browning and heading west on Highway 2, there is the last encampment of the largest contingent of members of the Blackfoot Confederacy, often referred to as "The Lords of the Great Plains." Johnny Lynn Old Chief is a direct descendent of the great people who once called this part of the North America their homeland.

Johnny Lynn Old Chief was born in 1963 and before he reached his 14th birthday in 1977 he had been adjudicated in federal juvenile court as a delinquent based upon a charge involving two counts of burglary and one count of theft.²⁸ In May of 1978, after reaching his 14th birthday, Johnny Lynn Old Chief was again adjudicated delinquent for assault with a knife and failure to comply with the alcohol and curfew conditions of his previous probation on the burglary charges. As a result of those charges and a finding that he had

²⁶ <http://www.tedturner.com/turner-ranches/turner-ranch-map/flying-d-ranch-montana/>

²⁷ See, <https://www.tedsmontanagrill.com/tmg061.html>

²⁸ Model Indian Juvenile Code at § 2454 provides that:

The Secretary of the Interior, either directly or by contract, shall provide for the development of a Model Indian Juvenile Code which shall be consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C.A. § 5601 et seq.] and which shall include provisions relating to the disposition of cases involving Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for alcohol or drug related offenses. The development of such model code¹ shall be accomplished in cooperation with Indian organizations having an expertise or knowledge in the field of law enforcement and judicial procedure and in consultation with Indian tribes. Upon completion of the Model Code, the Secretary shall make copies available to each Indian tribe.

violated the terms of his probation he was committed to the custody of the Yellowstone Boys Ranch in Billings, Montana, for “observation and study.” The mission of the Yellowstone Boys and Girls Rand is to support, promote, advance and enable charitable, religious, and educational organizations and programs whose services primarily benefit youth and adults with special needs. The residential facility was founded in 1957 and is designed to provide residential and community based care and treatment for emotionally troubled youth.²⁹

In October of 1978 Johnny Lynn Old Chief again violated the terms and conditions of his probation and in January 1979 he was sent to the Chemawa Indian School in Salem, Oregon. According to that school’s website, the “Chemawa Indian School is currently over 125 years old and is the oldest, continuously operated boarding school for Native American students in the United States. While its mission has changed some over the years its highest goal has always been to educate Native American students for the world outside.”³⁰ Two months after arriving there he was expelled for fighting and drinking. In October of 1979, he was sent to the Kicking Horse Job Corps Center in Ronan, Montana, which is located on the Flathead Indian Reservation 150 miles to the west of Browning. Kicking Horse Job Corps Center is part of the national Job Corps and is operated by the Confederated Salish and Kootenai Tribes of the Flathead Nation. The Kicking Horse Job Corps Center’s mission, according to its website, is to “teach eligible young people the skills they need to become employable and independent and placing them in meaningful jobs or further education.”³¹ Five months after being arriving at the job corps program, Old Chief was expelled because he repeatedly violated the rules and regulations of the Job

²⁹ <http://www.yellowstonefoundation.org/>

³⁰ <http://www.chemawa.bie.edu/history.html>

³¹ <http://kickinghorse.jobcorps.gov/about.aspx>

Corps Center. The violations which led to his expulsion were possession and use of drugs; possession and the manufacture of weapons; and possession of stolen property.³²

After returning to Browning, and while still on probation, he was charged with the burglary of a grocery store in downtown Browning. Again, he was committed to custody of a juvenile institution, this time in the Pine Hills School in Miles City, Montana and again for a period of observation and study. Pine Hills is Montana's only long-term state operated facility for adjudicated male youthful offenders (ages 10-17) committed by the District Youth Courts.³³ Miles City is located approximately 450 miles east of Browning. Miles City was founded originally as a fort after Custer's defeat at the Battle of Little Bighorn.³⁴

Johnny Lynn Old Chief's stay in Miles City ended like most of his other juvenile incarcerations –badly! He was expelled from that program in the middle of 1980 and in October of 1980, he was placed in a foster home in Alaska under the supervision of the federal District Court of Alaska. His tenure in that foster home lasted less than a year and he was returned to Browning after being involved in a fight with another student at the school he was required to attend. (It was also reported that he had attempted to have marijuana mailed to him from Browning). In November 1981, after returning to Browning, he allegedly shot a man in the face with a sawed-off shotgun. Although the shooting was found to be in self-defense, he was once again found to be in violation of his probation because, even in self-defense, he was found to be in possession of an illegal weapon (a portend of adult charges later on). He was again returned to Montana's juvenile reform school in Miles City the Pine Hills School. He remained there until he was released and returned to Browning in May, 1982.³⁵

³² <http://mileschamber.com/contact-us/>

³³ See, <https://cor.mt.gov/Youth/pinehills>

³⁴ See, <http://mileschamber.com/contact-us/>

³⁵ See, Brief of Petitioner, 1996 WL 279413 (U.S.) on Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit. Johnny Lynn Old Chief was represented by Daniel Donovan, Assistant Federal

In June of 1982, Johnny Lynn Old Chief was again charged with a probation violation because he had become intoxicated in a local Browning bar and he assaulted his girlfriend, and then fought with another customer. On July 16, 1982, he got into a fight while drunk in the same bar and shot someone in the foot. When the Browning police attempted to serve an arrest warrant on him, he attempted to elude them and got into a high-speed car chase with officers from the Bureau of Indian Affairs³⁶ and was finally arrested in Browning at his parents' home.³⁷ As a result of this incident, he was sent to the Flandreau Indian School on the Flandreau Indian Reservation in Flandreau, South Dakota. Flandreau is over a thousand miles east of Browning in the most eastern part of South Dakota. An article in the Omaha-World Tribune described the school as the last of its kind. The school belongs to the federally recognized Flandreau Santee Sioux Tribe of South Dakota. They are Santee Dakota people, part of the Sioux tribe of Native Americans. The reservation is located in Flandreau Township in central Moody County in eastern South Dakota, near the city of Flandreau.

The U.S. government, by treaty obligation, must provide education and vocational opportunities to members of the Indian Nations. "The federal Bureau of Indian Education, an arm of the U.S. Department of the Interior, funds and oversees 183 day and boarding schools in 23 states, plus two postsecondary schools. Most of the schools are now run by tribes. The Bureau directly manages four off-reservation boarding high schools, including Flandreau. The boarding schools still serve a purpose. They are

Defender, Federal Defenders for the District of Montana. (quoting Section 4A1.3, U.S.S.G. a Presentence Report prepared by the Probation Department of the Justice.

³⁶ The Bureau of Justice Indian Affairs- Office of Justice Services is responsible for the protection of lives, resources, and property which lies at the heart of the BIA's law enforcement effort. This federal agency is responsible for the overall management of the Bureau of Indian Affairs' law enforcement program. There are more than 567 registered Native American Tribes within the boundaries of the United States of America. The Bureau of Indian Affairs provides police, investigative, corrections, technical assistance, and court services. According to the website maintained to recruit new officers to its ranks, its "main goal is to uphold the constitutional sovereignty of the federally recognized Tribes and preserve peace within Indian country." See, <http://www.bia.gov/WhoWeAre/BIA/OJS/ojs-careers/index.htm>

³⁷ Id.

designed for students from troubled homes and schools, an alternative to schools at remote reservations.” Based upon Johnny Lynn Old Chief’s juvenile record it would seem that he was being removed as far away from Browning as possible.³⁸

Unfortunately, in October 1982, at the age of 19, Johnny Lynn Old Chief was expelled from the “last of its kind” school for seriously assaulting another student. After he was expelled from the school, he once again returned to the Blackfeet Nation and Browning, Montana. However, this time he returned to Browning not as a juvenile but as an adult. If he committed further crimes, the criminal justice system would now begin to punish Johnny Lynn Old Chief as an adult and not a child.

Those “future crimes” began less than two years after his return to Browning and the only life Johnny Lynn Old Chief had known. Law enforcement matters involving adults on Indian reservations in Montana are primarily the responsibility of the tribal police and the Bureau of Indian Affairs. Tribal courts can impose only minor sentences; however, the Bureau of Indian Affairs and the police officers working for that bureau have jurisdiction to arrest for felonies and misdemeanors. The Courts of the United States have jurisdiction over serious crimes committed on Indian reservations, even those crimes by one “member” against another.³⁹ Congress has provided that a state may assume criminal jurisdiction within Indian Territory with tribal consent, but Montana has never done so.⁴⁰

In 1984, two years after returning from Flandreau, Johnny Lynn Old Chief, now as an adult, was convicted of armed robbery and sentenced to four years in federal prison. According to the arrest records in that case, he had attempted to rob a bar with a pistol.

³⁸ Grace, Erin, “*Grace: Among the Last of Its Kind, Flandreau Indian School Catches Second Wind*,” Omaha-World Tribune, September 21, 2015.

³⁹ 18 U.S.C. section 1153.

⁴⁰ See 25 U.S.C. § 1321 (1994).

According to witnesses, he was quite drunk when he drew his pistol to rob the bar, the bartender drew his pistol and shot him twice thus preventing the armed robbery and wounded Johnny Lynn Old Chief. After that conviction, Johnny Lynn Old Chief spent just over four years in federal prison, his first, but not last, prison sentence as an adult.⁴¹

Johnny Lynn Old Chief was released from federal prison in July 1988 and he once again returned to Browning. Less than six months later, in December, Johnny Lynn Old Chief was charged with of "knowingly and unlawfully assault[ing] Rory Dean Fenner on the 18th of December 1988. In that case, the assault resulted in serious bodily injury to the victim. After a jury trial in early 1989, Johnny Lynn Old Chief was convicted and sentenced to a term of five years in a federal prison. After his release in September of 1993 for the shooting of Rory Dean Fenner, he, once again, returned to the Blackfeet Indian Nation and Browning. For most of his childhood, from age 14 to age 19, Johnny Lynn Old Chief had either been on juvenile probation or living in various types of juvenile reform schools. After his release from federal prison in 1993 for the assault charge, Johnny Lynn Old Chief had spent the first nine years of his adult life in federal prison. In 1993 he turned thirty years of age.

At the age of thirty in October 1993, one month and six days after his release from prison Johnny Lynn Old Chief was again arrested and charged with the crime which took him and the issue of abuse of discretion to the United States Supreme Court. This time he was once again charged with the crime of assault with a deadly weapon. This trip to the justice system began on Saturday night, October 23, 1993, Johnny Lynn Old Chief was involved in a "fracas"⁴² involving gunfire. Three separate groups of people were involved and the

⁴¹ Details concerning much of Johnny Lynn Old Chief's crimes taken from proposed sentencing memorandum which were filed in his cases.

⁴² A fracas is defined as a noisy disturbance or quarrel, Compact Oxford English Dictionary, Third Edition, page 397.

incidents took place at two different locations, Ick's Bar and the old Exxon gasoline station on U.S. Highway 2.⁴³ Four people, Stacey Everybody Talks About, Stephanie Spotted Eagle, Jess Wesley Crawford and Johnny Lynn Old Chief had been riding around Browning during the day in a pickup truck. The pickup was owned by Ms. Everybody Talks About's boyfriend, Marvin England. Mr. England would encounter the group a little later when the alleged gunshot incident. Ms. Everybody Talks About did the driving. Various purchases of alcohol were made during the day and, in fact, everyone was highly intoxicated. Ms. Everybody Talks About stated that she had consumed too many beers to remember or count. After driving around for some time, Mr. Crawford (a paraplegic) got tired and asked to be dropped off at his home.

Mr. Crawford, a local used car dealer, was carrying a bank bag of money and a 9 mm pistol, both hidden under the seat of the pickup. When Mr. Crawford was dropped off, the pistol was accidentally left under the seat. Although the gun belonged to Mr. Crawford, Ms. Everybody Talks About had placed the pistol under the driver's seat of the pickup. There was no evidence that Johnny Lynn Old Chief was aware of the gun. Sometime after dropping Mr. Crawford off at his home, the three others got back together in the same pickup and Ms. Everybody Talks About continued to do the driving. At some point in the afternoon, they parked the pickup truck in front of Ick's Bar. Ick's Bar is a rather decrepit building with a liquor store to one side and a bar room to the other side. The parking lot is gravel and full of potholes. The parking lot is sometimes used for overnight parking for tractor trailers traversing U.S. High 2.

⁴³ The author of this article visited Ick's Place when investigating the background for this article and seeking witnesses to interview. The bar, located on U.S. Highway 2, is in the middle Browning in a somewhat rundown building with is also the home of a liquor store. The wall of the front of Ick's Place announces that the bar is "air conditioned", and is also adorned with two large cartoon-like characters depicting drunken Native Americans wearing cowboy hats. The white stucco building is covered with a red-roofed corrugated tin cover and about one quarter mile from the offices of the Blackfeet Nation Tribal Council. The bar is located less than 200 yards from a building housing the "Blackfeet Trading Post.

Sometime later another vehicle, a Chevrolet Suburban occupied by Anthony Calf Looking and Luis Reevis, pulled into the parking lot at Ick's Bar and parked near the pickup truck occupied by Ms. Everybody Talks About and Johnny Lynn Old Chief. Anthony Calf Looking and Louis Reevis had also been drinking all day. Mr. Calf Looking testified that they had "drank a couple of cases of beer that day" and as a result, he couldn't remember "too much." Mr. Reevis said that he had been "kind of drunk all weekend." Mr. Reevis admitted that because he was drinking beer and whiskey, he did not have a clear memory of the events that occurred in front of Ick's Bar. As one of Johnny Lynn Old Chief's attorneys wrote in his appeal to the United States Supreme Court, "drinking to the point of memory loss is not uncommon on the Black Foot Indian Reservation in Browning, Montana."⁴⁴

Anthony Calf Looking and Luis Reevis saw the pickup truck driven by Ms. Everybody Talks About and they also saw Johnny Lynn Old Chief sitting beside her in the truck. All of these individuals had known each other for years. Johnny Lynn Old Chief had quite a reputation in Browning as an amateur boxer; that reputation made him the target of challenges from men like Anthony Calf Looking.⁴⁵

Anthony Calf Looking apparently wanted to pick a fight with Johnny Lynn Old Chief. The fight occurred because Anthony Calf Looking yelled over at the occupants of the pickup truck "Who wants to fight." Then directly looking at Johnny Lynn he said, "You think you are tough?" Upon hearing this, Johnny Lynn got out of the pickup truck and walked over to the car where Anthony Calf Looking was exiting the passenger side of the Suburban,

⁴⁴ Brief of Petitioner on Writ of Certiorari to the United States Supreme Court, Old Chief versus the United States of America, October 1995.

⁴⁵ Conversation with Ernie Heavy Runner, July 29, 2016 while being interviewed at the "Junction Care" on the outskirts of Browning, Montana. Mr. Heavy Runner, a lecturer on Blackfeet culture knows Johnny Lynn Old chief and indicated that he also was working, at times, on the fire lines for the local utility companies whenever fires threatened the lines.

he turned around and found himself face-to-face with face Johnny Lynn Old Chief. As Anthony Calf Looking was stepping out of his vehicle, Johnny Lynn Old chief knocked him to the ground with one punch. After recovering from the punch, Anthony Calf Looking got up and took off running. He ran away from Ick's Bar and ran across Highway 2 toward the Exxon Service Station. After he had crossed the highway, he heard a gunshot and immediately fell to the ground. There was no indication that the gunshot had been fired in his direction.

Anthony Calf Looking later testified that he had never seen Johnny Lynn with a gun. Mr. Reevis also testified that he never saw Johnny Lynn with a gun and he only heard what he thought was a gunshot. At Johnny Lynn Old Chief's trial, Ms. Spotted Eagle admitted that she was the person who grabbed the gun from under the seat and shot it.

After the brief fight, the three, Stacey Everybody Talks About, Stephanie Spotted Eagle, and Johnny Lynn Old Chief got back into the pickup truck and drove across Highway Number 2 to the old Exxon gasoline station. After Anthony Calf Looking ran from the Exxon Station, the occupants of the pickup truck and Johnny Lynn drove the short distance over to the station and parked the pickup truck near another vehicle parked there and occupied by Marvin England and Kirn Radasa. At the old Exxon station, Mr. England and Mr. Radasa testified that they had heard a gunshot, but neither had seen Johnny Lynn Old Chief with a gun.

The next day, Ms. Everybody Talks About told Mr. Crawford that Johnny Lynn Old Chief had gotten into a fight and that she had fired Mr. Crawford's pistol. The pickup truck in which Ms. Everybody Talks About and Johnny Lynn Old Chief were riding belonged to Marvin England, who, was reported to be the boyfriend of Ms. Everybody Talks About. Later during the investigation, Mr. England stated that he had been drinking with Mr.

Radasa “all day and all night.” Mr. Radasa said that the two of them had consumed a case and a half of beer by the time they got to the old Exxon station.

Even though Ms. Everybody Talks About would later testify that Johnny Lynn Old Chief fired one shot in the air before they drove over to the Exxon Station, but she later admitted that she had not seen Johnny Lynn fire the gun there. Johnny Lynn Old Chief did not make any statements nor did he testify at his trial. However, when he was arrested the police found four bullets and one shell casing in his pocket. A latent fingerprint was discovered on the magazine of the pistol.

This fingerprint did not match the known fingerprints of Johnny Lynn Old Chief nor the known fingerprints of Ms. Spotted Eagle or Mr. Crawford. Despite attempts by Johnny Lynn Old Chief’s attorneys to secure an expert to test the fingerprints that were found (none of which belonged to Johnny Lynn Old Chief), the trial judge refused their repeated requests. No comparison was ever made of this latent fingerprint to the known fingerprints of Ms. Everybody Talks About or anyone else involved in these incidents.

In addition to the charges against Old Chief for his alleged firing of the gun at Anthony Calf Looking, the government also charged Johnny Lynn Old Chief with the crime of being someone “who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year” to “possess in or affecting commerce, any firearm”⁴⁶ The federal prosecutors announced that they intended to use the underlying facts of Johnny Lynn Old Chief’s first conviction (the case involving Rory Dean Fenner) to prove that he was a “felon in possession of a firearm.” Not only did they intend to use a copy of the conviction itself, but told the trial judge that they intended to call witnesses

⁴⁶ This is a status offense which provides, in part, that “It shall be unlawful for any person— who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year. . . [to] possess. . . any firearm or ammunition. . .”

and present evidence concerning the Fenner assault. They did not offer this evidence as a similar transaction, but rather to simply prove that Johnny Lynn Old Chief had in fact been convicted of using a firearm in that case.

When this case went to trial⁴⁷, Old Chief's attorney offered to stipulate in writing that Old Chief had indeed been convicted of an offense which conferred upon him the status of a person who is not permitted to possess a firearm. However, as part of the stipulation, his attorney requested that the government not discuss or put into evidence any of the underlying facts of Johnny Lynn Old Chief's first crime, the assault on Rory Fenner. Old Chief's attorney argued that the jury did not need to know about the underlying facts of that previous conviction. The argument was simple. If the government was offering the prior conviction involving Rory Fenner to establish that Johnny Lynn Old Chief was a convicted felon in possession of a firearm the stipulation that he was in fact a convicted felon was all that needed to be proven. The prosecution only needed, with that stipulation, to prove that he had fired the gun at Anthony Calf Looking. Unlike offering prior bad conduct to show relevant facts which needed to be proven in the current trial nothing more was needed to prove the elements of the offense of being a felon in possession of a firearm.⁴⁸

On behalf of Old Chief, the attorney argued that it was unfair for the jurors to hear the details of his assault on Rory Fenner. The attorney argued that, in all fairness, the judge

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⁴⁸ See Federal Rule of Evidence Rule 404(b), FRE 404(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:

(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial — or during trial if the court, for good cause, excuses lack of pretrial notice.

should use his discretion and allow only the fact that he was a convicted felon and thus subject to the additional penalties provided for being a second-time offender as set forth in the applicable statute. The Federal Rules of Evidence clearly gave the trial judge the discretion to limit the underlying evidence of that prior conviction. The federal rules of evidence provide that “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”⁴⁹ Comments to this rule clearly express the opinion that the rule was crafted in such a way as to “...[c]all for balancing the probative value of and need for the evidence against the harm likely to result from its admission.”⁵⁰ The government, unsurprisingly, refused to accept this stipulation and the federal trial judge, the Honorable Paul Hatfield,⁵¹ stated that “[i]f he [the prosecutor] doesn’t want to stipulate, he doesn’t have to.”⁵²

The underlying facts of Johnny Lynn Old Chief’s previous assault case on Rory Fenner were submitted to the jurors and he was quickly found guilty of the assault with a deadly weapon on Anthony Calf Looking and of being a felon in possession of a firearm. Johnny Lynn Old Chief was sentenced for the assault and for the additional crime of being a convicted felon in possession of a firearm.⁵³ Judge Hatfield gave Johnny Lynn Old Chief

⁴⁹ Federal Rule of Evidence Rule 403, (Pub. L. 93–595, §1, Jan. 2, 1975, 88 Stat. 1932; Apr. 26, 2011, eff. Dec. 1, 2011.)

⁵⁰ Notes of Advisory Committee on Proposed Rules, Slough, *Relevancy Unraveled*, 5 Kan. L. Rev. 1, 12–15 (1956); Trautman, *Logical or Legal Relevancy—A Conflict in Theory*, 5 Van. L. Rev. 385, 392 (1952); McCormick §152, pp. 319–321.

⁵¹ Judge Hatfield served as United States District Court Judge in United States District Court of Montana from 1979 until 1996 (the last six years of his term was served as the Chief Judge of the District Court).

⁵² *Supra*, (Brief of Petitioner on Writ of Certiorari).

⁵³ *United States v. Old Chief*, 56 F.3d 75 (C.A.9 (Montana 1995)). Judge Hatfield was quoted in the transcript of the sentencing hearing as stating ““Mr. Old Chief and I have got [sic] to be friends over the years.” (“Because this was his third felony assault conviction in federal court, Old Chief was designated a “career offender.” Given this designation and the levels of his current offenses, the maximum sentence Old Chief could have received under the Guidelines was 51-63 months. The district court, however, departed upward to a sentence of 120 months, imposing an additional 57-month sentence on the unlawful possession count.

an additional sixty months on the felon in possession of a firearm's charge. Old Chief appealed his conviction and argued that the trial judge had abused his discretion by rejecting his offer of stipulation.

Until 1997, the United States Supreme Court had never directly addressed the issue of whether or not a trial judge abuses his or her discretion when a defendant offers to stipulate to certain facts in order to avoid unfairly inflaming and arousing the passions of the jurors. In a five to four opinion, Justice Souter, writing for the majority, agreed that the trial judge had abused his discretion. The Court agreed that the offer to stipulate that Johnny Lynn Old Chief was indeed someone who had previously been convicted was a reasonable alternative to allowing all of the underlying facts of the case to be presented to the jurors. In other words, the judge abused his discretion in deferring to the wishes of the prosecutor and the inclusion of the underlying facts of his previous conviction was unfairly prejudicial.

The United States Supreme Court noted in its opinion that the principal issue in the case was the scope of a trial judge's discretion under the federal rules of evidence.⁵⁴ This discretion can authorize the exclusion of even relevant evidence when that evidence's "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." The Court noted that Johnny Lynn Old Chief's appeals focused on the "unfair prejudice" portions of applicable rule of federal evidence.

The term of 60 months on the assault charge, was to be served concurrently. Thus, in effect, what should have been a five-year sentence, became a ten-year sentence. Moreover, the Guidelines impose a mandatory five-year enhancement on the "use" conviction, which the judge ordered to be served consecutively."

⁵⁴ All references in this article to the United Supreme Court's decision and rulings are taken from Justice Souter's opinion for the majority reported at *Old Chief v. United States*, 519 U.S. 172 (1997).

The Court noted that the term “unfair prejudice” goes to the capacity of some even relevant evidence to “lure the factfinder in declaring guilt on a ground different from proof specific to the offense charged.” The Court further held that “[I]f an alternative to the evidence is found to have substantially the same or greater probative value but a lower danger of unfair prejudice, sound judicial discretion would discount the value of the item first offered and exclude it if its discounted probative value were substantially outweighed by unfairly prejudicial risk. It noted that what counts as the rule relating to “probative value” of an item of evidence is distinct from its relevancy. “Relevance,” may be calculated by comparing evidentiary alternatives.” (Emphasis added)

When the Supreme Court remanded Old Chief’s case to the U.S. District Court by the Supreme Court, the trial judge “threw the book” so-to-speak at him. Apparently, the judge did not take kindly to having been reversed by the Supreme Court. He resentenced sentenced Johnny Lynn Old Chief to 180 months, departing from the sentencing guidelines which called for only a 57-month sentence. Needless to say, Johnny Lynn appealed this sentence and argued that the trial judge had “unreasonably departed” from the sentencing guidelines. This time the Ninth Circuit Court of Appeals agreed with Old Chief and they reversed the district court judge and sent the case back for the entry of a sentence in accordance with the sentencing guidelines. Johnny Lynn Old Chief also asked the Ninth Circuit to assign a different district court judge to his case, but the Ninth Circuit refused.⁵⁵

Johnny Lynn Old Chief served his sentence of nearly five years and, unfortunately, once again returned to Browning, Montana and picked up with his old lifestyle. Once more, he was charged with an aggravated assault in a case which arose from another night of drinking and fighting. On December 29, 2007, Johnny Lynn (who, by this time, was also

⁵⁵ U.S. v. Old Chief, 85 F.3d 638 (1996).

known by his friends and acquaintances as “Johnny Rotten”) was hosting a party at his residence on “Low Rent Street” in Browning. The party had begun a few days earlier and included, among others a friend named Maynard, Lundy Red Head (“Red Head”), and Jay Old Chief, along with an abundance of alcohol. As witnesses described the events, on the night in question, several fights broke among the various party guests and became more intense as more liquor was consumed.

Red Head, who described himself as “pretty drunk” at the time, eventually left Johnny Lynn's residence. An argument had already started between Little Garrett Renville and some of the other party guests in front of Carl La Plant's home, a few houses down from Johnny Lynn's house. As Red Head was leaving Johnny Lynn Old Chief's house the house, he saw La Plant, accompanied by another individual named Little Garrett Renville, coming out of La Plant's home with “two-by-fours,” bricks, and rocks. Red Head ran down the street to join the fight.

Johnny Lynn and Maynard apparently heard the “fracas” and joined Red Head in the fight which was just getting started. Maynard was carrying a knife, and Jay Old Chief picked up a metal fence post and told Red Head to stay behind him because of Red Head's intoxication. As Maynard continued to advance toward them with the knife in his hand, Jay Old Chief hit Maynard in the head. Red Head described Maynard as falling to the ground momentarily, but quickly getting up. Maynard was then joined by Johnny Lynn Old Chief and he began to pursue Red Head.

To avoid being caught by Maynard and Johnny Lynn, Red Head ran behind a house located at 636 Low Rent Street. Red Head, momentarily believing that he was safe he relaxed is guard. That was a mistake on his part because Johnny Lynn and Maynard were able to catch up to him. Red Head later said that Johnny Lynn pulled his hands behind

his back while Red Head struggled. When Red Head tried to raise his arms to protect himself and get away from the grasp of Johnny Lynn, Maynard stabbed him on his right bicep with his knife. Red Head then broke one arm free from the grasp of Johnny Lynn and swung at Maynard. Red Head jerked his body back, but was stabbed again by Maynard, this time on his left arm and shoulder. Red Head fell to his knees. He began screaming for help, and was then stabbed by Maynard for the third time, this time in the neck.

A short time later, Officer Edwin Salois answered a call about a disturbance in the neighborhood and arrived at the scene. Salois eventually persuaded Maynard to drop the knife. Meanwhile, Johnny Lynn was still on top of Red Head, holding him down. After Maynard released Red Head, Officer Salois told Maynard to stay on the ground. Several other officers arrived and took Johnny Lynn and Maynard into custody.

On May 6, 2008, Maynard and Johnny Lynn's consolidated jury trial began before Judge Haddon in Great Falls, Montana. After deliberating less than a day, the jury returned a verdict of guilty to the single count presented and on August 25, 2008 Johnny Lynn Old Chief was sentenced by Judge Haddon to a term of 120 months in federal prison.⁵⁶ Judge Haddon is not one of the most respected judges in his district according to many comments posted on a web blog titled "The Robing Room."⁵⁷

⁵⁶ U.S. v. Old Chief, 571 F.3d 898 (2009)

⁵⁷ See, <http://www.therobingroom.com/Judge.aspx?ID=217>

"Comments: Judge Haddon is a loose cannon, who, although he enjoys abusing counsel in general, he goes off the deep end in heaping abuse on the lawyers on the side he doesn't like. He is a bully from the bench, and if you are a lawyer who will not stand up to that bullying and hold your ground if you think you are correct, he will roll right over you. He generally likes short and sweet orders and he usually if not always has his written decision when he takes the bench. He could care less about the law if it conflicts with whatever it is that he wants to do. I don't mind judges who disagree with my arguments when discretion is available, but I have a serious problem with following his own agenda irrespective of the law. Advice to a lawyer appearing before him: Stand your ground, don't be bullied, and don't let him cut you off or push you into positions you don't agree with."

"Comments:

Imperious, mean-spirited, Holier-than-thou, abusive and degrading towards counsel and parties alike. One of the best descriptions that I have heard of the man came from a civil lawyer who described him as someone

Following Johnny Lynn Old Chief's last trial, Judge Haddon was removed from another federal case because he abused his discretion in sentencing a defendant serve a prison sentence for in excess of what the sentencing guidelines provided. The case involved charges of simple theft case. Upon appeal of the case, the Ninth Circuit Court of Appeals reversed Judge Haddon (unlike their previous action in Johnny Lynn Old Chief's case) and took the almost unprecedented action of removing him from the case upon remand. The Ninth Circuit Court ruled that the 16 months sentence imposed by Judge Haddon was excessive and sent the case back to Judge Haddon with instructions to resentence that defendant to a sentence more in line with the mitigating factors presented by the defendant. Judge Haddon, upon receiving the case back into his court on remand, resented the defendant to 15 months, reducing the original sentence by one month. The defendant again appealed and again the Ninth Circuit reversed Judge Haddon and noted that the 15 months was still too harsh and again sent the case back to the trial court for resentencing. However, Judge Haddon would not be the judge resentencing the defendant. In very strong language, the Court of Appeals ordered that Judge Haddon be removed from the case and that another judge be appointed to the case for the purposes of resentencing.⁵⁸

Johnny Lynn Old Chief served most of the 120 month sentence handed down by the Court in his last trial. He served most of that sentence in a high security United States Penitentiary located in the most northeastern county in Pennsylvania, twenty miles east of Scranton, and 134 miles north of Philadelphia. He was released from federal custody on

who made up "his mind forty years ago." Superficially and briefly charming, his true character shows through very quickly. I've seen him abuse jurors, witnesses, law enforcement, and counsel with alacrity. By disposition and temperament, he was a horrible choice for the bench. Making matters worse, he is not very smart. He denigrates those who appear before him as a way of compensating for his lack of intellect."

⁵⁸ Iwanski, Len, "*Appeals Court Removes Judge Haddon for Not Following Instructions*," Missoulian, April 3, 2009.

November 18, 2016 after being housed in a Residential Reentry Management Center operated by the Bureau of Prisons. Residential Reentry Management Centers serve the Bureau of Prisons by providing federal offenders with community-based services that will assist with the prisoners' reentry into society.⁵⁹

He, once again, returned to Browning, Montana and the Blackfeet Indian Reservation and began serving a term of supervised release under the supervision of the United States Probation Office.⁶⁰ Less than one month after returning to Browning, Montana, Johnny Lynn Old Chief was once again arrested for violating the terms of his supervised probation. United States District Judge Brian Morris. After hearing a complete history of Johnny Lynn Old Chief's use of alcohol and illegal drugs allowed him to continue his supervised release with the understanding that he would attend chemical dependency treatment and bring himself into compliance with his conditions of supervised release. However, on December 27, 2017, the Probation Office filed a petition to have Johnny Lynn Old Chief rearrested. He was accused of violating the conditions of his supervised release by failing to appear for drug and alcohol testing; and failing to attend outpatient chemical dependency treatment.

The facts, as presented at the hearing, were that when a probation officer went to the home of Johnny Lynn Old Chief's brother, Maynard Old Chief, Johnny Lynn preventing the probation officer from conducting a home inspection by threatening the officer's safety. He also refused to provide a breath sample. When the probation officer showed Johnny Lynn Old Chief the terms of his supervised release conditions Johnny Lynn Old Chief uttered a profanity and again threatened the officer. He stepped outside the house and continued to resist arrest on the probation violation. Upon his arrest he was found to be carrying a concealed weapon, a knife. However, before the probation officer could take

⁵⁹ See, www.bop.gov.

⁶⁰ See, *United States District Court, D. Montana, Great Falls Division*. August 28, 2017 Slip Copy 2017 WL 4020422 (2017) J. JURIS. 91

Johnny Lynn Old Chief into physical custody, his brother, Maynard Old Chief, pushed the probation officer back into the house and closed the door effectively trapping him in the home. Maynard was also subsequently charged with attacking the officer. Back-up officers arrived on the scene and both Johnny Lynn and Maynard were subdued and placed in custody.⁶¹

On January 30, 2017, Old Chief's probation was revoked and he was sentenced to six months in custody, followed by 30 months supervised release. He is currently being housed in the high security United States Penitentiary at Florence, Colorado. Johnny Lynn Old Chief will, hopefully, once again be released from federal custody on July 21, 2018 at the age of fifty five.⁶²

⁶¹ Id.

⁶² <https://www.bop.gov/inmateloc/>