

# Malcolm Wiener Center for Social Policy

*Hualapai Judicial Reform:  
Developing Alternative Dispute Resolution*

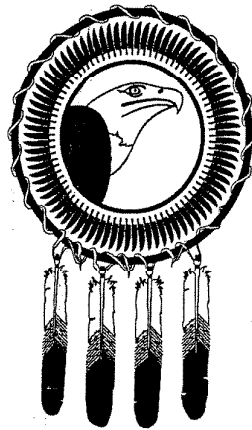
A Report to the Hualapai Tribe

by

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## Introduction

With understanding, comes strength. It is with this thought that we approach the subject of the Hualapai Judicial System, and how it might be changed or improved to better meet the needs of the Hualapai people. The beginning of judicial reform should, therefore, be a process for understanding the court itself. The purpose of this project is simply to create a picture of where the tribal court *has been* in the past, where it *is* today, and where it *might go* in the future. This project is in no way meant to be a final recommendation, but merely a tool for understanding the tribal court. Please look at it as an early stepping stone in an ongoing process of reform that already includes tribal, B.I.A., and independent reviews of the court system, as well as grant applications to continue reforms.

This report is organized into three parts, according to Chief Judge Joe Flies-Away own approach for “Hualapai Judiciary Regeneration.” These parts are *History*, *Clarity*, and *Vision*. In *History*, the report describes some of the history of Hualapai Court and tribal courts in general. History also looks at how Hualapai handled conflict before the creation of the tribal court. The second section, *Clarity*, addresses the perceptions and procedures of the present-day court, in order to determine what can be changed and what is most important to the tribe. Clarity also includes input from people within the court so that everyone can work towards a common goal. Finally, the *Vision* section draws on both the history of the past and the reality of the present in order to see what the future can bring for Hualapai. This report suggests that Hualapai could benefit greatly by adopting a form of Alternative Dispute Resolution (ADR). Above all, this

report advises that any option the tribe considers should involve families and community, be culturally appropriate for Hualapai, and be guided and shaped by the Hualapai Nation through an ADR Council or Committee. Surely, the Hualapai judicial system can only grow stronger from the constructive attention, energy, and understanding of the people it serves.

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# HISTORY

The purpose of the *History* section is to see how the events of the past may have “pre-disposed” Hualapai for or against the current judicial system. *History* presents the question of whether the tribal court is, historically, an appropriate fit for Hualapai culture.

## Tribal Courts

The history of tribal courts can be traced through the history of federal policy towards Native Americans. In 1934, the IRA provided ways for tribes to restore native institutions. Unfortunately, many tribes were forced to adopt a standard IRA constitution that affected traditional structures of leadership. At this time, tribal courts were created and put into operation. Many courts were required to follow BIA legal codes that were poorly-suited to the cultures of their tribes and favored state law over tribal common law.

In the 1960's, the Indian Civil Rights Act created new opportunities for tribes to shape events in Indian Country. Relatively unrestricted, tribal courts began a “feeling-out” process. Over the next few decades, a handful would become successful and many would continue to have difficulties. Tribal courts remained foreign and confusing. People were unaccustomed to settling disputes in the rigid English legal system. Lawyers were scarce, training was rarely available. Tribes have answered by producing competent, dedicated lawyers and judges that thoroughly understand the law and strongly desire to improve tribal judiciaries. These people frequently use tribal histories for guidance. Their goal is not to eliminate the tribal court, but to strengthen it through tradition.

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## Hualapai Court

The history of Hualapai Court closely follows the pattern outlined in the preceding section. Rather than describe the past sixty years in depth, we have included a timeline of important events (pg. 5). The list below is composed from observations over fifty years by past and present judges on the issue of the English legal system and its historical relevance for Hualapai. Their comments focus on the difficulties surrounding the court's history.

### Features of Hualapai Court's History

▷ *Unfamiliarity with court system*

- Many people had no knowledge of their basic legal rights.
- Legal education and trained court personnel hard to come by.
- Judges seen as all-powerful, and in court only to put people in jail.
- Need for outside judges.

▷ *Confusion with legal code*

- Code misunderstood and not followed for years.

▷ *Diminishing respect for Hualapai Court*

- People lost their original respect as they learned to beat the system

▷ *Lack of tradition*

- Historically, the court did not match up well with Hualapai culture.

## Timeline History of Hualapai Court

- 1800's:** Breakdown of band system through intermarriage
- 1934:** Tribe recognized by U.S. Government;  
Court follows BIA practices; no coherent structure
- 1950's:** Outside Judge from Kingman (part time)
- 1957:** Judge Nelson begins as Judge
- 1966:** Tribal court established under BIA 638 contract
- 1970:** Judge Haskie hired (Associate Judge)
- 1972:** Prosecutor and Public Defendant hired (under Council)
- 1980's:** Appeals court established
- 1986:** Judge Marshall begins as Chief Judge
- 1991:** Constitution revised and adopted
- 1992:** Backlog of over 600 cases
- 1996:** Joseph Flies-Away appointed Chief Judge

### 3) Connecting with Extended Family Members

Extended families played an integral role in establishing order and respect. The strong family ties provided individuals with a sense of belonging and purpose. Extended families were essential for raising children and teaching them values.

*"Grandparents, uncles, and aunts helped discipline the children. They all took care of them."*

*—Councilman*

### 4) Collective Responsibility

The meetings, discussions, and extended families that were used to solve problems gave tribal members a sense of collective responsibility. Because people were connected to a group, they realized how their actions could hurt others and, in turn, themselves. Every person in the tribe was responsible for everyone else.

*"It takes a whole community to raise a child."*

*—Judge*

## Commentary

Analyzing how "traditional" ways of handling conflict exist in today's court is key to improving the judicial system. The Hualapai legacy of group involvement and discussion, strong extended families, and collective responsibility is a valuable cultural resource that should be exploited. Any present or future system of conflict resolution should draw upon Hualapai beliefs and values. The tribal court, which was created *for* Hualapai rather than *by* Hualapai, also has a history suggesting that a more traditional or more Hualapai judicial system will substantially improve conflict resolution at. To get a better idea of how the past has affected the present, we turn now from History to Clarity.

## Tradition and Conflict

Many people incorrectly think of “tradition” as dead history, beginning and ending long ago. But history lives on because it influences our view of the present. When looking at the tribal court, therefore, we must also look back into the past to see how the tribe traditionally handled problems. By doing so, we get a better sense of how the court works and is perceived. Though many traditional laws might be impractical now, it is important to understand that they can affect Hualapai ideas about dispute resolution today. Interviews with tribal members raised four main themes related to tradition and conflict. Some of their comments are included:

### 1) Communication among Many Parties

Traditionally, problems were handled in large meetings that involved people from many different families and bands. Widespread group participation was crucial in locating and correcting a problem.

*“Everyone would gather, and if you had something to say, you said it.”*

*—Judge*

### 2) Conversation and Mediation

Emphasis was placed on discussing problems within the group. Solutions were reached by listening and “talking things through.” Medicine men and representatives from bands or families would often act as spokesmen to facilitate this process. Mediators were sometimes necessary to arrive at working agreements.

*“Long ago, they had it where you could talk in front of everybody out here.”*

*—Elder*

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## CLARITY

The *Clarity* section deals with the issues of Hualapai Court today. *Clarity* is linked to *History* because we can see the results of the court's historical influence in the way it is perceived by the Hualapai today. Since the subject of this report is strengthening the judicial process, *Clarity* focuses on the weaknesses people see in the current system.

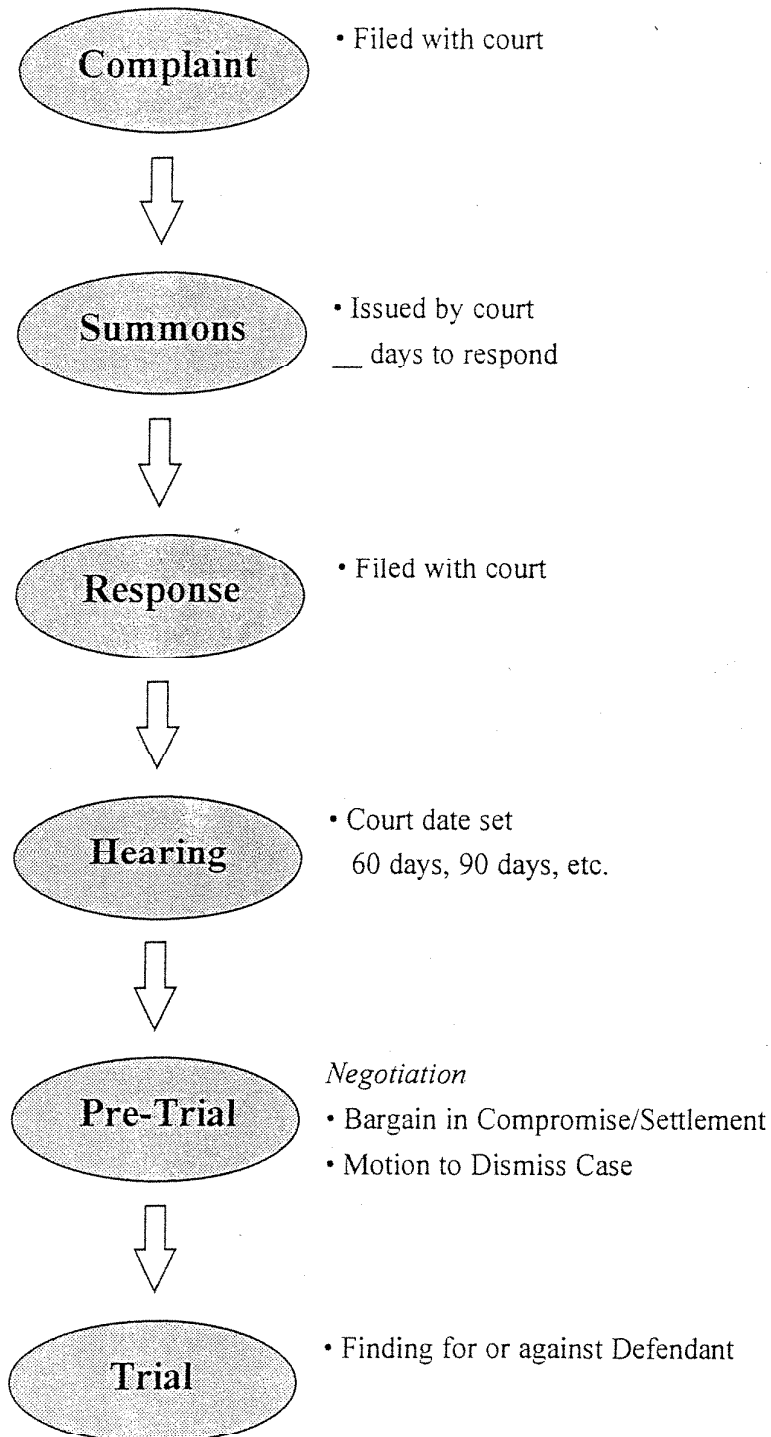
### Procedures

A problem that causes significant confusion in the court is the absence of clear, definitive procedures. Judges have no written materials to refer to when deciding how to proceed with civil, criminal, and juvenile cases. They learn by trial-and-error and improvise often. The resulting lack of consistency makes it difficult to know "how things should be done." Even more importantly, when people want to file a complaint or are involved in criminal matters, they have no guidelines to show them the next stage in the course of legal action. Like new judges, they learn only by going through the process.

The following two pages are an attempt to begin writing down and formalizing civil and criminal procedures for Hualapai Court. Hopefully, members of the court staff and the Law and Order Committee can collaborate by adding their thoughts and procedural experience to the charts given on the next two pages. The goal should be the codification of comprehensive court procedures and a working document (perhaps an information pamphlet) that judges and litigants alike can use to educate themselves about the different steps in the legal process.

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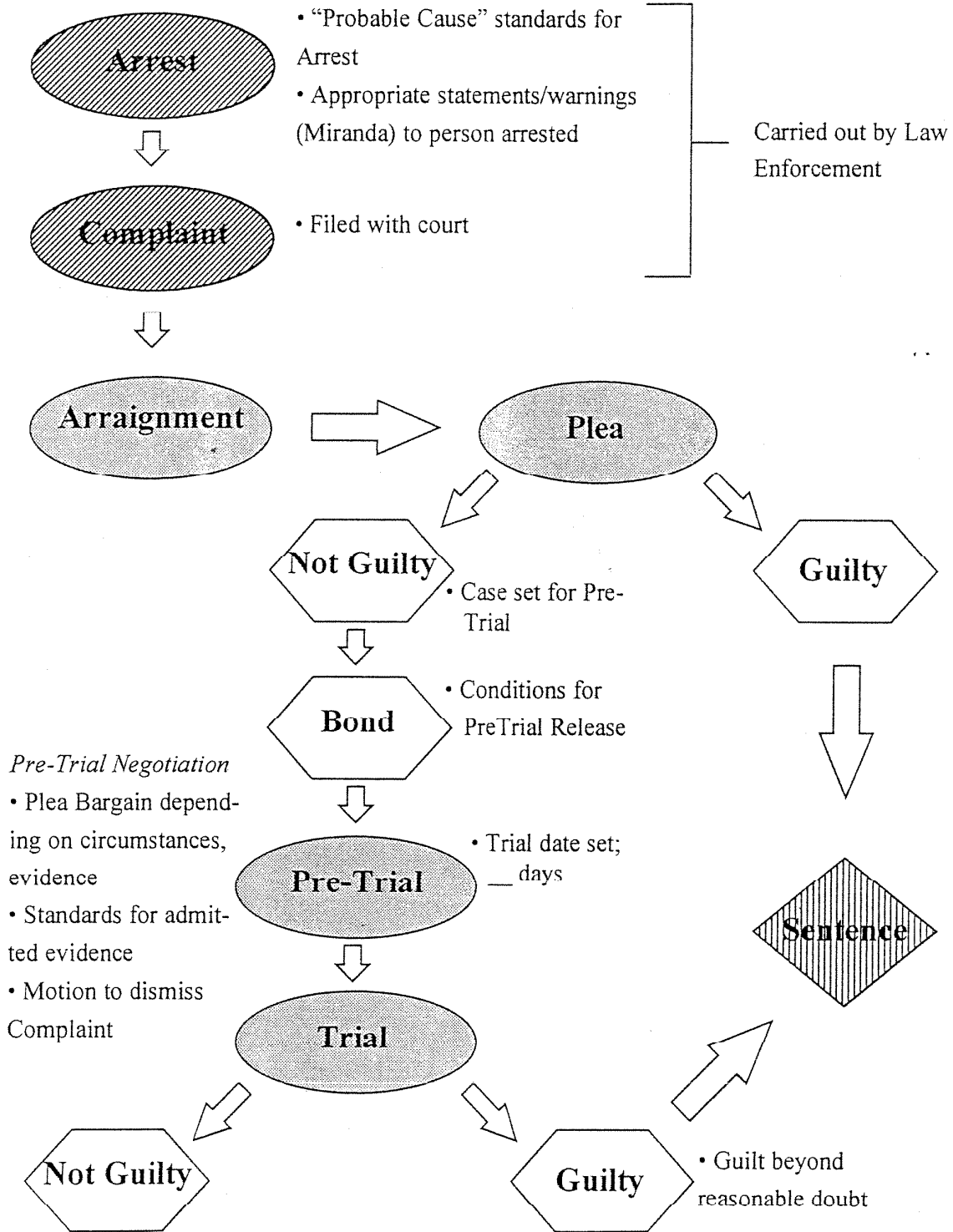
## Civil Procedures



### Questions

- ① Are there jury trials?  
If so, can the jury declare the proper “penalty” or solution?
- ② Are the penalties/sanctions in case of guilt clear, uniform, or left to discretion of court?

# Criminal Procedures



## Perceptions

When looking at the court system, the perceptions of tribal members, more than anything else, can indicate areas of concern. The Hualapai people are the ones who best know what is and is not working in the tribal court. The following pages explore issues people mentioned during interviews. As stated earlier, their perceptions focus mainly on the weaknesses of the court. This trend, however, does not mean that the court is not serving an important function at Hualapai. It only suggests that there is room for improvement.

## Organizational Problems

### 1) Separation of Powers

#### ▷ *Funding*

Although the Hualapai Constitution establishes separation of powers between government branches, Hualapai Court is financially controlled by the legislative branch. Funded as part of a consolidating contract run through the council, the court becomes little more than a tribal program run by a program director (Chief Justice). Essentially, the financial dependence of the court robs it of autonomy and much of its effectiveness. The council can decide with impunity how much money to give the court each year. This relationship makes it difficult for the court to get necessary funding and thereby erodes the court's ability to best serve the Hualapai people. The condition of the courthouse exemplifies this situation.

*"The court [is] a branch of government, not just a program...It would be an educational process for the council to realize the significance of the court and its importance to the people."*

*—Member, L & O Committee*

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▷ *Politics*

Related to court funding is the issue of tribal politics. Because it is not entirely “separate,” the court can be affected by the politics on the reservation. Members of the court staff are often friends with, or even related to disputants. Family feuds can polarize the court politically. This situation sometimes makes it difficult for the court to carry out its duties. The tribe needs to find a way of better insulating the court from the politics on the reservation.

- *In order for Hualapai Court to operate at its full potential, the tribe needs to establish the judiciary as a truly independent branch of the tribal government.*

## 2) Court Standards

▷ *Sentencing Strategy*

A sentencing strategy would help judges decide what type of punishment is appropriate. By establishing standards of punishment for certain crimes, judges would be able to act more objectively and better serve Hualapai in the eyes of the community. Furthermore, sentencing standards would ensure that people understood the severity and consequences of their actions. Someone who knows that he will definitely be put in jail for ‘X’ amount of days if he commits a certain crime will be less likely to commit that crime.

▷ *Code of Ethics*

Tribal members strongly feel that the court needs a code of ethics that will create guidelines for behavior. In a small community, it is especially important that judges act in keeping with

their positions of authority. If judges maintain standards of behavior, people have more respect for the court and are more willing to accept judges' decisions.

- *Developing standards for the court will only improve its operation and authority. Standards will increase respect for the court and, hopefully, help reduce crime.*

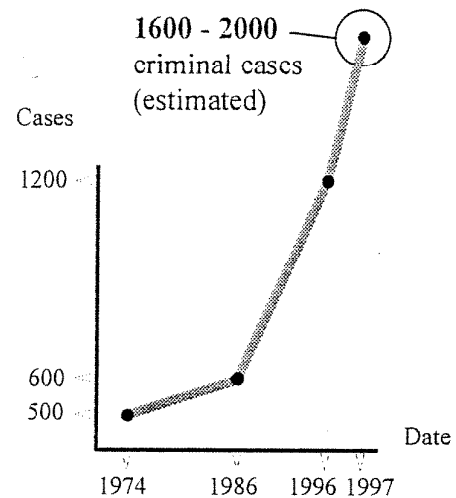
*"I wouldn't want anyone judging me who is doing the same things as me."*  
—Tribal Member

### 3) Overworked Court

#### ▷ *Case Overload*

The court caseload increased steadily until the mid-80's, when it rose dramatically. The graph at right illustrates the criminal case "explosion" at Hualapai. The number of cases continues to rise each year at rates overload the current court staff. Without more judges and clerks, the court risks sacrificing thoughtful deliberation for the sake of efficiency.

**Criminal Cases at Hualapai**



#### ▷ *Scheduling and Court Calendar*

The high caseload also makes it difficult for the court to follow its calendar and to schedule cases consistently. Trial dates should be scheduled within a set time frame of 60 days, 90 days, etc. When cases get backlogged and cannot be put on the court calendar, they are apt

to be scheduled indefinitely in the distant future, or even lost altogether. A common complaint is that since the court takes too long, family disputes continue and spread to other families.

*"If you do not  
set a court date  
and follow it, it  
will come back  
and haunt the  
tribe."*

*—Social  
Worker*

- *The case overload and scheduling problems suggest that it might be very useful to look into methods of resolving disputes outside the courtroom. This way, cases that would normally bog down a court would instead be handled in a different arena.*

#### 4) Other Organizational Problems

##### ▷ *Inadequate Training*

A common cause for concern is the level of training in the court. Many people cited the need for a continuous legal education of the court staff and higher training standards. The lack of legal resources makes adequate training difficult. Collecting the knowledge of past and present judges, clerks, and lawyers would be helpful in creating an information base.

##### ▷ *Poor Law Enforcement and Court Relationship*

##### ▷ *Law and Order Code*

The Law and Order Code needs updating. "It's an old-fashioned code, a code most tribes all had when we started our tribal courts."

## Structural Problems

### 1) Adversarial Court System

A serious issue brought up by many tribal members is that the current court is adversarial, not cooperative. The courtroom ends up being a place for increased confrontation rather than resolution. Emphasis needs to be placed less on who is right or wrong and more on finding the roots of problems and correcting them. The adversarial also system matches up poorly with Hualapai culture. As discussed in *History*, conflicts were traditionally handled with cooperation. The desire for similar cooperation remains in the mindset of the tribe today. This desire is evidenced by the large amount of criminal cases. As one judge put it, "People don't go to the civil side (person vs. person). They always think that the tribe should get him on the criminal side (tribe vs. person)." This pattern shows that there is still a very strong belief in collective problem-solving. Unfortunately, the court system does not accommodate *collective and cooperative* problem-solving.

*"When people come in, they think, 'Well, I'm either gonna win or I'm gonna lose.' It is a battle. For us, I don't think that is the way to settle problems."*

*—Judge*

### 2) Lack of Dialogue

With its punitive approach to problems, the current court system does not allow for communication. Tribal members feel that most of the time, people who have done wrong just need to have someone sit down with them, listen to them, and talk to them. Judges mentioned

*"We need to have someone trained in being a good mediator. We Hualapais are emotional people."*

*—Councilman*

that they were often approached as mediators but, in their formal positions, could do nothing to help. This need for both mediation and a place to talk problems through proves again that traditional beliefs are still alive.

### 3) No Family Involvement

Family ties are not what they once were at Hualapai. People feel that the dissolution of close connections between extended family members is a major source of problems on the reservation. There is a strong need to reestablish a community support network. The court, however, does not contribute to this effort. When an individual enters the court system, he is alone and does not get the opportunity to see how his actions have adversely affected his family and the tribe as a whole. Many Hualapai need a way to reclaim a sense of belonging, purpose, and accountability for their actions.

*"That is why there are so many problems: kids think that they are alone. They don't realize that when they go out drinking they are hurting grandma."*

*—Judge*

### 4) No Collective Responsibility

This problem is reinforced by the other three structural problems. The adversarial court system assesses right and wrong for an individual and prevents the discussion and mediation of conflict necessary for the individual, family, and tribe to begin the healing process. The lack of collective responsibility is demonstrated by the types of punishment assigned by the court. Sending people to jail is not a constructive punishment because it does not adequately address the root prob-

*"If we could go back to our traditional ways, it would bring our community back together. Right now, we are all separate."*

*—Elder*

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sentences are a response to *what* people do wrong, not an attempt to determine *why* something wrong was done in the first place. By going to jail, wrongdoers rarely learn how to correct their problems. They may even lose respect for the court system because it cannot meet their needs. Instead what is called for are forms of constructive punishment that help wrongdoers learn accountability and enhance community connections and feelings of collective responsibility.

### Commentary

Now that we have come to the end of *Clarity*, we can evaluate how the past has impacted the present and what the present can tell us about the future. As we have seen in the “Perceptions” section of *Clarity*, two categories of problems—organizational and structural—surround the present court system. Both types derive from Hualapai Court’s historical situation. The organizational problems are a byproduct of the tribe’s historical unfamiliarity with English common law and an American-style government. The structural problems, on the other hand, are a direct result of an imposed system of conflict resolution ill-suited to Hualapai culture. If we compare the four traditional values listed in *History* to the four structural problems described in *Clarity*, we see that the two groups correspond exactly. *what exists in traditional conflict resolution is sorely missing in today’s tribal court.*

Identifying the problem is, regrettably, much easier than rectifying it. However, in order to improve its judicial system, Hualapai must be prepared to try and find answers to some of these issues. Solutions to the organizational problems are mostly self-explanatory. Setting stan-

dards and finding ways to lessen the court caseload are matters only of taking the necessary steps. Dealing with these organizational problems will help the court operate more smoothly and give it more prestige.

Structural problems pose a greater challenge. We have seen first-hand that the Hualapai cultural legacy persists to this day. What is missing from the present situation are the channels to express the traditional values that Hualapai badly needs. Traditional methods of conflict resolution have been masked by a non-traditional court system, but definitely not erased. The task now is to find room for tradition in the current judicial system. Hualapai should not transform itself to fit the court system, it should transform the court system to fit Hualapai.

The answer to the system's structural problems lies in the development of a culturally-valid tribal program that draws on tradition for its strength. By returning the historical Hualapai value system to practice, these problems, along with many others, can be dealt with successfully. *Vision*, the next section of the report, examines how tradition can be effectively revitalized for Hualapai's future.

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## VISION

As *History* and *Clarity* have demonstrated, the Hualapai judicial system can be greatly strengthened by the incorporation, in some form, of traditional methods of conflict resolution. Consensus mediation and communication, family connections, and collective responsibility are all hallmarks of Hualapai tradition that can be reestablished and reinvigorated by an Alternative Dispute Resolution program.

### An Introduction to Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is an increasingly popular idea both within Indian Country and in other communities that are trying to find more effective ways to settle disputes.

Many communities are uncomfortable with the competitive, adversarial court system, where the disputants confront each other in a foreign environment and the outcome leaves both parties feeling that their view was not adequately recognized. To begin looking at ADR, it will be useful to answer a few general questions:

#### **What is ADR?**

ADR is a method to solve internal tribal disputes that will “supplement” the court not “supplant” it. *Usually, ADR systems involve mediation, arbitration, discussion, and consensus, rather than a competitive environment, to solve disputes.*

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**Why is ADR important?**

Preserving respect and tribal legitimacy, ADR allows for creativity, so that members of the Hualapai nation can create a system that addresses their own values and sense of justice.

*A consensus-based system allows for discussion and resolution, rather than just punishment and the recurrence of chronic problems.*

**Why are adversarial systems inadequate?**

They reinforce negative conflict, rarely satisfy either party, create a win-lose situation, fail to instill responsibility or understanding, and undermine family authority. In a place like Hualapai, a foreign court system has been forced onto the tribe. As a result, tribal members tend not to accept the legitimacy of legal issues and decisions. An example of this attitude is evidenced by the switch from guilty to not guilty pleas among the Hualapai after people recognized that it was a way to avoid punishment. *In an adversarial system, personal gain displaces a sense of justice.*

**How can respect for something new be generated?**

A sense of trust must be established between mediators and claimants, between claimants and families, between the developers of the ADR system and those effected in the community, and within each of these groups. Trust must be inherent in the ADR structure itself. It cannot be presented as simply an “informal” measure or a lenient alternative that will not be taken seriously. *If the system is made to conform to Hualapai notions of justice, it will seem less foreign than the “older” established court system.*

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## Goals of ADR

The goal of any Hualapai ADR system is much more than simply solving disputes. Enhancing the responsibility of families at Hualapai is perhaps the most important step towards greater cultural and political sovereignty as well as improved dispute resolution. Traditionally at Hualapai, children were raised by extended families, especially aunts and uncles who taught many important values and skill lessons. Grandparents were also extremely important, holding family members accountable for their actions. As elders, a certain level of responsibility was expected in their presence. However, parents no longer allow aunts and uncles to accept responsibility, and elders do not always play the same role that they once did. Sometimes children, and even adults, have little idea who they are related to.

Many Hualapai see the need to re-accept responsibility for children and relatives. They often attempt to use the adversarial court system to do so. Since conflicts between different families are also common, a Hualapai ADR system should strive to replace family confrontation with family cooperation.

### Goals of Alternative Dispute Resolution

- Instillation of respect and involvement of family.
- Strengthening of community and sense of Hualapai identity.
- Resolution of ADR cases to the satisfaction of all parties.

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## Laying the Groundwork for ADR

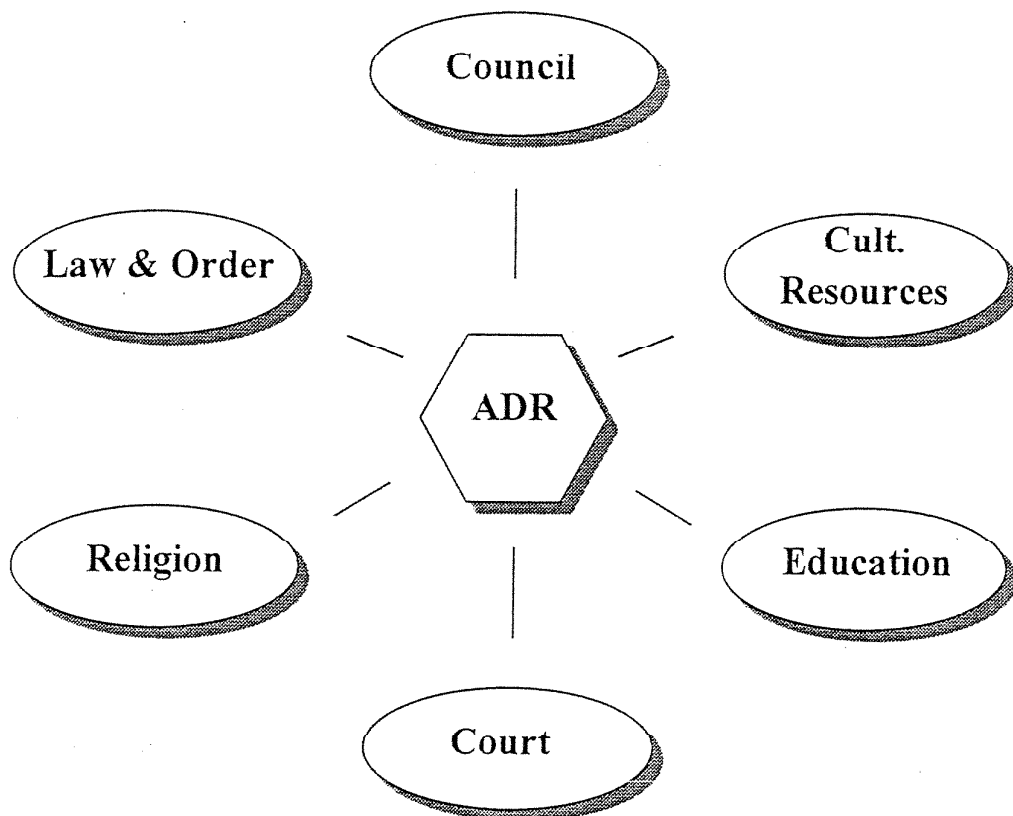
It is essential for there to be continuous dialogue when creating an ADR program. This means bringing together people with unique perspectives on the issue and spending real time discussing how to proceed. Establishing an ADR system for the Hualapai Nation is not a task for outside consultants like the authors of this report. This report is simply a “first step” document. Countless interviews cannot give non-Hualapai the necessary perspective to create the appropriate dispute resolution system. It would be equally inadequate to simply adopt the Navajo Peacemaker Court or another tribal ADR. Such a system would probably not gain the legitimacy of being specifically Hualapai any more than the Anglo-American court system.

Meetings for establishing an ADR system will be scheduled regularly and be relatively short, so that there is incentive to come. We would recommend one hour, once a week, with specific tasks given to each member of the committee to perform for the next week’s meeting. A regularly-scheduled meeting with assigned tasks will create a system of mutual accountability. The committee should consist of at least one representative from the Tribal Court, the Tribal Council, the Law and Order Committee, the Cultural Resources Department, and the bi-lingual education program at the school.

Devising an effective ADR system should be expected to take longer than one meeting or one week of work. A solid ADR program will need a series of meetings over time with set guidelines. A helpful approach might be to address one issue each week, the topic being assigned the week before so that members of an ADR planning committee would have time to evaluate the options themselves and be ready to discuss them.

The process should not be allowed to continue indefinitely. The first meeting of such a committee could establish an upper time limit of six months, during which the issues will be addressed. At the end of six months, the committee should have a firm proposal to present to the organizations they represent, including the court and the council for approval and suggestions.

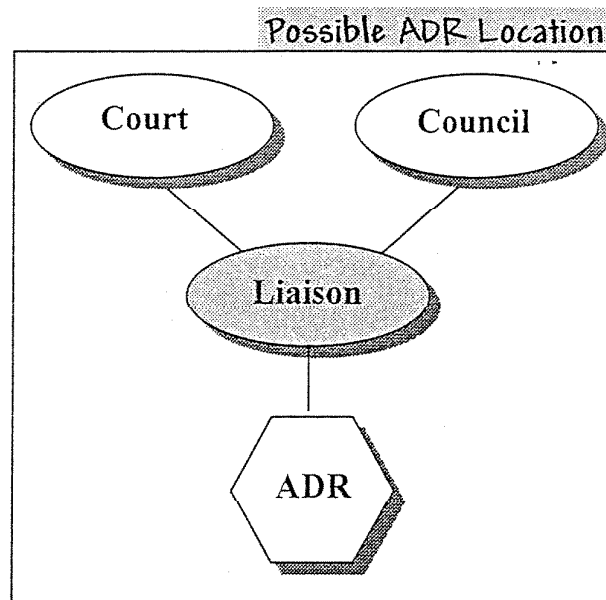
### Possible Representation for ADR Planning Committee



## ADR and Tribal Government

An ADR program installed at Hualapai should not face the same difficulties that the tribal court does in terms of separation of powers. An ADR program would be working for and involving the entire community. Its recognizable benefit to Hualapai would hopefully be enough to shield it from destructive politics or financial misfortune. The tribe should be aware of these potential dangers and avoid them as much as possible.

In terms of an ADR program's location within tribal government, it would be advisable to have the program somehow connected to, but not necessarily run by, several branches of the government. A "buffer committee" could be created as a liaison through which the ADR program could communicate with other government agen-



cies like the tribal court and the tribal council. The liaison would allow the program to act freely, but would also maintain a connection to the tribal government. There are numerous other ways to structure the relationship between ADR and government institutions. The tribe should carefully consider which option would be best-suited to Hualapai.

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## ADR Human Resources

Hualapai has many resources for supporting ADR and carrying out mediation roles. Some are official tribal programs, while others exist as cultural structures. Since each resource serves an important function, it would be beneficial for them to coordinate in the creation and administration of the ADR program. Below is a list of ADR resources and related questions regarding their involvement:

### 1) Extended Families

Important for building family respect and community.

*How are they convinced to get involved?*

*Will inter-family disputes lead to factionalism?*

### 2) Law and Order Committee

Administrative liaison between the court and council, a prime location for ADR. Most familiarity with codes.

*Where would the Law & Order Committee find more time or resources?*

*What level of ADR jurisdiction would be appropriate?*

### 3) Elders

Elders have been relied upon informally for family disputes and the Head Start programs.

*How will they be induced to participate?*

*Is relying on elders to build respect for elders self-defeating?*

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#### 4) Religious Leaders

Spirituality creates a means for ADR to be specifically Hualapai.

Religion and the knowledge of local leaders can instill legitimacy and respect.

*Can different religions work together?*

*Will family members from different religions attend events run, in part, by others?*

#### 5) Outside Bureaucratic Figures

Impartiality and dispute resolution knowledge.

Commonly cited as helpful among tribal and non-tribal ADR mediators.

*How would they attain local knowledge and community legitimacy?*

*How would this be funded?*

#### 6) Other Resources

- *Tribal Council*

Some inherent legitimacy. Already maintains too much control over disputes.

- *Bands*

Most people do not identify with a band. They are historical, but not lived, tradition.

- *Other Tribes (esp. Havasupai)*

Might not strengthen local identity and may have questionable legitimacy.

- *Judges and former judges*

Would this make ADR seem just like the court?

- *Veterans' Associations*

- *Other respected community leaders*

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### ADR Mediator Selection

An ADR system involves a gathering of the community and discussion of the conflict at hand.

This discussion should be led by members of the community who are seen as knowledgeable and impartial. Bringing together individuals with different forms of legitimacy—e.g. an outside mediator for negotiation techniques, a tribal elder for traditional Hualapai knowledge, and a religious leader for respect and spirituality—gives an ADR system a sense of “fairness” and a collective ability to handle problems. The members for an ADR Mediation Council could be selected by a variety of methods and with a variety of qualifications. A list of methods is given below. It should be noted that methods in which mediators are appointed by one tribal agency are less likely to represent a broad range of experience and opinion.

#### *Possible Mediator Selection Methods*

- ◇ appointed by Tribal Council
- ◇ appointed by Law and Order Committee
- ◇ appointed by Hualapai Court
- ◇ selected by disputants
- ◇ appointed or selected from a list of qualified members
- ◇ appointed by some combination of the above

ADR Case Types

The types of cases that would be handled by an ADR program is another issue that requires attention. Judges and other individuals closely involved with Hualapai Court suggested that an ADR program would be perfect for handling less-serious crimes. Juvenile and family matters would especially benefit from a mediation-type system.

**Civil Cases**

Potential for traditional restitution: compensation, work, service.

Most crimes under Hualapai jurisdiction are small and alcohol-related.

**Small Crimes**

**Juvenile Cases**

Most often cited by interviewees. A growing problem on the reservation. ADR would help children see who they are affecting and who their family is.

ADR would also instill respect and responsibility for family, elders, and traditions.

Cases of all types between and within families.

There is a need to see how people are connected. rather than divided

**Family Issues**

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### Format for Decision-making

The Hualapai court system already uses pre-trial conferences as a form of mediation. These cases, however, are dismissed often through the pre-trial conference because of lack both of evidence or police interest. For cases that are sent to ADR, it must be understood that the process is a positive rather than negative one, so that individuals have a desire to participate.

If ADR is not voluntary, due process must be maintained. Certain rights may be waived voluntarily, such as the right to a jury trial. If individuals understand that voluntary ADR is in everyone's best interest, there can be more leeway in discussions. Most likely, any ADR system will be based around a mediation process. A firm ADR structure gives equal power to all parties, while remaining flexible.

It is important, too, to establish procedural guidelines for whatever form of ADR the tribe selects. Having a specifically-Hualapai ADR system documented in writing will augment its legitimacy and help tribal members understand the new process.

**Role of Tribal Court**

The role of the tribal court in the ADR program is a very important one. The court might act as entry point for all cases and would then recommend or assign certain cases to the ADR Mediation Council. Another possibility is that only criminal cases are required to enter the court, where they are either processed in the court system or recommended to the ADR program. People involved in civil and juvenile cases, as well as family matters, would then have a choice of going through either the ADR program or the court system. The tribe may also feel that the ADR program should be completely separate from the tribal court. There are several options available. Accounting for resources and other factors, the ADR planning committee should decide on the role of the tribal court based on how culturally-appropriate it is for Hualapai. The *Tribal Court/ADR Relationship* chart shows how the different roles of the tribal court can affect some characteristics of the ADR program.

**Tribal Court/ADR Relationship**

	<i>Court-annexed ADR</i>	<i>Court-linked ADR</i>	<i>Independent ADR</i>
<i>Court Control</i>	Complete	Moderate	None
<i>Administration</i>	Clear	Some	Indeterminate
<i>Cultural Legitimacy</i>	Low	Possible	High

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## Other Important Issues

### ▷ *Mediation Process*

- ◇ Will mediation be based on legal rights; personal interest; therapeutic discussion?
- ◇ Will decisions be binding or non-binding?
- ◇ Could cases go to court simultaneously?
- ◇ How would records be kept for an ADR meeting. Would there still be a strict, written bureaucratic system?

### ▷ *Basis for Decisions*

- ◇ Validity of tribal customs, or “common law.” “Indian Law does not simply state principles which may be called ‘legal.’ It is a product of relationships and experience which form custom.” (ADR Handbook 169: 125)
- ◇ An emphasis on process, relationships, and mutual obligation.
- ◇ The importance for talking through issues and exploring the motivation and cause behind an act of wrong done to another.

### ▷ *Language of ADR Program*

### ▷ *Enforcement*

- ◇ Community Service
- ◇ Restitution
- ◇ Family Service
- ◇ Open community recognition of illegal or unethical act

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### Hualapai Spirituality and Tradition

The ADR system will be successful if it is modeled on Hualapai beliefs and cultural values. An important factor in building a specifically-Hualapai ADR program is bringing spirituality into dispute resolution. This may involve burning sage and singing the “old songs.” However, the tribe must also be able to reconcile different spiritual beliefs. Building an ADR system according to Hualapai ways means creating a definition of Hualapai culture that will be able to draw upon varying ideas about spirituality, religion, and tradition. Many Hualapai “may not completely follow the old ways, but the ‘flavor’ is still there” (ADR Handbook, 204).

In looking to tradition for guidance, it is important to recognize that many of the standard traditional answers to dispute resolution, such as death or exile into enemy territory, are no longer feasible. Tradition provides important ideas for shaping Hualapai values to fit a present and future context. Justice through direct restitution may no longer be useful in major crimes, over which ADR will not likely have jurisdiction. Restitution, however, might be quite useful in small civil matters.

One helpful idea may be for the ADR committee to outline a set of agreed-upon community values. As an example, a Navajo Peacemaking conference defined general community values as follows:

- Consensus
- Community Responsibility
- Group Acceptance of Leader’s Authority

- Individual and the Group
- Importance of the Elders

Judge Joe Flies-Away has proposed the *ELDR* model (*Earth, Lightning, Dream, and Rain*) to explain Hualapai traditional approaches:

▷ *Earth*

- Physical—Respecting the body and environment, human growth, and well-being.

▷ *Lightning*

- Thought—Creative thinking; intellect; telling the stories of the people.

▷ *Dream*

- Connection to Total Creation—Respect of all spiritual things.

▷ *Rain*

- Emotional—Feelings about the court. Emotion towards others. Anger and hurt, reconciliation and release.

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### ADR Obstacles

Many obstacles that must be recognized before discussions on ADR begin. Some of the small obstacles, such as the tendency to rely solely on pre-existing ADR procedure, have already been mentioned. Another tendency is to romanticize ADR and believe that all disputes will be perfectly resolved. They will not, and a committee should remain intact to continue evaluating and restructuring the ADR process. Other legal issues, such as due process, must be given close inspection, so that everything is in accordance with pre-existing laws and codes.

The primary obstacle to effective ADR, however, is resources. To put together an effective program will involve spatial, monetary, and especially human resources. It is difficult to bring people together voluntarily for such a commitment, but hopefully members of the community will see this as an important goal that can strengthen the entire Hualapai Nation and bring back valued traditions.

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### Final Thoughts on ADR

We have now covered the first few steps for initiating an ADR mediation program at Hualapai. Tribal members should keep in mind that any program they choose to develop must be grounded in Hualapai tradition to be legitimate and successful. Songs, costumes, symbols, prayers, and many other elements can give an ADR program an important and respected image, not to mention a strong cultural appeal. For example, some tribute could be paid to the old band system and the traditional methods of conflict resolution. Ceremonial acts like these would link ADR participants to the past and their ancestors and would also remind them to think of the future and how to make the tribe stronger.

With an ADR mediation program, the Hualapai Nation has a unique and exciting opportunity to make powerful, tangible changes in a critical area of everyday life that touches each member of the tribe. It is rare that communities of any size have both conditions that are favorable for change and the ability to make those very changes. Hualapai is indeed lucky that it has such a beneficial tradition of cooperation, discussion, and interconnectedness. Thoughtful planning of the ADR system will ensure that the Hualapai value system becomes a priority in the judicial system and in the tribe itself.