

Malcolm Wiener Center for Social Policy

Building Support for the Development of the Hualapai Tribal Court

by

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**Harvard Project on
American Indian Economic Development**

**John F. Kennedy School of Government
Harvard University**

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Executive Summary

Sovereignty is the most important resource on the Hualapai reservation. With it, Hualapai people make decisions on issues that directly affect them. Without it, they are at the mercy of organizations such as the Bureau of Indian Affairs that have their own—and not the tribe's—best interests at heart.

The following analysis is designed to assist the Hualapai Tribe in its effort to develop the Hualapai Tribal Court. A strong Hualapai Tribal Court, one that has the resources it needs to do its job, strengthens the power of the Tribe to govern itself and protect its sovereignty.

There are four ways a strong Tribal Court helps to build the Hualapai Nation.

- **One, it develops culturally legitimate systems.** The Judicial Branch is presently at work to create a family-centered Wellness Court to provide mediation and counseling for alcohol offenders.
- **Two, it maintains peace and order.** The Tribal Court is rendering justice at a time when the need for justice is pressing; new laws and more people moving to the reservation have created a crushing number of new criminal cases.
- **Three, it protects the rights of members and non-members.** Even-handed resolution of contract disputes by the Tribal Court is promoting economic development and improving the standing of the Hualapai Nation.
- **Four, it clarifies the economic and political rules of the Tribe.** The future of tribal economic development may depend on how the Court resolves ambiguities in regards to tribal investment and land use on the reservation.

Although the importance of the Judicial Branch is increasing dramatically, support of the Hualapai people for their Court is not. To a great majority of the population, the Tribal Court is still a place where drunks get sent to jail. This gap between perception and reality is what threatens to prevent the Court from fulfilling its important role. Without popular support, the Judicial Branch starves on a subsistence budget that has not increased even as the caseload has doubled over the

last four years. The Court is dangerously understaffed, its employees insufficiently trained, and its building condemned for threats to health and human safety.

In order to do the legal work necessary to develop a sovereign nation, the Tribal Court will require an additional \$200,000 in 1999 for personnel, training, and facilities improvements. *Yet the underlying problem confronting the Hualapai Judiciary is not a financial issue, but a people issue. How can the Judicial Branch build the support it needs to secure adequate funding to do its important work?*

To overcome the hostility many tribal members feel toward the Tribal Court, the Tribal Government needs to engage in activities that build respect for the Court and encourage tribal members to take part in Court activities. Recommended action steps include:

- Create a Hualapai Department of Justice;
- Develop an alternative dispute resolution system;
- Train tribal members to be public defenders;
- Institute an ethics code for Court employees;
- Have judges perform marriage ceremonies.

These action steps will build a reservoir of good will that the Tribal Government can tap into as it plans more challenging projects, including building a new Courthouse and securing earmarked funds for the Tribal Court.

Building relationships within the Hualapai community is a worthwhile investment for tribal leaders and employees of the Tribal Court. While the caseload will increase at first as the Chief Judge and others focus more of their attention on finding partners and building respect for the Court, the purpose of these activities is for the caseload to decline over time.

Structure of Report

The report is divided into three chapters. Each chapter can stand alone as a separate document, and each serves a different purpose.

CHAPTER 1: TRIBAL COURT AS NATION-BUILDER: WHY THE HUALAPAI TRIBE NEEDS A STRONG TRIBAL COURT.

An article for the Gamyu Tribal Newsletter explaining how the Tribal Court will play an essential role in the ongoing development of the Hualapai Tribe

- For all tribal members

CHAPTER 2: THE RESOURCE GAP: WHAT THE TRIBAL COURT NEEDS TO DO ITS JOB

An evaluation of the gaps in personnel, training, and facilities within the Tribal Court, and an explanation why building popular support is the key to filling these gaps.

- For planners, policy makers, and Court officials

CHAPTER 3: FIVE ACTION STEPS: HOW TO BUILD GOOD WILL FOR THE TRIBAL COURT

An action plan to build respect for the Tribal Court and encourage people to take part in Court activities.

- For Tribal Councilors and Court officials

Table of Contents

EXECUTIVE SUMMARY.....	I
STRUCTURE OF REPORT.....	III
TABLE OF CONTENTS	IV
THE NEXT STEP FOR THE HUALAPAI TRIBE: DEVELOPMENT OF THE TRIBAL COURT	VI
METHODOLOGY.....	VIII
REFERENCES.....	IX

CHAPTER 1

TABLE OF CONTENTS	1
FOUR ESSENTIAL ROLES OF THE TRIBAL COURT	2
DEVELOPMENT OF THE WELLNESS COURT.....	3
RESOLUTION OF CRIMINAL DISPUTES	6
RESOLUTION OF CONTRACT DISPUTES.....	10
RESOLUTION OF CONSTITUTIONAL DISPUTES.....	14
SUMMARY	18
ENDNOTES: CHAPTER 1.....	19
APPENDIX: SUMMARY OF TRIBAL COURT CASE DATA.....	20

CHAPTER 2

TABLE OF CONTENTS	1
INTRODUCTION: CRITERIA FOR AN EFFECTIVE TRIBAL COURT.....	2
IS THE COURT WELL-STAFFED?	3
ARE COURT EMPLOYEES WELL-TRAINED?.....	5
ARE COURT FACILITIES IN GOOD CONDITION?.....	6
COMPARISON WITH OTHER TRIBAL COURTS	8
IS COURT FUNDING DEPENDABLE AND SUFFICIENT?.....	10
DOES THE COURT HAVE THE SUPPORT OF TRIBAL MEMBERS?.....	14

SUMMARY 17

ENDNOTES: CHAPTER 3..... 18

CHAPTER 3

TABLE OF CONTENTS 1

CRITERIA FOR EFFECTIVE ACTION STEPS..... 2

ACTION PLAN: ONE YEAR TIMELINE 4

1. CREATE A HUALAPAI DEPARTMENT OF JUSTICE..... 5

2. DEVELOP AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM..... 10

3. TRAIN TRIBAL MEMBERS TO BE PUBLIC DEFENDERS..... 15

4. INSTITUTE AN ETHICS CODE FOR COURT EMPLOYEES..... 17

5. HAVE JUDGES PERFORM MARRIAGE CEREMONIES 18

TACTICS: RECRUITING PARTICIPANTS 20

TACTICS: TARGETING SUPPORTERS AND POTENTIAL OPPOSITION..... 22

SUMMARY 24

ENDNOTES: CHAPTER 3..... 25

The Next Step for the Hualapai Tribe: Development of the Tribal Court

Members of the Hualapai Tribe are building a nation. Like their counterparts in the Czech Republic and Ecuador, they are developing rules and systems and skills to create a self-sufficient state. Step by step, Hualapai members are transforming their government to fit their needs.

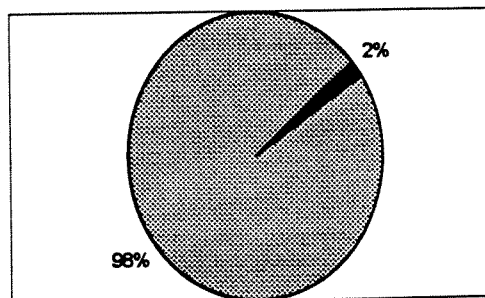
STEP 1: ASSERTED AUTHORITY TO RUN THE TRIBE

- In 1991, the Hualapai people enacted a new Tribal Constitution that reduced the role of the Bureau of Indian Affairs on the reservation. Under the old system, the Bureau had the final word on all decisions regarding investments and changes in tribal laws. Now the Tribe makes these decisions.

STEP 2: ESTABLISHED INDEPENDENT BRANCHES OF GOVERNMENT

- Framers of the new Constitution also added language to separate the Court from the Legislative Branch. As a result, the Hualapai became one of the few tribes in Indian country with a constitutionally provided separate Judicial Branch of government. One Harvard University study notes that as of 1992 fewer than 2% of tribes provide constitutionally for an independent judiciary. (Cornell, 1997) Unusual among employees of other Tribal Courts, Hualapai judges--so long as they keep up with their work and obey the law--can make even unpopular decisions without fear of dismissal.

The Hualapai Tribe is among a select few: Fewer than 2% of tribes provide constitutionally for an independent judiciary.



STEP 3: IMPROVED ITS SELF-SUFFICIENCY THROUGH ECONOMIC DEVELOPMENT

- Since the adoption of the new Constitution, the Hualapai Tribal Government has made a series of important steps to develop its capacity to make money. A short timeline of selected achievements in the last four years indicates the distance the tribe has traveled towards self-sufficiency.

TIMELINE OF SELECTED ACHIEVEMENTS IN HUALAPAI ECONOMIC DEVELOPMENT

	<p>1994 Hwal'bay Ba:j</p> <p>1995 Department of Finance</p> <p>1996 Hualapai Tribal Lodge</p> <p>1997 Environmental Code</p>	<p>Established a tribal corporation to separate the tribal businesses from politics</p> <p>Rebuilt the department to handle new demands of economic development</p> <p>Opened a 60 person hotel, the centerpiece of a plan to develop tourism on the reservation</p> <p>Authorized a new system to ensure sensible development of the Tribe's natural resources</p>
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STEP 4: DEVELOP THE TRIBAL COURT

- With each success, the need for effective and fair dispute resolution increases. In the future, the Tribal Court will become either an anchor that slows further economic and political development or an engine for ongoing growth. To carry out its promise, the Tribal Court will need the support of tribal leaders and all tribal members interested in doing their part to build their nation. What becomes of the Tribe depends to a considerable extent on how much tribal members choose to invest in their Judicial Branch.

Methodology

This research was part of the Harvard Project on American Indian Economic Development. The client contact was Joe Flies-Away, Chief Judge for the Hualapai Tribe.

The primary source of information was a series of one-on-one interviews conducted on the Hualapai reservation over a five-day period. The tribal members interviewed included Tribal Councilors, heads of social service agencies, educators, elders, and Court employees. Also interviewed were representatives from the Bureau of Indian Affairs, the American Indian Law Center, and tribal courts on five reservations in Arizona.

The literature review drew from the syllabi of two courses at the Kennedy School of Government: PED-501: Nation-Building I, a survey of economic, social, and legal issues surrounding nation-building on Indian Nations; and PAL-177: Organizing, a practical guide to grass-roots campaigning. The analysis also made extensive use of Hualapai tribal documents, including case data from the Hualapai Tribal Court, Hualapai ordinances and grant proposals. Lexis-Nexis was used to gather information about the status of federal resources for Tribal Courts.

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Bravo, Lorraine	Hualapai Housing Office
Bravo, Philip	Hualapai Law & Order Committee
Cabillo, Alex	Hualapai Tribal Councilor
Clarke, Damon	Principal, Peach Springs School
Easter, Wanda	Hualapai Accounting Office
Flies-Away, Joe	Chief Judge, Hualapai Tribal Court
Flores, C.J.	Chief Judge, Colorado River Indian Tribe
Grant, Kenneth	Consultant, Economics Resource Group
Grossman, Toby	Administrator, American Indian Law Center
Havatone, Earl	Hualapai Tribal Chairman
Havatone, Delbert	Board Member, Hualapai Tribal Enterprises
Honga, Waylan	Administrator, Hualapai Tribal Enterprises
Imus, Jean	Hualapai Housing Office
Marshall, Jolene	Administrator, Hualapai Tribal Court
Mills, Frank	Administrator, Salt River Tribal Court
Sousi, Mona	Administrator, Fort Mohave Tribal Court
Stokes, Sarah	Specialist, ADR Systems
Tinhorn, Barbara	Teacher, Peach Springs School
Vaughn, Charles	Hualapai Director of Human Services
Walker, Willie	Advocate
Watahomigie, Lucille	Teacher, Peach Springs School
Watahomigie, Philbert	Teacher, Peach Springs School
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Yellowhawk, Sandra	Hualapai Tribal Planner
Yellowhawk, Sheri	Hualapai Law & Order Committee

Building Support for the Development of the Hualapai Tribal Court

CHAPTER 1:

**TRIBAL COURT AS NATION-BUILDER:
WHY A SOVEREIGN HUALAPAI NATION
NEEDS A STRONG TRIBAL COURT.**

**Michael Goldstein
Harvard Project on American Indian Economic Development
April 1998**

Table of Contents

TABLE OF CONTENTS	1
FOUR ESSENTIAL ROLES OF THE TRIBAL COURT	2
DEVELOPMENT OF THE WELLNESS COURT.....	3
RESOLUTION OF CRIMINAL DISPUTES	6
RESOLUTION OF CONTRACT DISPUTES.....	10
RESOLUTION OF CONSTITUTIONAL DISPUTES.....	14
SUMMARY	18
ENDNOTES: CHAPTER 1.....	19
APPENDIX: SUMMARY OF TRIBAL COURT CASE DATA.....	20

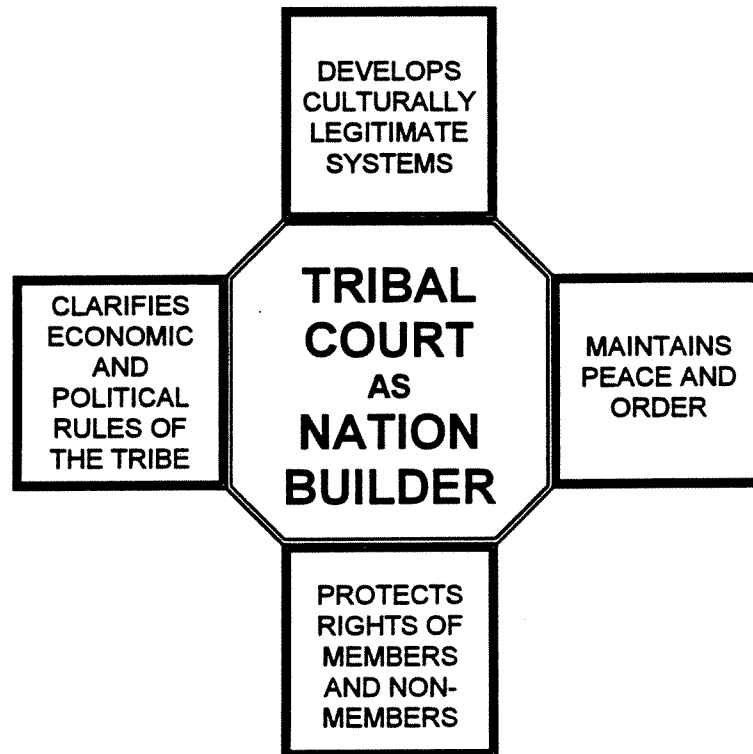
Four Essential Roles of the Tribal Court

“Sovereignty and freedom have no memory apart from the ability to make informed choices.”

--Frank Pommersheim, *Braid of Feathers*, 1995¹

Sovereignty, which means genuine decision-making control over one’s own affairs, is the most important resource on the Hualapai reservation. With it, Hualapai people call the shots on issues that directly affect them. Without it, they are at the mercy of organizations such as the Bureau of Indian Affairs that have their own—and not the tribe’s—best interests at heart.

A strong Hualapai Tribal Court, one that has the resources it needs to do its job, strengthens the power of the Tribe to govern itself and protect its sovereignty. This chapter focuses on four ways in particular that the Court will play an essential role in the Tribe’s social, economic, and political development:

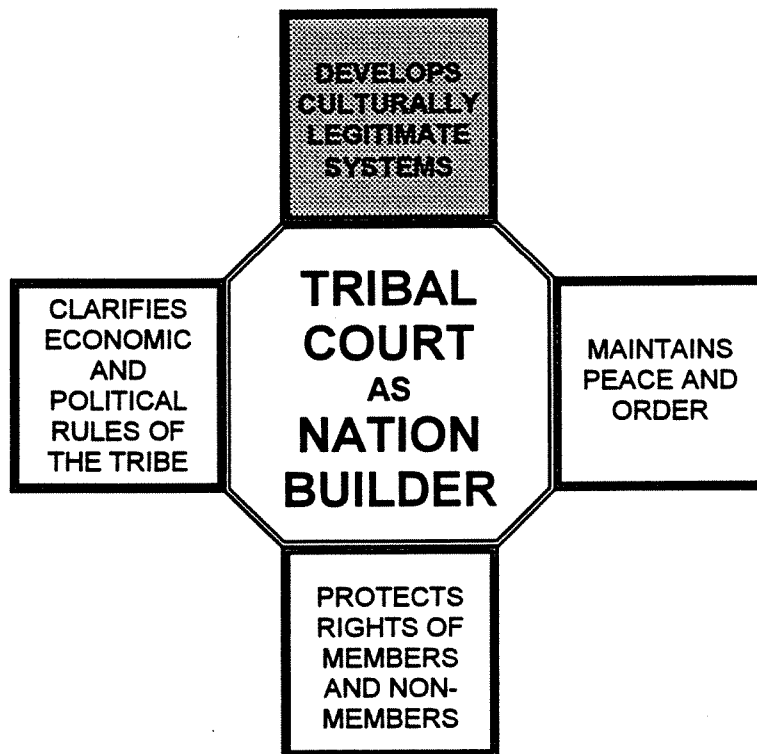


The next four sections are divided into the four main activities of the Court: development of the Wellness Court, resolution of criminal disputes, resolution of contract disputes, and resolution of constitutional disputes.

Development of the Wellness Court

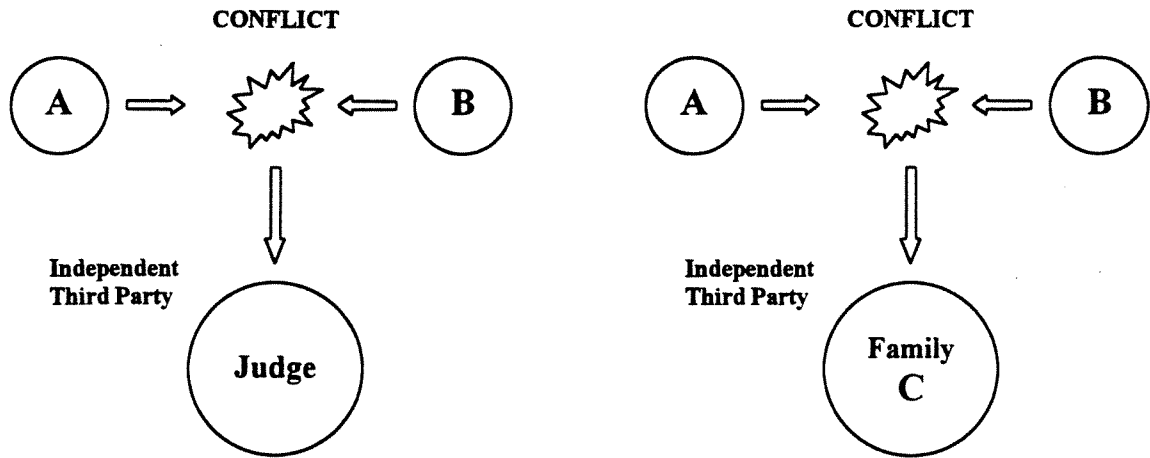
Tribal Courts articulate tribal values. They can act to preserve tribal culture and customs. Tribal values are affirmed not only in the end result of decisions about such issues as children, conflict disputes, and sentencing, but also in the process by which the decisions are made, the way disputes are resolved, and the manner in which justice is done.”

--Mary Morgan, Deputy Assistant Attorney General, Department of Justice²



At present, the Hualapai Tribal Court uses a model of dispute resolution that follows the formal legal framework of the United States court system. The formal model is effective at resolving impersonal conflicts, especially conflicts with non-Hualapai members. However, it is not the only model. In fact, until the formation of the reservation, the Hualapai people used an effective third party resolution system of their own to handle personal disputes. As one elder described in Kroeber’s Walapai Ethnography, “When two men start fighting, the whole settlement sometimes gets involved in trying to stop it. A family not closely related to either man usually tries to settle the matter.”³

Each system uses independent third parties to resolve disputes



and each matches the culture from where it was created.

**FORMAL U.S. LEGAL SYSTEM
(CURRENT SYSTEM)**

- Adversarial
- Designed to punish criminals
- Uses written laws to maintain order and respect

**TRADITIONAL HUALAPAI
DISPUTE RESOLUTION**

- Consensual
- Designed to “talk things through”
- Uses family ties to maintain order and respect

The Hualapai Tribal Court has moved to supplement its formal legal system with a system that more closely matches Hualapai culture and traditions. In 1997, the U.S. Department of Justice selected the Hualapai Tribal Court to be one of about twenty Tribal Courts in the United States to take part in the Wellness Court, a new program designed to fight alcohol abuse on the reservation. In these selected courts, those found guilty of alcohol-related crimes will have the option to undergo counseling instead of jail. The goal of the Wellness Court is to reduce recidivism, identify and improve coordination services, promote functional families, and

increase individual, family and community accountability and responsibility. A key player in the Wellness Court will be the probation officer, a Tribal Court official who will ensure that those convicted comply with their regimen of counseling and community service. This process shifts the Court's efforts towards preventing crime rather than punishing criminals, and it will dramatically change the way the Court does its job.

HOW THE WELLNESS COURT WILL CHANGE THE WAY THE HUALAPAI TRIBAL COURT DOES ITS JOB

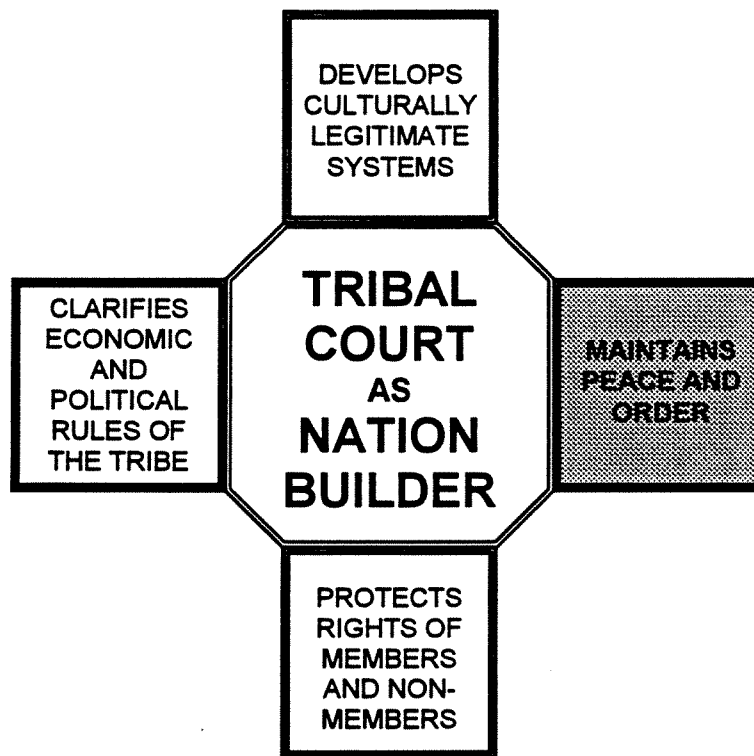
Subject	Current Court	Wellness Court
Performance Measures	Number of cases per year	Number of return offenders
Daily Work	Evaluate individual incidents	Track development of individuals
Perception of Public	Separate From public	Partnerships with families, other agencies
Role of Judge	Punisher of criminals	Counselor of criminals

In addition, the Judicial Branch received a grant in 1998 from the Administration for Native Americans to expand the Wellness Court system to other issues, including family disputes. This structure will take shape over the next year.

Resolution of Criminal Disputes

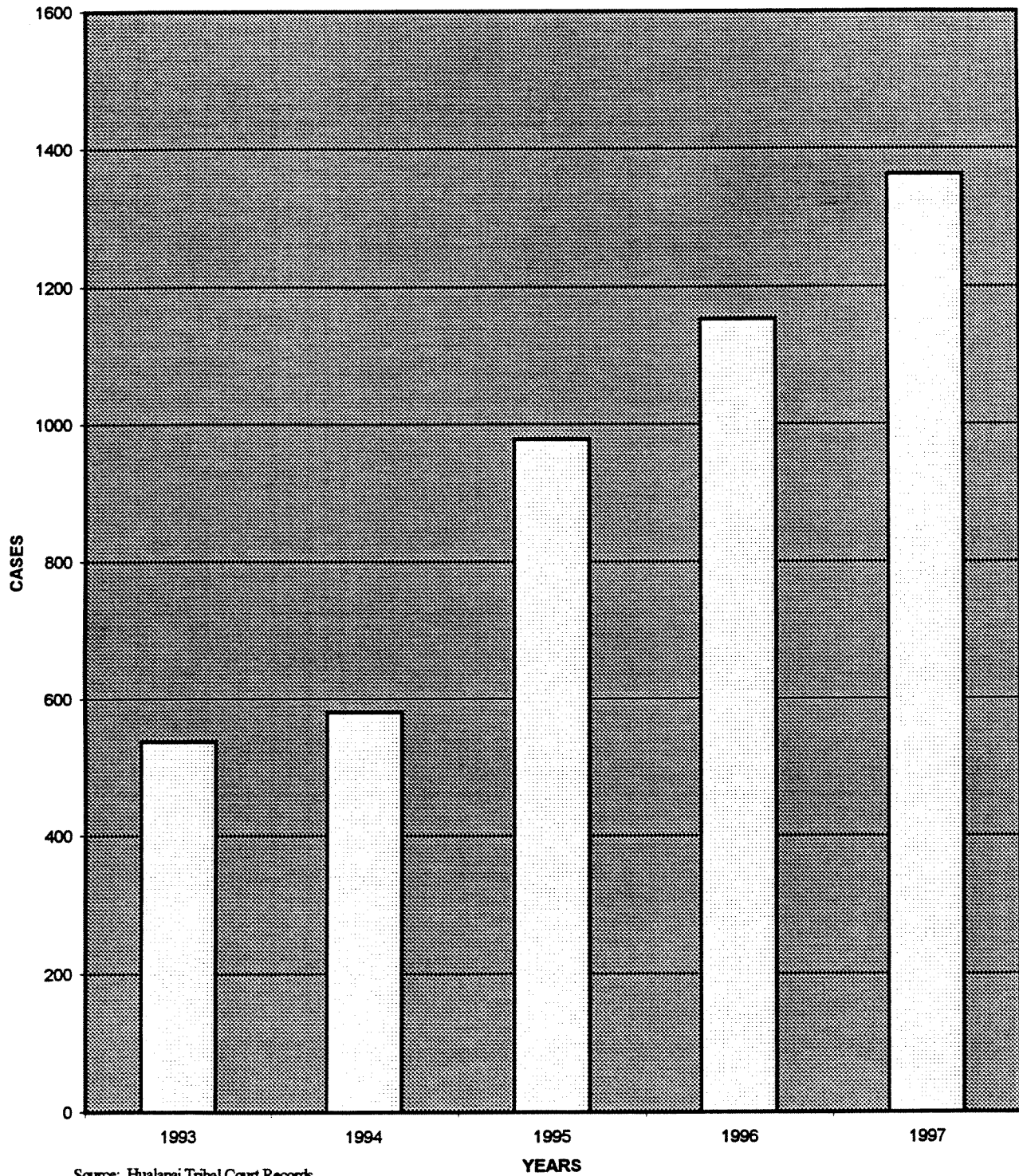
No matter how effective the police law enforcement may exist on a reservation, nothing can happen to the criminal, to the drug-pusher, to the child abuser, to the wife-beater, to the alcoholic, or to the con-artist unless there are sound judicial systems with a competent judge who can render justice.⁴

-- Former Jicarilla Apache Chief Judge Carey Vicenti



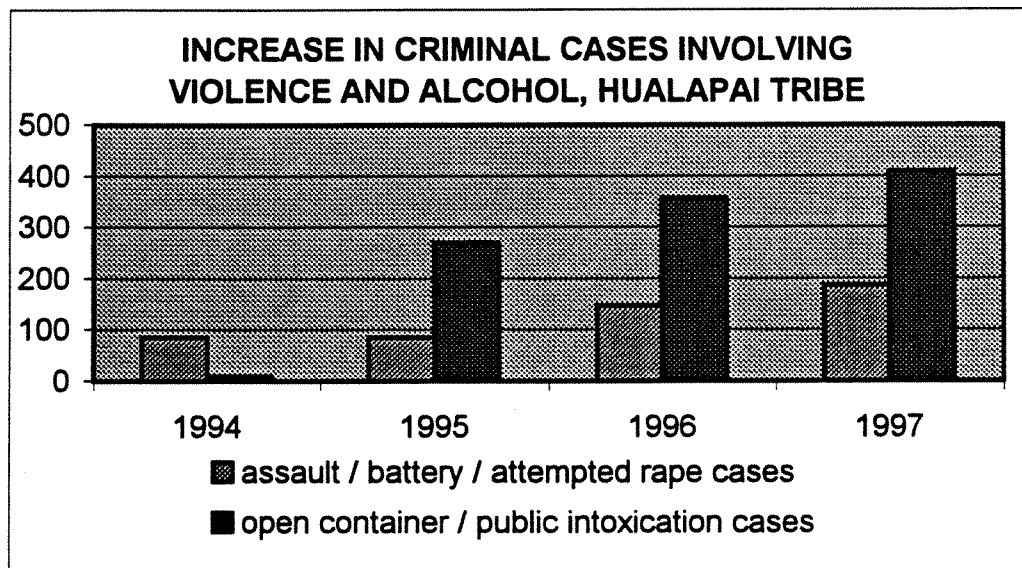
To maintain peace and order, as well as to protect the rights of the accused, the Hualapai Tribal Court will have to work harder, for the number of criminal cases has skyrocketed. There are three reasons for this growth in crime: new laws invented new crimes; new equipment uncovered new crimes, and more people living on the reservation committed more crimes.

INCREASE IN CRIMINAL CASES ON THE HUALAPAI RESERVATION



1. New laws created new crimes.

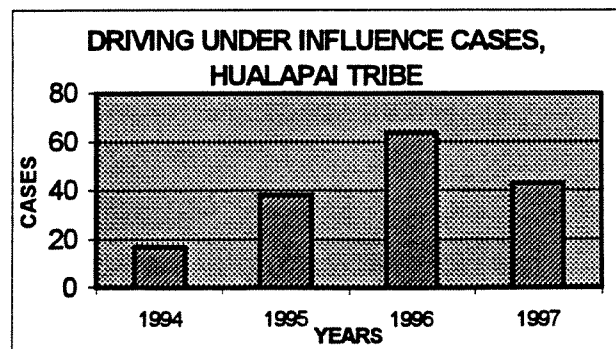
In 1994, the Tribal Council enacted changes in the Law and Order Code to fight alcohol abuse among tribal members. It became a crime to be publicly intoxicated or to possess an open container of alcohol on the reservation. In 1995, the Tribal Council enacted the Domestic Violence Code, which mandated that officers arrest husbands automatically in domestic disputes. Before this law, police officers infrequently arrested the husband, but rather separated him from the household or scolded him and left him in the house. As a result of both laws, the number of cases involving violence or alcohol jumped dramatically.



Source: Hualapai Tribal Court Records

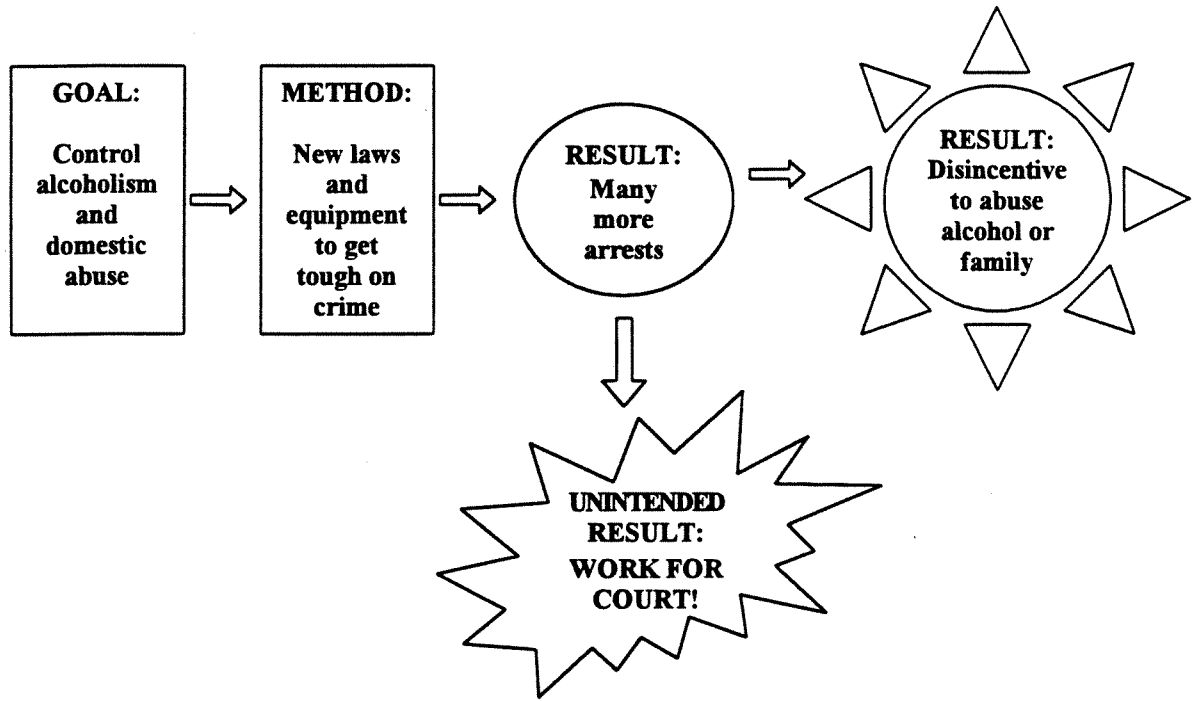
2. New equipment uncovered new crimes.

In 1995, the Hualapai Office of Planning and Community Vision received funding to buy breath analyzers for the local law enforcement. Police became better equipped to detect alcohol and to arrest people for alcohol-related offenses. This equipment contributed to the rise in alcohol-related crimes as well as incidents of drunk driving.



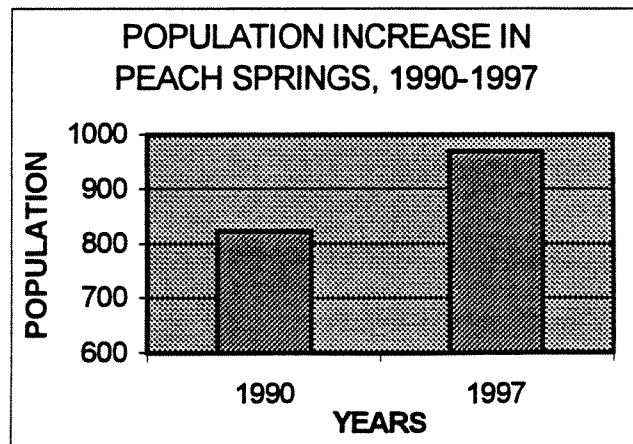
Source: Hualapai Tribal Court Records

UNINTENDED CONSEQUENCES OF NEW CODES AND NEW EQUIPMENT: MORE WORK FOR THE TRIBAL COURT.



3. More people living on the reservation committed more crimes.

The population of the reservation increased almost 15% in the last five years. Since 1993, 70 new homes have been built in the town, allowing Hualapai members living off the reservation to move back to the Tribe. These new residents have contributed a great deal to life on the reservation. Many tribal leaders, including several current tribal council members, number among the new arrivals. However, demands on services have increased. Health services, schools, and the Tribal court have noted an increase in service use with the arrival of these new members.⁵

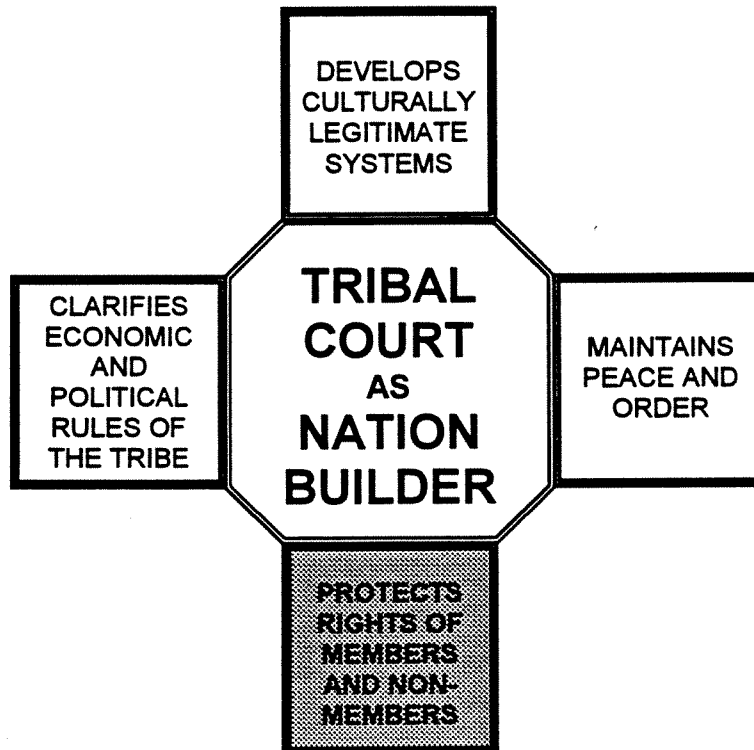


Source: U.S. Census Bureau (1990), interview with Judge Flies-Away (1997)

Resolution of Contract Disputes

The future of investment in the [Czech Republic] will depend, in part, on investors believing that, despite sometimes insecure business conditions, the country is subject to an effective dispute resolution process in the event it is necessary to enforce the agreement.

— East/West Executive Guide, WorldTrade Executives, Inc.⁶



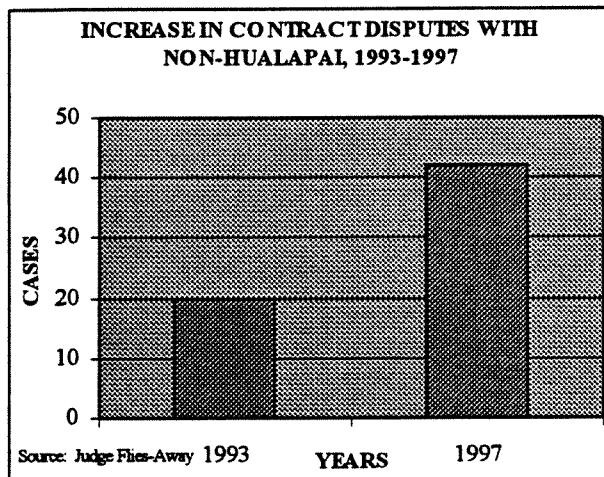
According to a Harvard study of 67 Indian nations, tribes that have strong, independent judicial systems economically outperform those that do not. Holding other factors constant, simply having an independent judicial system reduces unemployment by an average of 5 percent.⁷ As the quotation above shows, the effects of effective justice systems extend to all developing nations.

In the next few years, the competitive advantage of the Hualapai Tribe could be a result of two factors: the exquisite views of the Grand Canyon on its northern border; and its effective and fair dispute system on the reservation. The views will attract tourists, and the evenhanded resolution of contract disputes will assure members and non-members alike that their investments are safe. Both factors promise to promote economic growth.

The Hualapai Tribe is beginning to take advantage of the tourism industry. Almost 200,000 people visited the reservation in 1997, and more are likely in 1998. Not only is the tribe investing in its existing tribal companies, including its hotel in Peach Springs and airport and tourist facility at the Grand Canyon, it also plans to help local entrepreneurs start private businesses. Over the next year, Hwal'bay Ba:j (Tribal Enterprise) expects to provide training and technical assistance as well as draft new regulations that would clarify how small businesses can operate. For example, before private tour guides

NUMBER OF PRIVATELY OWNED BUSINESSES ON THE HUALAPAI RESERVATION
 1998: 3 businesses
 2000: 6 businesses (expected)

Source: Waylan Honga



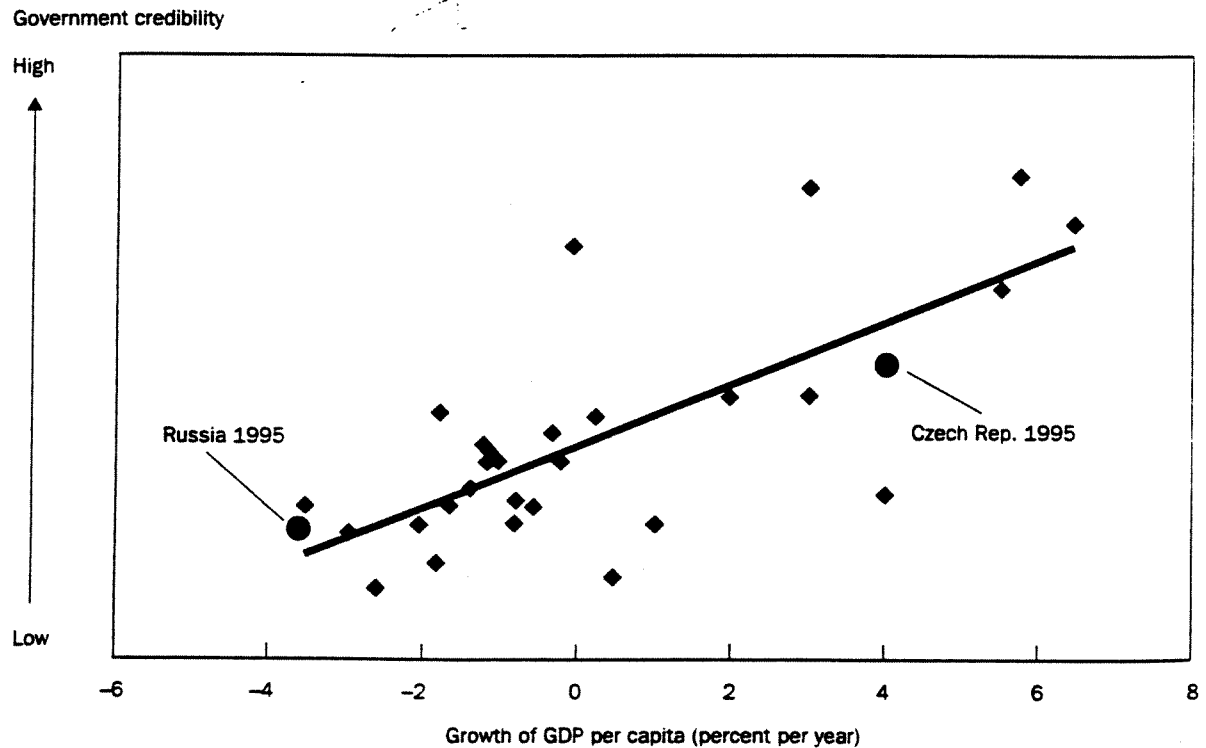
can take advantage of the increase in tourism, the Tribal Government must set guidelines as to where guides can go and what they can do on the land once they get there. An effective, independent Tribal Court will provide these small business owners a fair forum to defend their interests should conflicts arise.

The Tribal Court is already demonstrating its ability to resolve contract disputes. In recent years, more and more people are purchasing goods they can not afford. As a result, more tribal members have defaulted on retail installment plans than ever before, increasing the number of contract cases brought by off-reservation plaintiffs seeking damages from community member defendants. Although the court does not yet keep track of the exact figures, the number of cases increased from approximately 20 in 1993 to over 40 in 1997.

Providing prompt and even-handed resolution of such disputes may be the single most important contribution that the Tribal Government can make toward promoting economic development and improving the standing of the Hualapai Nation. According to recent cross-country research shown below, there appears to

be a positive association with citizens' level of trust in government, measured in part by the quality of its court system, and long-term economic growth.

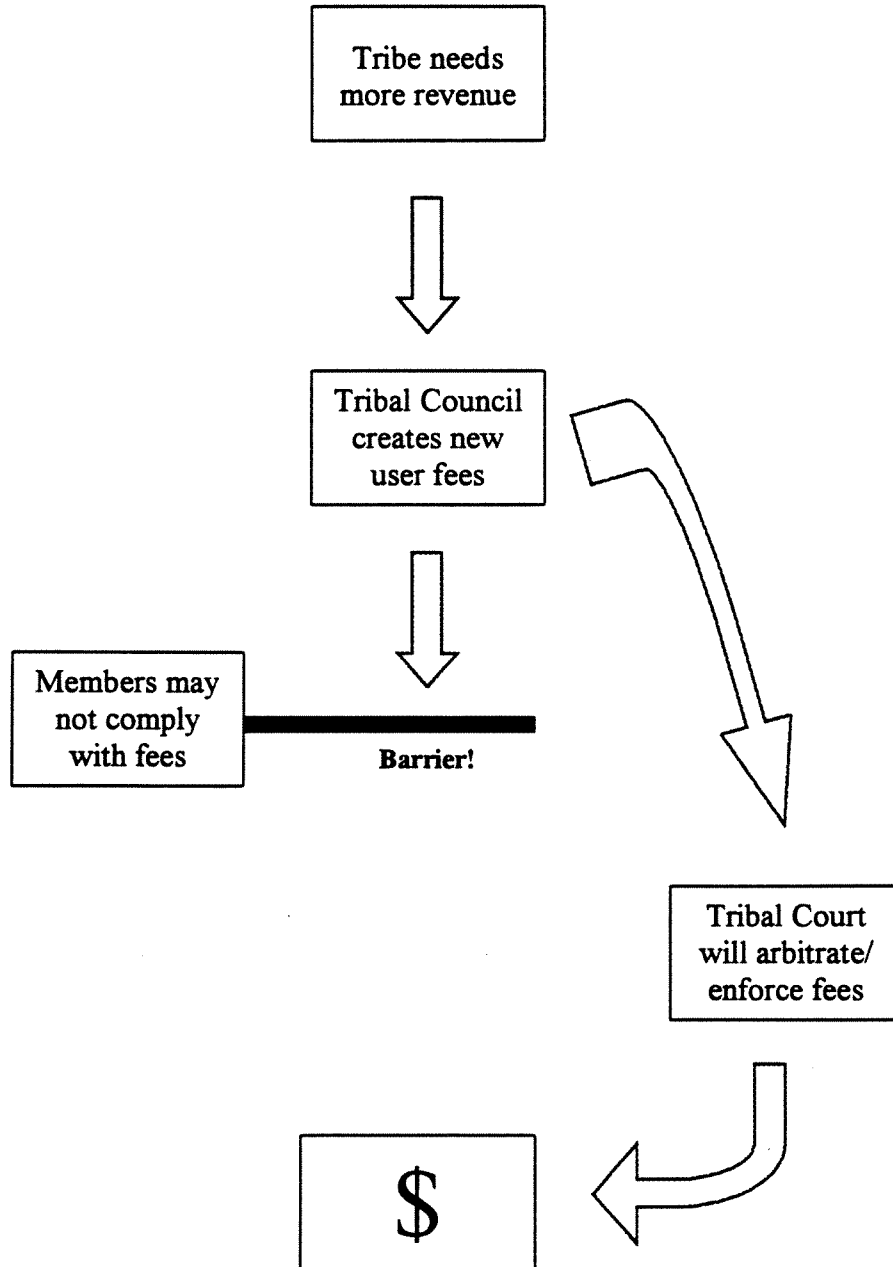
Figure 5.1 Economic growth per capita and government credibility



Note: The sample consists of twenty-eight economies plus Czech Republic and Russia. Growth data are annual averages for 1981–90, and data on government credibility are based on public opinion surveys taken in late 1992 (which included retrospective questions), except that data for Czech Republic and Russia are for 1995 on both measures. Source: Borner, Brunetti, and Weder 1994; World Bank data.

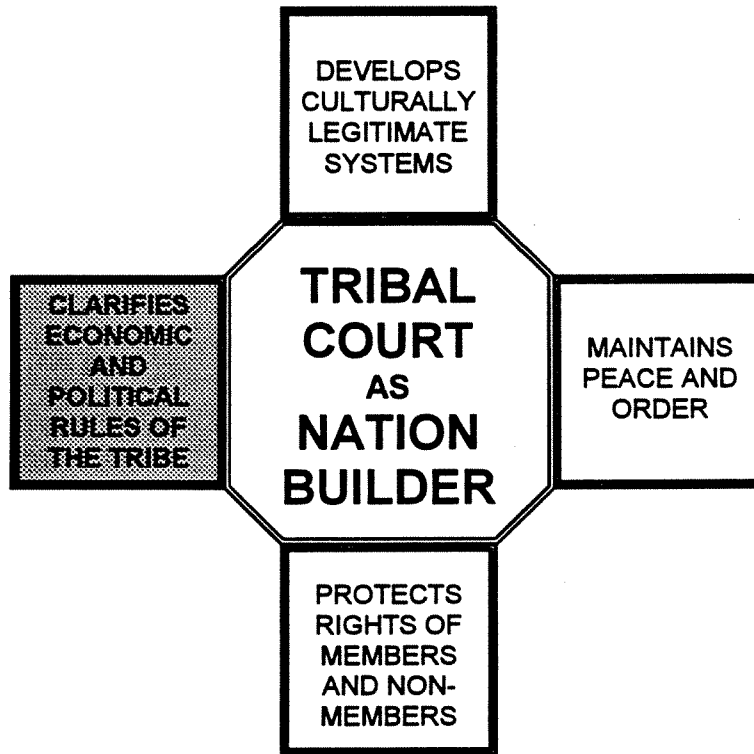
Finally, the Court will have to address new contract disputes between the Hualapai Tribal Government and its own people. As the Tribal Government moves to charge fees for local services that it once provided for free, such as trash collection and water, it is natural to expect more tribal members will find themselves in Court as the number of delinquent payments increase. To secure this revenue, the Tribe will need to rely on the Judicial Branch to arbitrate disputes regarding these fees.

A STRONG TRIBAL COURT HELPS THE TRIBE TAP INTO NEW SOURCES OF REVENUE



Resolution of Constitutional Disputes

The Hualapai Judiciary shall have the power to... declare the laws of the Hualapai Tribe void if such laws are not in agreement with this constitution.
—1991 Hualapai Tribal Constitution (Article VI, Section 3b)



Constitutional cases happen infrequently on the Hualapai reservation—only four in the last three years—but when they do occur, they are difficult to resolve and have far-reaching effects. One of the most important functions of the Court is to address the uncertainties created by the very Constitution that gave the Court more autonomy to do its work.

Framers of constitutions must balance between language that is too vague and language that is too specific. An overly vague constitution offers little help to future decision-makers, while an overly specific constitution becomes quickly dated and impractical.

Authors of the Hualapai Constitution created a living document, leaving it open for interpretation in some sections as new issues develop. In other sections,

they left the language unintentionally vague, a product of unclear language. Both forms of ambiguity may require judicial review, a process whereby the judge interprets the Constitution to make a decision about the legality of a certain law or incident. As new laws pass, and as new incidents occur which highlight these ambiguities in certain parts of the Constitution, the number of constitutional challenges are expected to increase.

EXAMPLE OF AN AMBIGUITY IN THE 1991 CONSTITUTION

LANGUAGE OF CONSTITUTION	UNRESOLVED QUESTIONS	COURT RULING
<p>"Any member of the Hualapai Tribe shall be eligible to run for tribal office if he...is a resident of the reservation for at least one (1) year." -- Article VIII, Section 5 (a)</p>	<ul style="list-style-type: none"> - Does he have to be a resident for at least one year immediately prior to the election? - Does he have to be physically present to qualify, or is having a P.O. Box enough? 	<p>A Tribal Court judge decided this case in 1996, ruling that a candidate can fulfill the residency requirement by having once lived for a year on the reservation.</p>

Since decisions on these issues inform decisions on all future Tribal Court cases, it is in the interest of the Hualapai Tribe that Hualapai judges adjudicate as many of these constitutional conflicts as possible. More than judges outside the reservation, these tribal members understand the context and culture that underpin particular tribal issues, and they and can reach a decision that takes this context into account.

The following pages outline two major constitutional issues that someone may likely push forward in the next few years:

- ***WHEN ARE GENERAL REFERENDA NECESSARY?***
- ***IS THE NEW ENVIRONMENTAL CODE CONSTITUTIONAL?***

WHEN ARE GENERAL REFERENDA NECESSARY?

Over the next few years, the Tribal Court will have to settle the legal boundaries, or “rules of the game”, in regards to tribal investment on the reservation. The future of economic development on the Hualapai Tribe may depend on these Court decisions. According to the 1991 Constitution, the Tribal Council must hold a referendum before it can engage in natural resource development projects worth more than \$50,000 or any projects that expose the Tribe to liability of at least \$250,000.

Several tribal leaders who are interested in streamlining economic development consider these dollar figures restrictive, and they have informally proposed several schemes to work around these clauses in the Constitution. The Court may have to decide one or both:

- Would it be constitutional to sign a series of almost identical contracts with the same business partner, where each individual contract is worth less than \$50,000?
- Would the Tribal Council be allowed to create one or more tribal corporations, each empowered to enter into large-scale contracts without the direct consent of the people?

IS THE ENVIRONMENTAL CODE CONSTITUTIONAL?

DEFINITION OF THE TERM UNCONSTITUTIONAL

When a law is unconstitutional, conflicting with some provision of the constitution, the statute found to be unconstitutional is considered void or as if it had never been. And consequently all rights, contracts, or duties that depend on it are void.

— Black's Law Book

In an important move to help the tribe plan and enforce a sensible policy on natural resource development, the Tribal Council recently passed the Environmental Review Code. This code designates the Tribal Environmental Review Commission (TERC) as the primary authority for regulating land use and development.

Moreover, it gives the Commission powers to issue summons to potential violators of the land ordinance and subsequently impose civil penalties. These offenders would then have the right to appeal the decision within the Tribal Court of Appeals.

At stake is whether TERC would be duplicating the powers of the Tribal Court. The 1991 Constitution states: "The Hualapai Tribal Government shall be divided into two separate and independent branches of government: the Legislative Department, consisting of the Tribal Council and the Tribal Administration, and the Judicial Department." [-- Article II, Hualapai Tribal Constitution, 1991.] Could an agency in the legislative branch assume powers similar to the judiciary? Federal agencies in the United States do use administrative law courts to adjudicate agency-specific claims, but these courts were not mentioned in the Hualapai Tribal Constitution. The first person summoned to TERC may sue the Commission for being unconstitutional.

Summary

The Judicial Branch will play a critical role in the development of the Hualapai Nation. As the Hualapai Nation grows, conflicts will inevitably increase. The decisions judges make define the legal framework for everyone living, visiting, and doing business on the reservation. A strong justice system will not only address increases in crime and contract disputes, it will also strengthen the power of the Tribe to govern and protect itself, encourage tribal members and non-tribal members to invest in businesses on the reservation, and preserve traditional culture.⁸

Endnotes: Chapter 1

¹ Federal Reserve Bank of Kansas City, *Community Investment*, Volume 5, Number 2—Winter 1997, p. 28.

² Mary C. Morgan, *Capitol Hill Hearing Testimony*, Federal Document Clearing House Congressional Testimony, August 2, 1995.

³ A.L. Kroeber, *Walapai Ethnography*, by Fred Kniffen, Gordon MacGregor, Robert McKennan, Scudder Mekeel, and Maurice Cook, edited by A.L. Kroeber, American Anthropological Association (1935), p. 158.

⁴ Carey N. Vicenti, *Prepared Statement before the Senate Committee on Indian Affairs*, Federal News Service, August 2, 1995.

⁵ It is interesting to note that while the number of tourists who visit the reservation has increased to almost 200,000 in 1997, the number of property-related crimes has not increased in the last four years. One reason for the lack of change is that tourists in the past have not interacted much with tribal members. With the construction of the new Tribal Lodge in Peach Springs, these figures may change.

⁶ East/West Executive Guide, *Identifying the Important Issues When Licensing or Transferring Technology in Eastern and Central Europe*, Volume 6, Number 4, April 1, 1996.

⁷ Stephen Cornell, "Sovereignty, Prosperity, and Policy in Indian Country Today," *Community Investment*, Federal Reserve Bank of Kansas City, Volume 5, Number 2—Winter 1997, p. 28.

⁸ Douglas B.L. Endreson, *Prepared Statement before the Senate Indian Affairs Committee on Tribal Sovereign Immunity*, Federal News Service, September 24, 1996.

Appendix: Summary of Tribal Court Case Data

This appendix includes the following items:

- **Hualapai Tribal Court Cases, 1991-1997**
- **Criminal Cases of Hualapai Tribe, 1994-1997**
- **Juvenile Cases of Hualapai Tribe, 1994-1997**
- **Traffic Cases of Hualapai Tribe, 1994-1997**
- **Civil Cases of Hualapai Tribe, 1994-1997**

HUALAPAI TRIBAL COURT CASES, 1991-1997

	1991	1992	1993	1994	1995	1996	1997	ANNUAL % INCREASE 1993-1997	Extrapolation			
									1998	1999	2000	2001
Criminal			538	581	979	1153	1363	26% a year	1717	2164	2727	3435
Traffic	739	775	46	52	153	144	113	25% a year	141	177	221	276
Juvenile			217	262	205	365	307	8.5% a year	333	361	392	425
Civil	153	100	91	139	233	127	195	21% a year	236	285	345	418
TOTAL	892	875	892	1034	1571	1789	1978	22% a year	2421	2980	3677	4546

NOTE: 1995 figures extrapolated from the 9 months of available data of that year

CRIMINAL CASES OF HUALAPAI TRIBE 1994-1997

	1994	1995	1996	1997
CRIMINAL CASES	581	979	1153	1363
VIOLENT CRIMES				
abduction	0	5	0	2
assault	28	16	50	71
attempted rape	3	1	3	8
battery	54	68	95	108
CRIMES INVOLVING MINORS				
care of dependent persons	49	45	39	38
carnal knowledge of minor	1	0	3	3
contributing to delinquency of minor	17	61	36	88
failure to send children to school	0	0	0	7
permitting child's life to be imperiled	45	89	85	61
unnatural sex acts with a minor	3	1	2	2
ALCOHOL-RELATED CRIMES				
disorderly conduct	184	172	216	238
illegal possession of alcohol	25	36	32	34
liquor violation	2	3	11	14
narcotics and dangerous drugs	3	7	13	16
open container	0	83	56	51
public intoxication	10	188	301	359
PROPERTY CRIMES				
breaking & entering	3	1	11	5
injury to public property	16	13	10	10
malicious mischief	18	21	31	28
shoplifting	2	0	0	0
theft	13	9	10	5
trespass	12	4	14	19
DISRESPECT OF LAW/COURT				
contempt of court	16	59	42	99
disobedience to a lawful order	3	12	12	8
escape	8	4	3	5
fugitive from justice	3	12	17	11
refusal to obey a lawful order	14	15	8	8
resisting lawful arrest	19	27	21	42
violence to policeman or judge	2	0	7	10
VIOLATION OF PROBATION				
violation of probation	18	21	8	1
OTHER				
false arrest	0	0	0	1
incest	0	0	1	0
maintaining a public nuisance	0	0	1	1
discharge of firearms	0	1	5	1
disposing of property of an estate	0	1	0	0
aiding and abetting	4	0	0	2
misbranding	0	0	0	1
negligent handling of a campfire	0	0	2	0
incest	0	0	1	0
carrying concealed weapon	2	1	2	4
game violations	1	0	0	0
cruelty to animals	2	0	0	1
destroying evidence	0	0	0	1
charges with wrong citation	0	0	5	0
bribery	1	0	0	0

NOTE: 1995 figures extrapolated from the 9 months of available data in that year

JUVENILE CASES OF HUALAPAI TRIBE 1994-1997

	1994	1995	1996	1997
JUVENILE CASES	262	205	365	307
VIOLENT CRIMES				
assault	8	4	5	11
battery	19	31	28	20
PROPERTY CRIMES				
breaking and entering	3	4	4	4
disposing of property of an estate	0	0	0	1
malicious mischief	7	1	7	3
injury to public property	7	1	6	4
receiving stolen property	0	0	1	0
theft	5	12	5	1
trespass	2	1	6	2
ALCOHOL RELATED CRIMES				
disorderly conduct	35	15	47	45
public intoxication	0	4	10	3
liquor violation	0	1	1	1
illegal possession of alcohol	53	32	70	65
narcotics and dangerous drugs	8	17	3	8
DISRESPECT OF COURT				
disobedience to lawful order	5	0	3	1
refusal to obey a lawful order	4	0	6	1
contempt of court	5	3	3	3
escape	4	1	0	2
resisting lawful arrest	0	1	5	12
TRAFFIC VIOLATIONS				
reckless driving	0	1	2	0
speeding	0	0	1	0
driving under the influence	1	3	2	0
no driver's license	2	8	5	1
temporary restraining order	0	0	0	1
unsafe backing	1	0	0	0
failure to stop at a stop sign	0	1	0	0
VIOLATION OF PROBATION				
violation of probation	7	4	5	5
OTHER				
dependent	43	23	39	65
aiding and abetting	5	5	3	0
custody	0	0	3	0
emergency custody	0	0	1	0
incorrigible	10	11	34	5
curfew for minors	28	19	55	32
no section cited	0	0	1	2
wrong section cited	0	0	0	6
carrying a concealed weapon	0	1	1	2
contributing to a minor	0	0	0	1
cruelty to animals	0	0	3	0
	262	205	365	307

NOTE: 1995 figures extrapolated from the 9 months of available data in that year

TRAFFIC CASES OF HUALAPAI TRIBE 1994-1997

	1994	1995	1996	1997
TRAFFIC CASES	52	115	144	113
NO REGISTER/LICENSE				
registration of vehicle	0	0	1	2
operators must be licensed	18	26	6	15
license carried and exhibited on demand	0	2	4	2
driving on suspended license	0	2	5	9
permitting unauthorized minor to drive	2	0	4	1
permitting unauthorized person to drive	0	3	2	3
no driver's license	0	1	5	4
no motor vehicle registration	1	3	1	2
employing unlicensed chauffeur	0	0	2	0
ALCOHOL RELATED CRIMES				
driving under the influence	17	38	64	43
ACCIDENTS				
accidents involving personal injuries	0	2	1	1
accident involving damage	1	1	2	0
immediate report of accidents	0	4	2	0
TRAFFIC VIOLATIONS				
overtaking on leftside	0	1	0	3
limitations of backing	1	0	0	1
turning movements and required signals	0	0	1	2
driving on left of center lane	0	1	2	1
entering private road or driveway	0	0	0	1
operation on approach of emergency vehicle	1	3	2	3
wrong section cited	0	0	0	2
party to a crime	0	0	0	2
speeding	2	0	0	0
parking outside of business district	1	1	1	0
no passing zone	0	1	0	0
stop sign and yield signs	0	3	3	0
duty to give information and render aid	0	3	0	0
striking fixtures upon a highway	0	0	2	0
required turning at intersections	0	0	2	0
tail lamps	0	0	1	0
vehicles without required equipment	0	0	1	0
obedience to police officer	0	1	0	1
implied consent	2	1	3	1
reckless driving	6	12	16	8
special restrictions	0	6	11	6

NOTE: 1995 figures extrapolated from the 9 months of available data in that year

CIVIL CASES OF HUALAPAI TRIBE 1994-1997

	1994	1995	1996	1997
CIVIL CASES	139	233	127	195
claims	81	112	34	83
order to show cause	19	71	30	37
probate	0	5	3	5
establish name	2	1	6	1
order of protection	0	0	18	24
name change	4	8	10	3
paternity/child support	4	0	6	6
repossession	0	0	2	1
injunction	2	7	1	7
temporary restraining order	0	0	1	1
contempt of court	0	0	2	2
divorce	20	12	3	9
modification of child support	0	3	2	1
writ of Mandamus	0	0	0	1
petition to modify order	0	0	0	2
employment suit	0	0	0	3
acknowledgment of commonlaw marriage	0	0	0	1
establish birth parents	6	3	1	1
petition for visitation	0	1	0	1
modification of custody order	0	3	0	1
inquest	0	0	0	1
search warrant	0	3	0	2
alimony	0	0	0	1
slander	0	0	0	1
guardian over a person	1	3	0	0
involuntary commitment	0	1	0	0
petition of eviction	0	1	0	0
property settlement	0	0	1	0
hunting without a permit	0	0	1	0
enforcement of foreign judgment	0	0	1	0
election violation	0	0	1	0
littering	0	0	1	0
establish residency	0	0	1	0
emergency order	0	0	1	0
enforcement order	0	0	1	0

NOTE: 1995 figures extrapolated from the 9 months of available data of that year

Building Support for the Development of the Hualapai Tribal Court

CHAPTER 2:

THE RESOURCE GAP: WHAT THE TRIBAL COURT NEEDS TO DO ITS JOB

**Michael Goldstein
Harvard Project on American Indian Economic Development
April 1998**

Table of Contents

TABLE OF CONTENTS	1
INTRODUCTION: CRITERIA FOR AN EFFECTIVE TRIBAL COURT.....	2
IS THE COURT WELL-STAFFED?	3
ARE COURT EMPLOYEES WELL-TRAINED?.....	5
ARE COURT FACILITIES IN GOOD CONDITION?.....	6
COMPARISON WITH OTHER TRIBAL COURTS	8
IS COURT FUNDING DEPENDABLE AND SUFFICIENT?.....	10
DOES THE COURT HAVE THE SUPPORT OF TRIBAL MEMBERS?.....	14
SUMMARY	17
ENDNOTES: CHAPTER 2.....	18

Introduction: Criteria for an Effective Tribal Court

The tasks of the Judicial Branch are clear: it must manage an increasing criminal, civil, and constitutional case load, as well as develop alternative systems of conflict resolution to promote Hualapai culture and prevent crime. What is not so clear is whether the Judicial Branch will have the resources necessary to accomplish these tasks.

An effective Tribal Court is one that meets the following five criteria:

FIVE CRITERIA: WHAT MAKES AN EFFECTIVE TRIBAL COURT

- 1. The Court is well-staffed.**
- 2. Court employees are well-trained.**
- 3. Court facilities are in good condition.**
- 4. Court funding is dependable and sufficient.**
- 5. The Court has the support of tribal members.**

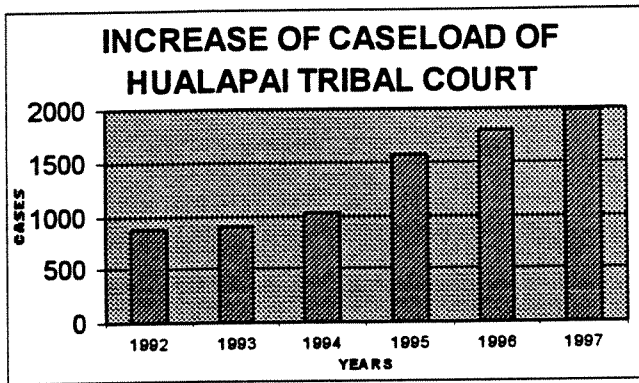
As this analysis will show, the Hualapai Judicial Branch is unprepared to handle the onslaught of new cases and roles. To do its job properly, the Judicial Branch will have to improve on almost all fronts, from developing its human capital to improving its facilities. Unfortunately, neither the resources nor the political will to rejuvenate the Court are readily available.

Is the Court Well-Staffed?

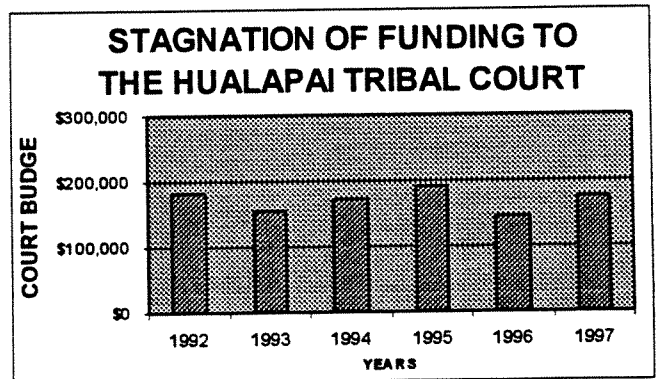
While the budget for the Tribal Court has not increased in the last four years, the number of cases has increased steadily over time. As a result, the Tribal Court has been doing more with less.

A TALE OF TWO STATISTICS:

THE WORK IS INCREASING BUT THE RESOURCES ARE NOT

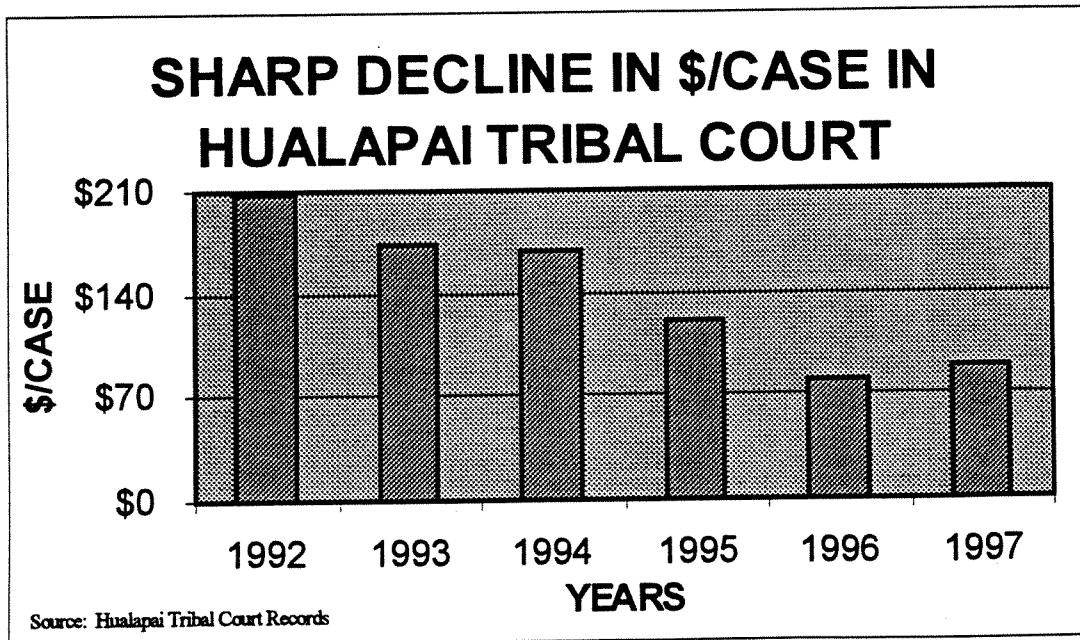


Source: Hualapai Tribal Court Records



Source: Hualapai Tribal Court Records

THE RESULT:

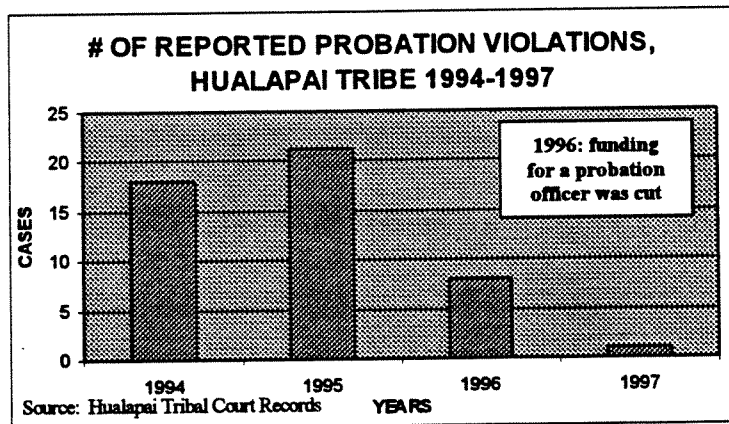


Source: Hualapai Tribal Court Records

Despite a two-fold jump in workload, the Hualapai Tribal Court does not have any more employees than it had four years ago. Since a typical case requires an average of two hours of a judge's time, from initial hearing to sentencing to documentation, the caseload currently requires 4,000 hours a year to complete. This is more work than one full-time Chief Judge and two quarter-time Associate Judges can competently accomplish. Unless the Judicial Branch hires new employees, judges will have to sacrifice thoughtful deliberation of Court cases for the sake of expediency. Alternatively, there will be delays in the Court process that will leave disputes unresolved. By the year 1999, when the court may have to handle up to 3000 cases, the Court will require an additional full time judge, one half-time judge, and two clerks.

COST OF NEW JUDGES AND CLERKS: ~\$90,000/YEAR

In addition, due to budget cuts in 1996, the Tribal Court does not have a single probation officer or public defender. Without probation officers, people currently sentenced to probation



and counseling find that there are few consequences if they do not comply with their court order. No one is checking up on them.

Without public defenders, accused people are not aware of their rights and opportunities during the legal process. For example, one Hualapai youth recently admitted to a crime he did not commit because he did not understand the legal questions he was asked. For 1999, the Tribal Court will need two probation officers and four part-time (12 hours/week) public defenders.

COST OF NEW PROBATION OFFICERS: ~\$50,000/YEAR

COST OF NEW PUBLIC DEFENDERS: ~\$36,000/YEAR

Are Court Employees Well-Trained?

Hualapai Tribal Court employees lack many of the skills they need to do their work effectively. One of the conclusions of the 1996 evaluation of the Tribal Court performed by the Bureau of Indian Affairs was that Court employees need more training in Indian Law and court procedures.¹ In addition, as the Court takes on more cases, the administrator and clerks will need to learn administrative systems to handle the work. And as the Tribal Court experiments with alternative dispute resolution mechanisms, all staff will need training in how to operate in a new work environment.

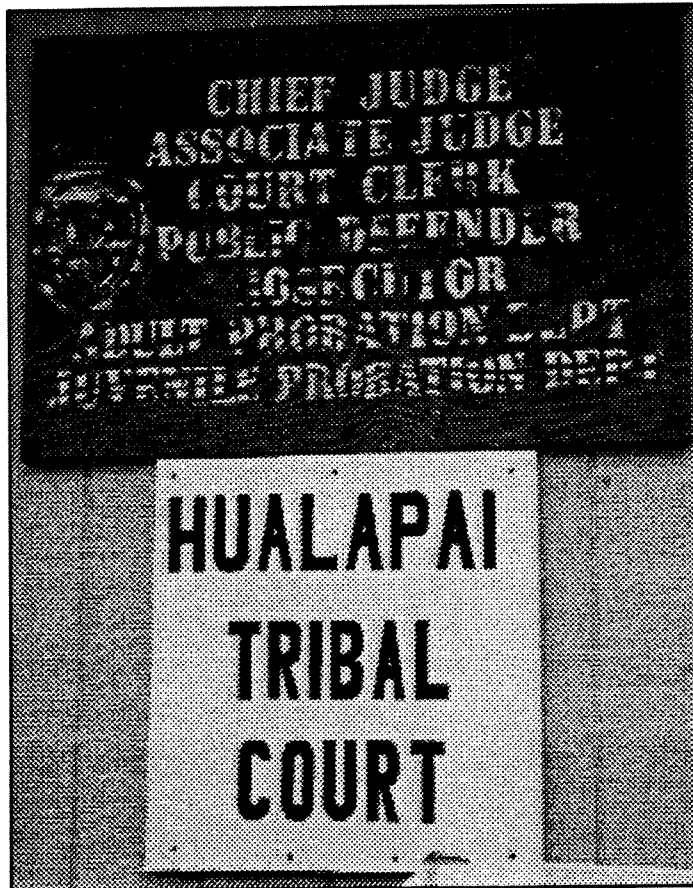
At the present time, not enough resources are devoted to training in the Tribal Court. Several times in the last few years, the line item for training was cut or significantly reduced in an effort to save money. While the Court will receive an additional \$4,000 for training and travel from its grant from the Administration for Native Americans, this money will only be available for one year.

TRAINING THAT COURT PERSONNEL WILL REQUIRE

EMPLOYEE	ALTERNATIVE DISPUTE RESOLUTION	INDIAN LAW	MANAGEMENT	COMPUTER TRAINING	LEGAL WRITING
Judges	★	★			★
Court Administrator	★	★	★	★	★
Clerks	★	★	★	★	★
Prosecutor	★	★			★
Public Defender	★	★			★
Probation Officer	★	★			

COST OF ADDITIONAL EMPLOYEE TRAINING: ~\$8,000/YEAR

Are Court Facilities in Good Condition?



“Architecture has its political use; public Buildings being the Ornament of a Country; it establishes a Nation, draws People and Commerce; makes the People love their native Country.”

-Sir Christopher Wren

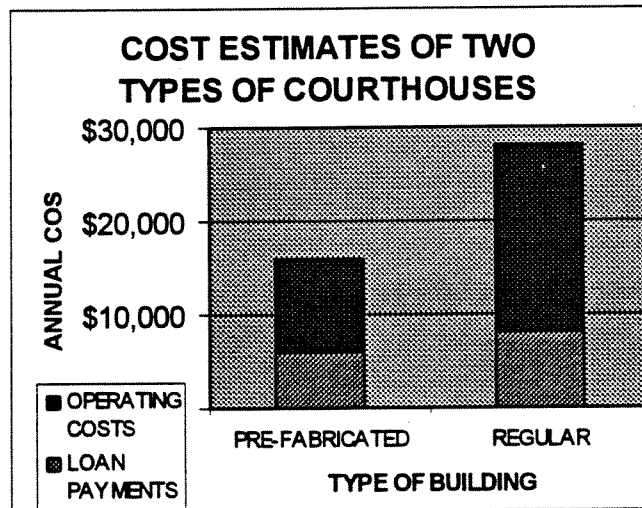
(English architect, 1632-1723)

The following is an excerpt from the Environmental Health and Safety Report of the court building, which declared the building condemned in April 1992.

- Lighting is inadequate in all the offices.
- Electrical wiring is uncovered in several places and water damage is evident near electrical junction boxes.
- Due to insufficient storage space restrooms were used as storage rooms.
- Wall paneling is loose in several places with protruding wood splinters and nails.
- The building does not have adequate heating and ventilation.
- Many kinds of animals and pests make their homes under and in the building.²

The current building is too small and unsafe to house the Tribal Court. Some tribal propose relocating the Tribal Court to another tribally-owned building or to the as-yet-unbuilt juvenile detention center, but neither of the proposed sites is large enough to hold the entire Tribal Court. As the caseload and responsibility of the Tribal Court increases, the only viable long-term solution is to build a new Courthouse.

Low interest financing is available for a new building from the Department of Agriculture through its Community Facilities Loan Program. Depending on the size and nature of the building, loan payments and operations/maintenance would cost the tribe between \$14,000 and \$30,000 a year.



Source: Brochure: Mobile Mini, Modular Building Division / Hualapai Courthouse Design, Planner's Office
 Note: Operating costs include electricity, heat, maintenance.

COST OF IMPROVED FACILITIES: ~\$14,000/YEAR TO \$30,000/YEAR

Fortunately, a recent grant from the Administration for Native Americans will provide \$20,000 for a basic legal library and computers for the Court employees. Before the grant, the Court staff worked with old legal texts, typewriters, and outdated computers.

Summary of People, Training, and Facilities: Comparison with Other Tribal Courts

This section compares the Hualapai Tribe with five other tribes in Arizona to create a rough benchmark for Tribal Court spending. Because these tribes vary considerably in population, casino wealth, and proximity to urban centers, it is difficult to make any firm statement about where the Hualapai Nation ranks among its fellow tribes in providing resources for its judiciary. Nevertheless, these two parameters—condition of the courthouse and dollars spent per case—provide some insight in how much attention tribal governments are giving to Tribal Courts in all six tribes.

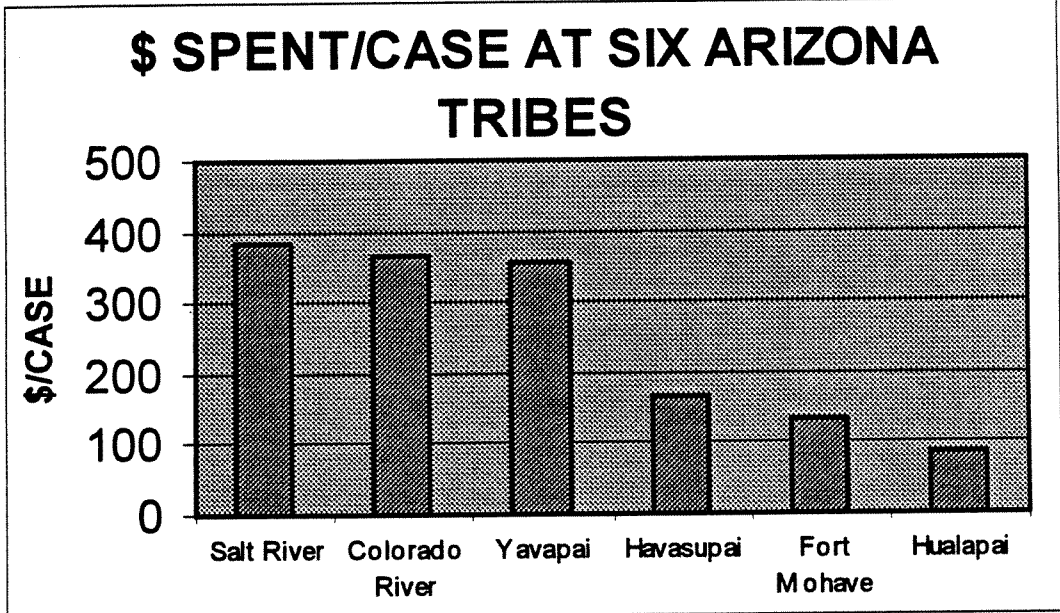
MOST TRIBES HAVE A NEW OR NEWLY RENOVATED BUILDING

COMPARING THE CONDITION OF COURTHOUSES ON SIX ARIZONA TRIBES:

TRIBES	CONDITION OF COURTHOUSE
Salt River	BRAND NEW
Colorado River	NEW
Havasupai	NEWLY RENOVATED
Fort Mohave	OLD
Yavapai	BRAND NEW
HUALAPAI	CONDEMNED

Source: Phone interviews with representatives from the BIA and the five Tribal Courts.

THREE TRIBES OUTSPEND THE HUALAPAI TRIBE BY A FACTOR OF FOUR TO ONE



Source: Phone interviews with representatives from the BIA and the five Tribal Courts.

ADDITIONAL RESOURCES THE TRIBAL COURT WILL REQUIRE IN 1999 TO BE EFFECTIVE

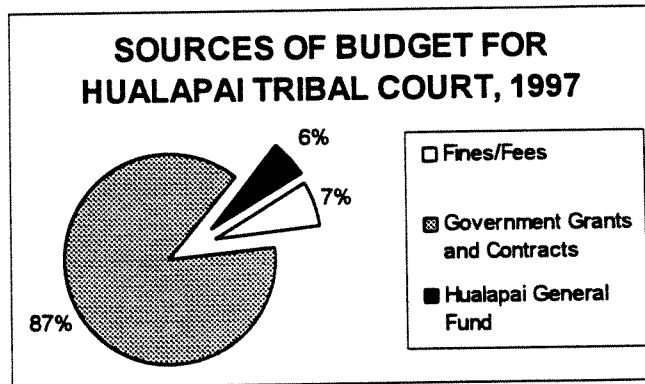
NEW JUDGES AND CLERKS:	~\$90,000/YEAR
NEW PROBATION OFFICERS:	~\$50,000/YEAR
COST OF NEW PUBLIC DEFENDERS:	~\$36,000/YEAR
ADDITIONAL EMPLOYEE TRAINING:	~\$8,000/YEAR
IMPROVED FACILITIES:	~\$14,000 TO \$30,000/YEAR
TOTAL ADDITIONAL COSTS FOR 1999	~198,000 TO \$214,000/YEAR

Is Court Funding Dependable and Sufficient?

SUMMARY: Past funding is clearly not enough to support the Tribal Court. Unfortunately, it is unlikely that future funding will much improve unless the Tribal Court becomes a higher priority in local tribal spending.

The judicial budget for FY 1997 was \$174,251. All of this money came from three sources:

Fines/Fees	\$11,451
Federal Government	\$152,800
Hualapai General Fund	\$10,000



1. FINES/FEES

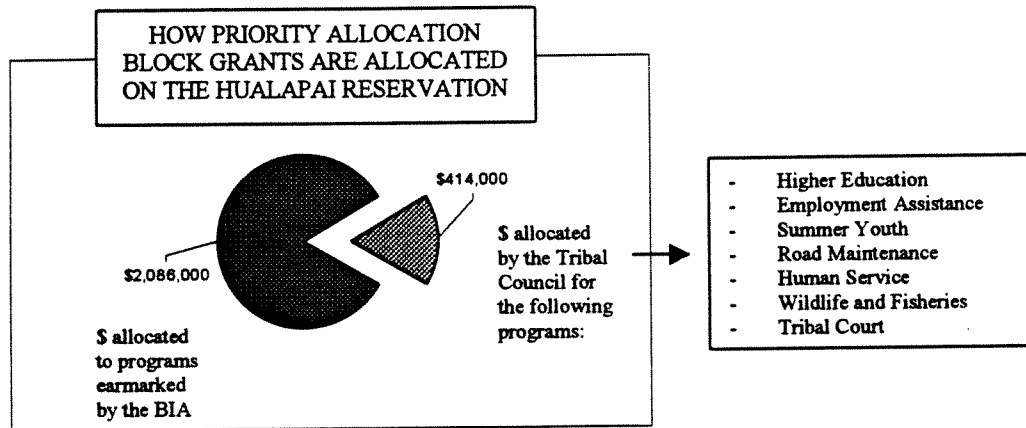
To increase the revenue of the Judicial Branch, the Hualapai Tribal Council approved a rate increase in Court fees. The percentage increase in fees per claim is dramatic: 400% in most instances. However, as the equation below explains, this increase will only yield an expected \$3,600 in FY 1998.

$$\begin{array}{rcccl}
 \$15 & * & 240 & = & \$3600 \\
 \text{(average fee increase} & & \text{(estimated number of} & & \text{(total)} \\
 \text{per claim)} & & \text{claims in 1998, up} & & \\
 & & \text{23\% from 1997)} & &
 \end{array}$$

A more important revenue source is speeding tickets. In 1997, the Tribal Council changed the Tribal Legal Code to allow local police to pull over non-Indians for speeding. These fines have been bringing in almost \$180 a week to the Tribal Court since February, yielding an expected \$8,000 for the year. While this is a steady source of revenue, it is not enough to support a Tribal Court.

2. FEDERAL GOVERNMENT

Current government spending for Tribal Courts, with minimal base funding and sporadic additional grants for tribal judiciaries, is inadequate and unpredictable. The Hualapai Tribal Court receives the bulk of its annual income from the Bureau of Indian Affairs in the form of priority allocation block grants. Last year, the Tribe received \$2,500,000 in these grants, all of which is theoretically available to the Tribe Council to allocate as it wishes. In reality, only a portion of these funds is under the Tribe's direct control; the rest is earmarked by the Bureau of Indian Affairs for other programs. It is possible, though it requires considerable paperwork, for the Tribal Council to reallocate portions of this earmarked funding as well.



All of these numbers beg a simple question: who should get the money that the Tribal Council may reallocate? With high unemployment and poverty on the reservation, the need for funds is greater than what is available. It falls to the Tribal Council to make the difficult decisions to allocate these resources among the competing interests according to where they perceive the need is greatest. This funding is the best source of revenue for the Tribal Court, but it will not be easy to receive.

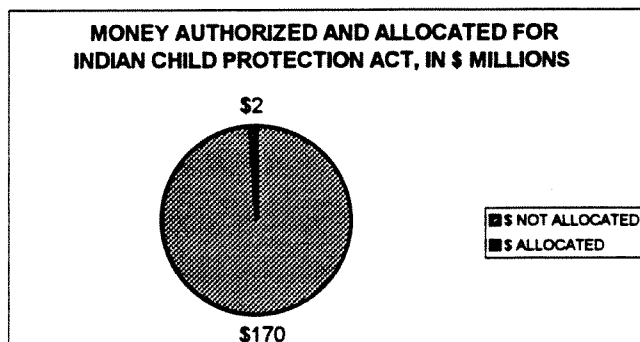
In addition to base funds from the Bureau of Indian Affairs, there are grant programs from other U.S. federal agencies for specific judicial and law enforcement programs. In 1997, the Judicial Branch received a \$19,000 planning grant for FY 1998 from the U.S. Department of Justice for its Wellness Court. This year, the

Judicial Branch received \$64,000 for training and equipment from the Administration for Native Americans, an agency within Health and Human Services. While the Hualapai Tribe has had success in securing grants from these agencies, these grants cannot substitute for predictable annual funding. These grants do not fund ongoing programs, and they require considerable time and energy for Court employees to write. Unless the Judicial Branch finds ongoing funding for the new programs initiated with this recent grant money, such as the Wellness Court, these programs may not survive.

EXAMPLE OF ONE PROGRAM THAT LOST ITS FUNDING:

Between 1978 and 1983, the Office of Juvenile Justice in the U.S. Department of Justice provided funding to the Hualapai Tribe to operate a youth home, an alternative to jail for youngsters. When the funding was cut in 1983, the program quietly died.

Throughout the country, supporters of tribal sovereignty are fighting to create a more reliable funding source for Tribal Courts. Specifically, they are lobbying Congress to fund part of the \$58 million authorized under the Indian Tribal Justice Act passed in 1993 to enhance the improvement of tribal judicial systems. *As of March 1998, Indian tribes have not received any of the money promised in the Act.*³ It is not unprecedented for the U.S. Congress to authorize funds under great fanfare and then not follow through on its pledge. For instance, Congress authorized \$43 million a year for four years for Indian child protection and family violence prevention programs. As of December 1996, only about \$2 million total was ever appropriated.⁴



Source: Ivan Makil, Testimony on the Indian Child Protection Act, 12/96

One reason for the lack of implementation is that the Bureau of Indian Affairs has not yet shown the leadership to fight for this funding. According to an internal memorandum of the BIA, more money channeled to the Tribal Courts through the bureau would only “strain available resources and staff.”⁵

The Hualapai Judicial Branch has little control over the federal funding environment. Members of the judiciary should by all means take advantage of any new opportunities that arise, but a passive strategy—waiting until the federal government decides what it wants to do—could bankrupt the Court. A more promising solution is for the Tribal Council to redistribute the funding it does control to support the Tribal Court.

3. HUALAPAI GENERAL FUND

Although the Hualapai General Fund is a more stable source of revenue to the Hualapai Tribe than government grants and contracts, it cannot support all of the Tribe's needs. The Tribal Council apportions the money in this fund—\$2,300,000 in 1997—to the government services it considers most important to the Tribe. The chart below summarizes the main sources of funding to the General Fund as well as the principal recipients of aid.

PRIMARY SOURCES OF INCOME AND RECIPIENTS OF THE HUALAPAI GENERAL FUND

SOURCES OF FUNDING	RECIPIENTS OF AID
<ul style="list-style-type: none"> • POSSESSORY TAXES: fees from companies like the Santa Fe Railroad to use Hualapai land. • INDIRECT COSTS: money from government contracts to defray overhead costs. • TRIBAL BUSINESSES: income generated from economic development. 	<ul style="list-style-type: none"> • Office Of Planning • Office Of Management And Budget • Recreation Department • Grants And Contract Administration • Personnel Department • Outside Auditor And Legal Counsel • Education And Elderly Programs

Source: Hualapai Accounting Department

The General Fund increased about \$100,000 over the last year, and growth will likely continue as a result of increased tourism. Any extra income can be earmarked for the Tribal Court, although other agencies will also press for an increase in aid. In the end, programs that receive funding will be those that persuasively present their case and enjoy wide-spread support from tribal members.

Does the Court Have the Support of Tribal Members?

The Hualapai Judicial Branch is an unpopular institution on the Hualapai Tribe. Most of the 19 tribal members interviewed reported that while *they* appreciate the contribution of the judiciary to tribal development, *others* do not. In fact, these members maintain that the Court is almost universally disliked on the reservation. **This attitude is not lost on tribal leaders who must prioritize competing interests.** Two Tribal Council members interviewed stated that while developing capacity of the Tribal Court is important, it is just one problem among many. To receive adequate funding in the future, members of the Judicial Branch must address this wide-spread negative attitude as their first concern. This section explores the three main reasons proposed in the interviews why tribal members do not like the Tribal Court:

- Tribal members do not consider the Tribal Court culturally legitimate;
- Tribal members do not understand how the Tribal Court works;
- Tribal members do not trust Tribal Court employees.

1. TRIBAL MEMBERS DO NOT CONSIDER THE TRIBAL COURT CULTURALLY LEGITIMATE

When two men start fighting, the whole settlement sometimes gets involved in trying to stop it. A family not closely related to either man usually tries to settle the matter.

-Walapai [sic] Ethnography⁶

If two men start fighting, one or both might be arrested. After the arrest the accused go to arraignment, where they enter a plea. If the plea is not guilty, the case is set for pre-trial. At pre-trial, standards are set for admitting evidence and parties can plea bargain depending on the circumstances or evidence.

-Summary of Hualapai Tribal Court Procedure

The dispute resolution system used by the Hualapai people before the creation of the reservation is almost a photo negative of the current system. The formal U.S.-style Court is adversarial; the traditional system relied on consensus. The formal U.S.-style Court is punitive, in that it is designed to punish people; the

traditional focused on mediation. The formal U.S. style Court isolates the accused from his or her family; the traditional system included the family in the dispute resolution process.

COMPARISON OF CURRENT AND TRADITIONAL DISPUTE RESOLUTION SYSTEMS

Formal U.S.-Style Court	Traditional Dispute Resolution
Adversarial	NOT adversarial
Punitive	NOT punitive
Isolating	NOT isolating

It has not been an easy transition from one dispute resolution system to another, especially when the two systems are so dissimilar. Under these circumstances, tribal members may naturally feel that the decisions of the current system are illegitimate and not relevant to them.

2. TRIBAL MEMBERS DO NOT UNDERSTAND HOW THE TRIBAL COURT WORKS

Tribal members who question the legitimacy of U.S.-style law are not anxious to understand how this law works. Many of them have no knowledge of their basic legal rights. According to one tribal member, even Tribal Government employees do not respect or understand all of the laws under which they operate. People often complain when judges decide matters based on legal technicalities rather than what may seem like the right thing to do. As well, others see an unfavorable verdict as a personal attack from the judge, not an formal decision based on the rule of law.

3. TRIBAL MEMBERS DO NOT TRUST TRIBAL COURT EMPLOYEES

Employees of the Hualapai Tribal Court have had an uneven track record throughout the Court's history. According to the 1979 Hualapai Tribal Report, the Tribal Court prior to 1976 had a reputation for being more of a BIA police tribunal than a fair court of law.⁷ In addition, judges were sometimes role models of the very behavior they were supposed to punish. Joked one tribal member, "In the old days, the judge would party with the people all night and then judge them the next morning." It is no surprise that the 'removal of Judges' section in the new Constitution includes as a reason for a judge's suspension or dismissal "performing his official duties while under the influence of alcoholic beverages."⁸ The framers added the line to institutionalize a lesson learned from past experience. Many acknowledge that employee behavior has improved dramatically in recent years. Like other developing nations, the Hualapai Tribe is setting a higher standard for its government employees. Yet the stigma of the past still lingers.

Before the Judicial Branch can make any claim on the limited resources available on the reservation, it must first overcome the hostility many tribal members feel toward the Tribal Court. A strategy to gain good will must take into account the fact that tribal members consider the Tribal Court a confusing and foreign institution, historically run by employees of questionable character.

Summary

In order to do the legal work necessary to develop a sovereign nation, the Judicial Branch will require an additional \$200,000 in 1999 in salaries, training, and facilities improvements.

LOOKING BACK AT THE FIVE CRITERIA: GAPS THE TRIBAL COURT MUST FILL

CRITERIA	STEPS REQUIRED TO MEET CRITERIA
SUFFICIENT NUMBER OF EMPLOYEES	Hire an additional full-time and part-time judge, two clerks, two probation officers, and four part-time defense advocates.
SUFFICIENT TRAINING FOR EMPLOYEES	Train staff in alternative dispute resolution, Indian law, management, computers, and legal writing.
SUFFICIENT COURT FACILITIES	Build a new courthouse.
SUFFICIENT AND STABLE FUNDING STREAM	Seek additional federal and Tribal funding.
SUFFICIENT PUBLIC SUPPORT	Overcome barriers of distrust and misunderstanding.

Endnotes: Chapter 2

- ¹ Joseph Thomas Flies-Away, *Hualapai Tribal Judiciary Report to the Hualapai Tribal Council at a Special Council Meeting*, January 17, 1997.
- ² Indian Health Services, *Environmental Health and Safety Report: Hualapai Tribal Court*, April 7, 1992.
- ³ Ron Allen, *Testimony on Sovereign Immunity before the Senate Committee on Indian Affairs*, Federal Document Clearing House, March 11, 1998.
- ⁴ Ivan Makil, *Testimony on the Indian Child Protection Act and Family Violence Prevention Act before the Senate Committee on Indian Affairs*, Federal Document Clearing House, December 16, 1996.
- ⁵ Carey N. Vicenti, *Prepared Statement before the Senate Committee on Indian Affairs*, Federal News Service, August 2, 1995.
- ⁶ A.L. Kroeber, *Walapai Ethnography*, by Fred Kniffen, Gordon MacGregor, Robert McKennan, Scudder Mekeel, and Maurice Cook, edited by A.L. Kroeber, *American Anthropological Association* (1935), p. 158.
- ⁷ Duane Yellowhawk, *Judicial Report: Hualapai Tribal Court for 1978-1979*, June 1, 1979.
- ⁸ *Constitution of the Hualapai Indian Tribe*, Article VI, Section 11a(3).

Building Support for the Development of the Hualapai Tribal Court

CHAPTER 3:

FIVE ACTION STEPS: HOW TO BUILD GOOD WILL FOR THE TRIBAL COURT

**Michael Goldstein
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April 1998**

Table of Contents

TABLE OF CONTENTS	1
CRITERIA FOR EFFECTIVE ACTION STEPS	2
ACTION PLAN: ONE YEAR TIMELINE	4
1. CREATE A HUALAPAI DEPARTMENT OF JUSTICE.....	5
2. DEVELOP AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM.....	10
3. TRAIN TRIBAL MEMBERS TO BE PUBLIC DEFENDERS.....	15
4. INSTITUTE AN ETHICS CODE FOR COURT EMPLOYEES.....	17
5. HAVE JUDGES PERFORM MARRIAGE CEREMONIES	18
TACTICS: RECRUITING PARTICIPANTS	20
TACTICS: TARGETING SUPPORTERS AND POTENTIAL OPPOSITION	22
SUMMARY	24
ENDNOTES: CHAPTER 3.....	25

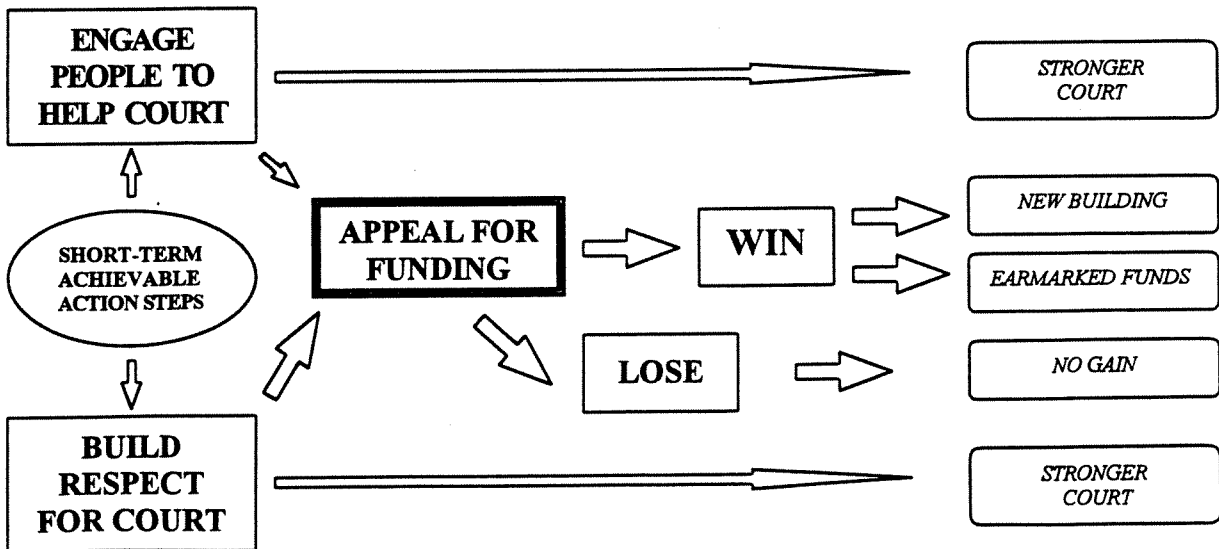
Criteria for Effective Action Steps

This chapter is intended to advise policy makers on strategies to increase the likelihood of local funding for the Hualapai Tribal Court. To accomplish its important mission, the Hualapai Judicial Branch will require a new courthouse and annual earmarked funds from the Tribal Government. Given current sentiment against the Tribal Court, however, the Judicial Branch will likely lose any contest for scarce funds unless it engages first in a series of achievable, short-term action steps to find allies and improve its reputation.

- An effective action step:**
- 1. Builds respect within the tribe for the Tribal Court.**
 - 2. Encourages people to have a stake in the Court's activities.**
 - 3. Has a high chance of success within one year.**

As the diagram below indicates, one advantage to this strategy is that the steps will strengthen the Judicial Branch whether or not the eventual appeal for additional funding is successful:

FLOW CHART: USING SHORT-TERM ACTION STEPS TO DEVELOP THE HUALAPAI TRIBAL COURT



This chapter outlines five action steps that meet the three criteria. These steps are listed below in decreasing order of difficulty and impact:

FIVE ACTION STEPS TO BUILD GOOD WILL FOR THE COURT

HARDEST		CREATE A HUALAPAI DEPARTMENT OF JUSTICE
	GREATEST IMPACT	DEVELOP AN ALTERNATIVE CONFLICT RESOLUTION SYSTEM
		TRAIN TRIBAL MEMBERS TO BE PUBLIC DEFENDERS
		INSTITUTE AN ETHICS CODE FOR COURT EMPLOYEES
EASIEST	LEAST IMPACT	HAVE JUDGES PERFORM MARRIAGE CEREMONIES

Action Plan: One Year Timeline

TASKS	NOW	THREE MONTHS	ONE YEAR
Create a Hualapai Department of Justice			
- Create Steering Committee	★		
- Hold monthly meetings	O N G O I N G		
- Recruit and hire an in-house lawyer		★	
- Take over BIA contracts of police/corrections			★
- Write legislation to enact Department			★
Develop Alternative Dispute Resolution System			
- Recruit tribal members to be ADR planners	★		
- Hold bi-weekly meetings	O N G O I N G		
- Visit other tribes with ADR systems		★	
- Write legislation to enact ADR system			★
Train Tribal Members to Be Public Defenders			
- Recruit tribal members to be advocates	★		
- Train members in legal process and mediation	O N G O I N G		
- Create Hualapai Bar Association			★
Institute an Ethics Code for Court Employees			
- Meet with Court employees to discuss code	★		
- Write legislation to enact code		★	
Have Judges Perform Marriage Ceremonies			
- Recruit people to study Hualapai weddings	★		
- Write legislation to enact marriage code		★	

1. Create a Hualapai Department of Justice

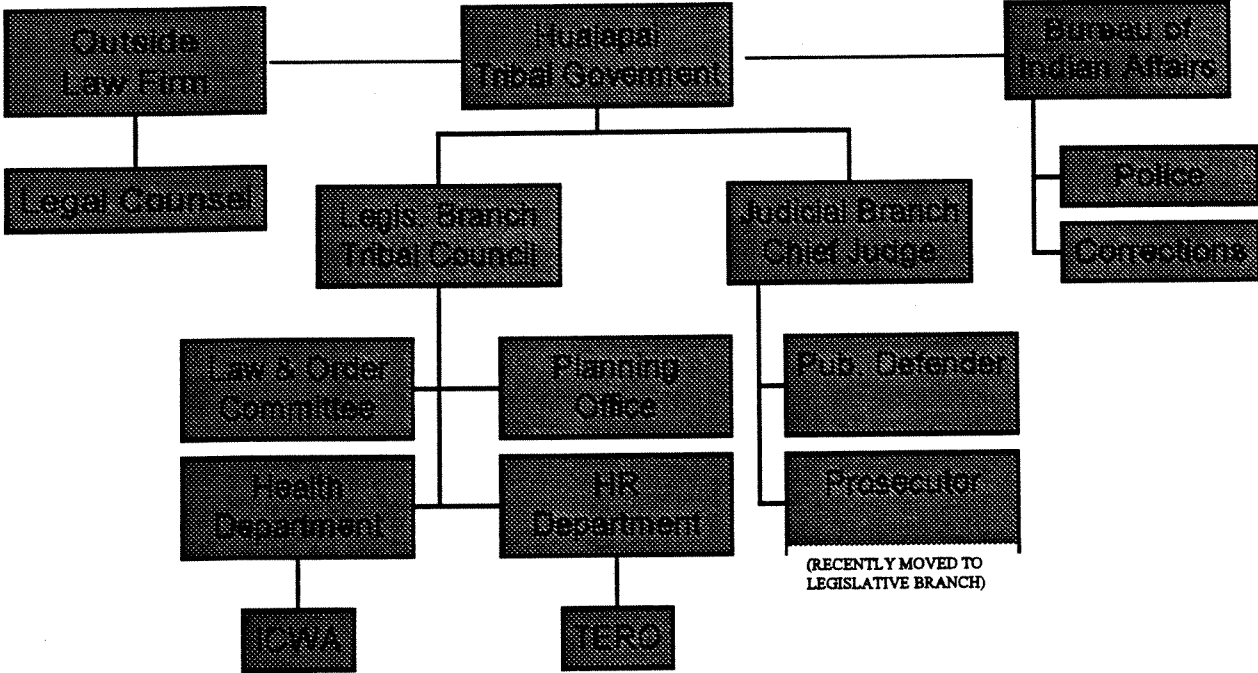
This section outlines how the Hualapai Tribe might reorganize nine of its law-related programs not in the Hualapai Judiciary into a Tribal Department of Justice. A Department of Justice is the most challenging of the five action steps, for a considerable investment of time and political capital will be required by the Tribal Council and other tribal leaders to convince all of the different parties to work together. Yet it is also one that provides the greatest rewards should it succeed. A centralized department would improve the quality and public standing of legal services and law enforcement on the reservation, including the Tribal Court.

A Department of Justice will:

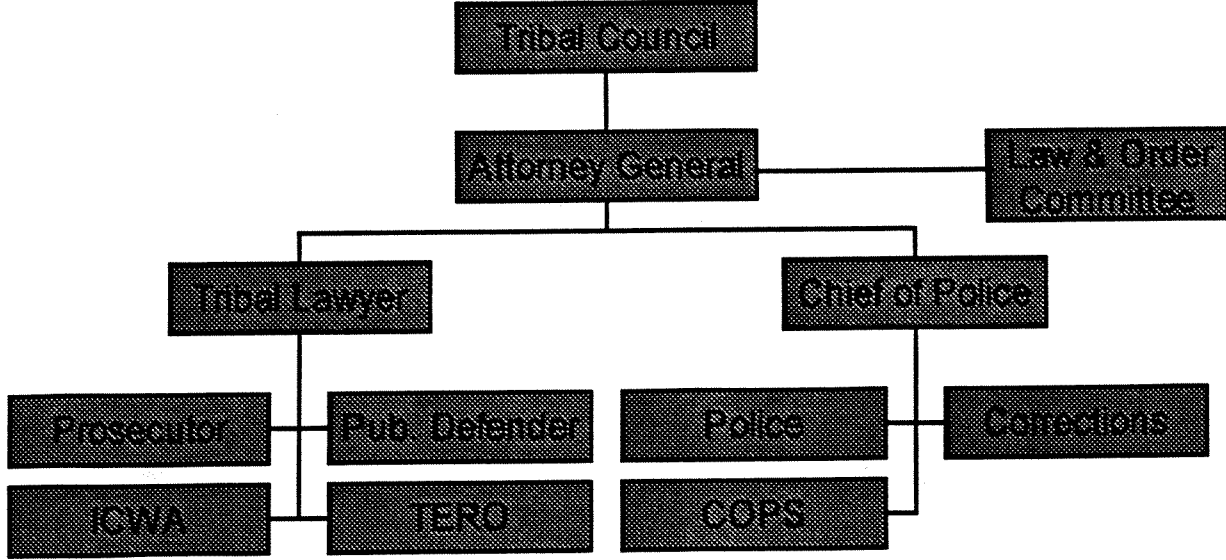
- 1. give the Tribe more control over the programs that affect them**
 - BIA police officers routinely forget to deliver Court summons to people on time, interfering with the Hualapai Tribal Court process.
 - BIA police officers do not put much emphasis on community policing and crime prevention, which are priorities of the Hualapai Tribe, preferring instead a more traditional model of crime detection.
- 2. promote cooperation across different legal and law enforcement services**
 - At the present time, both the Human Resource Department and the Health Department engage in legal activities, but they work in isolation.
 - The Law & Order Committee has a mandate to update legal codes, but its current work has stalled due to the lack of legal aid and staff support.
- 3. provide a home to programs that are in the wrong place**
 - The offices of the Tribal Prosecutor and Public Defender do not belong in the Hualapai Judiciary, since it is of questionable ethics for a prosecutor or advocate to work for the Chief Judge.
 - Community Oriented Police Service (COPS) is located in the Office of Planning and Community Vision because the planner is the one who secured the grant for the program.

In many respects, a Department of Justice is a natural next step for the Hualapai Tribe. The Tribe has come a long way since 1991, when most agencies reported directly to the Tribal Chair. Illustrated below is an organizational chart of the current system as well as a model of a Hualapai Department of Justice.

CURRENT STRUCTURE OF JUSTICE SYSTEM



MODEL OF A HUALAPAI DEPARTMENT OF JUSTICE



FIVE STEPS TOWARDS A DEPARTMENT OF JUSTICE

1. Create a Department of Justice Steering Committee

The Tribal Council would establish a Steering Committee to plan the department. For the committee, the Council would appoint leaders of the programs, branches, and agencies directly affected by the reorganization so that they would have a voice in the decision-making process. Much of the staff work for the committee would be done by the Office of Planning and Community Vision.

POSSIBLE MEMBERS OF THE STEERING COMMITTEE

- 1. Tribal Councilor (Head of Committee)**
- 2. Tribal Planner**
- 3. Head of Law & Order Committee**
- 4. Chief Judge of the Hualapai Tribal Court**
- 5. Chief of Police, Peach Springs**
- 6. Head of Human Resources Department**
- 7. Head of Health Department**

2. Hold monthly meetings

The Steering Committee would meet monthly for a year to develop its plan. Since the structure of the department will shape the role of law and law enforcement on the reservation, it is highly recommended that some or all of these meetings be open to the public. Public input will help the committee balance conflicting goals, especially surrounding the future of law enforcement and corrections.

3. Recruit and hire an in-house lawyer

Success of the Department of Justice may depend on the position of the in-house lawyer. One of the most important projects for the Steering Committee would be to write a job description for this position. The more legal work an in-house lawyer takes on, the more money the Tribal Government will save in outside

legal fees. In each of the last two years, the Tribe spent over \$200,000 on outside legal advice and representation. In addition, an in-house lawyer could assist in other projects on the reservation, such as writing new legal codes and providing legal assistance to children and workers.

It will be difficult to recruit a lawyer with the skills the Tribe may require. As a result, the Steering Committee may want to study the tribal legal fees item by item to determine how much the Tribe can pay a tribal lawyer and still save in overall costs. It is suggested that the committee begin the process of recruiting for this position as early as possible.

4. Take over BIA contracts of police and corrections

No other issue promises to be as divisive for the Steering Committee as taking over the law enforcement and corrections contracts from the Bureau of Indian Affairs. Embedded in this action are difficult political and financial issues. Who will run the police station? How much money will the Tribe divert from law enforcement and corrections to other programs? The committee will need to balance conflicting claims; the Tribe could replace the current police force with less expensive tribal members, but at the possible cost of a decline in the quality and neutrality of the police force.

A LESSON FROM HISTORY: CHALLENGES OF RUNNING A POLICE DEPARTMENT

In 1980, the Hualapai Tribal Government assumed control of the police department and correctional facility and replaced the BIA staff with tribal members. The Tribe struggled in hiring a diverse group of law enforcement officers. The Chief of Police, two of the officers, and the prison cook were all members of the same family. Other families reportedly resented this arrangement and cut funding to these programs. When the police station and the jail ran out of funds in 1985, the BIA took over these facilities.

5. Submit legislation to the Tribal Council to create the Department

Once it decides on the recommendations of the Steering Committee, the Tribal Council may want to enact its reforms through legislation. Legislation codifies the relationships that the Department puts in place and makes all of the participants accountable to do the work that is expected.

**HUALAPAI DEPARTMENT OF JUSTICE:
SUMMARY OF PROGRAMS, BENEFITS, AND CHALLENGES**

Participant	What They Do	Current Location	Benefits of Consolidation	Challenges of Consolidation
Legal Counsel	Provides legal aid, represents tribe in legal matters	Outside law firm	Save money.	Quality of legal advice may decline.
Office of Tribal prosecutor	Represents Tribe in prosecuting complaints	Tribal Admin.	One less expense for Judiciary to pay. Prosecutor independent of Judiciary.	Additional expense for Tribal Council.
Office of Public Defenders	Represents defendants in criminal/civil matters	Judicial Branch	One less expense for Judiciary to pay. Defenders independent of Judiciary.	Additional expense for Tribal Council.
Police	Enforces laws on the reservation	Bureau of Indian Affairs	Would make police more accountable to and supportive of Tribe	Legacy of failed attempt to take over contract.
Corrections and Detention	Oversees correctional facility	Bureau of Indian Affairs	Would make guards more accountable to and supportive of Tribe	Legacy of failed attempt to take over contract.
Law & Order Committee	Liaison with Court; writes laws for tribe	Tribal Admin.	Could work with a trained lawyer to write laws for the tribe.	Additional expense for Tribal Council.
COPS	Trains cadets to work in community	Planner's Office	Could integrate its operations with police.	Police may resist integration with unprofessionals.
ICWA	Provides legal and other aid to children	Tribal Health Dep't	Could integrate its work with prosecution.	Health Dep't may resist.
TERO	Protects labor in tribal contracts	Tribal HR Dep't	Could integrate its operations with a trained lawyer.	HR Department may resist.

2. Develop an Alternative Dispute Resolution System

As a sovereign nation, the Hualapai Tribe has the right and authority to adapt its tribal laws to the culture of its people. U.S.-style systems of dispute resolution may work well in some cases but not in all. An alternative dispute resolution (ADR) system would supplement the existing set of laws with a process more in keeping with a Hualapai way of resolving conflicts. By instituting an ADR system, the Tribe would create a more legitimate and better supported Judicial Branch.

While it is not easy to redesign a system of laws, conditions on the Hualapai Tribe are excellent for this project to move forward. First, current work on a Wellness Court provides the Tribe experience and confidence to expand a system of counseling and mediation beyond alcohol-related cases. Second, an Administration for Native Americans (ANA) grant provided the Tribe \$2,400 to engage in an ADR project over the next year. Third, the Harvard University report *Hualapai Judicial Reform: Developing Alternative Dispute Resolution* (1997) accumulated important cultural data from Hualapai elders.¹ These elders became more interested in taking part in the project as a result of the interview process.

FOUR STEPS TOWARDS AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM

1. Recruit tribal members to be ADR planners

Last year's Harvard report listed key members of the Hualapai community whom the Tribe would want to recruit to form an ADR system:

KEY PEOPLE TO TARGET TO BECOME ADR PLANNERS

- 1. Tribal Councilors**
- 2. Educators**
- 3. Employees of the Cultural Resources Department**
- 4. Law & Order Committee members**
- 5. Representatives from the local churches**
- 6. Tribal Court employees**
- 7. Elders²**

2. Hold bi-weekly meetings

A temptation in the ADR process is to gather ideas and suggestions and then go off and do the real planning without further input. However, the Tribe will need people to staff the alternative dispute resolution once it is created. One way to ensure that participants invest in the project is to structure the process so that participants believe that they can affect the outcome. For example, Court personnel could transcribe the comments of participants in the meetings and send them a detailed summary of all the input generated. A shorter version of the comments could be printed as a regular feature in the tribal newsletter Gamyu under the heading “Tribal Members Talk about a New Tribal Court.”³

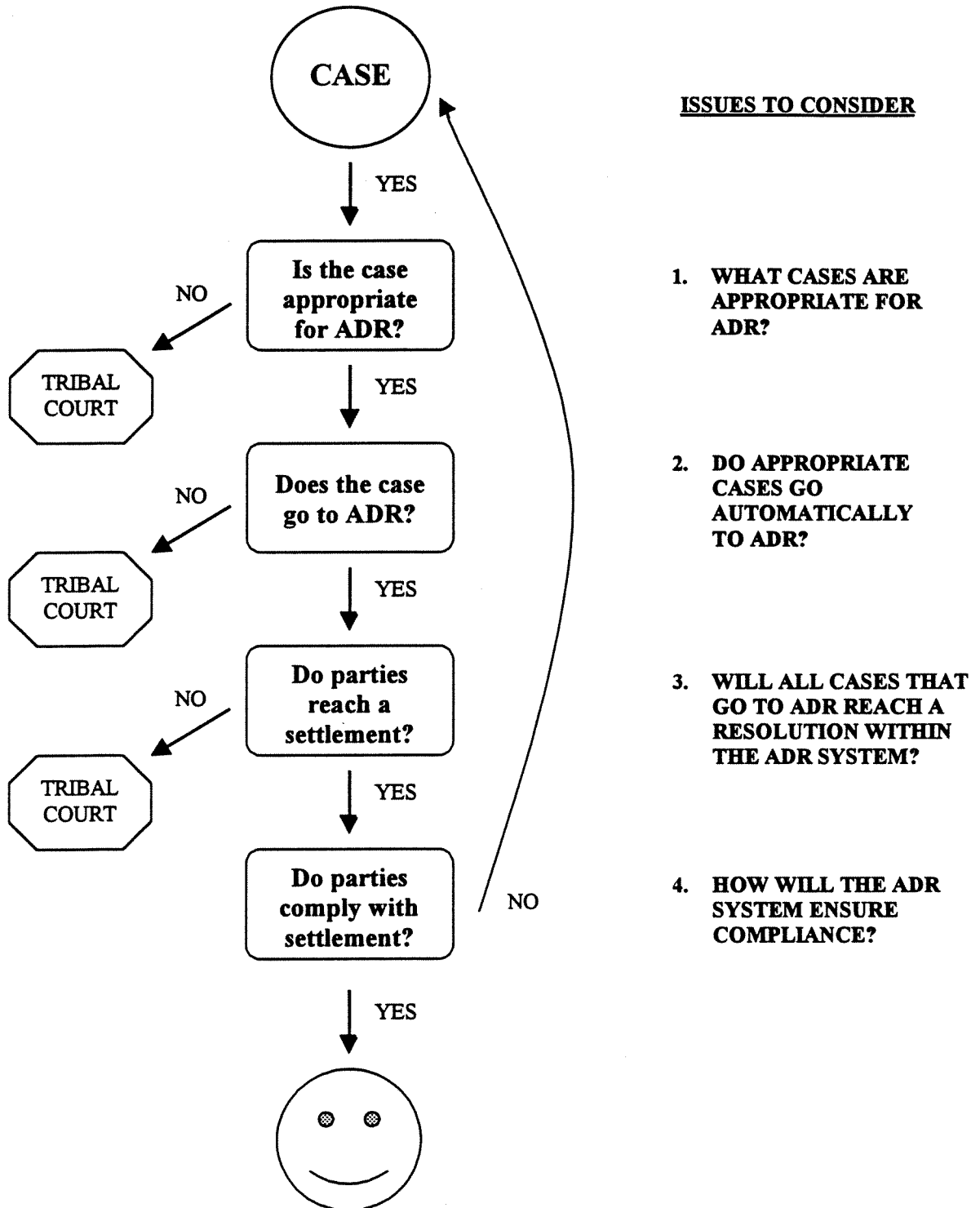
3. Visit other tribes with ADR systems

Early in the process, some or all of the ADR planners may want to visit another Tribe that has put an ADR system into effect. One successful model is the Peacemaker Court on the Navaho reservation. This visit may help resolve questions of planners as well as inspire participants to continue working on the project.

4. Submit legislation to enact the Hualapai ADR system

Writing the ADR system into law will ensure that the ideas of the ADR Planners will become institutionalized within the Tribe. As well, the process of writing negotiation will help tribal members better understand and appreciate the legal process.

PROCESS FLOW CHART: ISSUES TO CONSIDER IN REGARDS TO ADR



ISSUES TO CONSIDER

1. **WHAT CASES ARE APPROPRIATE FOR ADR?**

2. **DO APPROPRIATE CASES GO AUTOMATICALLY TO ADR?**

3. **WILL ALL CASES THAT GO TO ADR REACH A RESOLUTION WITHIN THE ADR SYSTEM?**

4. **HOW WILL THE ADR SYSTEM ENSURE COMPLIANCE?**

1. WHAT CASES ARE APPROPRIATE FOR ADR?

An ADR system is especially suited for cases where participation of family members could positively affect the outcome or where it is possible for the two parties to talk through their differences. In contrast, the existing U.S.-style system works better for claims involving cash transactions or where more formal legal obligations are appropriate.

EXAMPLES OF CASES SUITABLE TO THE PROPOSED AND CURRENT DISPUTE RESOLUTION SYSTEMS

CASES MORE SUITED TO AN ADR SYSTEM	CASES MORE SUITED TO THE CURRENT SYSTEM
<ul style="list-style-type: none">- JUVENILE OFFENSES- CONFLICTS BETWEEN AND WITHIN FAMILIES- ALCOHOL-RELATED OFFENSES	<ul style="list-style-type: none">- CONTRACT DISPUTES- CHILD SUPPORT DISPUTES- CLAIMS INVOLVING NON-HUALAPAIS

2. DO APPROPRIATE CASES GO AUTOMATICALLY TO ADR?

ADR planners may decide to set up the system so that all of a certain type of case, such as juvenile alcohol offenses, are referred automatically to the ADR system. Alternatively, they may decide to refer only cases where both parties mutually agree to mediation and family involvement.

3. WILL ALL CASES THAT GO TO ADR REACH A RESOLUTION WITHIN THE ADR SYSTEM?

An important consideration is the role of the facilitator handling the case within the ADR system. One possible role for the facilitator is to mediate disputes but not to make a decision in the event of an impasse. Under this mediation system, these cases would then go to the Tribal Court for a ruling. Another possible role for the facilitator is to arbitrate disputes, where he or she would have the power to make a decision if no consensus can be reached. There is a trade off: an arbitration system would reduce the work of the Tribal Court, but at the risk of making the parties more reluctant to give out potentially damaging information.⁴

4. HOW WILL THE ADR SYSTEM ENSURE COMPLIANCE?

Some questions that ADR planners may want to consider in regards to compliance include:

- What incentives will the system use to reward compliance?
- What sanctions will the system use to punish noncompliance?
- What role will a probation officer play?
- What written records will be necessary to enforce the agreement?

3. Train Tribal Members to Be Public Defenders

The final three action steps are internal projects within the jurisdiction of the Judicial Branch. The steps may not have the impact of a Department of Justice or a alternative dispute resolution system, but each will build respect for the legal process and engage people to take part in this process.

At the present time, the Hualapai Tribe does not have a public defender, someone who can inform defendants of their rights within the legal system. Rather than hire a single person to fill this position, the Tribal Government can train and hire several tribal members to work part-time, creating more opportunities for tribal members to participate in the Tribal Court and appreciate its activities.

THREE STEPS TOWARDS TRAINING TRIBAL MEMBERS TO BE PUBLIC DEFENDERS

1. Recruit tribal members to be advocates

Given the heavy caseload, the Tribe would need four part-time advocates who would be able to devote 12 hours a week to the work.

QUALITIES OF A SUCCESSFUL ADVOCATE:

- **WISE**
- **EMPATHETIC**
- **STRONG MORAL CHARACTER**
- **FLUENCY IN HUALAPAI LANGAUGE A PLUS**

— NO EXPERIENCE NECESSARY —

2. Train tribal members in mediation and the legal process

Over the course of a year, these tribal members would learn how to work within the current system as well as how to mediate disputes within a proposed ADR system. One possible project during the training is to translate legal terms, such as “due process”, into the Hualapai language. In this way, the advocates will develop a vocabulary to explain the legal system to people who feel more comfortable speaking in their native language.

3. Create a Hualapai Bar Association

At the end of training, the advocates would form the Hualapai Bar Association, an organization designed to manage the conduct of its members and train new advocates in the future. A strong bar association would provide the Tribal Court a ready source of support as the Hualapai Nation develops. Moreover, the Hualapai Tribe would become one of the first tribes in Indian country to have a bar association for Wellness Court and ADR practitioners.

4. Institute an Ethics Code for Court Employees

Although the 1991 Constitution gives the Hualapai Tribal Council the power to institute a code of ethics for all government employees, no code of ethics yet exists. This is an opportunity for the employees of the Tribal Court to take the lead and unilaterally institute an ethics code for themselves. While this strategy risks giving others a wrong message—“We on the Tribal Court are better than the rest of you”—it also makes the strong statement that the Tribal Court is responding to the wishes of the tribe to hold its employees to strict standards. This message could go a long way towards changing tribal opinion about the Judicial Branch.

TWO STEPS TOWARDS INSTITUTING AN ETHICS CODE FOR COURT EMPLOYEES

1. Meet with Court employees to discuss the code.

It is important for all Tribal Court employees to have a say in what would go into their code of ethics. The focus of their discussion would be the models of codes gathered by the Law & Order Committee. Particular issues to discuss include: standards of conduct, prohibited activities, rules for accepting gifts, and sanctions for code violations.

EXCERPTS FROM ONE OF THE MODEL ETHICS CODES

“Officials must show a deep sense of responsibility for the public trust and a standard of personal behavior which credits that individual and the Tribe.”

“Officials shall avoid any action which might result in, or create the appearance of, using public office for private gain for themselves, their families, or their friends.”

“The Personnel Committee shall administer and enforce this Code of Ethics in relation to Personnel Policies and Procedures, affording all persons charged with violating the Code with due process.”³

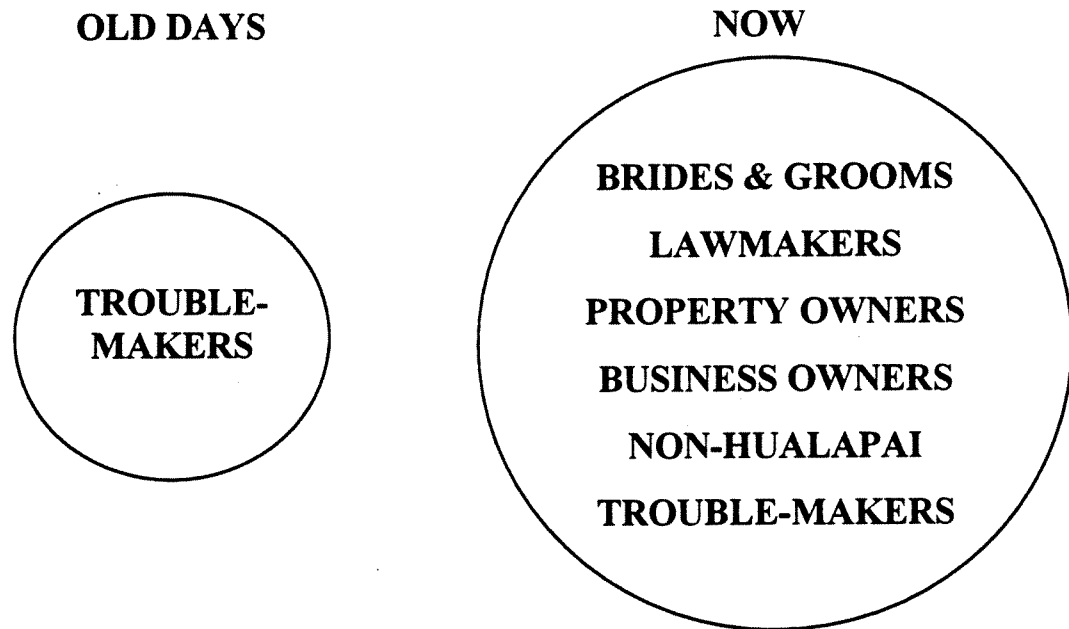
2. Submit legislation to enact the code.

Once again, enacting the code of ethics through tribal legislation ensures that the code has binding force and that it will live on long after its original framers have left the Court.

5. Have Judges Perform Marriage Ceremonies

At present, tribal judges have the authority to oversee divorces but not marriages. Tribal members either marry off the reservation or in one of the local churches. The Hualapai Judicial Branch would be providing a service to those couples who are not affiliated with a church but who want to get married on Hualapai territory. Positive, non-threatening experiences such as marriage ceremonies will make people more supportive of the Tribal Court.

PEOPLE WHO WOULD USE THE TRIBAL COURT



TWO STEPS TOWARDS HAVING JUDGES PERFORM MARRIAGE CEREMONIES

1. Recruit people to study Hualapai weddings

While couples may want to be married by a Hualapai judge according to Hualapai tradition, it is important to note that there is not one traditional ceremony but fourteen, one from each of the historic bands. The Tribal Court may want to recruit tribal members to gather information about the rituals of different Hualapai ceremonies. Encouraging this research is in keeping with the Tribal Court's other efforts to promote Hualapai tradition.

2. Submit legislation to enact a marriage code

It is a simple procedure to amend the Hualapai Legal Code to give tribal judges the authority to perform marriage ceremonies. With minor changes, the tribe could adopt into law the Havasupai tribal ordinance regarding marriages. This ordinance does not have rules as to how the marriage ceremony should look, but rather who would have the power to preside over the ceremony.

EXCERPT FROM THE HAVASUPAI MARRIAGE CODE

“Marriage is a personal relation arising out of a civil contract, to which the consent of parties, capable of consent, is necessary, as well as solemnization. Solemnization occurs...when the ceremony is performed by a duly authorized official under Arizona law, by any recognized clergyman, or any judge of the Havasupai Tribal Court.”

Tactics: Recruiting Participants

To secure earmarked funding and a new tribal courthouse, the Hualapai Tribal Government will have to take its message to the people. Most of the action steps require the Tribe to recruit tribal members. This section will describe how the Tribal Court and Tribal Council can increase the likelihood of participation from tribal members.

LIST OF THE PROPOSED PROJECTS THAT WOULD REQUIRE PARTICIPATION FROM TRIBAL MEMBERS

1. Department of Justice	→	Steering Committee
2. ADR system	→	ADR Planners
3. Hualapai Bar Association	→	Public Defenders
4. Traditional Weddings	→	Wedding Researchers

Communication with tribal members has not been an easy task for Hualapai tribal leaders. Unless tribal members read the government newsletter Gamyu or attend a public meeting, they have few other opportunities to learn about important public issues. To encourage people to vote, tribal leaders have had to use creative means to spread information, from fliers to barbecue dinners.

Out of respect for the dignity of the position, the Chief Judge should not have to resort to handing out fliers or burgers to win people's support. Moreover, because the Chief Judge and others will need people not just to vote but also to participate in Court activities, they will need to develop other means to reach out to tribal members.

1. Go to where the people are.

Instead of calling a meeting and hoping that tribal members attend, the Chief Judge and others could go to places where people are already gathered and then ask for their input. Such gathering points on the reservation include churches, the senior center, and the gymnasium.

2. Take advantage of Tribal Council elections.

Elections this June will spur more people to be involved with issues that concern the tribe. During this time, more people are likely to attend public meetings about Court activities. It is also a good time to pursue a public referendum, such as a vote to finance a new tribal courthouse. Since a referendum regarding borrowing funds needs the approval of at least 30% of the total number of eligible voters, the high turnout expected for Tribal Council elections will increase the chances of electoral success.

3. Get help from leaders on the Wellness Court Committee.

For the first time, Tribal Councilors, members of the Law and Order Committee, leaders of social service agencies, and Tribal Court employees have joined forces to write legislation for the Wellness Court. This process has encouraged the different participants to cooperate and support each other's activities. The Chief Judge may draw on the energy and talent of Wellness Court participants for other Court initiatives, such as planning the alternative dispute resolution system or the bar association.

4. Let court cases pile up in the short term.

Recruiting and relationship-building takes time to do well. If the Chief Judge is to work with Tribal Councilors and others to develop the Hualapai Judiciary, he or she will have to spend less time adjudicating cases. A Chief Judge may be reluctant to let the paperwork slip, since the Constitution does state that a judge can be removed for "unnecessary and repeated lengthy delays in hearing and adjudicating matters filed in the Tribal Court."⁶ However, Tribal Councilors would recognize that any backlog is a *temporary* and *necessary* delay, that the time spent to develop the Judicial Branch will make the Tribal Court more efficient and effective in the long term.

Tactics: Targeting Supporters and Potential Opposition

As Tribal Councilors, Court officials, and others plan their strategy to develop the Judicial Branch, they may wish to focus on certain individuals who stand to gain or lose more than others from the change. These policy makers could reach out to different groups who benefit from the Court's activities. For example, elders, teachers of Hualapai culture, recovering alcoholics, and local service providers may benefit from a more culturally sensitive court. Business owners, investors, and tribal councilors may profit from effective and fair resolution of contractual disputes. A group as diverse as construction workers and engaged couples may support the Court's future plans. Many of these benefactors could support the development of the Judiciary if targeted and mobilized to help.

Few people are against the idea of a strong Tribal Court, just as few tribal members are against the idea of greater tribal sovereignty. Yet some individuals may have a stake in the current system and may feel threatened by a better funded and more effective Judicial Branch. Many of these potential opponents will remain neutral if targeted and reasoned with in person. It is important to stress that funding the Judicial Branch is not a zero sum game, where one party would gain only at the expense of another. An effective, independent Tribal Court is an engine of economic growth for the Tribe and a protector of the Tribe's sovereignty, and it will help increase the resources available for all.

The table on the next page summarizes some of the potential winners and losers should the Tribal Court receive the resources it needs to be fully effective:

WINNERS AND LOSERS IF THE TRIBAL COURT GAINS FUNDING AND CARRIES OUT ITS ACTION PLAN

WINNERS	LOSERS
<ul style="list-style-type: none"> • Agency heads participating in Wellness Court: opportunities to improve their service delivery • Alcoholics and their families: opportunity to reach long-term solutions • Business owners: “rules of the game” fairly enforced • Construction companies: new courthouse provides work and jobs • Elders: opportunity to teach what they know about dispute resolution • Investors: confidence that their investment will be protected • Local school teachers: opportunity to apply the Hualapai cultural lessons taught in school • Newlyweds: opportunity to be married in a traditional ceremony • Public Defenders: opportunity to learn new skills and supplement their income • Tribal Councilors: better conditions for tax collection and economic development • Tribal Court employees: better working conditions 	<ul style="list-style-type: none"> • Agency heads participating in Wellness Court: may not want to share control or power • Alcoholics: may wish to evade their probation requirements • Heads of other tribal agencies: may want funding for projects of their own • Tribal Court employees: may not want a strict code of ethics • Tribal members: may have a personal grievance with a Court employee and may oppose Court funding to attack the person

Summary

Marshall Ganz, a labor organizer who worked with Cesar Chavez and the United Farm Workers Union for most of his career, lists some of the benefits of using a strategy of collective action to achieve results:

ADVANTAGES OF A STRATEGY OF COLLECTIVE ACTION

- It creates opportunities for people to deliberate with one another.
- It challenges people to take responsibility, to make a commitment, to act.
- It identifies leaders and enhances their skills, values, and commitments.
- It focuses on building strong communities.⁷

The action steps described in this report serve the same purpose. They encourage the type of active public participation in civil society that will help the Hualapai Tribe prosper. In addition, these activities make it easier for the Tribal Court to secure the local funding it needs to do its work effectively. They provide the Hualapai Tribe the impetus to do what it needs to do as a developing nation: develop the capacity to govern itself and protect its sovereignty.

Endnotes: Chapter 3

¹ Luke O'Brien, Pablo Padillo, and Andrew Williams, *Hualapai Judicial Reform: Developing Alternative Dispute Resolution*, Harvard University, June 1997.

² O'Brien, *et al.*, p. 23.

³ Susan Podziba, *Social Capital Formation, Public Building and Public Mediation: The Chelsea Charter Consensus Process*, September 12, 1997.

⁴ Interview with Sarah Stokes, March 13, 1998.

⁵ *Proposed Code of Ethics for Hualapai Tribal Officials (draft)*, 1997.

⁶ *Constitution of the Hualapai Indian Tribe*, Article VI, Section 11a(6).

⁷ Marshall Ganz, *What Is Organizing*, Kennedy School of Government, Harvard University, 1997.