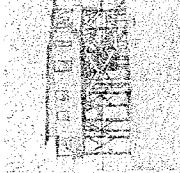




How Greenspan
Sees the Mess
In Mortgages
OPINION | A15



Shore Thing:
Who Owns
The Beach?
MARKETPLACE | B1



In Videogames,
A Convergence
For Consumers
PERSONAL JOURNAL | D1

THE WALL STREET JOURNAL

WEDNESDAY, DECEMBER 12, 2007 • VOL. CCL NO. 138
 DJIA 13452.77 • 2.1% NASDAQ 2652.25 • 2.4% RUSSEL 16004.72 • 0.8% DJ STOXX 50 3765.34 • 0.6% 30-YR TREAS 4.113/52, yield 3.972% OIL 99.02 • \$216 • GOLD \$811.40 • \$170 • EURO \$1.4653 • YEN 110.64
 ** \$1.50

TOUGH BENCH

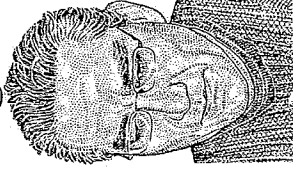
U.S. Indian Tribal Judges Grapple With Legal Limits

*Mr. Flies-Away's Court
Offers Advice, Hope;
Admonishing Valentino*

By GARY FIELDS

PEACH SPRINGS, Ariz. — Judge Joseph Thomas Flies-Away, a graduate of Stanford and Harvard, is a national expert on Indian tribal law. But here in the Hualapai tribe's court, a small, windowless room fashioned out of a converted kitchen, he seems more like a social worker.

"Valentino, you were just here. Now you're here again?" asked the judge during a recent session. Mr. Flies-Away had known Valentino Washington and his family for years. Now, the 18-year-old was facing jail after assaulting his mother and sister in a drunken rage—as well as for not paying a previous fine. Unlike courts elsewhere in the U.S., the tribal reservation system doesn't guarantee all Na-



Joseph Thomas
Flies-Away

tive Americans the right to defense counsel. So Mr. Washington sat alone, a situation that softened the judge's usual businesslike demeanor.

After reprimanding the teen for his behavior, Judge Flies-Away ordered him to perform community service. Mr. Washington was puzzled as to what that meant.

"You go and clean somebody's yard. You wash cars. You go work with the elderly," the judge explained. Mr. Washington will remain in jail until the fine has been paid in labor. "Valentino, you might be in there a while," said the judge, his low voice tinged with both sadness and resignation.

In this separate justice system crippled by arcane laws and decades of fed-

Please turn to page A16

P A-1

Tribal Judges Grapple With Legal Limits

Continued from Page One

convictions to augment a new sentence.

A number of piecemeal efforts have sought to unravel such complexities. U.S. attorneys in several states, including Oklahoma, Michigan and North Carolina, have assigned federal prosecutors to focus on tribal crime in a bid to ensure that cases don't fall through the cracks. Nationally, the Federal Bar Association is pushing Congress to relax sentence restrictions imposed by the Indian Civil Rights Act and to give tribal courts broader jurisdiction. South Dakota Republican Sen. John Thune has introduced legislation to fund federal prosecutors specifically for pursuing crimes in Indian lands.

"You're not apprehending people, and if you catch them, they're not being prosecuted, or if they are being prosecuted, they aren't spending any amount of time in jail," Sen. Thune says. "There is a federal role and responsibility."

Until these potential fixes are in place, much of the procedural burden falls to judges like Mr. Flies-Away.

The Hualapai reservation sits on about one million acres along the Grand Canyon. The tribe, also known as the "people of the Tall Pines," is best known for tourism. One attraction: a new transparent skywalk suspended 4,000 feet above the canyon.

Yet tribe members are poor. About half the adults in the 2,300-member tribe are unemployed. A third of all members live below the poverty line, supported by family members and a patchwork of tribal and federal programs.

Peach Springs, the tribe's capital, with a population of 1,800, is split by the famed Route 66. Much of the traffic is gone now, taken by interstate highways. It doesn't even have a gas station. There's little in the way of activity, aside from the mile-long Burlington Northern Santa Fe freight train, which rumbles through town every 20 minutes, forcing the lone hotel, the Hualapai Lodge, to give earplugs to patrons.

Mr. Flies-Away was raised on the reservation, where the impact of drugs and alcohol has taken a toll on his own family. Four of his mother's 11 siblings drank themselves to death or committed suicide, he says. One hung himself in jail.

Intense and studious for much of his life, Mr. Flies-Away earned a scholarship to study at Stanford University. After graduating in 1989, he returned here to teach seventh grade. Eventually he became involved in tribal government, first as a planner who developed proposals for economic growth and revitalization of the tribe.

He left again for law school but quit his studies after a year when tribal elders asked him to become chief judge. After one term on the bench, he headed off to Cambridge, Mass., to study at Harvard's Kennedy School of Government. From there, he went to Arizona State University, where he received his law degree.

Sense of Obligation

He could have joined a private firm and earned "more money," as he still recalls. Instead, a sense of obligation led him back to the reservation in 2006, when he became the first chief judge of the tribal court with a law degree. Mr. Flies-Away is now in the middle of a two-year term.

His court calendar is a full one. Aggravated assaults are some of the major crimes; baseball bats and knives are the weapons of choice.

Although it has only 2,300 members, the tribe handles about 1,000 criminal cases annually. The judge says the high number stems mostly from repeat offenders. Federal law permits him to hand down a maximum sentence of one year per charge, even for the most heinous of crimes such as rape. Jail overcrowding leaves free some of the criminals he'd like to lock up. The result: Those people often commit new crimes.

Mr. Flies-Away typically arrives at the court about 7 a.m. and puts in an 11-hour day. The judge, who is divorced and has no children, spends much of his time building his administrative or helping other tribes develop their systems. His offices are small and crowded with papers and books such as "Federal Rules of Evidence." A 2-inch glass sphere sits on his desk.

"Warrior of Law"

"I am not a fortuneteller," he is quick to say, mindful of the

committed suicide, he says. One uncle hanged himself in jail.

Intense and studious for much of his life, Mr. Flies-Away earned a scholarship to study at Stanford University. After graduating in 1989, he returned here to teach seventh grade. Eventually he became involved in tribal government, first as a planner who developed proposals for economic growth and revitalization of the tribe.

He left again for law school but quit his studies after a year when tribal elders asked him to become chief judge. After one term on the bench, he headed off to Cambridge, Mass., to study at Harvard's Kennedy School of Government. From there, he went to Arizona State University, where he received his law degree.

He could have joined a private firm and earned "more money," as he still recalls. Instead, a sense of obligation led him back to the reservation in 2006, when he became the first chief judge of the tribal court with a law degree. Mr. Flies-Away is now in the middle of a two-year term.

His court calendar is a full one. Aggravated assaults are some of the major crimes; baseball bats and knives are the weapons of choice.

Although it has only 2,300 members, the tribe handles about 1,000 criminal cases annually. The judge says the high number stems mostly from repeat offenders. Federal law permits him to hand down a maximum sentence of one year per charge, even for the most heinous of crimes such as rape. Jail overcrowding leaves free some of the criminals he'd like to lock up. The result: Those people often commit new crimes.


Mr. Flies-Away typically arrives at the court about 7 a.m. and puts in an 11-hour day. The judge, who is divorced and has no children, spends much of his time building his administrative or helping other tribes develop their systems. His offices are small and crowded with papers and books such as "Federal Rules of Evidence." A 2-inch glass sphere sits on his desk.

"Warrior of Law"

"I am not a fortuneteller," he is quick to say, mindful of the

THE DARDEN PERSPECTIVE

IN
First Person



Martin Davidson
Associate Professor of Business Administration

Leveraging Difference Can Make A Difference.

Making diversity work is not just about problem solving, it's about learning. And one thing I've learned from my research and consulting about diversity efforts is that they often fail for the same reason. See if any of this sounds familiar.

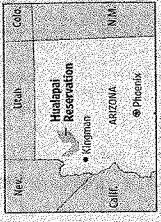
Does your organization invest time and money in diversity efforts without real results? A diversity recruitment function, a minority- and women-owned vendor function, some target marketing, a diversity awareness course everyone sits

clear results. It is called Leveraging Difference.

The key to leveraging difference is cycling through three simple but powerful steps: paying attention to the differences that matter to your business (seeing difference), gaining knowledge about how those differences matter (understanding difference), and experimenting with changes in how you do business as a result of the differences (valuing difference). By moving through the cycle, you generate change in your organization and in your people.

Good Council

Judge Flies-Away, a Hualapai Indian, is trying to combat the old tribal system, which has been crippled by arcane laws and federal neglect. Here are some of the problems, and potential solutions, the tribal courts face.



Solutions and Prospects

Overlap and conflicting jurisdictions
The Arizona State Tribal and Federal Court Forum, a collection of judges and other members of the criminal-justice system, meet three times a year to resolve various issues.

Tribes have limited resources and powers to prosecute and sentence criminals
Legislation to provide \$20 million to U.S. Attorneys for prosecuting crimes committed on tribal lands. Sponsors: South Dakota Republican, Sen. John Thune.

Federal authorities often overlook cases the tribes can't prosecute
Several states have assigned prosecutors to focus on cases on reservations. Among them: Arizona, Colorado, Oklahoma, Michigan and North Carolina.

Tribes can't arrest non-Indians who commit crimes on reservations
Federal authorities have given a special law-enforcement commission to tribal officers in Michigan and North Carolina. It allows them to make arrests on federal charges regardless of a defendant's background. In Kansas, some tribes have signed agreements that permit tribal officers to make arrests on state charges.

Under federal law, tribes can sentence criminals only to one year maximum per charge
The Federal Bar Association has been lobbying Congress to give tribes more authority to lengthen sentences, especially for domestic-violence cases. In addition, the bar wants to allow tribes to prosecute non-Indians who abuse their Indian partners on the reservation.

Liberty of suspending the jail sentence. In the end, he fined Mr. Querta \$500.
He asked Mr. Querta if that was agreeable. The defendant said he didn't know. For several minutes, the judge tried to explain that Mr. Querta wasn't going to jail. Another defendant, meanwhile, leaned over and whispered to Mr. Querta that he was getting a good deal. Finally the older man looked at the bench and said "I'm quite satisfied" with the sentence.

The next defendant, Todd Watahomigie, 20, was well known to the judge, a situation common on tight-knit tribal reservations.

He was in court as a fugitive, accused of slashing his mother's face with a knife in March 2006. When he failed to appear for a hearing later that year, authorities put out a warrant for his arrest but had been unable to locate him because he had no valid address. "You are a hard man to find," the judge said.

The defendant told the judge he needed to be released. "I'm trying to get a job. I need to work because I have a medical bill to pay," he said.

The judge was skeptical. Compounding Mr. Watahomigie's problems, Mr. Flies-Away was well versed in the social services available on the reservation, having been instrumental in obtaining them.

He peppered his charge with questions. "What have you been doing for the last year? Why haven't you been working and why do you have a medical bill? Why are you paying for treatment? You can go over to Indian Health Services and they will handle it and pay for it."

The young man gave up meek excuses when the judge suggested having the court check out his claims. Mr. Flies-Away set bail at \$900, a figure that he knew was too high for Mr. Watahomigie to pay. After being locked up for weeks, he was recently released under home detention by another judge.

The most difficult case of the afternoon was Valentino Washington's. The judge has known the teen since he was a small boy, when Mr. Flies-Away placed him in protective custody after his alcohol-abusive mother neglected him. He landed here on a bench warrant for failing to pay a \$500 fine he incurred for underage drinking. In the interim, between the imposition of the fine and this court hearing, he picked up charges for disorderly conduct, domestic violence and battery.

Years earlier, Mr. Washington had received a settlement of several thousand dollars after being hit in a car accident. Yet

he said he couldn't satisfy the \$500 fine because his mother refused to pay it. "You trust her with your money?" the judge asked. "No," replied Mr. Washington. "That's telling," retorted Mr. Flies-Away. To make up for the overdue payment, the judge imposed community service.

Mr. Washington had watched others enter pleas during the day and listened to the judge explain the proceedings. He pleaded no contest to the new assault charges against him, acknowledging that they were true.

According to court documents Mr. Washington was drunk at a family member's home when he threw a television to the floor and began yank it apart. As his sister tried to stop him, he attacked her, then his mother.

Judge Flies-Away repeated what he had told other defendants—about the right to hear witnesses, be represented by defense advocates and call witnesses on his behalf—before setting sentencing for December.

After the defendants left, Mr. Flies-Away sat quietly on the bench. "I've dealt with him a long time. I had him as a child as a juvenile and now as a young adult. It's sad," he said of Mr. Washington. "Todd and Valentino, they weren't raised by anyone. I wish I had the facilities to send them to, where they could think about their problems and get to the root of those problems....I'm afraid how this will end for them."

Back in his office, the judge struggled to remember a case with a positive outcome. He decided on Catherine Querta. He had known Ms. Querta, an alcoholic, since the tribe operated a wellness court, which was designed to divert defendants into treatment and away from jail. Although disbarred after federal grant money dried up, Ms. Querta, 38, continued to receive some counseling. She found a job with the tribe and was a hard worker. "She tried," the judge recalls.

In October, Ms. Querta was heading back to Peach Springs on foot along Route 66 when a car struck her. She was killed. Tribal authorities say she was intoxicated at the time.

"People think that as a judge I love this job, but I'd rather not deal with any of it," says Mr. Flies-Away. "There is much sadness." But he feels compelled to power his fellow tribe members.

"One time my grandma said to me, 'You take care of them....so I have done so.'"

P. A-16