

# BROKEN GOVERNMENT

## *Constitutional Inadequacy Spawns Conflict at San Carlos*

IAN WILSON RECORD

**O**n election night, they gathered at the front steps of the tribal administration building in the town of San Carlos, Ariz. From the districts of Seven Mile, Gilson Wash, Peridot and Bylas they met. Huddling anxiously as they prepared to praise victory or lament defeat.

The San Carlos Apache perform this ritual convergence every four years, but last November's gathering bore an especially dire sense of urgency. Many in attendance held up signs reading "No more corruption," while others blared slogans of "We've got the power" over a choir of bullhorns. All were there to cast an exclamation point on what has been the most difficult period in recent memory for the more than 10,000 Apache who call the San Carlos reservation home.

This past year, some residents of the San Carlos Apache reservation felt their home had been transformed into a police state by a tribal government attempting to maintain the status quo amid allegations of fraud, embezzlement and harassment. The escalating crisis found the tribal council struggling to retain control, allegedly overriding constitutional dictates and due process, targeting anyone who questioned their authority. These acts revived the deep-seated mistrust many San Carlos Apache have for the structure, power and reach of tribal government. It also has

prompted an increasing number of people on the reservation to openly demand a comprehensive overhaul of the tribe's constitution to prevent the all-too-familiar scene from happening again in the future.

The unrest began in January 1998 after reports surfaced that the tribe was teetering on the brink of bankruptcy, with a budget deficit of more than \$8 million. Despite warnings from tribal chairman Raymond Stanley and others for immediate action to avoid insolvency, the San Carlos Apache Tribal Council, standing behind tribal vice chairman Marvin Mull Jr., offered no alternatives, vowing the tribe was not going broke.

The council set off a powder keg weeks later when it dismissed a cost-cutting budget proposal and relieved tribal general manager Jim Burns, the plan's author, of his duties. The Call To Action committee, formed by concerned residents seeking government accountability for the tribe's financial predicament, took over the tribal administration building for a week, and petitioned for the removal of Mull and all nine council members. The council responded by ordering the removal of Stanley and several of the chairman's allies from their tribal positions.

With Stanley politically immobilized, the council, supported by the tribal police department and a private security

*Above right: A peaceful rally degenerated into a day-long standoff between Call to Action supporters and tribal and county police when an American Indian Movement caravan was prevented from entering the San Carlos reservation. A restraining order was issued against local authorities, touching off a celebration by the protesters.*



force, moved to quash the Call To Action movement, ordering the repeated arrests of dozens of the group's supporters on a wide range of criminal charges. When the people overwhelmingly affirmed Stanley's position in a July recall election, the council refused to return his administrative authority. Finally, in August, the council indefinitely suspended two tribal court judges, selecting its own replacements instead. The removed judges had drawn the council's ire for releasing jailed Call To Action members on bail and appointing a White Mountain Apache judge who restored full executive powers to Stanley.

Stanley's landslide victory over Mull, along with the electoral defeat of four sitting council members in November's

election, seemingly has caused this latest chapter of civil conflict to at least subside. The campaign for constitutional reform at San Carlos was building momentum. There was mounting sentiment that the people of San Carlos could no longer afford to live under the current system of government, especially considering the recent troubles and the reservation's long history of structural instability.

**ROOTS OF ILLEGITIMACY**

It was almost 50 years ago that Dakuglie, son of the prominent Chiricahua Apache war leader Juh, said San Carlos "was the worst place in all the great territory stolen from the Apaches," that no one "had ever lived there permanently." Yet it was here that

the federal government established the San Carlos reservation in 1873, to consolidate the remaining non-reservation Apaches in a remote location far removed from surging white settlements.

San Carlos soon became a repository for several disparate bands of Western Apache, some of whom were enemies. Others relocated to San Carlos had not previously intermingled. Some bands, such as Geronimo's group of Chiricahua Apaches, had fiercely resisted federal subjugation. Other groups, like those who served as scouts for Gen. George Crook during his military campaign against the Apaches, were viewed as friends of the United States.

When copper deposits were discovered at San Carlos a few years later,

white miners invaded the reservation's boundaries to stake their claims. Civil and military authorities battled regularly over administration of the suddenly lucrative land. A procession of Bureau of Indian Affairs (BIA) agents invested heavily in the mining operations, allowing miners to stake claims to the reservation's most profitable tracts.

Meanwhile, traditional tribal clan authority, already hampered by the strictures of the reservation's concentration-camp environment, succumbed to the BIA's indiscriminate management of Apache life. The BIA controlled the disbursement of Apache lands, regulated the tribal court and restricted movement off of the reservation. Apache children were forced to attend the reservation's Lutheran boarding school. As dependence on federal food rations grew, once-scattered bands were forced to congregate around the agency. In order to simplify the identification of individual Apaches, the federal government implemented a tag band system of classification. The BIA assigned each Apache a number and selected its own chief for each band, ignoring indigenous leadership composition. This system arbitrarily cut across band and clan lines, further eroding traditional group organization.

It was in the 1920s that the seeds of the modern San Carlos Apache tribal government were sown. The reservation superintendent, acting on orders from the BIA to form a group that could represent the tribe in dealings with non-Indians, assembled what came to be known as the Business Committee. The committee had little substantive power and was used by the BIA to expedite its management of the reservation's land and resources. Superintendents purposefully avoided selecting committee members from traditional leadership, instead choosing English-speaking Apaches and Yavapai amenable to their



Tribal chairman Raymond Stanley meeting with Call To Action representatives after winning a recall election.

plans for San Carlos. Renowned historian Edward Spicer wrote that by the 1930s "the result was an extreme breakdown in traditional forms of authority with the substitution of no authority except that of the [BIA] superintendent and his staff."

Tribal government at San Carlos expanded in 1934 with the passage of the federal Indian Reorganization Act (IRA). Crafted by well-intentioned Commissioner of Indian Affairs John Collier, (see *Winter 1997*) the IRA mandated that tribes establish a constitutional form of self-government and create a tribal council. The IRA was designed to stimulate economic development and reduce the federal government's historically oppressive involvement in reservation affairs. Instead, it forced many tribes to adapt to a completely foreign structure of government, one that repudiated traditional indigenous group organization

and practice.

Although the governmental framework established under the Reorganization Act promulgated political independence and economic self-sufficiency for many tribes, it essentially ratified the extreme breakdown in traditional authority at San Carlos. Most traditional leaders chose not to participate in the formation of the new government. Distinct tribal bands living on the reservation were subsumed into one new tribe—the San Carlos Apache. The Business Committee, under the strict attention of the BIA, adopted the IRA constitution, a boilerplate model structured primarily for the administration of business operations. The bare-bones document placed the bulk of the tribe's powers in the hands of the tribal council, including the ability to appoint tribal court judges. The constitution subjected several major tribal actions to federal approval or regulation, including tribal

fund expenditures and the passage of tribal resolutions.

Under IRA guidelines, the council chartered the tribe as a business corporation and immediately took over a number of economic enterprises on the reservation. The council had some early successes with the reservation's burgeoning ranching industry and other land use ventures, but the federal government controlled the formative era of tribal constitutional governance. Even at that time, many Apache regarded the council as merely an appendage of the BIA.

The San Carlos Apache amended its constitution in 1954, incorporating a chairman and vice chairman, and redefining voting districts, but the council's near exclusive authority over tribal affairs remained unimpaired.

#### LIVING UNDER A BROKEN SYSTEM

*We were given a basic cookie cutter constitution structured for a socialistic society and this is still in place today ... Constitutions are created to protect the people from the government, yet our constitution does the complete opposite. Our constitution promotes corruption, oppression, dictatorship, greed, and abuse of power ... When our government touches individual lives and our constitution does not protect the people, then it is time to change the very document that created the broken structure we live with today.*

—Gail Haozous, *Apache Moccasin*, June 30, 1998

Today, more than 60 years after the passage of the Indian Reorganization Act, the San Carlos Apache are still having a hard time shaking the "IRA tribe" moniker. The now-obsolete constitution that San Carlos adopted in 1936 prevails as the foundation of tribal self-governance. The BIA continues to exert considerable influence in tribal affairs. Gradual federal and state appropriation

of the control and disposition of the tribe's most vital economic enterprises, its land and natural resources, have severely limited the tribe's ability to effectively govern the reservation.

A pronounced degree of institutional instability, exacerbated by the constitution's failure to adequately separate executive and legislative powers, impedes the already limited autonomy of the San Carlos government. In addition, clan divisiveness and familial factionalism still drive reservation politics, contributing to high turnover among elected tribal officials.

Political scandal has become a way of life at San Carlos. In 1991 both the chairman and vice chairman were

*Meanwhile, traditional tribal clan authority, already hampered by the strictures of the reservation's concentration-camp environment, succumbed to the BIA's indiscriminate management of Apache life.*

forced from office amid allegations of misdeeds. The tribal judiciary has also experienced internal struggles, enduring a myriad of terminations and recalls in recent years. According to those leading the charge for a new constitution, the IRA system simply no longer works. "The Apaches who live on this reservation do so under a simplistic Third World system. It is a system that possesses no balances or accountability, and claims ultimate rule over the legislative, judicial and now executive powers," said San Carlos resident Joe Machukay, a 24-year U.S. Army veteran. Machukay used his writing talents during this year's unrest, regularly publishing in the reservation's newspaper editorials showing

how the deficient tribal constitution was the root cause of the political turmoil.

The absence of a separation of powers at San Carlos became particularly evident as the latest tribal government power struggle unfolded. The council, the government's law-making body, consistently deployed tribal law enforcement authorities on its own behalf. Tribal court judges who ruled contrary to the council's wishes were removed and replaced with more sympathetic council appointees. According to Call To Action members, those who publicly expressed their disapproval of the government's actions or who held peaceful protests were routinely arrested or harassed.

Dale A. Miles, one of Call To Action's most vocal advocates, was fired as the tribal historian by the tribal council in May 1998. Miles said that losing his job was the price he had to pay to make a stand against what he called "years of financial and moral corruption that have been a part of tribal council policy for too long. It was Mao Tse-tung who once said that political power grows in the barrel of a gun. I never understood what that meant until it happened here this year at San Carlos." Miles amassed a host of criminal indictments for speaking out against the council on a weekly radio show. "The people of San Carlos will not rest until we have a change in government which respects the rights of the people."

Gail Haozous, also one of the founders of Call To Action, faced more than 30 criminal charges for her public criticism of the council. She said a new constitution would provide the council with a much needed reality check. "The chairman and council have been given so much power that it affects our everyday living. We are punished for and restricted from voicing our own beliefs," stated Haozous. "The people are not here to serve the council, the

council is here to serve the people."

According to Call To Action, the tribal council consistently violated or ignored the existing constitution, which does not provide a system of checks and balances. The group accused the council of more than a dozen constitutional violations, including the unlawful termination of tribal court judges, improper use of the tribal police department, holding meetings outside reservation boundaries and the illegal removal of the chairman from office. Even more disturbing, said

the group's members, is the fact that the system itself promotes this corruption and recklessness. "Every election we put in people who we think can do the job, but then many of them become corrupt. This happens because the system is broken. There is too much power concentrated in one place, and too many opportunities for greed," said Haozous.

Machukay agreed. "Character traits not seen in our leaders previous to this style of government has promoted the

#### CHRONOLOGY OF CIVIL CONFLICT AT SAN CARLOS

**January 1998:** Reports surface that the tribe has accrued an \$8.6 million budget deficit and is on the verge of bankruptcy. A group of concerned reservation residents respond by forming Call To Action, which charges financial mismanagement on the part of the tribal council and calls for tribal constitutional reforms.

**March 6:** The tribal council removes Jim Burns from his position after rejecting the general manager's proposal to rectify the budget crisis.

**March 19:** Call To Action stages an official "takeover" of the tribal administration offices and petitions for the removal of Vice Chairman Marvin Mull Jr. and the tribal council. The takeover ends peacefully a week later.

**March 20:** Tribal chairman Raymond Stanley, who endorsed the takeover, calls a meeting to inform tribal employees of the seriousness of the tribe's financial situation. The tribal council responds by holding an unconstitutional "special meeting" in which it orders the removal of tribal chairman Raymond Stanley from office.

**March 30:** The tribal council announces that it has relieved Stanley of his duties, citing Stanley's alleged

ignorance of tribal council directives and "promoting chaos in tribal government." The council publishes its "10 Promises" to the Apache people, which include passing a balanced budget and holding open public meetings to address the people's concerns. Stanley declares that he remains in power, stating that the council violated numerous tribal laws by removing him from office. The council also removes several other Call To Action supporters.

**April 7:** Tribal Council cancels a constitutionally-mandated council meeting. Meanwhile, Call To Action spokesperson Charles Vargas is allegedly beaten (among several who are reportedly injured) during a wave of arrests of Stanley supporters by tribal police and private security forces. Call To Action again briefly occupies the tribal administration building. The BIA ignores Stanley's pleas to supply federal police to protect Apaches.

**April 24:** A day-long standoff ensues between Call To Action supporters and tribal and county authorities after Gila County police detain an AIM caravan that was attempting to enter the reservation to participate in a peaceful rally.

downfall of our cultural values and social system," he wrote. "Rather than a system that works for the people, we have been subjected to oppressive conditions that serve to benefit those who hold power and promote self-interest."

### CHARTING A NEW COURSE

Call To Action, established in the wake of the disclosure of the tribe's financial straits, was organized to compel the tribal government to initiate what most acknowledge will be a lengthy constitu-

tional reform process. Call To Action's credo portrays an ultimatum for change: "Let us all remember that our Nation was the last to surrender, and so in the spirit of our ancestors, let us be the first to stand up and redirect for a new beginning for all Indian Nations."

While Call To Action propelled the constitutional debate to the public forefront in 1998, the reform movement at San Carlos actually took shape three years earlier. The tribal council, in what now seems an ironic twist, appointed a

Constitutional Review Committee to draft a new constitution for the council's review, the San Carlos public and the BIA. The committee proceeded through the constitution at a deliberate pace, weighing the pros and cons of each individual article. After 17 months and 32 meetings, the review team identified several specific areas of inherent weakness in the 1954 constitution. Included was the failure to mention the tribe's sovereign powers or "inherent sovereignty;" weak jurisdictional provisions over the tribe's territory; vague and confusing differentiation among the various branches of government, especially the roles of the chairman and the council; and the limited jurisdiction of the tribal court.

In drafting a new tribal constitution, the committee drew from the constitutions of a number of other tribes, including the White Mountain Apache, Hochunk, Oneida and Tohono O'odham.

Using the U.S. tripartite system of democracy as its model, the committee incorporated what it felt were elements essential to stabilize the historically volatile tribal government, and provided for a comprehensive configuration of checks and balances, a clearly defined separation of powers and an independent judiciary. Under the terms of the draft constitution, term limits would apply to all elected tribal officials. The tribe's Bill of Rights would combine the existing rights of the 1954 constitution, the U.S. Constitution and the Indian Civil Rights Act of 1968. The primary tribal membership requirements of the 1954 constitution would be retained, while campaign contributions from non-tribal members would be prohibited.

According to the draft, the tribal council would increase in size from nine to 13 legislators, three from each of the four districts and one at-large majority leader. The council's powers would be

**May 7:** Stanley requests unsuccessfully that tribal police chief Arthur Jackson remove Marvin Mull and three council members from the tribal administration building, citing their forfeiture of office for failure to attend council meetings.

**May 13:** A public hearing is held to allow Stanley to respond to the council's allegations of neglect of duty after the tribal court rules that Stanley's position has not been vacated. The council orders a recall election for Stanley, reaffirming his removal from office.

**May 30:** U.S. Marshals arrive at San Carlos to observe matters after Stanley's repeated appeals to the Justice Department and the BIA for federal protection.

**June 8:** Stanley is arrested on assault and theft charges, only to have the charges dismissed within 24 hours. Stanley supporters condemn his arrest as a desperate attempt to publicly discredit him.

**July 28:** In a recall election, Stanley's status is overwhelmingly affirmed in a victory, as the chairman receives two-thirds of the popular vote. However, the council refuses to recognize the results and says it will not return full administrative authority to the embat-

tled leader. Tribal historian Dale Miles is among five Apaches arrested and charged with disorderly conduct during a meeting with council delegates.

**July 30:** A temporary restraining order is issued preventing the tribal council from meeting or expending funds.

**August 5:** San Carlos judges Anson Sneezy and Marston Zaye disqualify themselves from the Stanley matter and appoint White Mountain Apache judge Kay Lewis, who issues a restraining order against the council that restores full administrative and executive powers to Stanley. The council suspends Sneezy and Zaye indefinitely for appointing Lewis and releasing jailed Call to Action members on bail. The council then ignores Lewis' ruling and appoints its own tribal court judges. Stanley calls for the removal of the tribal police chief.

**August 17:** Seven candidates announce their intent to run for the office of tribal chairman, including Stanley and Mull.

**November 3:** Stanley easily wins reelection, with Mull finishing a distant fourth. Stanley ally Velasquez Sneezy replaces Mull as vice chairman and Call To Action candidates win three of the four open council seats.

confined to making laws concerning the tribe's general welfare and passing the annual budget. Legislative meetings would be held within reservation boundaries and open to the public. Day-to-day administrative decisions would not be a part of the council's duties.

Replacing the chairman and vice-chairman, the executive branch would consist of a president and vice president who would run for office together on a single ballot. Executive powers would include line item veto power; administering and enforcing tribal laws; approving tribal spending in concert with the annual budget; and proposing laws and

persons from each of the four districts would insulate the judiciary from the Legislature under the draft constitution. The committee would have the power to initiate impeachment proceedings in accordance with the constitution, with a unanimous vote needed from the Legislature to bring impeachment. The chief justice of the Supreme Court would preside over any impeachment process involving the president or any legislator, while the president would preside over that of a judge.

The Constitutional Review Committee submitted this report, complete with the draft constitution, to the tribal

draft, such as the article requiring that all elected officials speak fluent Apache, are already being passionately debated.

In keeping with the existing constitution, the council must first review and discuss the draft, then hold public meetings in each district to incorporate the people's recommendations. The council then would approve the revised draft before submitting it to the BIA for its review and approval. After making the necessary changes, the council would ratify the final version of the draft and then submit it for approval by popular vote.

Machukay, who also was a member of the constitution committee, estimated that the process, once begun, would take about three years to complete. But if the constitutional reform process is to ever get off the ground, the tribal government must take the lead.

"The spirit of cooperation between the chairman and vice chairman has to be there for us to do anything for the people, to bring peace and community back to the people," said Sneezy. "The draft constitution will do away with the struggle for power. There will be resistance to it."

New council member Josephine Goode, who was endorsed by Call To Action, said it is not the time to throw caution to the wind. "The government needs to educate the people about the importance of the constitution before we can begin the reform process."

But when one considers the tribal government's history of federal subservience and its inability to prevent political divisiveness from impacting the daily management and long-term development of meaningful economic initiatives, there is little time to waste. Non-Indians continue to reap most of the revenues from the reservation's profitable grazing lands and mineral resources. The unemployment rate at San Carlos has been around 65 percent,

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negotiating business agreements subject to approval by the legislature.

The tribal judiciary would expand to include a three-justice Supreme Court, three-judge Court of Appeals, and other, lower tribal courts. Voters would elect the trial court judges, while the President would appoint the Court of Appeals and Supreme Court judges, with confirmation by the Legislature. The judiciary would have jurisdiction over all cases and controversies, interpret and apply the constitution and laws, hear cases and settle disputes. It also would have the power to declare the laws of the tribe void if such laws were not in agreement with the constitution.

An ethics committee composed of two

council in June 1997. The committee sent two separate letters to the tribal council later that year requesting a special meeting to review and approve the draft constitution, but the letters were never acknowledged.

"When the council members saw how the draft would limit their powers, they said they didn't want it and then cut the committee's budget," said Velasquez Sneezy Sr., who served as constitutional reform director during the committee's tenure.

While committee members agreed that the draft constitution signifies a promising start, they insisted that the documented is a work in progress that requires the input of the San Carlos Apache people. Some sections of the

with four out of five Apaches living at or below the poverty level. The recent troubles have left the reservation's largest employer, the tribal government, in an administrative shambles. And gaming revenues have stagnated as news of the unrest has reportedly kept some tourists away from the Apache Gold Casino, the tribe's largest economic enterprise.

"The way it is right now, no industry in their right mind will come here because of the lack of continuity in tribal politics," said Haozous, fearing the tribe's enormous budget deficit will result in unwise mineral leases or sale of tribal land. "Changing the constitution would be the greatest benefit we could give our children, but it is just a start. We also need to reorganize the tribal structure to stop the council's micro-management of tribal programs."

Tribal constitutional scholars, who have watched San Carlos closely over the past year, feel a new constitution may be the only thing that can bring the tribal government the popular acceptance it needs to effect significant progress for San Carlos.

"San Carlos faces the same quandary that plagues many tribes," said Dr. Stephen Cornell, head of the University of Arizona's Udall Center. "Tribal governments perform much more effectively when they are recognized as legitimate by the people. In some cases that means sticking with traditional notions, but at San Carlos there historically has been such a profound destruction of tribal leadership."

Cornell and fellow scholar Dr. Marta Cecilia Gil-Swedberg stated that the tribal government faces the challenge of developing an institutional environment that can encourage tribal members and potential investors to have confidence not only in current leaders, but in the institutions of tribal governance.

Dr. Tom Holm (Cherokee/Creek),

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*Velasquez Sneazy, Sr., endorsed by Call To Action, celebrates with family and friends after being elected.*

professor of American Indian Studies at the University of Arizona, has been an advisor to Call To Action on the issues surrounding constitutional reform. Holm is convinced that **San Carlos needs to adopt a constitution that speaks to the unique composition, history, experiences and challenges of the tribe.**

"The new constitution, above all else, must *be* Apache," Holm said. "It has to have not only the sanction of the people, but the sanction of tradition behind it."

Sneezy predicted the government will wait about two years to initiate the reform process to provide enough time for the tribe to recover from the current financial crisis and for the people to heal emotionally. He and others stressed that the government needs to right the tribal ship before charting a new course.

"The recent abuse of power has hurt this tribe like we have never known before—financially, morally, politically, in every way," said Miles. "The new

constitution will teach the council that they are answerable to the people."

Elementary school teacher Irwin Rope echoed Miles' sentiments. "This is a crippled form of government that was forced on us from the start. The current constitution renders the people helpless," said Rope. "These months of corruption have made the people aware of the shortcomings of the constitution, and the need to revise it. The people are starting to realize that they have a choice."

#### NOTES

Stephen Cornell and Marta Cecilia Gil-Swedberg's "Sociohistorical Factors in Institutional Efficacy: Economic Development in Three American Indian Cases" (*Economic Development and Cultural Change*, Volume 43, Number 2, January 1995); Edward H. Spicer's "Cycles of Conquest: The Impact of Spain, Mexico, and the United States on the Indians of the Southwest, 1533-1960" (Tucson: University of Arizona Press, 1962); and various 1998 issues of the *Apache Moccasin* newspaper contributed to this report.

*This story is dedicated to the memory of Cy Wilson Record. Ian Wilson Record is a freelance writer and a graduate student in American Indian Studies at the University of Arizona.*