

DOWJONES

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To the Judges:

In his story "Tilted Scales," Wall Street Journal reporter Gary Fields has lifted the lid on a topic unknown to most Americans: the uneven nature of justice for one million Native Americans living on reservations.

Using Spartan yet powerful prose, Mr. Fields details how centuries of federal law and judicial precedent have whittled away Indian tribes' control over reservation justice. The result: a legal system that's often separate and unequal.

The effect of these laws is on vivid display in Mr. Fields's page-one story about Bobbi Jo Wing, a Native American convicted of setting an arson fire that killed her 15-year-old cousin. Because tribal courts can no longer prosecute serious offenses, such as murder, manslaughter and rape, Ms. Wing was shuffled into the federal system, where sentences are longer and parole non-existent. If tried in state court, she likely would have been released within five years. She's currently serving life without parole.

In telling Ms. Wing's tale, Mr. Fields sheds lights on the broader problem of Native American justice. In some cases, the federal government doesn't have the resources to prosecute serious crimes, allowing criminals to slip through the gap. For lesser crimes, which are handled by tribal courts, the range of possible sentences is severely circumscribed.

In upholding Ms. Wing's conviction, an appeals court judge wrote "separately to express my dismay at the consequences of the result we reach."

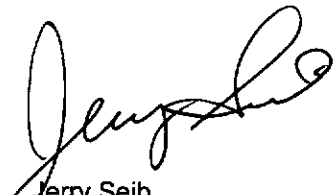
Mr. Fields's article brings readers to a part of the country they rarely—if ever—encounter. "Before it burned," he writes, "the house she lived in was a small, wood-frame structure with three bedrooms, a basement and a carport. It had neither plumbing nor a well. Water had to be hauled in, in five-gallon jugs and blue water bottles, from about a mile away. Residents had to use an outhouse."

The story, along with others on the same topic written by Mr. Fields, is credited by legal experts and tribal activists with helping spur the Federal Bar Association to take up the matter of Indian justice. The Senate Indian Affairs Committee cited his stories during a hearing about the jurisdictional quagmire that is tribal criminal justice. Members of the Senate indicate they will support legislation to address the issue. Meanwhile, the National Association of Criminal Defense Lawyers is asking for a reassessment of federal sentencing guidelines in the light of how they affect Native American defendants.

Mr. Fields overcame considerable obstacles in presenting this story. He avoided being judgmental or sentimental to a community that is often described in a broad and stereotypical manner. He won the trust and respect of people on both sides of the issue, many of whom are leery about talking to reporters.

I am proud to submit this impressive work for the Excellence in Criminal Justice Reporting award.

Sincerely,



Jerry Seib
Washington Bureau Chief

THE WALL STREET JOURNAL

Tilted Scales: On Tribal Land, an Arson Leads to Murder, Prison --- American Indians Can Face Unequal Justice; Prayers at Sweat Lodge

By Gary Fields

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LODGE POLE, Mont. -- In 2005, Bobbi Jo Wing and her husband were convicted of helping burn down a ramshackle house on the Fort Belknap Indian Reservation. At the time the fire started, the couple say they didn't know that Ms. Wing's 15-year-old cousin was asleep in a back bedroom. The girl's badly charred body was later found, after the house collapsed, in what had once been the basement.

Because Ms. Wing, 27 years old, and her husband are both members of a Native American tribe, they were tried in federal court. Since the arson caused a death, both were charged with felony murder, which automatically turned into a first-degree murder charge and a mandatory life sentence. Ms. Wing is now at a Federal Correctional Institution in Dublin, Calif. Her husband is serving life in a Colorado prison. There is no parole in the federal system.

But if the crime had taken place off the reservation, just five miles to the east or southwest, the case would have gone to a local prosecutor. The likely state charge -- deliberate homicide -- carries a penalty as low as 10 years, with the chance of parole after as little as 2 1/2 years, according to the local state prosecutor and the state attorney general's office.

Indian tribes once had control over the dispensation of justice on reservations. But federal laws -- some passed a century apart -- have whittled away that authority, and, critics say, helped create a legal system that's often separate and unequal.

In 1883, the U.S. Supreme Court ruled that the Dakota Territory court had no jurisdiction in a case in which a member of the Lakota nation killed a fellow member on tribal land. The decision overturned a death sentence and effectively gave exclusive jurisdiction for crimes to tribes. Congress, uncomfortable with the decision, passed the Major Crimes Act in 1885, taking away the tribes' authority to prosecute murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny. That meant serious crimes committed by Indians on reservations could be prosecuted only by the federal government.

Because the tribes don't have jurisdiction for serious crimes committed on their lands, outcomes of cases can be uneven. In some cases, the federal government doesn't have the resources to prosecute such crimes, allowing criminals to slip through gaps. But Native Americans who do end up being prosecuted face a federal system that has become tougher in recent years.

Since the 1980s, Congress has been toughening federal penalties by adding mandatory minimum sentences -- which are often more severe than those handed out by states. Coupled with that was the abolishment of parole in the federal system. As a result, American Indians, especially the million or so living on tribal land, can face harsher punishments than non-Indians for what are effectively local crimes, say tribal officials and legal experts.

Utah Federal District Court Judge Paul Cassells, a former federal prosecutor, says the federal sentencing guidelines were designed with a different set of criminals in mind, such as multiple, violent offenders. And yet, "we give everyone the same sentence, even when we know, and everyone in the courtroom knows, it's not the right thing to do."

In Blaine County, Mont., where the fire took place, prosecutor Donald Ranstrom says he would have weighed the fact that the death was unintentional and that the defendants were involved in a rescue attempt. All three options available to him were less severe than the punishment the couple received. Whatever the sentence, the couple would have been eligible under state law for parole after serving one quarter of it.

The federal "guidelines and statutory requirements are very restrictive," says Mr. Ranstrom. "It's a train wreck anyway you look at it."

There are 3,470 American Indians serving time in the federal prison system. That's more, proportionately, than

any other racial group. According to census and Bureau of Prisons data, tribal members living on reservations are incarcerated at a rate of more than 249 per 100,000 residents. The next group is African-Americans, who are imprisoned at a rate of 198 per 100,000.

The rate of incarceration only partially tells the story, according to a 2003 study commissioned by the U.S. Sentencing Commission, a federal agency that creates the guidelines federal judges use in sentencing. It showed that Indian offenses amount to less than 5% of the overall federal caseload, but constitute a significant portion of the violent crime in federal court. "Over 80% of manslaughter cases and over 60% of sexual abuse cases arise from Indian jurisdiction and nearly half of all the murders and assaults arise from Indian jurisdiction," said the report.

Fort Belknap Reservation, like many reservations here, is far from any major population centers. Great Falls, the closest, is 160 miles away. The communities on the reservation are spread over 1,200 square miles, making them even more isolated. Lodge Pole is one of the larger ones, situated in the Little Rocky Mountain chain, where farming and ranching are the primary occupations.

Two years ago, Ms. Wing, who is about 5 feet tall with long, black hair, was attending Fort Belknap College in a health program. She says she wanted to do research for the tribe on a contaminated-water problem. She also worked with teens on the reservation, supervising those who were considered by the tribal court to be at risk for drugs and delinquency.

Before it burned, the house she lived in was a small, wood-frame structure with three bedrooms, a basement and a carport. It had neither plumbing nor a well. Water had to be hauled in, in five-gallon jugs and blue water bottles, from about a mile away. Residents had to use an outhouse.

April 9, 2005, began as a big party to celebrate multiple birthdays around that time. Cousins, friends, siblings, aunts and uncles -- all tribe members -- gathered at the decrepit wood-frame house. Ms. Wing was the primary guest of honor. It was a Saturday and her 25th birthday was the following week.

Angel Lynn Denny, Ms. Wing's second-cousin, was there too. She left at one point and went home to call her parents, who were at a basketball tournament with her younger siblings.

"We told her she had to leave because there was drinking," says Ms. Wing's husband, Kenneth Arcand, 23, in a phone interview from the federal prison in Colorado where he is serving his sentence. There was beer and whisky. Some participants left and went to local bars before returning, Mr. Arcand and Ms. Wing say.

The alcohol brought out simmering animosities over a central question: Who owned the house? The land had been in the family for generations, evidenced by a vacant, one-room log cabin that had belonged to Ms. Wing's great-grandfather. But the house itself was claimed by two branches of the family: that of Ms. Wing's father and that of her uncle. A fistfight broke out.

Two years later, no one is sure who started the fight or who came up with the idea to burn the house. What the participants do agree on is that most were drunk.

The fire that caused the most damage began in the living room, according to court documents. The party-goers evacuated and were standing outside the house when a young teen began crying, says Ms. Wing. Ms. Wing says her cousin Angel had returned to the house unnoticed and had been asleep in a back room.

Several people, including Mr. Arcand, tried to go back inside but were turned away by the heat and smoke, according to court testimony. "I ran through the back door and tried to get into the house but the flames were already climbing up the wall," he recalls. The crowd formed a human pyramid to boost would-be rescuers through the bedroom window. One of the rescuers thought he found the girl, but was overcome by the smoke and couldn't pull her out, according to court testimony.

After the body was discovered, tribal police, realizing the crime was out of their jurisdiction, called the Federal Bureau of Investigation. During questioning, the couple confessed to setting the fire, but later recanted. They were released on their own recognizance, and later received instructions through the mail on when to report to court.

At the time, prosecutors were operating under instructions from Attorney General John Ashcroft to pursue the severest possible charges in all cases. The federal district of Montana followed the instructions: In 2006, according to the U.S. Sentencing Commission, defendants there received sentences nearly double the national average.

Mr. Arcand recalls thinking that he and his wife would be found not guilty, because concluding that they had set out to purposely kill the young woman "was wrong."

It took the jury in Great Falls less than four hours to convict them.

As he sentenced Ms. Wing, federal district Judge Sam Haddon noted that a state court would have handed down a more lenient sentence. But he continued: "My personal preference -- what I would do as an individual if not constrained by the law -- is, itself, in the view of the court, irrelevant." He said the court was "obliged to impose a sentence of life imprisonment."

During their subsequent appeal, the Ninth U.S. Circuit Court of Appeals upheld the convictions. One judge on the three-judge panel, Richard Clifton, while upholding the convictions, wrote "separately to express my dismay at the consequences of the result we reach."

Judge Clifton continued: "It is appropriate that the defendants be seriously punished for what they did, but these life sentences do not square with my concept of justice." He expressed hope that the executive branch might intervene to reduce the sentence.

Anthony Gallagher, the federal public defender who defended Ms. Wing, says a clemency request for a pardon or commutation is his last option. The Supreme Court decided in June not to take the case.

Recently, Congress has begun discussing changing the way jurisdiction is decided on tribal land. A committee with the Federal Bar Association has taken up the cause of pushing for changes, as well as the National Association of Criminal Defense Lawyers.

Sitting in a conference room at the women's prison outside Oakland, Calif., Ms. Wing wiped away tears as she talked about her cousin, acknowledging how the incident has torn apart the tribe and her family. She says she has come to terms with the possibility she won't see her home or husband again.

Ms. Wing was offered a plea bargain that would have given her 30 years, but she wanted to go to trial. "We knew we would face life, but I wanted the truth to be known, that there was no malice and we didn't know she was there," she says.

She and Mr. Arcand once worked at the Tastee Bite Cafe in Chinook. Ms. Wing was a waitress. He had worked his way up from dishwasher to cook.

In letters written on their behalf before they were sentenced, the owners of the cafe, Karen and Frank LaTray, said they sometimes left the couple in charge. "I trusted them to operate the business in these occasions and also trusted them with the money. I knew every penny would be in the till and accounted for until I returned," Ms. LaTray said in court papers.

Now Ms. Wing reports for work at 6:20 a.m. at the prison's garment factory, which produces parachutes for the military and blankets used in disaster relief. There she works on a computer and helps develop cost estimates for the products the prison produces. Remembering the battle for the house, which led to her cousin's death, is painful, she says. "It was just greed."

Ms. Wing has written to her cousin's immediate family asking forgiveness, but says they haven't responded.

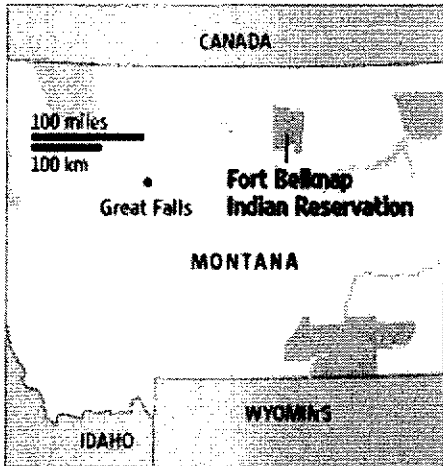
"My life is nothing compared to Angel's," Ms. Wing says. "Nothing can ever replace her life. I do pray I get a second chance, but I know God has a plan," she says. "I'm not saying he'll take me out of here, but I know he has a plan."

The spot where Angel died is marked by a 6-foot white cross. Friends and family have left a softball and a pink, portable cassette player at its base, symbols of the teen's love of music, dance and sports. A small herd of horses graze at the site of the burned structure, and the outhouse is barely visible through the tall grass.

Less than a mile away, there is a sweat lodge, resembling a cloth-covered igloo, behind an uncle's home, heated by granite rocks in a pit. Several times, Ms. Wing's parents have gone there to sweat moral and physical impurities out of their system in preparation for a three-day fast and a sun dance, where they have prayed for the incarcerated couple and Ms. Wing's deceased cousin.

Angel's father, Bruce Denny, 50, sitting in the family living room that has become a shrine to the teen, says the incident has forever changed his family. At first, he refused to believe she was dead. "I was in shock. I went blank there. I'm still inside myself," he says. "Her high-school class just graduated. I couldn't go to the ceremony, I just couldn't."

Mr. Denny says he hasn't thought about whether the life sentences are just. "I just went with what the system said the punishment should be," he says. "We live by a system and whatever the system gives, that's what I go with."



Bobbi Jo Wing

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