

A G A I N S T

T H E

C U R R E N T



Written and Photographed by John Snyder

*BYU's first tribal judge encounters a maelstrom within
the Omaha tribal government and tribe—a society surrounded by,
but not reconciled to, the prevailing legal system.*

Driving 85 miles to Macy each workday, Ed Zendejas, '91, chief judge of the Omaha Indian Tribal Court, follows his tribe's ancestral path. The Omaha were "Maha" to the tribes around them, "the people up river," or "those who move against the current."

In a red, four-wheel-drive Nissan truck, he first picks up fellow BYU law grad Chris Robison (also '91), his public defender. Leaving Omaha about 8 a.m., he crosses the Missouri River into Iowa and heads north on Interstate 29. Dropping off the freeway he turns west, passing through lands no less interesting than other flat parts of the world. A sign points north to the tribal casino, "CasinOmaha," a small sign, disproportionate in its impact to the effect of the casino on the tribe. Then he recrosses the river into Nebraska over a toll bridge at Decatur, entering the reservation over hilly, snow-covered farmland. The trip—one of Zendejas's two complaints about the job—takes, in all, about an hour and 20 minutes.

Of the winter, Zendejas (pronounced zen DAY hoss) says, "It hasn't been too bad this year," but on this day, cold winds and snow suggest what the Omaha traditionally endured. One of five eastern tribes that moved west along the Missouri in the 17th century, they are said to have had the best of both worlds, augmenting their woodland life through winter buffalo hunts on the plains. But, under pressure, they relinquished control of most of their native lands, retaining a part of what is now Thurston County, centered on Macy—a name clipped from two words, *Maha Agency*. Pushed north, precariously close to the hostile Sioux, they were, by accounts, "not altogether pleased" to be there. They were, however, the only Nebraska tribe to keep any of their original holdings, and that had two distinct results—it knit them closely together and they retained a greater sense of their traditional culture. Both factors may bear on the work Zendejas does among them.

The Tribal Courthouse, perhaps representative of the larger cultural tide that hemmed in the Omaha, is a recent addition to Macy—there was no such thing until the mid-1970s. A modern brick and cinder-block structure, which also houses the police department, it stands on a rise west of town.

The town consists of small houses, a few trailers, a hexagonal Tribal Council building, the school, post office, several churches, a swimming pool, and what appears to be the focus of the town, Jump's Food Barn, also known as Cliff's Used Cars, where the mechanic is the cook. Hepatitis broke out in the town a few months ago and spread to the rest of the reservation. Not that Jump's was the cause but,

since then, Zendejas hasn't eaten food cooked in Macy. "I told them there's no way I'm going to eat in any place where the cook doubles as the mechanic." He doesn't drink the water either. Rather, with remarkable consistency, he goes to Jump's around noon and buys some grape juice and cookies to bolster him until his return to Omaha after the court closes at 4:30 p.m.

Hepatitis is not the only scourge of the reservation. Alcohol is the biggest problem among the people here—alcohol compounded by diabetes—according to Ed's aunt, Elsie Clark, a resident of the town. She works as a youth counselor on the reservation, sponsoring activities to gather support for drug education, such as a run to and from the town of Walt Hill to protest the bars there. Bars were outlawed when the reservation was established, she says, yet they exist in the primarily white farming community eight miles to the west. She has a vested interest. Of her four siblings, only she and Ed's mother remain. The other three died of cirrhosis of the liver, all before they were 40—one of them only a month ago.

Alcohol provides most of the Tribal Court agenda. Zendejas says, "Conservatively, 90 percent of my cases are alcohol related." Whether this derives from the poverty of Thurston County, the "second poorest" county in Nebraska, he cannot say.

Tuesdays and Thursdays are reserved for trials, the other days for arraignments and other business. Only one in 10 cases will ever go to trial—most are plea bargained, or there is a change of plea. But there is an additional challenge. It's difficult to get people to testify. "That's one of the biggest problems we have here. I don't know how many cases I've had where some serious assaults, stabbings, have occurred, but they were between family members or husband and wife: They have a party; someone pulls a knife, breaks a bottle, cuts someone up pretty bad. Police will go over and haul everyone in, then set it for trial. Two months down the road people forget. When they're back together [they say], 'We don't want to testify; we don't even want to prosecute.'"

Although it wasn't so when he started the job, Zendejas seems confident and collected at the bench. In the first month or two he was nervous. "I didn't know what to do. I was just kind of fumbling around at first."

Now after nearly a year, he seems intent, sometimes humored, as he takes notes. Above him is the seal of the court—a Plains headdress serving as background to the scales of justice.

Observing him at work and in the decisions he makes, he doesn't appear intent on the arbitrary use of authority.

Rather he seems to want the good of not only those on his docket, but the Omaha tribe as a whole. Norman, an Omaha man with braids, works off his fine in the court office.

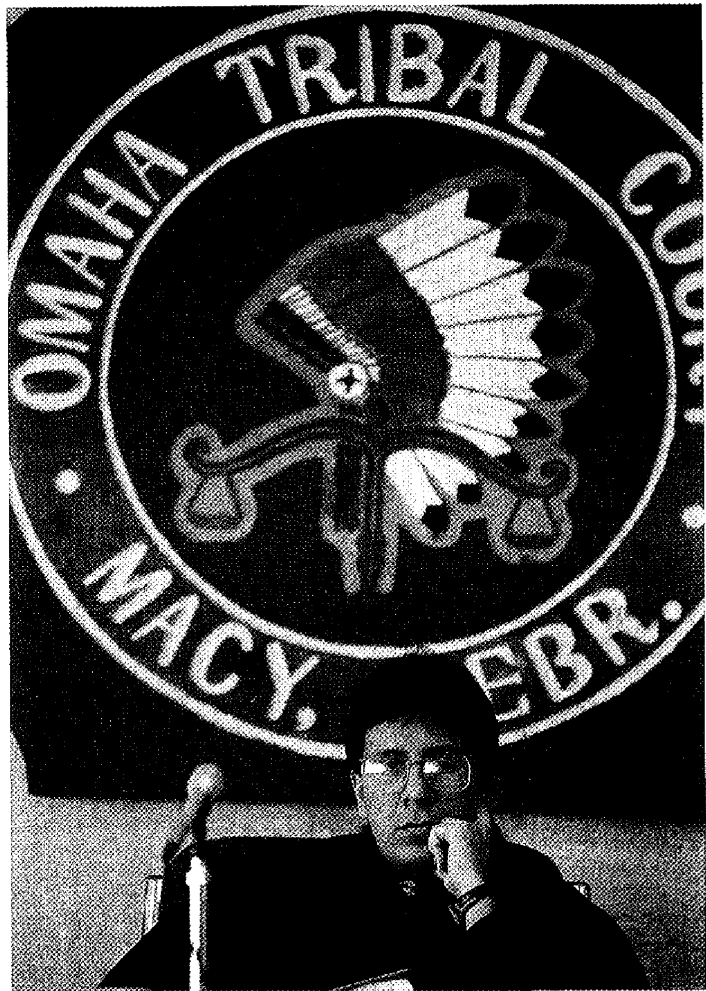
Unless revised upward according to a recent federal law, penalties assessable in Indian tribal courts are limited to \$500 and six months, but Judge Zendejas rarely approaches even those bounds and seems often to suspend sentence, something he calls "a stick." "If they don't do what they're supposed to do, they'll do the time." Not every one has taken him seriously. "But I've been pretty consistent with it, and, I guess to some extent, it's been successful because I've had more complete what they're supposed to." It isn't just a matter of leniency—if they don't comply they'll be back in court. And he's accommodating that way too: after a woman calls him asking to get on the next day's docket, he says, "It's the only court where you can call one day and get in the next. I probably shouldn't do this. It gives people unrealistic expectations about coming to court."

If he can prevent the need to come to court at all, he'll do that too. He has talked to local groups about alcohol abuse and participated in the run last summer to Walt Hill. Barry Webster, a first counselor in the local LDS branch, calls Zendejas a "role model and an inspiration." He's having a tremendous impact. Webster, currently pursuing a degree at a local trade college, was influenced simply by knowing that Zendejas was highly educated. He says, reflecting his initial surprise, "He's a lawyer *and* he's Omaha!" In fact Zendejas is the first law-trained Omaha chief judge. There have been Omaha judges, or judges who have gone to an accredited law school (all of them white)—but never both. And it means something to the 2,200 Omaha living on the reservation. "I don't think that people hold it against me when I send them to jail," says Zendejas, "I have people, my regulars, that I see on the street. They'll wave to me. I can't think of too many people who do or would [hold a grudge]."

In his noontime trip to Jump's Food Barn, several young people recognize him, saying, "Here comes the judge." One of them shakes his hand. Donald Blackbird, presently a probation officer in the Tribal Court, himself chief judge four times, has told Zendejas, "The people like you, and the fact that they're being judged by one of their own instead of a white man—

that hasn't happened here for a while." Zendejas says he enjoys the work. He doesn't, however, enjoy the politics of the work. In that, he broaches his only other, and more serious, complaint, besides the long drive—the Tribal Council. It seems odd with his growing rapport with the people that he would be in conflict with the council. But of any judge, Indian or white, law trained or untrained, none has lasted more than 18 months.

On Thursday after finishing his docket, he returns to his office and two memos, both from the Tribal Council. One



Zendejas at the bench: *I was just kind of fumbling around at first*

calls for installation of a \$1,500 time clock in his court, apparently to track not only his staff, but him. The other threatens "severe disciplinary action" if he doesn't come to meetings scheduled by the council, unattuned to his court schedule. Noticeably subdued afterward, he says, "It's like

that all the time. I guess I shouldn't let myself be affected by it as much as I do." Responding to pressure he has felt, he nearly asked the Tribal Council to have a recall election a month and a half ago. "I'm not so in love with this job that I'll stay if I'm not wanted here." But he also had enough confidence in his popular support to consider such a request. His wife and grandfather had counseled him "not to make it easy for them" by quitting. "Put it to a vote."

Reasons for conflict between tribal councils and their courts range from the obvious to the obscure. A key to the conflict lies in the phrase "their courts." The Tribal Court exists at the behest of the Tribal Council, described by Zendejas as "all powerful." What it gives it can also take away. There is no constitutional separation of powers. The most evident reasons for conflict: his salary—if it had been thought to be too low, it wouldn't have been questioned, but that wasn't likely the suspicion. His qualifications: again, it probably isn't lack of education that would subject him to scrutiny. Many tribal judges nationwide have no legal education at all. A 1978 study of the tribal court system observed, "Councils perceive courts as alien institutions and do not consider them part of the tribal government structure." Someone well trained in "alien Anglo legal systems" would by implication be an outsider, especially within a group that retains a greater than ordinary sense of its traditional culture.

Wearing his hair in a ponytail, Zendejas seems indistinguishable from any other Omaha, but he might be considered an outsider for other reasons. When he first came to the reservation, he says, "I would always get these stares because I hadn't been raised around here." His mother had left the reservation at 15 and moved to Omaha. His name also stands out among the Omaha, many of whom were gratuitously renamed in the mission schools for victorious American generals—Grants, Fremonts, Tyndales, Sheridans, Robinsons, and Hastings are common on the reservation. Zendejas's father is not Native American, but Mexican, and, when Ed started the job, people said, "They hired a Mexican," which was, of course, only half true.

Barry Webster says Zendejas "was looked at as an outsider when he first came." Here was an Omaha he had never seen. "I thought, 'Who is this guy?'" That they are both LDS would more readily acquaint Webster and Zendejas, but, says Webster, "Mormons are labeled"—in a potentially negative way. Does his religion have any effect? "I think yes," Zendejas responds. "I think it's viewed in a negative light. They've been suspicious of the Church ever since the placement program." Zendejas himself participated in the LDS placement program, spending six years in Boise, Idaho. A strong presence of the Native American Church on the reservation also influences attitudes toward Mormons. According to Zendejas, some leaders of the Native American Church were formerly Mormon, engendering some hostility toward Latter-day Saints now. On the reservation "you just know who the Mormons are, and there's a perception of that



Adele, the judge's sister, tweaks his ponytail: *In a small community like this, connections and accountability are inherent to the structure.*

being 'the white man's church' and that the Native American Church is our church."

While conflict with the council may only be intrinsic to the work he does and tension may be inherent in the decisions he makes, those decisions represent his upbringing, his education, his religion—all that he is. And, in that, he is going against the current. "One of the most frustrating things is seeing the conditions that people live in back here, and it doesn't necessarily have to be that way." Does he see himself trying to exercise an influence over the Omaha people? "I've tried, and I think that's the biggest source of contention between the council and me. I've been told they view me as a threat." While he may seek the good of the people, attempting to nurture rather than break down, through his decisions, the council may not always agree with his means. He isn't afraid to take unpopular positions, such as the time he put a pregnant woman in jail. In response to a complaint from the pregnant woman's mother the council passed a resolution barring such action, but didn't tell him. "Someone called up complaining about me having so and so in jail, and said, 'The council passed the resolution.' I said, 'show me a copy,' and they sent up a copy of what they'd passed." Was he supportive of the resolution? "No, no," he says. Considering it a "bad call," he was "adamantly opposed to it. Fetal alcohol syndrome is such a problem around here—and on other reservations as well. I figured if they were in jail, at least they weren't drinking. At least I knew they would get prenatal care, which was part of the sentencing for some of the women." One pregnant woman he let out "was back in a couple weeks on a drunk driving charge. I put her in jail, and I kept her there. I guess I challenged the council on that one. I told them that they were giving pregnant women a license to do as they pleased—so I put her in jail." She protested enough as she left the courtroom that he called her in contempt. "She got a little too belligerent, so I slapped another 10 or 15 days on her."

He has even ruled against the tribe several times, but his stance toward one attraction—a lucrative addition to the Plains landscape—has generated more controversy than any other: the casino.

S ometime late in the last century the Missouri River changed course, rearranging the boundary of the Omaha Reservation. The battle, in federal court, was fought over how the river had acted: Was it a slow change over time through “accretion”? If so, the tribe lost any right to the land. Or did the river “avulse,” quickly tearing off a section? Then the tribe had a claim.

Whatever the intricacies of the dispute, by the midwifery of the federal courts, the Missouri delivered a bundle of Omaha land on the other side of the river. Though aspects of the 1980s decision are still being appealed, the Omaha found themselves with 10,000 acres in Iowa, a result first thought to be inconsequential. Simultaneously, Iowa, hoping to use the Missouri and Mississippi Rivers as lures to tourists, approved “riverboat” gambling, thinking they could limit it to that. It didn’t work. Under the complexities of federal, state, and Indian law—what has been called a “jurisdictional jigsaw puzzle”—Indian tribes could now offer casino gambling. Zendejas says, “It’s been an economic boon to not only this tribe, but the other tribes that have land on the Iowa side of the river.”

It was last fall, when Zendejas ruled against the tribe in a \$2.3 million suit against the casino construction company, that things “really got crazy.” In addition to his general budget from the Bureau of Indian Affairs, he has a “court fines account.” When he fines people, that money is used for the benefit of the court—to train people or to pay oper-



The casino: The Omaha found themselves with 10,000 acres in Iowa, a result at first thought to be inconsequential

ating expenses: postage, supplies, and office equipment. After his ruling the council froze the fines account. It may only be coincidence, he allows, but after issuing the opinion, Zendejas met with the Tribal Council and, “Things

didn’t work out there.” They had decided that they were going to be in control of all the accounts, and Zendejas would have to submit any expenditures to them to be approved.

Then came the Tribal Council elections and, at least for Zendejas, a sorrowful demonstration of the way the earnings of the casino were being used. Since its opening in July, drawing people from throughout the region, it has produced \$500,000 to \$800,000 a month—a conservative estimate, he says. Being immensely profitable, the casino became the center of the election. The existing council, representing the Ten Clans Party, lauded itself for bringing the casino to the reservation. They also offered \$750 to every adult member of the tribe. The opposition enticed voters with its plans for the revenue and upped the offer to \$1,000. By Zendejas’s account, about four o’clock the Friday before the Monday election, the existing council, realizing that they couldn’t be outdone, announced a \$250 payment. “And only registered voters got it.” There wasn’t time for others to register. “When I heard that was happening, I couldn’t believe it.” He waited, he said, to see if it was really true, and if anyone would file an injunction against it. No one did and the money was passed out. In spite of their ploy, the traditional Ten Clans slate lost. Of the seven seats on the council, the Omaha Rights Council took six. Zendejas thought that might be good for him. Their platform had promised not only money, but open government and no favoritism in job appointments—the best jobs in the area are tribal jobs, and there had been complaints about the previous leadership. Most important to him was a proposed separation of powers between the council and the court. First things first, though—he was dangerously close to not running a court at all.

Nothing had gotten done during the election, he says, “No one was doing anything around here but campaigning and handing out checks.” The new council had pledged to open the fines account but later told him, “We don’t have a quorum yet.” The court languished. “We didn’t have any postage stamps. The Post Office had pulled our box. Our phone was about to be disconnected. We were down to our last box of paper, and we were running out of toner for the printer.” They didn’t have any pens either. Not having stamps, they couldn’t deliver court notices, but tried to have the police serve them. And the court didn’t have a public defender. “We were pretty humble,” he says.

Then the heat in the court building went off.

It was early December. By then he had no direct contact with the Tribal Council. The relationship had degenerated to such a point that he went to the chief of Tribal Operations, Kay Kearnes, and told her, “I can’t run a court this way and I’m not going to. I’m suspending court, taking people’s pleas, and then I’m sending everybody home, and you’re going to pay them administrative leave until we get heat and money for postage so we can operate.” He didn’t know if they took him seriously. But he wasn’t concerned “if they wanted to fire me or not or recall me or not—I was ready to quit anyway.”

Shortly after the ultimatum he got heat, stamps, and a six-month appointment for a public defender "They didn't get around to trying to advertise for or hire one, so that's how I got Chris Robison in here"

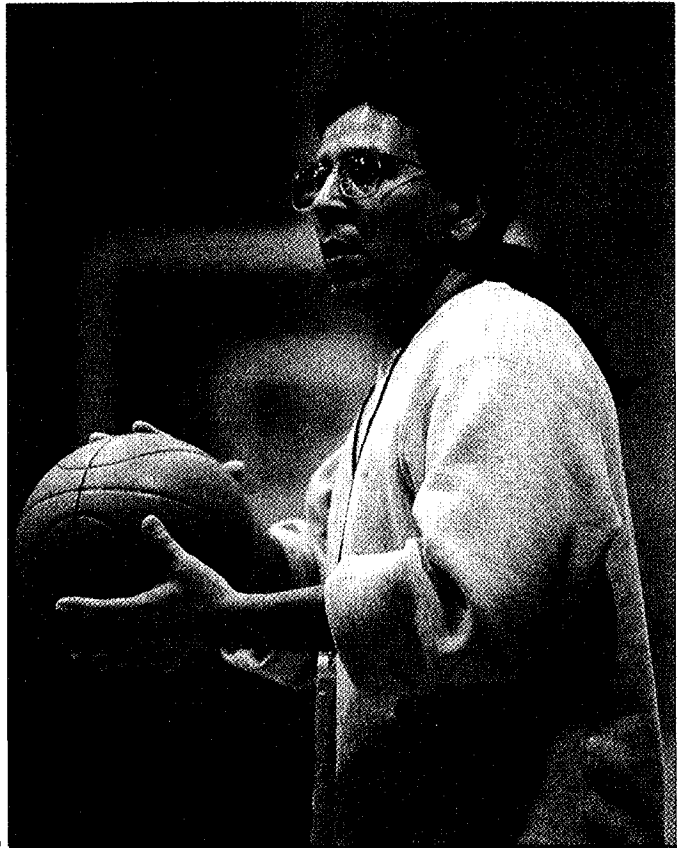
If the Tribal Council was failing in its pledge of separation of powers, one campaign promise was not so easily forgotten: the \$1,000 payment to all adult members of the tribe, a pledge requiring \$3 million—money the tribe now didn't have By Zendejas's assessment the previous council had squandered it trying to sway the election—making loans, grants, and a cash offer of its own "Money was going out just as soon as it was coming in." So they decided to borrow it Zendejas's response to such a move may have been another twist in the tourniquet that had been applied to his court

Just after the election, the new council had approached him about being the tribal attorney. He was one of two being considered His initial meeting with them was matter-of-fact "I wasn't going to tell them what I thought they wanted to hear" He had seen other attorneys who had simply advocated for the tribe—even if theirs wasn't a strong position—gotten them into a lot of trouble, and cost them a lot of money "I told them I'd tell them what I thought was best for the tribe" Some council members said, "We want one of our own to represent us" When they asked Zendejas to go with them to the bank in Omaha and sit in their negotiation for the \$3 million, it sounded like they'd committed to hiring him On the way to the meeting he asked the new tribal chairman, "Is it worth taking out a \$3 million loan at 7 percent? What is it going to do to the tribe?" They may not have appreciated the question, he concedes, "because that was something they'd already decided" And though they didn't hire him as their counsel, they didn't release him as their judge Since then, he says, "Things aren't well They're practicing evasion."

The result of the ensuing \$1,000 payment resounded throughout the reservation Zendejas relates a sequence of effects: "Most people on the reservation are on some kind of public assistance, and any outside income has to be reported Public benefits are cut in proportion to how much income comes in If someone gets \$1,000, that's what their assistance will be cut by "It was like putting a dollar in somebody's pocket and taking a dollar out of the other pocket We gave the state millions of dollars" Complicating matters, the money came a few days before Christmas Rather than using it to pay any bills or buy necessities, "it was one big party and Christmas shopping binge" Many people with tabs at local grocery stores didn't pay their bills Store owners, knowing of the recent windfall, cut off their credit

"The Tribe called the other day," Zendejas says, "wanting to establish an emergency assistance program I said, 'You're creating another supplemental welfare program that is not going to be supplemental after a while It's going to be a big mess.'" And there is perhaps more He can only speculate but suspects that the payment led to his uncle's recent death "He died of cirrhosis He was on a month-long drunk, and I would attribute a lot of that to the \$1,000 He was just able to go out—and he threw it away"

He hasn't seen any indication that the payment actually helped anyone. It might have, used properly, accomplished much good. But for Zendejas it raises larger questions about

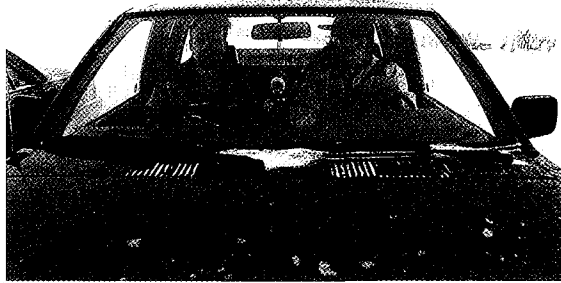


On a different court, Zendejas referees a local basketball tournament:
I'll continue to do whatever I can do

the casino and the money it generates He sees the "wangling over control and power" that surrounded it in the election and illegality in its operation "They're often violating their code and constitution." He told people when the casino opened, "It's like a rope that's tied up in a loop. Either you can bring it down around your waist and use it to pull yourself out of the mess you're in, or you can open it just a little bit and it will fit right around your neck Then you're going to choke yourself—the tribe's going to kill itself"

Without lifestyle changes, "just getting a lot of money and throwing it around won't solve all of the problems here." He feels he could write a persuasive argument against Indian gaming. He calls lotteries "a can of worms" opening up other problems with Indian gaming. "It doesn't stop. This is something for Utah or any other state that's thinking about opening up a lottery. If you think, 'Well, we're just going to limit it to this,' you're opening up almost everything."

Yet he also sees that several of his relatives, including a brother, work at the casino. In a small community like this,



Zendejas and Robinson leave the court for Omaha: *Cold winds and snow suggest what the Omaha traditionally endured*

connections and accountability are inherent in the structure. Banter in the courthouse office includes questions about kinship. AG-O (sounds like "Eggle") Sheridan, also a probation officer, asks Donald Blackbird what his clan is, volunteering that the complexity of the Omaha kinship system would take days to explain. Norman, the man with the braids, is his nephew, but by the traditional reckoning he would be AG-O's "Little Grandpa." Indeed, Omaha kinship has attracted the attention of notable anthropologists such as Margaret Mead and the Frenchman Claude Levi-Strauss. "Omaha Alliance" has come to signify a particular variety of patrilineal descent. Levi-Strauss, seeing numerical relationships in all things, thought only math could describe the complexity of the Omaha. "There are some things Ed didn't quite understand about that when he first came here," adds Sheridan, asserting that it might have made things easier for him. "Still don't," says Zendejas.

Reflecting, he doesn't see anything changing here "until the Second Coming." He had hopes with the new Tribal Council. The new chair, called Dr. Rudy by the people, has a PhD. "I thought the tribe was moving in the right direction, but I guess I've been disappointed in his leadership. Instead of raising the level of competence of the Tribal Council, I think he's stayed at everybody else's level."

Regarding himself, Zendejas doesn't know how long he'll last—he has other possibilities in Omaha. Officially,

his appointment lasts four years. He doesn't fear rejection, something he has had considerable experience with, having applied to law schools—first in Nebraska, then at BYU—four times before he was accepted by BYU. He applied two times for his present position after being turned down several times for other tribal positions. His reason for persisting wasn't obscure. "I needed a job," he says. And, finally having been appointed chief judge, that is the job he really wants to do—without the politics. "I don't think any state or federal judge has to ask after ruling, 'Is the governor or the mayor or somebody going to come down, or give them a call, or threaten to cut off their budget?'" Although he doesn't see anything changing, he says, he "isn't going to throw up his hands and wait for the Second Coming." He will persist. He waits for the council to review and approve the revisions to the Tribal Code that he submitted to them at election time. He will also go before the council and petition them to keep their promise of separation of powers. It has to be achieved through the tribal constitution, and he realizes that, given recent violations, "the constitution only has as much meaning as the people want to give it." It would be to the tribe's advantage, though. "Tribes are saying we want to encourage business and outside development—those are the buzzwords. And to do that, businesses and outside developers need to feel comfortable with their investment dollars." They need, he says, to be reassured that the Tribal Court is neutral and independent. "And that's the feeling around here—that they won't get a fair shake in a tribal court."

His dismissal of the \$2.3 million suit filed by the tribe was merely on procedural grounds. Though not the primary reason for dismissal, the construction company also had a clause specifying that any dispute would be handled in the state courts. With separation of powers, the tribe could say, "We have a court. We have a judge. We have no power or influence we can extend. We don't control their purse strings, so if we're not happy we can't cut court funds and suffocate them until they submit." That would be encouraging to business, enabling to the tribe and, no doubt, reassuring to Zendejas, who considers it "vital to the tribes."

Wrested forcibly from the past, though still affected by their traditions, the Omaha have yet to adjust to the society that engulfs them. In trying to bring tribal legal practices into compliance with a broader standard, the standard of an external and alien system, perhaps Zendejas represents an inexorable and unavoidable current. The Omaha still move against it—even if they are only treading water. He says, "I'll continue to do whatever I can do, and to help in whatever way I can. It's just a question of what, if any, help they want from me. I can only do as much as people want me to do."

Donald Blackbird, having experienced Zendejas's frustration, has urged him on. "He's doing a really good job—he doesn't think he is, but he is. There has always been pressure. It's discouraging at times, but he's young. He'll survive." The term, says Blackbird, is "hang in."

Zendejas says he tells people he is like an alcoholic: "I take it one day at a time."

Epilogue: *From Bad to Worse to Unbearable*

Judge Zendejas is gone. Chris Robison and Doug Haymore, '91, another BYU law grad hired by Zendejas as a prosecutor, are also gone. To Zendejas's knowledge, only one of his former staff remains at the Omaha Tribal Court.

Increased tension between the tribal council and court prevented publication of this article as intended in the Spring 1993 *Clark Memorandum* on Native American issues. About that time the Tribal Council fired the health center staff. When the chief of police, who had just resigned under pressure, came to Zendejas, saying, "You're next," Zendejas reconsidered: Fearing that the council might sacrifice his staff to get to him, he asked that the story not run.

What made a bad situation worse, finally unbearable? Two smoldering issues—council concern about his salary and a desire for more control of the court—proved inflammatory. The council sought to "re-evaluate the budget," which was, to Zendejas, a euphemism for "cut my pay." Then, in April, while he was in Albuquerque for a Federal Indian Law Conference, an emergency arose. Zendejas took care of it by fax, he says, but "they were concerned I wasn't there to handle it." After putting court travel on hold pending evaluation, the council also revealed plans to hire an associate judge using a portion of his salary to do it. In a heated exchange Zendejas responded, "You came in here promising separation of powers. I don't think you understand what that means. If you did you wouldn't be interfering the way you are."

When Chris Robison gave notice he would be leaving in July, Zendejas, having been without a public defender before, provided for a replacement. Undermining his efforts, the council refused to sign any contracts until after their proposed, but never completed, budgetary review. By August the man Zendejas had hoped to hire couldn't wait longer and moved on. The council had, however, submitted tribal budgets—except for the court's—to the Bureau of Indian Affairs. A source close to the tribal government, "right nine times out of ten," relayed that the council was threatening to give the court back to the BIA.

Tribal leaders again approached him about being their in-house counsel, something he wouldn't consider until they found a replacement for him. Suggesting Chris Robison, Zendejas met with the council on several occasions, but made it clear, he says, that he was "still judge and hadn't left the court." The council interviewed Chris, but nothing came of it. The anonymous source conveyed that it might be a ploy to get rid of Zendejas. Losing his constitutional protection, he would be "just an employee."

Relations between the tribal government and the Omaha community were also precarious. Learning that council members were paying themselves salaries—in violation of the tribal constitution—and that a member of the council had failed to report a felony conviction on the election petition, community members brought an injunction against the council. The case would have been heard in his court but, Zendejas says, he would have recused himself.

Hearing of a possible takeover of the Tribal Council building, Zendejas contacted the Department of Justice to provide mediation. He was caught in the middle: The council felt he was siding with the community for having suggested that they "take the high road" and admit their wrongdoing. Only becoming more entrenched, "They told me I was resigning and would be their attorney," Zendejas countered, telling them, "I wasn't leaving. I had never resigned and was going to stay at the court. I didn't want the community to think I was being bought off." It was a showdown. But immense casino revenues had tipped the political balance on the reservation. Fortified by profits recently reported at \$16 million for 1993, the council showed its hand. "They wanted me off the bench and sent their attorneys after me." The tribe had been paying a large Omaha firm approximately \$100,000 a month, according to Zendejas, mostly to monitor gaming issues. And "if they didn't want someone around, they could send their attorneys after them," he says, expressing concern that a law firm could exercise such influence in the tribe's judicial affairs.

At the start of the fiscal year in October, the court budget still hadn't been submitted. The council quit paying Zendejas and, with his salary, appointed two new judges of their own. Zendejas, the tribe's lawyers contended, had "effectively" resigned as judge when he met as potential in-house counsel. "That's crazy," says Zendejas, who continued to assert his rights as judge. To resign "effectively," he would have had to miss work, without excuse, for three days. He met with the council using vacation time, he says, or on tribal holidays. In response, Zendejas filed an affidavit alleging official misconduct. The "new tribal judge that heard it dismissed it. He used a rule of civil procedure to dismiss a criminal case. That's how far he stretched." The council, meanwhile, had filed a petition in the court to have him removed as judge. Not optimistic about his chances with either of the newly appointed judges, Zendejas accepted a settlement—part of which precludes his discussing the terms—and resigned December 1, 1993. To him, it was a case of "economic blackmail."

The community had been supportive, he says. One tribe member "told me, 'If you don't stand up to them, nobody will.'" But no one offered to pay his bills. Unpaid, without resources to fight them, and knowing that a protracted law suit wasn't in the best interest of his family, he conceded.

Away from it now, he has "no regrets about the job or work. I got to know a lot of good people." But of the council he adds, "The only thing that bothers me is they got what they wanted. The Tribal Council wanted me out." Though freed of his biggest complaint, the politics, he misses making the long drive upriver. He navigates smoother waters now. Teaching criminal law and Indian law at the Omaha campus of the University of Nebraska feels like vacation to him. But that may not last long. As irony might have it, politics beckon. He is considering running for local office or the state legislature. Others have offered to pay his bills.