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# Former Judge Bud Lee Would Rather Go to Jail Than Give Up His Fight for Off-Res Poker Parlors

**PAUL RUBIN** | APRIL 16, 2009 | 4:00AM

The folks at the Arizona Department of Gaming are convinced that onetime Phoenix Justice of the Peace Harold "Bud" Lee isn't playing with a full deck.

It infuriates them that the 64-year-old Tombstone resident continues, as they see it, to

break the law and laugh in their faces as he does so.

According to outgoing ADOG director Paul Bullis, "Harold Lee and his cohorts have attempted to expand their criminal enterprise of illegal gambling halls throughout Arizona. These are not casual poker games among friends."

Poker rooms are against the law in Arizona, except at the 22 casinos on 15 Indian reservations, where 212 tables (at last count) are in service night and day.

Arizona does permit "social gambling" outside of the Indian casinos, but only if no one other than the players collects money from a game, whether it is poker or anything else. It also is illegal for the "house" to charge an entry fee for a poker game off the reservations.

But ADOG's agents don't have the time or desire to investigate goings-on at the back of, say, an Elks lodge, where the guys get together on Friday nights to play a little poker.

Instead, they increasingly are focusing on the two dozen or so poker rooms that, according to the agency, have opened illegally around Arizona in the past few years.

Bud Lee has been involved in several of these operations. ADOG has spent thousands of dollars and untold man-hours investigating Lee's rooms.

Lee has appointed himself spokesman and would-be martyr to his cause, which is that poker salons should be allowed to operate and flourish without government interference outside of Indian country.

He is at the forefront of a high-stakes and increasingly public controversy concerning Arizona's Indian tribes and the role that prosecutors should play in enforcing the state's anti-gambling laws.

No doubt, ADOG's agents would love to play a game of Arizona hold 'em with the wise-guy ex-judge – as in hold him in jail. But to the chagrin and dismay of the Indian tribes and ADOG, no prosecutorial agency has been willing to charge him with something.

That includes at least two County Attorneys' Offices and the Office of the Arizona Attorney General, which consistently have rejected Gaming's requests for criminal prosecution of Lee and others.

Lee says he's eager to take on the state of Arizona in a no-limit, winner-take-all courtroom brawl.

"The foggy idea that adults playing poker for money in a card room is so dangerous to the community that it warrants a state-level prohibition is really quite loopy," Lee says. "And to squander resources in attempting to sustain such a silly prohibition is truly preposterous. I'm telling you, there's a bigger hand to play in all of this, and if they have to toss this old grandpa into the slammer before we get to make our point, fine with me."

Mark Brnovich, the newly appointed director of ADOG, who takes over next week, just might call Lee's bluff.

"As far as Mr. Lee goes," Brnovich tells *New Times*, "if he continues to do what he's been doing and is so anxious to be prosecuted as a criminal, well, I intend to oblige his request."

The real game, it seems, may be just starting.

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Though Bud Lee has a penchant for showing his hand, he will allow only that he's been making "a little" money in the poker rooms around Arizona with which he's been involved.

But whatever his income, Lee is light years shy of the million-dollar Texas hold 'em pots seen on national television that have turned poker from just another popular card game into a spectator sport replete with superstars, fan clubs, and thousands of Web sites.

Lee's organization, the International Card and Player's Association, essentially is a one-man band. For a starting fee of \$5,000, he will issue a charter and a kind of business plan for an off-reservation poker room. He also collects as much as 15 percent of the profits from a room's owners.

Lee tells *New Times* that he also makes money from the \$20 annual ICGPA "membership fee" charged to every new poker player at one of his rooms. He claims that more than a thousand people "joined" one of his onetime affiliates, the now-defunct Club Royale in Tucson.

All of the above – the start-up fee, the percentage of the profits, and the membership

charge – are crimes, say ADOG officials.

Arizona's anti-gambling laws range from conspiring to conduct illegal gambling operations, conducting a criminal enterprise, promotion of gambling, and benefiting from gambling.

Each is a felony punishable by a prison sentence.

Lee is adamant that ICGPA rooms don't have a so-called "rake," as the Indian casinos do. The rake is what the casino collects from each player, usually 10 percent of every pot (casinos have a dollar limit in their cash games and in certain tournaments, though most tourneys are non-limit).

Lee explains that a player at one of his tables who holds the dealer button – a disk that rotates from player to player after each hand – pays \$1 to \$3 to the club *before* the cards are dealt, not after.

"That makes the house not part of the poker game itself," he says.

"We're not promoting gambling under any criteria. I hate gambling. I do not gamble. If you want to dump your money into a machine that says 'Feed me; you're gonna lose,' go for it. But not me. We're promoting poker. And frankly, you cannot get rid of it and you cannot control it, however you try."

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Just months after it opened to great success last summer, Tucson's Club Royale shut its doors in December after the Pascua Yaqui Indian Tribe sued Bud Lee and two business partners in Pima County Superior Court.

The club's owners, a Tucson couple, agreed to get out of the poker business in return for the tribe dropping its case against them. Lee says he disagreed with the decision, and he remains a defendant in the civil action.

The Pascua alleged that acting outside of the state's compact with the Native American tribes had given Club Royale an unfettered and illegal competitive advantage.

Because of a contractual arrangement, the Arizona Tribal-State Gaming Compact, Native American tribes in the state have the sole right to the spoils of the lucrative gaming

industry.

In return, the tribes send a percentage (1 to 8 percent, depending on the size of the casino) of their gross gaming revenues to the state, and to other jurisdictions.

Gross gaming revenue is the difference between gaming wins and losses, before deducting operating costs and expenses. In fiscal 2008, according to ADOG records, it was \$1.98 billion.

The tribe claimed it was losing business to the club on Tucson's north side, though its lawyers never specified how much. The Pascua own and operate two of the Tucson area's four casinos.

"We were taking their players, who didn't want to drive way out there to their casinos and didn't want to pay so much to play, so the bastards sued us," Bud Lee says.

Interestingly, ADOG agents armed with search warrants raided Club Royale and the residences of its owners only *after* the big room closed for business. They seized gaming equipment – including the club's eight poker tables – video surveillance equipment, an ATM machine, and records.

ADOG says its three-month undercover probe revealed that Club Royale collected as much as \$550 an hour on one table alone.

The one Valley poker room currently affiliated with ICGPA is the Ace High Arizona Card Room on West Bell Road in Surprise. It seems to do decent business, and Lee reports no problems yet with law enforcement.

Until recently, Lee was connected with Poker Nation, an unassuming storefront operation with a few tables at 19th Avenue and Greenway Road. But he had a falling-out with room owner Christine Korza after a quarrel over – what else? – money.

Afterward, Lee terminated Korza's ICGPA membership, a move that has had no effect on her or her business, she says.

The dispute turned ugly a few weeks ago, and Korza says she called Phoenix police after Lee showed up during a weekend game and loudly demanded money from her, disturbing

her patrons. Lee denies wrongdoing and says Korza simply is avoiding paying off her debt to him. No legal charges were filed.

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Bud Lee's legal arguments basically fall into two areas:

He says the 10-year compact (it expires in 2012) between the state of Arizona and the Native American tribes is an illegal "monopoly." His view on Native Americans is paternalistic, as if he knows what's best for Indians.

"To our friends and fellow human beings living in a segregated compound, and human Petri dish, under the watchful eye of the Bureau of Indian Affairs," Lee wrote in a February 24 open letter to the Pascua Yaqui tribe, "we urge you to help us organize the sport of poker in the state of Arizona. Leave those reservations and join us in the cities and towns that need your help in providing safe and secure venues for our professional players."

Lee's second big issue is more compelling. He's adamant that poker is a game of *skill*, not of *chance*, and should not by definition be subject to Arizona's anti-gambling laws.

"Any game where the best hand can lose to the worst hand is not gambling," Lee claims in a raspy voice that he may have earned in the days before Arizona banned smoking in bars and other public places.

"It is a strategic contest by definition. I'm telling you, we're a skill game all the way, and courts around the country all agree with us. I mean, all of them."

He's about one card short of a winning hand on that one. *All* the courts in the land aren't agreeing that poker is a skill game.

A New York court ruled a few years ago that games such as poker and blackjack do require *some* skill, but the outcome inevitably depends on the random distribution of the cards.

But Lee is correct that judges in Pennsylvania and South Carolina have ruled this year that Texas hold 'em *is* a game where skill predominates over chance.

In the Pennsylvania case, a local judge wrote that a small-stakes private game was not

"unlawful gambling" under that state's statutes. Though the case directly affected only two rural counties, the president of the Washington, D.C.-based Poker Players Alliance called it a "significant victory in the overall battle to demonstrate that poker is not pure chance gambling."

In the South Carolina case, which was decided on February 19, a municipal judge convicted five poker players of violating the state's anti-gambling laws during a private Texas hold 'em tournament. But the judge also found that the evidence "is overwhelming" that poker is a game of skill.

The debate, by the way, is not new.

In 1870, Mark Twain wrote a delightful short story titled "Science vs. Luck."

The premise was a made-up Kentucky court case that considered whether Seven Up (also known as Old Sledge) was a prohibited card game of chance. It was much like the game of Hearts.

Naturally, "experts" testified on the matter, including religious leaders who told the judge on behalf of prosecutors that the game was purely chance.

In the end, the judge said he couldn't make up his mind.

The defense attorney suggested that he impanel a jury of six from each side, those who favored luck and those who favored science (or skill). They would be given candles and cards and sent into a room to have at it.

"After playing all night, with some clergymen coming out to borrow more money, the jury reached their unanimous verdict," Twain wrote.

Old Sledge, they said, *was* a game of skill.

Expert poker players are known to be able to take money from a table of novices, even without looking at their own cards. The pros will assume they have average hands and work with what they know for sure, which is how their opponents are playing, their body language, facial tics, table talk.

Learning how to win money on a bluff with a bad hand, and knowing when to fold against a surely winning hand takes psychology, attention, and intuition.

But does poker become pure chance after all the players have shown their hands and there still are cards left to draw into the game? Even when one suspects that he or she has "the nuts" – the best hand in a game – it takes skill to lure opponents into continuing to drop money onto the table.

Last month, Las Vegas gaming law attorney Tony Cabot and two colleagues published a terrific article on the subject of skill and chance for the *Drake (University) Law Review*.

Its title bears repeating: "Alex Rodriguez, a Monkey, and the Game of *Scrabble*: The Hazards of Using Illogic to Define Legality of Games of Mixed Skill and Chance."

It points out that laws in most states are clear on the obvious differences between, say, risking money at a roulette table and vying for a scholarship in a science competition. One is pure chance, and the other is based on skill

But what of competitions that *mix* both skill and chance?

Cabot writes that most games have an element of chance – even chess, which starts only after a draw determines which player moves first. He suggests that states and courts should ask whether "player skill" or "uncontrollable chance" most likely determines the winner.

As for the Alex Rodriguez reference in the title, Cabot writes of a mythical duel between pitcher CC Sabathia and the steroid-scandal-tarnished New York Yankees third baseman. The big lefty comes at Rodriguez during an at-bat with a strategic array of three pitches: a fastball, slider, and change-up.

There's nothing random about it.

A-Rod is looking for certain pitches at specific points in the count. If a great hitter like Rodriguez "guesses" right, he's got a much better chance of hitting the ball hard somewhere.

Actually, Rodriguez is lucky enough in real life that he won't have to face Sabathia this

season. The two became teammates in the offseason.

Cabot says proving that a game is based on chance is simple: If its payout is consistent over time regardless of the player (hell, the player might as well be a monkey in this situation), then it's sheer chance.

It gets more complex when discussing a game like Texas hold 'em, which is a classic mix of chance and skill. Sure, the greenest rookie at the table may win a hand or two, or even do well in a random tournament. But over the long haul, players who know what they're doing inevitably come out ahead of their less-experienced opponents.

Based on that notion, can someone be violating Arizona's gambling laws when playing the "skill" game of poker?

"Nope," ex-Judge Lee says. "A thousand times nope."

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Few Arizonans know more about gaming laws and Indian casinos than Mark Brnovich.

Brnovich is leaving his job as an assistant United States Attorney at the end of the week to tackle a new challenge as director of ADOG. Governor Jan Brewer appointed the articulate 42-year-old to replace Paul Bullis, an appointee of former Governor Janet Napolitano's.

Brnovich can talk ancient history: "All cultures have a fascination with gambling. The United States was founded on gambling, with the Jamestown Colony financed through a lottery from England. Greek mythology says the gods gambled for everything: Venus won the heavens, Poseidon won the oceans, and Hades got the short end of the stick with the underworld."

But he actually is a law-and-order type who has been working in the U.S. Attorney's white-collar unit prosecuting gaming and casino-related crime in Indian country. The former director of the Goldwater Institute Center for Constitutional Studies is of a libertarian bent, which is something on which he and rabid government-hater Bud Lee may have common ground.

But Brnovich says he plans to be "extremely hands-on" in dealing with Lee and whoever else is violating Arizona's anti-gambling laws.

"When the gaming world is not regulated – and I'm speaking of poker or what-have-you – it can attract cheaters, crooks, and corrupting influences like moths to a flame," he tells *New Times*.

"It is extremely important to have controls and internal regulation in the gaming industry, and historically there is a backlash when the public feels it is unregulated or it actually is unregulated."

Brnovich says that what Bud Lee and others have been doing outside of Indian country is a different bird from what a handful of folks playing their regular weeknight game at someone's home are doing.

"Beyond the fact that you're taking a gamble on several levels just walking into those illegal facilities, Mr. Lee is a third party who is directly profiting from a cash-intensive business," he says. "I intend to find the necessary resources and a prosecutorial agency that will prosecute illegal gambling crimes when called for. What Lee has been doing goes into the category of 'called for.'"

Brnovich says he was surprised to learn that no pending legislation exists on the thorny issue of off-res poker rooms, either from ADOG's perspective or from the perspective of those who want to legally increase the role of "social gambling."

But many Arizona legislators may look away from any bill with the phrase "social gambling" attached to it. In the 1980s, about 250 social gambling halls opened at drinking establishments statewide after the Legislature created a loophole in the anti-gambling laws.

The lawmakers corrected their "mistake" in 1990.

In Texas, a bill that would legalize and regulate poker rooms at a limited number of racetracks and neighborhood bars may go to a vote later this month. Advocates for the proposed law are using the recent South Carolina and Pennsylvania examples to try to distance poker from casino games, with a distinct edge to the house.

Big as it is, Texas has only a handful of Indian casinos, so the exclusivity argument common to Arizona tribes is virtually non-existent there.

The straight-talking Brnovich begged off discussing a sensitive issue that he may have to deal with during his tenure – the specter of the "poison pill."

During the Club Royale brouhaha in Tucson, attorneys for the Pascua Yaqui not only sued the club's owners and Bud Lee, they publicly attacked everyone involved in print and on television – including the state of Arizona (specifically Attorney General Terry Goddard) for not prosecuting the alleged lawbreakers.

One tribal attorney raised the possibility of invoking the poison-pill provision that is written into its gaming compact with the state of Arizona. It allows tribes to terminate the enormous compact if the state supposedly looks the other way at illegal gaming off the reservations.

"If it is determined that gambling is allowed in the state that should be considered illegal, then the tribes – not just this tribe – could take the stance that they're not just limited to what's in the gaming compact," the Pascua attorney told the *Arizona Daily Star* last August. "It could be like Las Vegas, with slot machines in the Circle Ks."

She added that if the poison pill does come into play, millions of dollars going to the state of Arizona and other jurisdictions from the Indian casinos would dry up.

The public threat probably was little more than idle. But the political ramifications potentially were big enough to worry high-level officials in the now-departed Napolitano administration, say sources familiar with the situation.

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Business is good at Christine Korza's Poker Nation on a Friday night.

The Web cameras available for viewing at [pokernationusa.com](http://pokernationusa.com) show how many folks are in the house at any given time. On this night, 26 people are playing a Texas hold 'em tournament, with about \$380 going to the winner.

The players include a quartet of liquor salesmen who drop in every so often. "Beats going to the other side of town to Talking Stick," one of them says, referring to the 54-table Casino Arizona, the sprawling facility at the 101 and Indian Bend, on the Salt River-Pima Indian Community.

Three schoolteachers sit at one of the four tables joking with each other, happy to get away from it all for a few hours.

Korza is a pleasant woman who seems blissfully unaware that ADOG agents already may be doing undercover work at her modest place of business.

"We're not trying to hide anything," she says. "See that big sign out front? It says 'POKER.'"

Korza says the Phoenix Police Department has been nothing but cooperative with Poker Nation on the rare occasions she's called for assistance (one of those times was for the recent flap with Bud Lee).

She neither serves nor provides liquor, though she does have pizza delivered on most Saturday nights during games. A few teens are on hand ready to walk to a nearby Subway restaurant to buy sandwiches and cold drinks for the players in return for tips.

The 1,000-square-foot storefront resonates with the occasional *oohs* and *aahs* of a hand gone awry or of a fortunate draw of a good card.

But mostly, everyone is in his or her own head, figuring the strategies, the possible outcomes.

One gent who has bombed out of the game decides to call it an early night. The games are likely to go on for hours, but he doesn't care.

"No one knows how to play here," he huffs on his way out.

Korza shrugs.

"There's no law that says he has to stay," she says, chuckling. "We don't lock anyone in here."

She insists that everyone knows the score, that the "volunteer" dealers will accept tips directly from the players but not from a house kitty, and that Poker Nation is not supposed to be part of the game.

Korza puts everything on hold about every hour to allow patrons to grab a smoke outside in the parking lot.

A young couple strolls in, looking to buy a card shuffler for their home.

"You ever do blackjack here?" the woman asks Korza.

"No," she replies. "That's gambling. We do poker. It's a game of skill, not a game of chance."

Korza apparently has learned her lessons well from former mentor Bud Lee.

"It's an easy game to learn, but [takes] a lifetime to master," she continues.

"Well, how do you learn?" the woman asks her.

"Right now, we do it the old-fashioned way," Korza says. "That is, you gotta get your butt kicked for a while before you can figure out what's going on."

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