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## Alan Dershowitz Reflects on Issues of Sovereignty and Future of Vineyard

By JULIA WELLS  
*Gazette Senior Writer*

Sovereignty is in the news these days.

It's in Rhode Island, where tempers are running hot in an ongoing skirmish between the Narragansett Indian Tribe and state attorney general over whether the tribe can sell tax-free tobacco.

It's in the Hamptons, where the Shinnecock Indian Nation has begun to clear land for a casino, contravening local zoning and state gaming laws.

It's on the Vineyard, where the Wampanoag Tribe of Gay Head (Aquinnah) is locked in a court battle with the town of Aquinnah and a group of taxpayers over whether the tribe can be sued if it does not follow local zoning laws.

Sovereignty is also on the mind of Alan Dershowitz.

"This case cries out for a reasonable settlement," Mr. Dershowitz wrote in an opinion piece published in the Gazette last Friday about a recent superior court decision that found the Wampanoags cannot be sued because of sovereign immunity.

The land-use decision by the Hon. Richard F. Connon has potentially far-reaching implications for every town on the Vineyard, and if it is allowed to stand, it has the power to turn a landmark 1983 Indian land claims settlement on its head.

Mr. Dershowitz is a high-profile criminal defense attorney, a legal scholar, a prolific author and a devoted Vineyard resident - all in no particular order.

In an interview at his comfortably cluttered Vineyard home late Friday afternoon, he aired a headful of thoughts about the ongoing struggle over the Wampanoag court case. The Aquinnah selectmen have not decided yet whether to appeal the decision, although they did decide to join the Gay Head Taxpayers Association and the Benton Family Trust in a formal request for reconsideration.

"Struggle is the appropriate word here because this is not a problem that has an easy solution. This will not be resolved by the law alone," Mr. Dershowitz said.

Judge Connon found that the doctrine of sovereign immunity trumps the 1983 Wampanoag settlement agreement, as well as subsequent state and federal legislation that led to federal recognition of the tribe in 1987. The Wampanoag Tribe is the only federally recognized tribe in Massachusetts.

The 1983 settlement agreement and the state and federal acts all contain explicit language noting that the land conveyed to the tribe is subject to state and local laws.

Mr. Dershowitz said Judge Cannon may be wrong.

"I think it's a close question. I think the judge is wrong in the sense that the town has a right to enforce its zoning bylaw; I don't think you should have a right without a remedy because that is what leads to lawlessness. And I think the judge was not being sensitive to the close connection between rights and remedies," he said, adding:

"On balance he was wrong, but I think he was not bizarrely wrong. And I would not bet widows' and orphans' money on winning an appeal here - for either side. It's not a clear call at all."

In his op-ed piece last week, Mr. Dershowitz explored an alternative theme - noting that even without the remedy of the courts, the town can still enforce zoning laws by invoking its power of self-help. A town can send in police to block construction of a building project that violates local law and it can order an illegal building torn down. Such action by the town would force to Wampanoags to sue the town, and if they sue they waive sovereign immunity, Mr. Dershowitz reasoned.

Ironically, this is exactly what happened in the recent case involving the Narragansett tribe. State police raided a smoke shop where the tribe was selling tax-free tobacco, and the raid ended in a physical altercation. The dispute is now in federal court.

Mr. Dershowitz called self-help a last resort.

"I'm in fact glad that it's being tested someplace else," he said. "Sometimes knowing you have the power makes it unnecessary to use it. But I am not advocating using the power here. When it comes to the self-help option I want to be perfectly clear, it is absolutely as a last resort. But people should know that there are other options."

He framed his remarks around expressions of deep respect for the Wampanoag people.

"I think that the Wampanoag community only enhances this Island community and nobody should ever think of them as a problem. We should instead think of them as the owners and sole proprietors with us. They are not interlopers; they are the original landowners," he said, continuing:

"The Native Americans were subjected to genocide, there was a conscious policy of killing our native population, it was a form of ethnic cleansing and there is no question about that."

History led to more history. Mr. Dershowitz expanded on the subject of sovereignty.

"Sovereignty began with France and England, and of course the right to self-help has always been a a component of sovereignty and it involved the use of force. But when you begin to apply sovereignty to nations within nations, it gets a little more difficult," he said.

"It's not a glove fit and there is a need to transcend the legalisms and begin to use real common sense. Sovereignty is a very complicated concept and it comes with so much baggage. People

shouldn't get too caught up in the words. A good lawyer knows how to use words to his advantage and a great lawyer knows how to go beyond words. What's needed here are some great lawyers and some great minds."

The Dershowitz cure for the Wampanoag case? He goes to the middle ground, suggesting an Islandwide town meeting.

"This would be a way to discuss ideas in a constructive way, and it would be a way to show that we don't need the courts to tell us what's right. And all of us who love this Island should get involved," he said.

He said the case pits two critical issues against each other: Sovereignty and environmental protection.

"Native Americans traditionally have been the best stewards of the environment - it hasn't been them, it's been us ruining the environment. I have no reason to believe that the Wampanoag Tribe on the Vineyard is out to turn Martha's Vineyard into a giant casino. But any settlement has to be something that recognizes sovereignty - and then the Wampanoags need to be able to say that when it comes to land use they are prepared to waive sovereignty, especially when it comes to environmentally sensitive projects," he said.

"Is there a perfect answer? No," he added.

Mr. Dershowitz is 65 and is in his 40th year of teaching at Harvard Law School. He has been coming to the Vineyard for 33 years. He spends 10 straight weeks on the Vineyard every summer and comes at other times of year as well. He said the Martha's Vineyard Hebrew Center is his family synagogue.

He loves to talk about his work.

He recently had two high-profile murder cases overturned on appeal. He has published a book a year for the last 20 years. His latest book is titled America Declares Independence, and he has another one coming out next month about Israel and Palestine. He does nearly all his writing on the Island.

More importantly, he said, he lives his life on the Vineyard.

"This is my home. We work off the Island but we live on the Island," he said, concluding:

"How could I not get involved? I am a lawyer, I have ideas, and the Vineyard is a place that is very important to me."

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