

Partnerships in Law and Aging

(Re)Training Native American Elders to Be Mediators

By John Duffy, with Ronald D. Hutchinson

In traditional Lakota (Sioux) society, elders were sources of peacemaking, arbitration, and community leadership. Ironically, while “peacemakers,” or mediators, have fallen into disuse on the reservation, they have gained in popularity in modern American society. The Sicangu Oyate (People of the Rosebud) sought funding to hire a lawyer to develop a program to educate and retrain elders in traditional peacemaking roles. The elders could then be called upon to help resolve community problems and to resume important leadership roles in social and legal life.

For the Lakota, justice is a very real element in the cycle of life. It is not necessarily an institution or set of rules, rather an idea that should permeate life’s activities. Such a holistic, respectful attitude toward justice might surprise some, given the injustice Native Americans have endured. But it does not surprise those involved in establishing the Rosebud Sioux Tribal Peace Court, a melding of traditional Lakota and modern Anglo-American interpretations of justice into a forum for dispute resolution.

The idea of mediation on the Rosebud Reservation had been explored previously, but those efforts had been hamstrung by a lack of coordination and funding. This latest and most successful effort was spearheaded by Dakota Plains Legal Services, which hired me to develop and coordinate the various elements of establishing the Peace Court. My position as an Equal Justice Works Fellow was paid for by Equal Justice Works, a national association for public interest law; a Washington, D.C. law firm; and various regional

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John Duffy was the Equal Justice Works Fellow hired by Dakota Plains Legal Services to develop the Peace Court.

Ronald D. Hutchinson is the executive director of Dakota Plains Legal Services in Mission, South Dakota.

Legislative Updates

Elder Justice Act Reintroduced

Senators John Breaux (D-La.) and Orrin Hatch (R-Utah) reintroduced the Elder Justice Act as S. 333 on February 10, 2003. The proposal represents the first attempt to develop and enact a comprehensive federal bill related to elder abuse, neglect, and exploitation (hereafter referred to as “elder abuse”). Congress has taken comparable action previously on child abuse and domestic violence, with the passage of the Child Abuse Prevention and Treatment Act of 1974 and the Violence Against Women Act of 1994.

Recognizing that elder abuse is a public health, social, and public safety problem occurring in both community and institutional settings, the proposal seeks to support and strengthen the health care, social services, and justice systems that are responsible for preventing and responding to the problem. The strategy for providing this support is multifaceted and complex. It involves:

- ◆ Establishing federal leadership and ensuring federal coordination;
- ◆ Funding a variety of programs and projects to support the needs of victims and the health care, social services, and justice systems that respond to victims, including Adult Protective Services, victim services, and “safe havens”;

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(Re)training Elderly As Mediators

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Native American entities. Responsibilities of the fellowship included designing a system to develop the Peace Court, conducting community meetings, and helping to establish the pilot court. As part of the development, an Elder Legal Symposium and mediation training were planned. Both the symposium and the mediation training were funded by a mini-grant from the Partnerships in Law and Aging Program, a project of the ABA Commission on Law and Aging and the Albert and Elaine Borchard Foundation Center for Law and Aging.

The goal of the Elder Legal Symposium was to raise public awareness of mediation and to explore traditional Lakota concepts that could be used in dispute resolution practices. Held at a multipurpose building at Sinte Gleska University, in Rosebud, South Dakota, the conference drew nearly 120 people, many of them elders. The symposium opened with a prayer by an elder, followed by a morning devoted to exploring traditional Lakota adjudication. Faculty from the Lakota Studies Department at Sinte Gleska University made presentations on how disputes had been handled in traditional Lakota society. The presentations were followed by roundtable discussions, where elders were encouraged to express their understanding and memory of tribal Lakota adjudication and to discuss how it might be applied to modern-day reservation life.

Following a traditional lunch of soup and “frybread,” the afternoon session focused on mediation theory and practice. Faculty from the University of South Dakota and a mediator from the U.S. Department of Justice’s Denver office conducted a “primer” on mediation skills. The aim was to expose elders to modern mediation practices and to demonstrate the social and financial benefits that this method of dispute resolution held.

As a result of the symposium, several attendees opted to participate in a training program to become certified mediators. Each of the participants completed a four-day, 32-hour training course conducted by faculty of the University of North Dakota. The program included theoretical and cultural presentations, as well as hands-on role play. At the end of the training, 18 people were certified to serve as mediators at the Peace Court.

Conclusion

According to Ronald D. Hutchinson, executive director of Dakota Plains Legal Services, the Peace Court has resolved about 30 disputes. “Most of the cases were run-of-the-mill domestic disputes,” said Mr. Hutchinson. Typical issues addressed by the Peace Court included disputes between a grandparent and a natural parent, or between two natural parents, over custody of a child. Other fairly common disputes revolved around spats between domestic partners—a girlfriend breaks her boyfriend’s car window, the boyfriend wants the girlfriend to pay for a new car window. “These types of cases are common on the reservation,” said Mr. Hutchinson, “and they are handled very well through the mediation process.”

Unfortunately, since its establishment two years ago, the Rosebud Tribal Peace Court has ceased to operate on a regular basis. Potential participants can ask for a mediation and courthouse staff will arrange a session with a certified mediator, but there is no effort on the part of the court administration to promote its use. According to Mr. Hutchinson, once Dakota Plains Legal Services handed the responsibility off, the Peace Court faltered. “This is the unfortunate aspect of the project,” said Mr. Hutchinson, “because it did work so well.”

While the Rosebud Sioux Tribal Peace Court has faltered for the moment, the idea has spurred a lot of discussion at the state level. According to Mr. Hutchinson, the Rosebud mediation project has generated momentum for the further development of Peace Courts for all the tribes of the Sioux Nation. A Native American mediation training center is currently being developed for the Wakpa Sica Reconciliation Place (or “Bad River” Reconciliation Place). Wakpa Sica will serve as a gathering place to display and interpret tribal culture. In addition, it will house the Tribal Judicial Support Center and the Sioux Nation Supreme Court, as well as the mediation center. The Native American Mediation Training Center will focus both on traditional methods of dispute resolution and modern approaches to community and commercial mediation. Currently, a Mediation Center and Traditional Dispute Resolution Working Group is exploring other activities that the center could promote, including judicial and other community peacemaker training; mediation interventions for tribal, state, and federal issues; and the development of model court-based and community-based peacemaking systems for all the tribes of the Sioux Nation.

Reaching Out to Homebound Elderly

By Carrie Wetzel

The city of St. Louis, like many large urban areas, has a higher than average number of elders who live below the poverty level. In addition, the 1990 U.S. Census indicated that one in four seniors in St. Louis has mobility or self-care limitations. Elders with these limitations experience more difficulty leaving their homes and accessing services. The combination of poverty and limited independence creates an especially vulnerable group of elders. Reaching these elders and providing basic legal services, such as drafting wills and durable powers of attorney for health care and finances, requires extra resources and different strategies for service delivery.

Legal Services of Eastern Missouri (LSEM), with funding from the Partnerships in Law and Aging Program of the ABA Commission on Law and Aging and the Albert and Elaine Borchard Foundation Center on Law and Aging, began a project to recruit, train, and support volunteer lawyers and law students to provide these legal services to vulnerable elders in their own homes.

Building Partnerships

One of the key elements in the success of the project was the building of collaborative relationships with a variety of community partners. The project was launched with the assistance of the Elder Law Committee and the Young Lawyers Division (YLD) of the Bar Association of Metropolitan St. Louis (BAMSL), Saint Louis University School of Law Legal Clinic, and the St. Louis Area Agency on Aging (SLAAA). These entities helped with the recruitment of volunteers and the development of materials. Three senior centers that receive funding through SLAAA distributed more than 300 project brochures with home-delivered meals.

However, project staff realized that collaboration needed to extend beyond the traditional partners of legal services programs in order to reach the targeted population of elders. Staff contacted service providers and senior volunteers, who visit the homes of elders and could encourage them to seek assistance. These providers included Autonomous Case Management, which delivers case management services to socially and economically needy elders; the Occupational

Therapy Department of Saint Louis University, which works with SLAAA to identify elders who need mobility and modification assessments in their homes; and the Senior Companion Program at Kingdom House, whose staff visit homebound elders and provide them with information, referral sources, and other support.

Recruitment and Training of Volunteers

The Homebound Elderly Outreach Project utilized two main strategies for the recruitment of volunteer lawyers. The first approach was to utilize existing volunteer recruitment efforts, such as the Volunteer Lawyers Program (VLP) at LSEM and the community service opportunity sign-up lists of the BAMSL Young Lawyers' committees.

The director of the VLP drafted articles about the project and the need for volunteers, which were published in *The St. Louis Lawyer* and the bar associations' YLD newsletter. In addition, the director of VLP made several presentations about the project at bar functions, private law firm events, and law school functions. These efforts not only increased the number of volunteer lawyers for the project, but also resulted in three full-time, in-house volunteer lawyers for LSEM who work primarily on elder law cases.

The other strategy was to incorporate recruitment efforts with continuing legal education programs. At the Annual Continuing Education Session for the BAMSL Probate and Trust Law Section, project staff gave a presentation to more than 100 attorneys. As a result, three lawyers volunteered to accept cases for elderly clients and the Homebound Elderly Outreach Project.

Staff also worked on recruiting non-lawyer volunteers. The managing attorney for the Homebound Elderly Project gave a presentation to approximately 50 service providers and organizations, as well as to contractors and staff of SLAAA. Additionally, the supervising attorney for the Civil Legal Clinic for Saint Louis University School of Law posted recruitment information around the law school to offer interested law students the opportunity to assist with cases. Approximately fifteen students from two area law schools volunteered for the project.

Carrie Wetzel is the director of the Special Projects Unit of Legal Services of Eastern Missouri in St. Louis, Missouri.

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Homebound Elderly Project

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Outcomes

Since March 2001, the project has closed 19 cases for homebound elderly clients. In addition, volunteer attorneys have opened 156 cases for needy elders since the beginning of the grant period.

Although the number of volunteers recruited for the project has remained high, the number of calls from homebound elders has remained relatively low. As LSEM continues to serve this vulnerable elder population, some significant changes are being made in the project to address the utilization problem.

The first issue involves the use of the term “homebound” on all of the information regarding the project and, more importantly, as a description of the elders served. Anecdotal information indicates that many elders unable to leave the home without assistance do not self-identify as “home-

bound.” Indeed, most elders with disabilities do not self-identify as disabled, but rather view hearing, visual, and mobility impairments as a part of aging (G. Cavanaugh and J. Emerman, “ASA Study: Aging Agencies Must Do More on Assistive Technology,” From the Director, *American Society on Aging Connection Newsletter*, 1996). The project is changing the informational brochure to eliminate the use of the term “homebound” and instead, identify mobility and other health limitations as part of the criteria for service.

A broader issue to address is how to more effectively educate low-income, homebound elders about legal services that involve wills and durable powers of attorney. Many of these individuals do not understand the benefits of these documents and, thus, do not view a will or durable power of attorney as necessary or even desirable. Therefore, the project is developing two approaches to balance the supply of volunteers with the demand for services. The first strategy is to increase the general knowledge—through community education and written materials—of the value of these kinds of documents. The second is to continue to seek volunteers willing to provide a broader range of legal services to this vulnerable elder population.

BIFOCAL

Bar Associations in Focus on Aging and the Law
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2003-04 Partnerships in Law and Aging Program Grants Awarded

By Stephanie Edelstein, Associate Staff Director of the ABA Commission on Law and Aging

The ABA Commission on Law and Aging and the Albert and Elaine Borchard Foundation Center on Law and Aging are pleased to announce the Partnerships in Law and Aging Program awards for 2003-04. The program, now in its fifth year, awards up to ten \$7,500 grants annually to bar associations, legal services providers, and other organizations to encourage the development of collaborative, law-related projects designed to enhance the legal knowledge and awareness of older adults and improve their access to the justice system. This year, nine grants were awarded, with additional funds going towards an evaluation of the program and the projects funded to date.

Additional information about the program awards for 2003-04, as well as descriptions of previously funded projects, are available on the Commission Web site at <http://www.abanet.org/aging>. Information about the 2004-05 program, including the RFP, application, and guidelines, will be posted on the Commission Web site in mid-August.

Connecticut Legal Services, Inc.

62 Washington St., Middletown, CT 06457

“Regional Kinship Care Legal Issues Seminars for Professionals.” Project will convene quarterly educational seminars on kinship care legal issues in four regions of the state for lawyers, social workers, court and state agency personnel; and distribute informational materials.

Dispute Resolution Ctr. of Yakima and Kittitas Counties

1106 B. West Lincoln Ave., Yakima, WA 98902

“Senior Mediation Program.” Project will use facilitative mediation to assist seniors in rural, culturally diverse area with disputes related to landlord/tenant, neighborhood, caregiver, etc.

Institute on Aging—Consortium for Elder Abuse Prevention

3330 Geary Blvd., San Francisco, CA 94118

“Predatory Lending Prevention Collaboration.” Project will use pro bono lawyers to provide advice to low-income seniors at three day-long legal clinics; create consumer education materials; and train social service professionals.

Midwest Bioethics Center

1021-1025 Jefferson St., Kansas City, MO 64105-1329

“Kansas City Regional Long-term Care Ethics Committee.” Project will recruit, organize, train, and

make available to all long-term care providers in seven counties in Kansas and Missouri that comprise greater Kansas City, a model multidisciplinary ethics committee to address end-of-life issues of seriously ill and dying residents.

Needs of the Elderly Committee, Utah State Bar

Law & Justice Ctr., 645 S. 200 E., Salt Lake City, UT 84111
“Senior Law Help.” Project will train volunteer lawyers on elder law basics and aging network resources; conduct legal consultations with seniors at senior centers and senior housing units; and publish print and Internet elder law manual for advocates and consumers.

New Hampshire Legal Assistance

P.O. Box 778, Portsmouth, NH 03802-0778

“Long-Term Care Education.” Project will provide training and educational material specifically targeted to increase statewide awareness about the legal rights of individuals receiving long-term care and those making long-term care choices.

Prairie State Legal Services, Inc.

975 N. Main St., Rockford, IL 61103

“Elder Law Education Initiative.” Program will provide educational programs targeted to private lawyers to encourage pro bono services for seniors, for social service providers to facilitate early identification of legal issues for elderly, and for senior citizens to prevent legal problems caused by high medical costs and predatory lending practices.

SeniorLAW Center

100 South Broad St., Ste. 1810, Philadelphia, PA 19110

“Pro Bono Internet Matching Project for Vulnerable Elders.” Project will use Internet technology to provide much-needed legal services and education to poor elders by matching clients with interested volunteers through listserv postings of pro bono opportunities, on-line volunteer registration, and email communications.

Vermont Bar Association

35-37 Court St., PO Box 100, Montpelier VT 05601

“Taking Control to Plan for Future Financial Decisions.” Project will create booklet and outreach forums to educate seniors, professionals, and other consumers about the impact of new state laws that protect older persons from financial abuse and improve financial decision-making.

Elder Justice Act Reintroduced

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- ◆ Increasing knowledge and supporting promising practices through Centers of Excellence and other programs to conduct research, clinical practice, training, and information dissemination;
- ◆ Developing capacity in forensics and geriatrics through training programs;
- ◆ Increasing the likelihood of prosecution through the provision of resources and training to law enforcement, victim services professionals, and prosecutors;
- ◆ Supporting underserved populations, including rural, minority, and Native American older persons, through special programs;
- ◆ Enhancing the systems that respond to the needs of residents of long-term care facilities and the ability of consumers to learn about those facilities;
- ◆ Providing the U.S. Department of Justice a full range of remedies against long-term care facilities in which abuse and neglect occur, through a new federal cause of action and civil enforcement provision; and
- ◆ Evaluating programs, projects, and systems to determine whether they are effectively serving victims and the professionals who assist them.

The Elder Justice bill currently has 17 co-sponsors. A House version has not yet been introduced. To read the text of and track the progress of the bill, visit the Library of Congress Web site, Thomas, at <http://thomas.loc.gov>. For more information about the Elder Justice bill, contact the minority staff of the Senate Special Committee on Aging by calling (202) 224-1467.

A bipartisan Elder Justice Coalition has formed to support enactment of the bill. The coalition currently has more than 100 members representing national, state, and local organizations, as well as individuals. Coalition members reflect the many disciplines that address elder abuse, including adult protective services, long-term care ombudsmen, health care professionals, elder law practitioners, law enforcement, researchers, national, state, and local advocacy groups, and key players in the aging network.

Those interested in information about the coalition should contact Amy Hooper in the office of the National Committee for the Prevention of Elder Abuse (NCPEA) at (202) 682-4140 or by email at ncpea@erols.com. NCPEA is serving as the administrative home of the coalition.

—Lori Stiegel
Associate Staff Director
ABA Commission on Law and Aging

Elder Abuse Fatality Review Team

Demonstration Sites Selected

The Summer 2002 issue of *BIFOCAL* announced that the Commission had received a grant from the Office for Victims of Crime at the U.S. Department of Justice to promote the idea of elder abuse fatality review teams and develop a promising practices manual about such teams. As part of that grant, the Commission recently selected four demonstration sites that will establish elder abuse fatality review teams and contribute to the promising practices manual. Those teams are located in Houston, Texas; Maine; Orange County, California; and Pulaski County (Little Rock), Arkansas.

For more information about elder abuse fatality review teams or this project, contact Lori Stiegel by phone at (202) 662-8692 or by email at lstiegel@staff.abanet.org.

—Lori Stiegel
Associate Staff Director
ABA Commission on Law and Aging

Video Focuses on Practice of Elder Law

Elder Law: Views from the Field is a new videotape introducing the subject of elder law through five lawyers who specialize in legal matters that concern the older population.

The lawyers talk about how and why they chose a career in elder law, the special qualities it takes to be an effective elder law attorney, specific legal issues facing older people, and the pitfalls and rewards of working in this particular field of law. They also discuss the practical matters of an elder law practice, such as how an office should be set up for older clients, and how elder law differs from more conventional legal practice.

Elder Law: Views from the Field is geared toward law students who are thinking about elder law as a career and practicing lawyers who are thinking about elder law as a career change. The videotape is also an excellent source of information for professionals working with older clients and who need to know the kind of legal services available to them.

For a VHS copy, contact Hal Kirm & Associates, 2122 Wallace Street, Philadelphia, PA 19130 or e-mail halkirm@aol.com. The videotape runs 29 minutes and costs \$29.25 plus shipping.

Senate Hearing Raises Awareness of Adult Guardianship Issues

Senator Larry Craig (R-Idaho), chairman of the Senate Special Committee on Aging, convened a February 11, 2003, hearing in Washington to raise awareness of the adult guardianship system. In his opening remarks, Sen. Craig said “When used correctly in very extreme cases, guardianships can be an important tool in securing the physical and financial safety of an incapacitated elderly senior. At the same time, guardianship can divest an elderly person of all the rights and freedoms we consider important as citizens. For this reason, I will be asking the GAO to study the accountability of guardians who are charged with managing funds on behalf of the elderly.”

Sen. Craig, joined by Sens. Susan Collins (R-Maine) and Thomas Carper (D-Del.), listened to testimony from two separate panels of witnesses who described their experiences with the guardianship system.

Leading the first panel was Jane Pollack, whose aunt Mollie Orshansky drew national media attention when a court-ordered guardianship was imposed upon her. According to Ms. Pollack, the courts ignored the wishes and carefully prepared plans Ms. Orshansky had made for her

future living arrangements and care. Ms. Pollack, tearful at times, spoke of the “incalculable” mental and financial damage to her family caused by their battle with the courts and guardianship system. Also testifying to the particular abuses of the Orshansky case was Michael S. Kutzin, lawyer for Jane Pollack.

The second panel of speakers included Penny Hommel, of the Center for Social Gerontology, who spoke on guardianship mediation; Diane Armstrong, a clinical psychologist and author of the book *The Retirement Nightmare*, who warned of the many motives that compel family members to seek guardianship; and Robin Warjone, who was forced to spend her retirement savings to defend against a guardianship petition by her own children. A. Frank Johns, a lawyer representing the National Academy of Elder Law Attorneys, offered a historical perspective on guardianship reform. He also drew attention to the recommendations from the 2001 Wingspan conference on adult guardianship, specifically the need for data collection, research, monitoring, and judicial education. Robert L. Aldridge, a Boise, Idaho-based lawyer, spoke of his home state’s progressive laws and practices in the areas of due process protection and guardianship accountability.

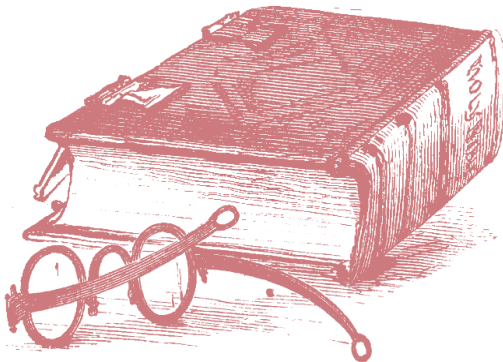
Finally, Erica Wood, associate staff director of the ABA Commission on Law and Aging, submitted written comments on behalf of the American Bar Association on the subject of guardian accountability and monitoring.

Books Worth Reading

I am not in the habit of doing book reviews, but this is one I have read and believe it to be so relevant and compelling that I recommend it highly. *Long-Goodbye: The Deaths of Nancy Cruzan*, by Bill Colby, is a gripping, medico-legal modern-day journey of Odysseus. But, in this version, the central character is a silent soul—Nancy Cruzan—caged within a non-sentient bag of pulsing organs maintained by a feeding tube, and waiting for final rest. Her crew is her loving family, along with a young Kansas City lawyer named Bill Colby, who takes on their cause. They suspect little of how this journey would change their lives. But through days, then weeks, then years, they navigate with great determination and trepidation the tortuous waters of law, medicine, politics, and the media.

The recounting of their journey by Bill Colby is both fascinating in what it shows about our culture’s difficulty in piecing together death with the puzzle of life, and distressing in its revelation of the human toll exacted on a family trying to do the right thing for a loved one. Yet, in the end, it leaves the reader with hope and a belief that this trail, cleared once, has been made forever more welcoming for the rest of us who are all traveling their way.

—Charles P. Sabatino
Assistant Staff Director
ABA Commission on Law and Aging



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- On Friday, October 17, Robert Grey, president-elect of the American Bar Association, will deliver the luncheon keynote address.

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- Registration Fee: \$300 legal services and aging advocates; \$350 private attorneys.
- Hotel Accommodations: Same rate as last year! \$125/night, single or double (ask for the AARP/NALC room rate).
- Added Benefit: Shuttle service available between Crystal City Metro Station and Hilton Crystal City Hotel.

Sponsored by the AARP Foundation, ABA Commission on Law and Aging, the National Senior Citizens Law Center, the Center for Social Gerontology, the Center for Medicare Advocacy, Inc., the National Academy of Elder Law Attorneys, the National Consumer Law Center, and National Association of State Units on Aging.

See you at the conference!

NALC 2003

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