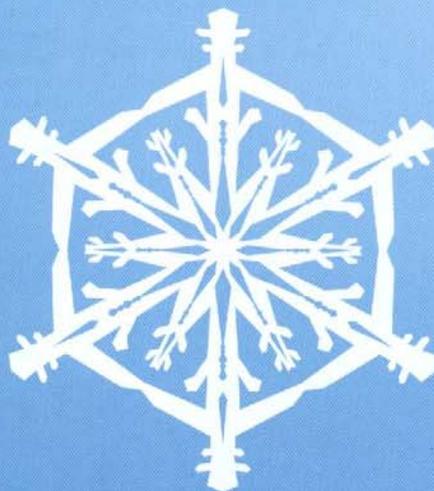
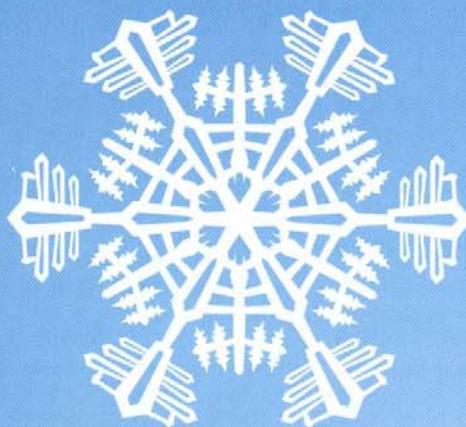
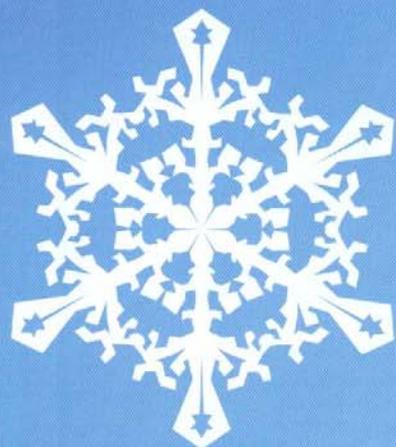


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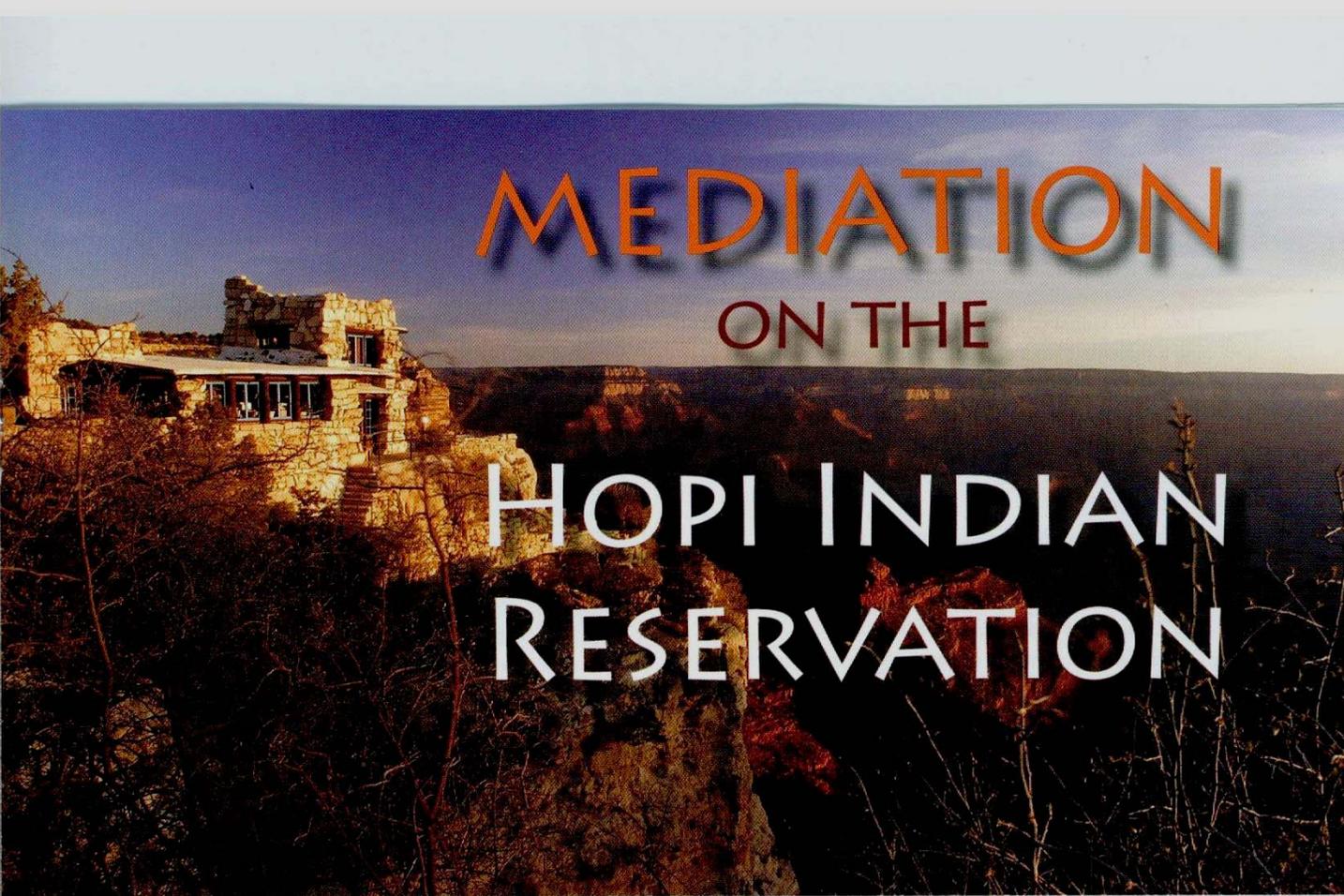
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MEDIATION ON THE

HOPi INDIAN RESERVATION

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BY ETHAN N. ELKIND

When Joyce James's mother died, she and her sisters expected to inherit the family bean field. They were members of the Hopi Tribe, a Native American community in which traditional land rights dictate that land passes through matrilineal lines. Conflict soon erupted as their aunt claimed the land belonged to her by virtue of an oral will. The feuding family took the dispute to the Hopi Tribal Court, an Anglo-American style court that has general civil and criminal jurisdiction (restricted to American Indian criminal defendants and with limited sentencing authority). As the court struggled to reconcile traditional, customary Hopi law with the intrusion of Anglo legal instruments, such as wills and deeds, the parties began running out of money. After six years, they could no longer afford legal representation and the court was unable to resolve the dispute. To this day, the bean field lies unused – a tragic reminder of the failure of the courts and the cost to Hopi society of a traditional legal system compromised by a foreign culture.

These kinds of cases have become more common among the Hopis. Such cases burden not just the people involved, but all Hopi religious life. Because land is intimately connected with religious ceremonies, conflicts over property disrupt ceremonial life and undermine Hopi custom and tradition.

Local leaders decided that mediation could help resolve such cases. Mediation attracted these leaders because it resembled historical, customary dispute resolution practice in which village and clan authorities handled disputes by advising and arbitrating among disputants. As Radford Quamahongnewa, a local village leader, described after completing a training course in mediation, "Mediation is almost like the Hopi way, it's just more of a structured way." In the Hopi way, respected clan elders advise disputing parties using a process that looks more like arbitration than mediation.

In response, a group of Hopi tribal members, legal academics and educators formed The Nakwatswevat Institute, Inc. (TNI) in 2005, a nonprofit organization dedicated to helping tribes improve their governance systems. The organization, whose name comes from a Hopi word meaning "in a friendly way," developed Hopi Dispute Resolution Services to offer mediation on the Hopi reservation. TNI works with the tribal court to handle court-referred mediations and also services walk-in cases.

The model for the program is two-fold: first, TNI trains Hopi tribal members in mediation skills so that they can mediate disputes themselves. Second, TNI staff perform case intake and help parties choose a TNI-certified mediator. TNI pays the mediator for the first eight hours of mediation and lets the parties agree on the mediator fee for any additional

time. TNI launched the program one year ago, after receiving a three-year federal grant for \$905,000 from the U.S. Department of Health and Human Services' Administration for Native Americans. This article describes the successes and challenges of the program to date.

SUCCESSSES

The successes of the mediation service have resulted from TNI's familiarity with the community's needs and its ability to earn the trust of community members by establishing an open and consistent presence on the reservation.

In order to convince community members to enroll in the mediation training program, TNI engaged in grassroots organizing to build awareness and interest. TNI did not simply take sign-ups for a mediation training class and then offer a replica of an outside mediation training program. Instead, TNI held a culturally-tailored workshop on mediation that demonstrated a Hopi-specific mock mediation involving two sisters fighting over a clan house. The workshop included Hopi actors and discussions on traditional dispute resolution and Hopi governance structures. TNI also provided a free meal for attendees. TNI staff invited Hopi community members personally and used the local media and word-of-mouth to publicize the event.

The event was successful because it made mediation seem relevant to the community. Participants watched as the actors embellished their roles as sisters, even adding comments and insults in the Hopi language (a few people commented, "That

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Photo Credit: Ethan N. Elkind

A Nakwatsvewat Institute mediation training session led by Pat Sekaquaptewa

sounds just like my sister!"). The mediator's comments also brought head-nods as participants recognized a role played by their elders. As a result of the workshop, TNI had full enrollment for its 40 hour-mediation training program.

The mediation training program benefited from using material that was culturally-specific (using Hopi fact scenarios and discussing the context of conflicts within the Hopi governance structures and culture) and tailored to community needs (focusing on areas of dispute most common to Hopi, such as property and divorce matters). Taking place over three weekends, the program offered role plays, mediation demonstrations and presentations on mediation techniques. TNI consulted with Los Angeles mediator, and ACR member, Forrest S. Mosten and then set the content within contexts relevant to Hopis, such as by adding local fact-scenarios to the role plays and giving a presentation on the Hopi court system.

Participants recorded a high-satisfaction rate with the training and course material. "It was very informative," said program graduate George Mase, who serves as a quasi-mayor for his village. "The last classes went through actual case studies that have been handled in the court." Another participant commented, "Although the concept follows an Anglo model, the trainees were encouraged to submit their ideas about developing a traditional concept. After all, Hopi has always had a mediation process."

TNI's most recent training featured Hopi mediation graduates returning to teach their fellow community members. TNI ultimately envisions Hopis leading all future trainings.

CHALLENGES

Along with the successes, TNI has faced challenges, including the logistical hurdles of operating in a low-income community, difficulty bringing all parties to the table, and addressing cultural issues in mediation.

Operating on the Hopi reservation, which is a low-income and highly traditional society, has created challenges. For example, the mediation training program saw enrollment decline over the three weekends as some participants could not find or afford transportation to the training. Participants also had scheduling conflicts with off-reservation employment. In addition, TNI learned to schedule the training program outside of the Hopi ceremonial season when most Hopis have intense religious commitments in their villages.

Another challenge was determining the appropriate pacing of the mediation training program. The participants have varying levels of education and experience with mediation. Perhaps as a consequence of using overly-ambitious material unfamiliar to new mediators, some graduates expressed a lack of confidence in their mediation ability. TNI hopes that having Hopis teach the program now has helped address this concern.

TNI also has struggled to bring all parties to a dispute to the mediating table. This problem has been particularly acute with cases that come from walk-in clients, as opposed to cases referred by the court, where litigation provides an incentive for settlement talks.

In one case, a woman came to TNI upset that her grown child's family had moved permanently into the family home. The woman had moved back to the reservation and wanted to stay in the house. She had not agreed to let her child's family live there permanently and wanted them out. However, after TNI tried repeatedly to contact the child's family to inform them about mediation and to arrange an intake session, they refused to respond. They did not see any reason to go through mediation when they had possession of the house. Eventually, TNI had to refer the woman to legal services.

Even for cases that go to full mediation, challenges have arisen over cultural barriers. For example, Hopi culture strongly discourages people from disagreeing openly, resulting in people often agreeing to do something in person, but then later not following through. This dynamic occurred in a mediation involving siblings feuding over the use of a clan house. TNI was able to bring all parties to the table. However, after a mediation session in which they agreed to a resolution, one sibling called the mediator to withdraw from the agreement. Even though she had shown a willingness to agree, the mediator learned that she actually had no intention of following the agreement. TNI can address this type of problem through caucusing to discuss a party's intentions privately and by including respected clan leaders in the mediations who can serve as enforcers of the agreement, but the challenge requires ongoing attention and more training for our mediators in how

...BUILDING A MEDIATION SERVICE IN A TRIBAL CONTEXT REQUIRES RESPONSIVENESS TO LOCAL CUSTOMS AND NEEDS.

to address it. It also affects efforts to bring all parties to the table, because some parties will verbally agree to mediation but then simply not show up or repeatedly offer excuses for not participating.

Another challenge has been finding mediators that all parties believe will act fairly. Hopi is a small community of roughly 7,000 residents, and many members are related through extensive clan networks. Gossip and feuds can dominate community life, and many parties worry that community mediators are already aligned with one "side" or have heard of the dispute informally and have prejudiced views. TNI works to overcome these concerns through outreach to the parties and by training mediators on how to address this problem from the outset of a mediation. But in some cases TNI has had to offer outside mediators in order to find a mediator that the parties would accept.

Despite the challenges, TNI has learned that building a mediation service in a tribal context requires responsiveness to local customs and needs. The goal for TNI is to use the lessons from the Hopi community as a model for mediating in other tribes. TNI believes that mediation will help people like Joyce James and her family resolve their disputes. And perhaps one day the family bean field will once again nourish and support the community. 



Ethan N. Elkind serves as the deputy director of The Nakwatsvewat Institute, Inc., a Native American nonprofit that works with indigenous communities to develop and enhance their governance, justice and educational institutions. He is a licensed attorney, mediator and environmental law instructor.