

Spring, 1999

76 U. Det. Mercy L. Rev. 875

LENGTH: 15114 words

COMMENT: Walking Together in a Good Way: Indian Peacemaker Courts in Michigan

NAME: Nancy A. Costello

SUMMARY:

... To insure the candor and openness of peacemaking participants, tribal judges, including Chief Judge Petoskey, do not participate in peacemaking and are not told the content of peacemaking discussions. ...

TEXT:

[*875]

I. Peacemaking in the Grand Traverse Band of Ottawa and Chippewa Indians

The sweet aroma of sage or sweetgrass burning in the hollow of an abalone shell opens the Peacemaker Court for the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan. n1 As the peacemaker carries the smudge bowl n2 around the room to dispel negative energy, he prays for wisdom to help the hostile parties resolve their dispute. n3 Both parties, the wrongdoer and victim, offer gifts - a pouch of tobacco, cedar, or sage - to the peacemaker. n4 A candle is lit and placed at the center of the room. n5 The peacemaker, the parties, and their families find a seat in a circle surrounding the flame. n6

No judges, lawyers, social workers, or court reporters attend this traditional Indian justice ceremony. n7 No impatient plaintiffs or wary [*876] defendants wait for their moment before the bench. n8 No crowded docket of cases must be adjudicated before day's end.

"There is an Indian saying, that the watch is the white man's handcuff," said Michael Petoskey, Chief Judge of the Grand Traverse Band. n9 "Peacemaking is not time limited. If it takes time, it takes time. Everyone has an opportunity to say what they want to say. They take whatever time necessary to develop a consensus." n10

"Mnaweejeendiwin" is the Ottawa name for the Peacemaker Court of the Grand Traverse Band. n11 It is emblazoned on the red baseball caps, white T-shirts, and black jackets of the court-appointed peacemakers who volunteer as tribal mediators to help settle conflicts involving tribe members. Translated, Mnaweejeendiwin means "Walking together in a good way." n12 According to Paul Raphael, Peacemaker Coordinator for the Grand Traverse Band, the word "peacemaking" does not exist in Ottawa language because tribe members never spoke of peacemaking. n13 There was no need. Striving to live together in harmony and solidarity was a concept simply inherent to Ottawa culture. n14

A. Grand Traverse Band Joins Tribes Nationwide in Recreating [*877] Peacemaking

The Peacemaker Court, established by the Grand Traverse Band in 1996, allows disputes that would otherwise be handled by judges and attorneys to be settled by tribal members who simply "talk things out" with the help of a peacemaker. n15 The ultimate goal of the peacemaking process is to heal the minds, spirits, physical beings, and

emotions of all parties involved, including the wrongdoer, the victim, and their families. n16 By so doing, the harmony of the tribal community is also restored. n17

As the first Michigan Indian tribe to adopt peacemaking, the Grand Traverse Band joins a host of other tribes nationwide that have established peacemaker courts in the last seventeen years. n18 In 1982, the Navajo Nation was the first Native American tribe to recreate a traditional Indian justice system to work in tandem with its tribal court. n19 National gatherings of Indian tribes in 1985 and 1992, which focused specifically on traditional justice systems, examined the operation of the Navajo Nation Peacemaker Court and lauded its effectiveness. n20 Inspired Indian tribes across North America, including those in Michigan, have since attempted to revitalize traditional tribal justice programs within their own tribal court systems. n21

The federal government has recognized these attempts. In 1993, the United States Congress enacted the Indian Tribal Justice Act that specifically recognized traditional Indian law and procedure, declaring that "traditional tribal justice practices are essential to the maintenance of culture and identity of Indian tribes." n22 In 1995, United States Attorney General Janet Reno reaffirmed government recognition when she established the Office of Tribal Justice and Tribal Courts Project to support Indian justice systems. n23

[*878] At its core, Native American peacemaking is inherently spiritual; it speaks to the connections between things and focuses on unity and balance. n24 Peacemaking is more conciliation than punishment. It is relationship-centered. It brings peace through talking and deep listening between wrongdoers, victims, and their families. Its goal is to restore dignity, to bring peace to the parties involved, and to sustain community health by repairing relationships damaged in conflicts. n25

In contrast, the Anglo-European justice system used in American culture uses rank and coercive power to address conflicts. n26 A judge sits above the parties, lawyers, and jury at a trial in an Anglo-American court. n27 A decision dictated from on high by the judge brings harm or goodness to the parties in a process in which the parties have less power. n28 A defendant may leave the courtroom with the penalty of a jail term or a fine, but the victim has little or no say about what relief the judge should grant and often leaves the court feeling voiceless and ignored. n29

"The way we typically do things in an adversarial court is really counter productive," said Chief Judge Petoskey. n30 "We are saying all the negative things about people instead of working together toward common ground. Things people say about each other can be very hurtful and lasting." n31

Indeed, the anger that perpetrators feel from receiving harsh sentences in the Anglo-European justice system, and the resentment that victims feel as a result of indifferent treatment, can be exacerbated in Indian culture. In a closed Indian community where tribal members live side by side, parties to a legal action cannot go to court, severely criticize each other and leave court, dissolving into a larger society where chances of meeting again are minimal. n32 Living together in a community of only a few thousand people or less, Indian [*879] plaintiffs, defendants, and their extended families are very likely to know each other and interact. An adversarial legal system, therefore, that doles out punishment but does not address the underlying feelings involved in a dispute, can prolong conflict between tribe members and fragment an Indian tribe. To avoid such fragmentation, the Grand Traverse Band sought an alternative means to resolve tribal conflicts. n33

B. Restoring Relationships versus Finding Guilt

The Peacemaker Court of the Grand Traverse Band essentially recreated traditional Indian justice methods practiced by Indians long before European settlers imposed the Anglo-European justice system on tribes in the late 1800s. n34 Several other Native American tribes n35 that have adopted peacemaker courts within their justice systems in the last two decades have also re-instituted old practices. n36 Unlike the Anglo-European legal system, traditional Indian peacemaking focuses not on the guilt of the wrongdoer, but on solving the [*880] problems the dispute presents. n37 Heavy emphasis is placed on the spirit and the feelings of the perpetrator and victim, and the restoration of relationships in the family and community. n38 Peacemaker Courts recognize that when the feelings of parties are separated from the legal process and a judge's decision does not address those feelings, dissatisfaction follows. n39 Peacemakers recognize that when a legal system ignores the emotions of the parties, tribal relationships cannot be restored. n40 In contrast to the dominant culture's justice system, peacemaking is an educational device that attempts to mend relationships and teach tribe members correct behavior. n41

"Peacemaking focuses on maintenance of relationships. If people treat each other with respect and people accept their responsibility, things move toward a feeling of harmony, and justice has really been done," said Chief Judge

Petoskey. "If justice happens in the adversarial legal system it seems to be by accident. The adversarial system relies on who has the best lawyer, who understands the technicalities, and who can beat up on the other more." n42

The focus on problem solving rather than guilt makes peacemaking an effective method to penetrate the denial of a wrongdoer. n43 The absence of coercion or punishment allows all parties to freely discuss a problem. Wrongdoers, therefore, are more likely to overcome the psychological barrier that holds them back from acknowledging substance abuse and other problems. n44

The involvement of relatives and friends in the peacemaking process also assures that weak victims or silent, ashamed perpetrators have someone who can speak for them and in support of them. n45 If an abused victim is afraid to speak, relatives can describe the victim's pain and protect that person's interests. n46 Likewise, if a perpetrator feels shame for committing an act and is therefore hesitant to speak, relatives may speak to show mitigation of the harm and offer restitution. n47

[*881]

C. How the Mnaweejeendiwin Functions

1. Juvenile Justice

The operation of the Mnaweejeendiwin is simple and straightforward. Typically, a case is referred to the Peacemaker Court by a tribal court judge, a tribal law enforcement officer, a tribal social worker, or the Grand Traverse Band's tribal prosecutor's office. n48 An offender may agree to seek peacemaking in lieu of a complaint being filed against him or as an alternative to probation. n49 A tribal peacemaker trained in mediation then schedules a peacemaking session, choosing a location that is institutional, such as the tribal court offices, or a place more convenient for the victim and the victim's family. n50 The peacemaking session begins with a prayer and traditional Indian rituals. n51 The perpetrator, victim, and family members then [*882] talk over the dispute in a discussion in which all participants are encouraged to speak and share their feelings. n52 When a consensus has been reached, a contract outlining the terms of the resolution is signed by both the wrongdoer and the victim. n53 If peacemaking cannot resolve a conflict, the dispute is referred to the tribal court, which is modeled after the Anglo-European justice system. n54

The Peacemaker Court of the Grand Traverse Band handles mostly juvenile misdemeanor cases, such as minors in possession of alcohol and drugs, truancy, shoplifting, auto thefts, property damage, vandalism, and assault and battery charges. Wrongdoers ranging in age from eight to twenty-one years old have participated in peacemaking. n55

In 1998, Mnaweejeendiwin peacemakers mediated a case in which an Indian youth beat up a non-Indian high school classmate. The Indian youth was one of four teenagers who had attacked the victim and pummeled him, cracking his ribs and cutting and bruising his face and back. n56 The victim teenager missed school, was in debt with medical bills as a result of the beating, and was afraid to walk the streets of Grand Rapids for fear he would be beaten again. n57

The victim attended the peacemaking session with his mother, father, sister, and brother, while the Indian perpetrator was accompanied by his mother. n58 Peacemakers assured both parties that they would be safe and explained that the peacemakers would work to protect both parties. n59 During the three-hour morning session, peacemakers coaxed the victim and his family to voice their fears and [*883] anger over the beating incident. Peacemakers prodded them to turn their desire for revenge into forgiveness. The Indian perpetrator listened to the victim's concerns, ultimately apologized for his actions, and offered to pay half of the victim's medical bills. He and his mother consented to sign a contract agreeing that he would not beat up anyone again. As part of the contract, he agreed to attend school regularly, go to bed earlier, and stop playing video games. His mother agreed to make sure her son ended friendships with the troublemaking crowd he had joined. If the Indian youth breached his contract, he understood that his case would be referred to the Grand Rapids District Court, which could impose fines and jail time. At the end of the peacemaking session, the victim and his family, and the perpetrator and his mother, thanked each other, hugged, ate lunch together, and signed the contract. One year later, in 1999, the Indian youth had stayed out of trouble and had managed to find a job. n60

Peacemaker Court organizers claim the peacemaking process is particularly effective in handling juvenile delinquents who might otherwise be given up to a \$ 500 fine or up to ninety days in jail for their misdemeanor crimes. Such penalties, peacemaker advocates say, typically cause shame, anger, and a desire for revenge, and consequently do not often change a juvenile's behavior. n61 In contrast, Peacemaker Coordinator Paul Raphael stressed that "peacemaking gives juveniles dignity. They personally come up with solutions for what they have done. The

peacemaker just keeps peace between the two parties. The peacemaker empowers families to take control of what is going on." n62

2. Unconventional Peacemaking

Tribal peacemakers for the Grand Traverse Band generally handle two cases a month. On average, each peacemaking session lasts two to three hours. A routine case will require two or three sessions stretched over one to two weeks. To insure the candor and openness of peacemaking participants, tribal judges, including Chief Judge Petoskey, do not participate in peacemaking and are not told the content of peacemaking discussions. n63

In early 1999, the Peacemaker Court helped negotiate commu [*884] nication conflicts that have inspired rivalries between various tribal departments within the Grand Traverse Band. n64 Peacemaking involved up to twenty departmental employees discussing their differences in sessions that stretched over three weeks. n65 Mnaweejeendiwin organizers and Chief Judge Petoskey hope to expand the caseload of the Peacemaker Court to handle other employee disputes and to address domestic relations cases such as child support, child custody, and divorce within the tribe. n66

To deal with some juveniles, peacemakers with the Grand Traverse Band have adopted an unorthodox, back-to-nature approach to teach lessons on correcting behavior and serving the community. In June of 1998, four peacemakers took four fifteen and sixteen-year-old Indian youths, all of whom had been in trouble with the law, on an exhausting ten-day, 260-mile canoe trip on Michigan's Manistee and Au Sable Rivers. n67 In the first seven days, the crew paddled 140 miles up the Au Sable River from Lake Huron to Grayling, and then finished the trip with a 120-mile paddle down the Manistee River to Lake Michigan. Peacemakers specifically selected fatherless youths to go on the trip. The youths had been chronic truants and some had been charged as minors in possession of alcohol and drugs. Raphael and three other male peacemakers who led the trip served as role models for the young men who were unfamiliar with fatherly teachings. Peacemaker Coordinator Paul Raphael conceived the trip to teach the young men that when faced with a hard challenge, their best option was not to give up, but to complete the difficult task. n68

Unskilled as canoeists, the youths struggled mightily to paddle against the river's strong current, trying to steer clear of rocks and [*885] tree limbs. The first few days were filled with angry complaints and scowls until the youths learned to control their boats. Along the way, peacemakers compared the river trip to a life journey. n69

"We told them that if you don't watch where you are going on the river, you will end up downriver, losing a lot of ground. We told them that if they don't watch what they are doing in life, they will end up in the court system and in jail, losing a lot of ground," said Peacemaker Coordinator Raphael. "At first they didn't want to do the trip, but then it mattered to them. The kids really changed." n70

Almost one year later, two of the youths had managed to straighten out their lives and steer clear of the legal system. Two of the young Indian men, however, were in trouble again and re-entered the court system. n71

As part of its unconventional approach, the Peacemaker Court of the Grand Traverse Band is also developing a one-week, residential peacemaking camp where a juvenile may be sent instead of being sentenced to probation. n72 Juveniles assigned to the camp will participate in physical training exercises, workshops relating to drug use, educational workshops on tribal culture, and exercises focusing on emotional health and well-being. n73 By participating in such programs, juveniles will earn points toward satisfaction of a probation sentence. Chief Judge Petoskey believes a peacemaking camp for repeat juvenile offenders will be more effective than sentencing youths to fines, routine breathalyzer tests and other terms of probation because such penalties often treat only symptoms of deeper emotional and behavioral problems. The camp will offer youths an opportunity to focus on subterranean issues, Chief Judge Petoskey said. At the discretion of a tribal judge, juvenile offenders who are convicted of alcohol and drug-related offenses, theft, vandalism, and minor assault and battery may be sentenced to the peacemaking camp. n74

D. Who is a Peacemaker?

In the Mnaweejeendiwin, the counterpart to a judge who presides over trials in the Anglo-European justice system is the peacemaker. The peacemaker is a traditional leader, a member of the [*886] Grand Traverse Band chosen for demonstrated abilities of wisdom, integrity, good character, and respect by the Indian community. n75 A peacemaker must be willing to perform community service and maintain an upright, exemplary life. n76 Peacemaker Coordinator Raphael supervises nine volunteer peacemakers - five women and four men - that he selected from the Grand Traverse Band. The peacemakers, whose ages range from thirty years to the mid-seventies, are visible role models in the Tribe.

n77 Not only do they wear the Mnaweejeendiwin "uniform" during peacemaking sessions, but they don the red baseball caps, white T-shirts, and black jackets emblazoned with the Mnaweejeendiwin symbol in public and wear them as they go about their daily activities in the tribal community. n78

"There is a standard you have to live by. You have to walk your talk," Raphael explained. "If I say I am alcohol and drug free and then tribe members see me at the casino drinking and gambling, I am not living up to the standard." n79

Because the authority of a peacemaker is based on trust, if a peacemaker loses the community's respect, leadership authority is lost as well. n80 According to Raphael, some Grand Traverse Band peacemakers have been asked to step down after inappropriate behavior tarnished their images as community leaders. n81

In the Peacemaker Court, the peacemaker leads discussion regarding problems, n82 keeping hostile conversations in check and keeping the dialogue between a wrongdoer and victim in balance. n83 The peacemaker's authority is not coercive or commanding, though the peacemaker can advocate for a peaceful resolution and provide direction. n84 A peacemaker is a person who thinks well, speaks well, and [*887] shows respect for the personal conduct of others. n85 Peacemakers do not have to possess any special knowledge, education, degree, or position in society. n86 The only skill required is the ability to induce people to talk about their problems with one another. n87 To supplement their skills, peacemakers for the Grand Traverse Band have received instruction in mediation, counseling, and nonviolence training from professionals in those fields. n88 Peacemakers have been trained to detect and provide limited counseling for substance abuse, child abuse, domestic violence, and child neglect. n89

A peacemaker is also someone who knows and can teach the tribe's Indian traditions and ceremonies. n90 A Peacemaker Court session usually opens and ends with a prayer. n91 Peacemakers for the Grand Traverse Band show up thirty minutes before a session begins to set out blankets and "smudge" the area by burning sweetgrass or sage. n92 The peacemaker prays for wisdom and guidance in helping the parties settle their dispute, shapes the circle where the parties will sit, and sets a lighted candle at the center. n93

"Fire has a tendency to draw things out of people. When people sit around a fire they like to talk," Raphael explained. n94

Peacemaking participants sit in a circle because it is a symbol of unity and equality. n95 No one sits at the head of a circle. No one sits above another. n96 The circle conveys the image of people gathering together for a discussion. n97 Indian tradition often divides a circle into four quadrants representing four aspects of an individual or community: the spiritual, emotional, physical, and intellectual. n98 In peacemaking, the presence of spirituality and the rituals and symbols of Indian culture make the parties feel secure and relaxed. n99 The expression of emotion or feelings is encouraged so that parties speak [*888] openly about a conflict. n100 Participants must also explore inside themselves to discover how they and their families are physically being affected by the dispute. n101 Finally, the parties must use their intellect to arrive at solutions. n102 The task of the Peacemaker Court is to move resolution of the dispute to the center of the circle so that all four parts of the circle, the spiritual, emotional, physical, and intellectual aspects of the group or individual are in balance and comprise a whole. n103

E. Peacemaking Builds Community

For the Grand Traverse Band, peacemaking is as much about building community as it is about resolving conflicts. n104 The Peacemaker Court, which emphasizes the involvement of family and friends in dispute resolution, promotes tribal traditions and community harmony for a tribe that is reconstituting after a century of dislocation. n105

Like most other Native American tribes, the Grand Traverse Band was splintered when the Tribe was dispossessed of its land in the 1800s following the migration of European settlers to America. n106 Indian children were sent to boarding schools and the Ottawa language was forbidden as European settlers imposed English. The Grand Traverse Band began to regroup only after the United States government federally recognized the Tribe in 1980, making the Tribe eligible to exercise rights of self government and eligible for federally subsidized education, health, and housing services. Today, the membership of the Grand Traverse Band numbers approximately 3400. Nearly 1700 members live in the Tribe's six-county service area, which includes Charlevoix, Antrim, Leelanau, Grand Traverse, Manistee, and Benzie Counties. Of those 1700, nearly 500 members live on the Tribe's 1000 acres of reservation land. n107

Following federal recognition, scattered tribe members moved to the Peshawbestown region seeking newly-established health services, low-income housing, jobs, and a long-lost sense of tribal community. n108 Tribal government provided local leadership and has [*889] spearheaded successful economic development. n109 In 1974, the only public enterprise the Grand Traverse Band owned was a coin-operated laundry. n110 By 1984, four years

after federal recognition, the Grand Traverse Band opened a bingo hall. n111 A casino-motel complex soon followed, as well as an Indian art store and other commercial buildings and businesses. n112 The millions of dollars generated by these enterprises were directed back into housing, human services, and plumbing for the Tribe, and created annual payments for each tribe member. Tribe members returning to the fold sought jobs at the casinos and government agencies, and welcomed an annual dividend check provided by gaming profits. n113

But those who were moving to Peshawbestown were returning to a socially complex tribe. n114 Some were familiar with Indian culture and traditions. Many were not. Some members returning to tribal territory who sought jobs and homes had brushes with the law. As tribal membership increased, juvenile wrongdoing escalated. Juveniles who got into trouble entered a tribal court system modeled after the impersonal Anglo-European system. In creating its Peacemaker Court, the Grand Traverse Band pulled together as a community to decide what would be the best justice method to govern disputes involving tribal youths. n115

To set up the Peacemaker Court, the Grand Traverse Band utilized the skills of Ada Pecos Melton, President of American Indian Development Associates, which provides training and technical assistance to Indian nations for the development of tribal justice systems. n116 Melton gave peacemaking presentations to the Tribe, and [*890] with tribe members, she organized fifteen oral survey meetings over several months to learn how the existing justice system responded to juvenile crime and delinquency, and what changes were possible. Tribal groups surveyed included youths, adults, elders, and employees of tribal agencies. They discussed what the concept of law meant to them and how they would have designed an Indian justice system had the dislocation of Indians by European settlers never occurred. n117

A core group of tribe members formed and visited the Pueblo and Navajo Nations in New Mexico and Arizona to observe peacemaker courts and discuss tribal philosophies of justice. That group designed the existing Peacemaker Court and a peacemaking manual, emphasizing the involvement of family and friends, community harmony, and the inclusion of Indian rituals and traditions. n118

The creation of the Peacemaker Court of the Grand Traverse Band not only established a justice system based on Indian ritual, but re-educated the Michigan tribe about its own culture. n119 The Peacemaker Court has pulled together all segments of the Indian Tribe to construct a local justice system rooted in Indian ritual. It has been influential in building community as the Grand Traverse Band pieces itself back together after nearly a century of fragmentation. n120

II. Peacemaking Takes Root: Other Michigan Tribes Consider Traditional Indian Justice

As the traditional Indian justice court flourishes in the Grand Traverse Band, other Michigan tribes are designing peacemaker courts of their own and exploring the benefits of an alternative method of resolving conflicts. The Little River Band of Manistee planned to open a peacemaker court in the summer of 1999. n121 The Saginaw Chippewa Indian Tribe near Mt. Pleasant hopes to open a peacemaker court in the summer of 2000. n122 In early 1999, the small Lac Vieux Desert Tribe of Lake Superior Chippewa Indians in Michigan's Upper Peninsula county of Gogebic n123 and the Little Tra [*891] verse Bay Bands of Ottawa Indians in Petoskey n124 were exploring peacemaking alternatives.

A. Little River Band

Fueled by a \$ 100,000 United States Department of Justice grant, the Little River Band has established peacemaker court procedures, drafted a core group of six volunteers to be peacemakers, and conducted a series of oral survey meetings to learn the justice system concerns of its members. n125 Like the Grand Traverse Band, the Little River Band has seen tribe membership increase, with a total of 2500 new members since the Tribe was federally recognized in 1994. n126 Members of the Tribe have officially reinstated their membership to take advantage of federally subsidized health, education, and housing services. n127 Members have also sought benefits from a judgment against the federal government that paid the Tribe thirteen million dollars in 1997, after it was found that the government underpaid several Michigan Indian tribes in a 150-year-old land deal. n128 The new peacemaker court will handle drunk driving offenses involving adults, non-violent domestic relations issues, and focus largely on juvenile wrongdoing, which has escalated as tribal membership has increased. n129 Peacemaking, tribal officials say, is more effective than the tribal court system in handling juvenile justice issues.

"The peacemaker court works better because the adversarial system always has a winner and a loser," said Jonnie "Jay" Sam, Associate [*892] Judge and Court Administrator for the Little River Band. "When a youth is a loser it reinforces negative aspects of their behavior. The traditional Indian justice system has the youth offender recognize the

victim as an individual. It promotes more healing and helps the juvenile remain part of the community. As a result, the community doesn't splinter." n130

B. Saginaw Chippewa Indian Tribe

The Saginaw Chippewa Indian Tribe, n131 with 2700 members located in Isabella County near Mt. Pleasant, Michigan, planned to hire a coordinator in the spring of 1999 to set up a peacemaker court by the summer of 2000. n132 Eighteen tribe members had expressed interest in becoming peacemakers, with the help of training offered by a local community college. The Tribe also met with tribal justice consultant Ada Pecos Melton, who conducted focus group meetings for the Grand Traverse Band, and tribe members were considering seeking additional support. n133

The Tribe favors a peacemaker court because it harkens back to traditional Indian justice methods. These methods often held an extended family member liable for a wrongdoer's actions, and required that family members make reparations and atonement to a victim's family, according to Ronald Douglas, Associate Judge of the Saginaw Chippewa Tribal Court. "In Indian culture, if you wrong a person, you wrong a family, but the Anglo justice system focuses on individual rights," Douglas explained. n134

Similarly, in peacemaking, when a person commits a wrong, his whole family can be called upon to correct the bad behavior. Such a practice is particularly effective in resolving disputes involving juveniles. "The current justice system is too restrictive because you can only subpoena parents in juvenile cases, even though aunts and uncles would be more effective in resolving the matter. In tribal tradition, aunts and uncles look out for the welfare of nieces and nephews," Douglas said. n135

[*893]

C. Lac Vieux Deseret Tribe

Tribal court officials at the Lac Vieux Deseret Tribe of Lake Superior Chippewa Indians n136 in the Upper Peninsula town of Watersmeet are eager to learn more about peacemaking to adopt it for their Tribe. n137 Tribal Chief Judge Roxann Bain said tribe members, who number approximately 350, hope to observe an actual peacemaker court in action and schedule training sessions for tribal elders who are interested in becoming peacemakers. n138

In sentencing for juvenile offenses, Bain often assigns youths to perform community service with an elder at least fifty-five years old. For six months, youths may do grocery shopping, snow shoveling, and other household tasks for the elder. In some cases relationships have blossomed when juveniles have adopted elders as role models, listening to their tribal stories and heeding their advice. n139

"Elders make good peacemakers," Bain said. "They have more knowledge, patience, and experience. They are respected members of the community and can connect with juvenile wrongdoers." n140

D. Little Traverse Bay Bands

Officials for the Little Traverse Bay Bands of Odawa Indians, n141 which has more than 2800 members in seven bands, have attended peacemaking seminars sponsored by the Grand Traverse Band and are considering setting up a traditional Indian court. n142 The Tribe favors the peacemaking approach that offers harmony instead of hostility, reconciliation instead of punishment. n143

"It brings families together. A peacemaker court gets people talking and healing. It gives people a sense of 'us', instead of 'them and us,'" said Bruce Hinmon, court administrator for the Little Traverse Bay Bands' Tribal Court. "We are a tight knit community. We [*894] don't need more fragmentation." n144

III. Peacemaking in the Navajo Nation

The Grand Traverse Band and other Michigan tribes have drawn inspiration and guidance for developing traditional Indian justice systems from the sophisticated and expansive Navajo Nation Peacemaker Court. n145 The Navajo Nation n146 is unique because it was the first tribe to revive a traditional Indian justice system that operates side-by-side with its formal tribal court system, which is modeled after Anglo-European courts. n147

A. Peacemaking Made Accessible, Expansive, and Inexpensive

Established in 1982, the Navajo Peacemaker Court has over 250 peacemakers serving most of the Tribe's 110 chapters in Arizona and New Mexico. n148 In its first decade of operation, the Navajo Peacemaker Court handled an average of only six cases per year. n149 Considerable community outreach, however, including radio and television publicity, expanded peacemaking services enormously in the 1990s. n150 By 1993, Navajo peacemakers were handling more than 400 cases a year. n151

Each of the Navajo Nation's nine judicial districts now has a peacemaker forum designed to work quickly and without formality. n152 A judge may refer a dispute to the peacemaker system, or tribe members can request peacemaking services directly by applying at a Navajo Nation courthouse. n153 A clerk of the court will take the names [*895] and addresses of everyone with an interest in the dispute, along with a short statement concerning the nature of the conflict. The peacemaker court will then set a date and location for a peacemaking session and notify the participants. n154 Sessions are usually held in courtrooms, court conference facilities, Navajo Nation chapter houses, or homes. n155 Following a Navajo tradition in which tribe members pay traditional healers, those who utilize the peacemaking process pay approximately sixty dollars to the peacemaker court for its services. n156

The Navajo Nation Peacemaker Court handles a wide variety of cases, not limited to juvenile issues. For example, if a judge decides that a criminal charge really involves a private dispute, it may be referred to the peacemaker court. n157 Tribe members who want to avoid the expense of a divorce can, with the help of a peacemaker, split up property and develop plans for child custody. n158 Tribe members who have problems with drugs, alcohol, or unemployment can use the peacemaker court to repair family relationships and set a new direction for their lives. n159 Tribe members often use the Peacemaker Court to resolve ownership issues involving land, vehicles, and livestock, and then ask a Navajo tribal judge to issue legal documents based on settlements reached. n160 Navajo women also frequently choose peacemaking sessions instead of seeking court-ordered restraining orders to cope with domestic violence. n161

B.

"Life Comes From It"

In contrast to the Anglo-European concept of law, which understands law to be written rules enforced by authority figures, the Navajo do not believe law is man-made. n162 Rather, law according to the Navajo tradition is something fundamental that has existed from the beginning of time, providing spiritual and emotional thought and [*896] guidance. n163 Law leads people to correct themselves and restore harmony. n164 "[Law] is the source of a healthy, meaningful life, and thus 'life comes from it.'" n165 Peacemaking relies on this life-giving, traditional law to govern when people resolve their problems.

The Navajo's original peacemaking practices faded last century after the United States government established the Navajo Court of Indian Offenses in 1892, a western-style court system imposed to discourage tribal custom and acculturate Indians to the Anglo-European way of life. n166 In 1959, the Court of Indian Offenses was replaced by the Navajo Tribal Courts that, like the federal court system, kept state courts from exerting jurisdiction over the Navajo Nation. n167

According to Navajo Supreme Court Chief Justice Robert Yazzie, traditional peacemaking was revived in 1982 to restore traditional Indian justice practices to local Navajo communities. n168 As modeled by the Grand Traverse Band in Michigan, peacemaking sessions for the Navajo have no judges, lawyers, police, or social workers present. n169 "Everyone must have access to justice that is inexpensive, readily available and does not require expensive legal representation," Chief Justice Yazzie stated. "Peacemaking is people making their own decisions, not others forcing decisions upon them." n170

The traditional Navajo system of peacemaking is based on discussion, consensus, and healing. n171 It is "restorative justice" that puts people in good relations with each other and encourages harmony. n172 It "compels individuals to address their own behavior and it gives communities the means to resolve their own problems." n173 In Navajo [*897] culture, in which communities are based on clans and kinship ties, good relations between family members and neighbors are imperative. Indeed, Navajos hold in high regard the duties individuals owe to clan members. n174 When an individual acts in a way that does not honor his duties, it is said of the wrongdoer: "He acts as if he has no relatives." n175 Restoration of these family relationships is the basis of the traditional Navajo peacemaking process. n176

To restore harmony and good relations, a tribe member, through the tribal court, can seek the assistance of a Navajo peacemaker, known as a "naat' aanii." n177 A naat' aanii is chosen by the consensus of the community based on the

person's wisdom, as well as the person's ability to speak well, develop plans, and guide others. n178 Both men and women serve as Navajo peacemakers. n179

A peacemaking session always begins with a prayer and a Navajo spiritual ritual. n180 Following the prayer, the individual who requested peacemaking will tell his version of the problem. If a person who wants action is unable or unwilling to speak, a family member may relate the problem. After the nature of the dispute has been presented, it is time for "venting," which allows all participants to express their emotions about the conflict and its effects. n181 The peacemaker will then recite a traditional tribal story as a lesson to apply to the conflict. The peacemaker will explain how the traditional story is relevant to the dispute and will use it to advise the group. n182 Following the story, the peacemaker and participants will shape a plan to [*898] resolve the dispute. n183

In planning a resolution, Navajo peacemaking emphasizes that compensation must be made by the wrongdoer to provide for injuries and to make the victim whole. n184 Unlike Anglo-European courts, where reparation is designed to assess the market value of an injury, Navajo compensation focuses on repairing feelings and relationships. n185 The test for the proper compensation is "enough so there are no hard feelings." n186 Compensation, then, can take unusual forms. It can be symbolic, such as a valuable piece of jewelry or a horse. n187 In addition, wrongdoers can promise to participate in a traditional Indian healing ceremony designed to cure a personal problem that caused the dispute. For example, in cases involving drug or alcohol abuse, the wrongdoer could agree to enroll in a substance abuse treatment program. n188

Once a plan for compensation has been decided upon, the peacemaking session closes with a prayer to commit all participants to the decision. The decision may take the form of a written agreement, or it may be reaffirmed by a tribal court order that requires compliance with the peacemaking decision. n189 All peacemaking sessions are taped so that any future questions regarding the agreement reached by the parties may be answered. n190

C. Peacemaking Versus Mediation

Some observers of traditional Indian justice systems suggest that the counterpart to peacemaking in dominant Anglo culture is alternative dispute resolution. Both the Navajos and the Grand Traverse Band insist, however, that these two forms of conflict resolution are [*899] crucially different, and that peacemaking is not mediation. n191

Mediation has become increasingly popular in the last two decades because it stands apart from the adversarial process of an Anglo-European legal system. n192 It is contrasted with courtroom litigation by emphasizing harmony in resolving conflicts, granting equal access to the legal process for typically disenfranchised classes, and reducing the cost of dispute resolution. n193 Its methodology incorporates privacy, procedural informality, absence of substantive rules, and emphasizes compromise in reaching a consensual settlement. n194

Both peacemaking and mediation embrace informality, n195 confidentiality, reducing costs for participants, and making dispute resolution accessible to all; however, there are important differences between them. Mediation is a bargaining process that focuses on trading valuable tangible concerns to reach a remedy for the injury, but emotional demands are avoided or treated as secondary. n196 In contrast, peacemaking emphasizes restoring harmony to relationships, so exploring feelings and emotions is paramount in the process. n197 Peacemaking, both for Navajos and the Grand Traverse Band, does not focus on punishing the offender, but on addressing a victim's feelings and injuries, and ensuring that the offense does not happen again. n198

Another essential difference is that in mediation, only the parties directly involved in the dispute participate in the dispute resolution process. Conversely, peacemaking involves the parties, their families, friends, neighbors, and anyone with a marginal interest in the dispute because the goal is to heal the community as well as individuals. n199 Peacemaking, in both the Navajo and Grand Traverse Band tradition, also utilizes extended family and friends to serve as "traditional probation officers" for the wrongdoer. n200 Family and friends have a responsibility to the victims and communities to pre [*900] vent the wrongdoer from causing further harm. n201

Perhaps the greatest difference between mediation and peacemaking, however, is the role and identity of the mediator and peacemaker. Unlike a mediator, a peacemaker is not a neutral figure who negotiates a conflict. n202 Peacemakers are rarely strangers to the parties in conflict and may even be a relative of one of the parties. n203 The peacemaker is chosen for his listening and leadership skills in the community, and knowledge of traditional values and rituals. In contrast, the neutrality of the mediator is a crucial element in mediation. n204 It would severely compromise the mediation process to have a mediator who is related to one of the parties.

Finally, although a mediator merely facilitates a discussion between parties, a peacemaker may be more of a teacher. A peacemaker can openly inject concerns greater than that of the dispute between the two parties. n205 A peacemaker may bring up concerns of community, harmony, and spiritual guidance that the parties share. n206 A peacemaker's role, as seen in both the Navajo and Grand Traverse Band peacemaker courts, is steeped in tribal tradition and ceremony. n207 In contrast, the mediator's role is not bound by any dominant cultural practices other than neutrality.

IV. Conclusion

The success of the Navajo Peacemaker Court has gained national recognition by the federal government and has inspired indigenous peoples in North America and around the world to revive and formalize traditional tribal justice systems. The movement gained popularity in the United States following the recreation of the Navajo Peacemaker Court in 1982. n208 In 1985, a gathering of United States Indian tribes met near Seattle, Washington, for the first national conference to exchange ideas on traditional Indian justice systems. n209 Seven years later, in 1992, nearly 300 people from tribes across the United States and Canada participated in a national conference on peacemaking in Albuquerque, New Mexico. n210

Meanwhile, Navajo court officials have traveled to Australia, New Zealand, New Guinea, Vanuatu, Fiji, Bolivia, South Africa, and Canada to explain their experiences with the peacemaking process and to learn about traditional justice concepts from others. n211 Currently, active attempts to revive traditional indigenous justice systems are underway in the United States, Canada, Bolivia, New Zealand, and Australia. n212

Michigan Indian tribes, beginning with the Grand Traverse Band, are following this trend. After a century of suppressing traditional Indian law and struggling to adapt to an Anglo-European justice system that is foreign and counter-productive to Indian culture, the Navajo Nation and Michigan tribes have reached back to ancient practices to rediscover their own law. The tribes have discovered that traditional restorative justice is inexpensive, efficient, and produces long-term solutions. n213 They have relearned that people in Indian communities can solve their own problems without a coercive authority dictating the law. n214 The tribes have adopted a justice system that avoids condemnation by advocating Indian tradition, the disclosure of feelings, and the fostering of good relationships. Traditional peacemaking is being revived in Michigan, the United States, and, indeed, around the world by indigenous people, with the goal of nourishing traditional justice in local communities. The reason is obvious: life comes from it.

FOOTNOTES:

n1. Telephone Interview with Paul Raphael, Peacemaker Coordinator for the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan (Jan. 29, 1999). Raphael, a member of the Grand Traverse Band, worked as a substance abuse counselor and youth coordinator before he was hired as the Tribe's peacemaker coordinator in early 1998. Raphael was one of the early organizers of the court and created the Mnaweejeendiwin logo for the Peacemaker Court. He supervises nine volunteer peacemakers. Id.

n2. It is a Native American ritual to "smudge" an area before tribal ceremonies. Smudging consists of burning one of the four sacred Indian herbs of tobacco, sage, sweetgrass, or cedar, or a combination of them. Smoke from the burning herbs is whisked about a room or a person to dissolve negative energy, decrease anxiety, and relax a person. In peacemaking, smudging helps parties relax, clear their minds, and focus on the present. Id. See also Marg Huber, *Mediation Around the Medicine Wheel*, 4 *Mediation Q.* 355, 359 (1993).

n3. Telephone Interview with Paul Raphael, *supra* note 1.

n4. Id. See also Grand Traverse Band Mnaweejeendiwin (Peacemaker) Division Mission Statement, Program Components 4 (on file with the University of Detroit Mercy Law Review).

n5. Telephone Interview with Paul Raphael, *supra* note 1.

n6. *Id.*

n7. Robert Yazzie, *The Navajo Peacemaker Court: Contrasts of Justice*, Address Before Non-Navajo Lawyers and Judges 4 (Nov. 10, 1992) (transcript on file with the University of Detroit Mercy Law Review).

The Peacemaker Court of the Grand Traverse Band is modeled after the Navajo Peacemaker Court, which was established in 1982. The Navajo Nation was the first Native American tribe to formally adopt a peacemaker court as part of its tribal court system. *Id.*

n8. *Id.*

n9. Telephone Interview with Michael Petoskey, Chief Judge of the Grand Traverse Band of Ottawa and Chippewa Indians (Jan. 22, 1999). Petoskey has served as tribal judge for the Grand Traverse Band in Peshawbestown, Michigan, since 1986. He is a member of the Grand Traverse Band and a 1983 graduate of the University of New Mexico Law School where he was exposed to a variety of concepts concerning Indian justice systems. Petoskey attended law school with influential Navajo Tribe representatives Robert Yazzie and Raymond Austin, who currently serve on the Navajo Supreme Court. Petoskey's friendship with Yazzie and Austin, and his familiarity with the Navajo Nation's Peacemaker Court, prompted Petoskey to introduce the peacemaker court concept to the Grand Traverse Band in the 1990s. *Id.*

Petoskey also serves as coordinator of the American Indian and Minority Services at Northwestern Michigan College in Traverse City, Michigan, where he teaches courses on contemporary Indian issues. *Id.*

n10. *Id.*

n11. Telephone Interview with Paul Raphael, *supra* note 1.

n12. *Id.*

n13. *Id.*

n14. *Id.* The Grand Traverse Band gained federal recognition in 1980, but the Tribe, composed of Ottawa and Chippewa Indians, has resided in the northwest section of Michigan's Lower Peninsula for at least 500 years. The tribal government is located in Peshawbestown, Michigan, but the tribal service area is spread out over six adjacent counties. The Tribe's reservation land base consists of nearly 1000 acres. The Grand Traverse Band has 3400 members, with a reservation population of nearly 500. Robert N. Van Alstine, *Brief Historical Sketches on the Development of Michigan's Eleven Federally Recognized/Reaffirmed Chippewa, Ottawa & Potawatomi Tribes* (July 29, 1996) (unpublished informational memorandum, on file with the University of Detroit Mercy Law Review).

n15. Yazzie, *supra* note 7, at 4.

n16. *Id.*

n17. Id.

n18. Diane LeResche, Editor's Notes, 4 *MEDIATION Q.* 321, 324 (1993). See *infra* note 35 for a list of tribes that have recreated traditional Indian justice programs, including peacemaker courts.

n19. LeResche, *supra* note 18, at 323.

n20. Id. at 322-23.

n21. Id. at 322-24. See also *supra* note 9.

n22. 25 *U.S.C.* 3631(4) (1994). See also Judicial Branch of the Navajo Nation, Traditional Restorative Justice in North America 2 (Jan. 24, 1997) (unpublished memorandum delivered at the Conference of Strengthening Nations: Justice for Victims of Crime, Workshop on Challenges to Peacemaking, in San Diego, Cal., on file with the University of Detroit Mercy Law Review).

n23. The official names are the Office of Tribal Justice, Office of the Deputy Attorney General, United States Department of Justice and Tribal Courts Project, Office of Policy Development, and United States Department of Justice. See also Judicial Branch of the Navajo Nation, *supra* note 22, at 2.

n24. LeResche, *supra* note 18, at 321.

n25. Id. Peacemaking seeks solutions relevant to each situation, using accumulated tribal wisdom. For some tribes, elders are frequently asked to be present at peacemaking sessions.

n26. Robert Yazzie, "Life Comes From It": Navajo Justice Concepts, 24 *N.M. L. REV.* 175, 177 (1994). Yazzie is the Chief Justice of the Navajo Nation. He has given several speeches and written several publications on the structure and functions of peacemaker courts. Yazzie, a graduate of the University of New Mexico Law School, formed a friendship with Grand Traverse Band Chief Judge Michael Petoskey while in law school during the 1980s. See *supra* note 9.

n27. Yazzie, *supra* note 26, at 177.

n28. See *id.* at 177-78.

n29. See *id.* at 178.

n30. Telephone Interview with Michael Petoskey, *supra* note 9.

n31. Id.

n32. Id.

n33. Id.

n34. Id.

n35. Indian tribes that have recreated peacemaker courts include the Navajo Nation in Arizona and New Mexico, Mille Lacs in Minnesota, and the Nez Perce in Idaho. Telephone Interview with Ada Pecos Melton, President of the American Indian Development Associates (Feb. 8, 1999).

Other indigenous tribal justice systems use practices similar to the formal peacemaker courts. Not all, however, may work in tandem with the tribe's formal court system. Other such systems include: the Mohawks' Akwasasne Peacemaking Program; Santa Clara Pueblo's Mediator in the Tribal Court; the Muscogee (Creek) law-menders; Cheyenne Peace Chiefs Today; Seneca-Cayuga (Oklahoma) Faithkeepers; the Rosebud Sioux Tribal Court "Lakol Woose" Project; the White Mountain Apache Council of Elders; Wind River Preservation Peacemakers; the Appeals Commission of the Oneida Nation of Wisconsin; the Salt River Pima-Maricopa, Shoshone and Arapaho Peacemaker Court; Family Mediation in Laguna Pueblo; and the Nebraska Native American Mediation Project in Walthill, Nebraska. LeResche, *supra* note 18, at 321, 324.

Other indigenous tribal justice projects include: the Traditional Dispute Resolution Research Project and Peacemaker Program of the Northwest Intertribal Court System; the Apache Mediation Center of the White Mountains Apache Nation of Arizona; Saddle Lake Band Peacemaker Program in Alberta, Canada; the Community Council Project of Aboriginal Legal Services of Toronto, Canada; and the Hollow Water First Nation Holistic Circle Healing Project of Manitoba, Canada. Judicial Branch of the Navajo Nation, *supra* note 22, at 11-12.

n36. Yazzie, *supra* note 26, at 189. In her telephone interview, Melton pointed out that the peacemaking process has been the traditional Native American method for solving disputes from time immemorial. Since 1982, however, when the Navajo Nation was the first to establish a peacemaking division as part of its formal tribal court system, several Indian tribes throughout the United States have formally adopted peacemaker courts as part of their official tribal justice systems. Telephone interview with Ada Pecos Melton, *supra* note 35.

n37. Tom Tso, *Moral Principles, Traditions and Fairness in the Navajo Nation Code of Judicial Conduct*, *Judicature*, June-July 1992, at 15, 17.

n38. Yazzie, *supra* note 26, at 180.

n39. Id.

n40. Id.

n41. Tso, *supra* note 37, at 17.

n42. Telephone Interview with Michael Petoskey, *supra* note 9.

n43. Yazzie, *supra* note 26, at 184.

n44. See *id.*

n45. See *id.* at 183.

n46. See *id.*

n47. See *id.*

n48. Telephone Interview with Michael Petoskey, *supra* note 9. The jurisdiction of tribal courts is limited by the Major Crimes Act which states that federal courts have jurisdiction over more than a dozen major crimes. The Major Crimes Act applies only when the perpetrator is an Indian. It covers major crimes by an Indian against anyone, Indian or non-Indian. The Act states in pertinent part:

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely murder, manslaughter, kidnapping, maiming, a felony under chapter 109A (rape and related offenses), incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, ... an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

18 U.S.C. 1153 (1994). The punishment for crimes within the jurisdiction of Indian tribal courts is limited by federal law to a fine of \$ 5,000 and one year imprisonment. The Indian Civil Rights Act, which imposes this limitation, states in pertinent part:

No Indian tribe in exercising powers of self-government shall ...

...

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of \$ 5,000, or both.

Id. 1302(7).

n49. Telephone Interview with Michael Petoskey, *supra* note 9.

n50. Telephone Interview with Paul Raphael, *supra* note 1.

n51. Id. See also Grand Traverse Band Mnaweejeendiwin (Peacemaker) Division Mission Statement, *supra* note 4, at 4.

n52. Telephone Interview with Paul Raphael, *supra* note 1.

n53. Grand Traverse Band Mnaweejeendiwin (Peacemaker) Division Mission Statement, *supra* note 4, at 4.

n54. Id.

n55. Telephone Interview with Paul Raphael, *supra* note 1.

n56. Id. The three other perpetrators, who were 17 to 18 years old, were non-Indian and their cases were adjudicated by the Grand Rapids district court. The motive for the beating was unclear. Id.

n57. Id.

n58. Id. Peacemakers set up the peacemaking session in Grand Rapids, where the beating victim lived. The Peacemaker Court of the Grand Traverse Band is very mobile. It does not necessarily take place at the tribe's government center in Peshawbestown, but rather moves where the location is most convenient for the parties involved. Id.

n59. Id. Peacemakers will meet with the victim before a peacemaking session begins to assure the victim and his family that they are entering a safe space because the victim is often wary of the wrongdoer and afraid to face him. In this early meeting, the victim is urged to think about his feelings of fear, anger, and revenge, and encouraged to consider how he might forgive the perpetrator. At the actual peacemaking session, peacemakers encourage the victim and his family to express their feelings and tell the perpetrator how they were hurt. Id.

n60. Telephone Interview with Paul Raphael, *supra* note 1.

n61. Id.

n62. Id.

n63. Telephone Interview with Michael Petoskey, *supra* note 9. Petoskey is not informed of peacemaking discussions so that he develops no bias should the peacemaking case fail to reach resolution and proceed to the tribal court, where he would preside. Id.

n64. Telephone Interview with Paul Raphael, *supra* note 1.

n65. Id.

n66. Telephone Interview with Michael Petoskey, *supra* note 9. Peacemaking is particularly appropriate for issues involving closely related family members or people who work closely together. Although the adversarial court system allocates fault in such cases, it rarely delves into the hard feelings underlying the dispute, which can continue long after the court case is settled. *Id.* Petoskey, however, does not advocate handling domestic violence cases in the Peacemaker Court. Although the peacemaking process treats both wrongdoer and victim as equals, in a domestic violence case there is an explicit power imbalance because an abuser assumes a more powerful role than does a battered spouse. Peacemaking cannot function properly where such a stark imbalance exists. The Peacemaker Court accepts assault cases not involving family members only when the injuries sustained are relatively minor. *Id.*

n67. Telephone Interview with Paul Raphael, *supra* note 1.

n68. *Id.* The Peacemaker Court-sponsored canoe trip is reminiscent of Outward Bound programs, in which troubled youths are challenged to test their strength and endurance skills in nature trips designed to instill team-building and determination to reach one's goals.

n69. *Id.*

n70. *Id.*

n71. *Id.* The Grand Traverse Band peacemakers have continued their nature lessons, taking two juveniles on a seven-day snow camping-backpacking trip on the Pigeon River between Grayling and Alpena, Michigan, in the winter of 1999. *Id.*

n72. Telephone Interview with Michael Petoskey, Chief Judge of the Grand Traverse Band of Ottawa and Chippewa Indians (Apr. 1, 1999).

n73. *Id.*

n74. *Id.*

n75. Yazzie, *supra* note 26, at 186.

n76. Telephone Interview with Paul Raphael, *supra* note 1.

n77. *Id.*

n78. *Id.* The Mnaweejeendiwin logo, designed by Peacemaker Coordinator Paul Raphael, shows four grandfathers huddled in a sweatlodge to give wise direction, with a warrior standing on one side of the sweatlodge and a family on the other. The warrior is ready to lead the family back to a road of harmony. A lightning bolt touching the roof of the sweatlodge symbolizes rain and the renewal of life. All the figures are

positioned in a circle with two bear paws straddling a river at the bottom of the circle, symbolizing strength and justice. A red line rims a portion of the circle, symbolizing the road of life on which the Grand Traverse Band members live and should follow in a good way. Two eagle feathers on the red road represent the balance of a man and a woman. *Id.*

n79. *Id.*

n80. See Tso, *supra* note 37, at 17.

n81. Telephone Interview with Paul Raphael, *supra* note 1.

n82. See Tso, *supra* note 37, at 17.

n83. Telephone Interview with Paul Raphael, *supra* note 1.

n84. Yazzie, *supra* note 26, at 186.

n85. See *id.*

n86. Yazzie, *supra* note 7, at 4.

n87. See *id.*

n88. Telephone Interview with Paul Raphael, *supra* note 1.

n89. *Id.*

n90. Robert Yazzie, "Hozho Nahasdlii" - We Are Now In Good Relations: Navajo Restorative Justice, 9 *St. Thomas L. Rev.* 117, 122 (1996).

n91. Isabelle R. Gunning, Diversity Issues in Mediation: Controlling Negative Cultural Myths, 1995 *J. Disp. Resol.* 55, 84.

n92. Telephone Interview with Paul Raphael, *supra* note 1. See also *supra* note 2.

n93. Telephone Interview with Paul Raphael, *supra* note 1.

n94. *Id.*

n95. Yazzie, *supra* note 90, at 122.

n96. Yazzie, *supra* note 26, at 180.

n97. See *id.*

n98. Huber, *supra* note 2, at 358.

n99. *Id.* at 359.

n100. *Id.* at 359-60.

n101. *Id.* at 359.

n102. *Id.* at 360.

n103. See *id.*; Telephone Interview with Michael Petoskey, *supra* note 9.

n104. Telephone Interview with Michael Petoskey, *supra* note 9.

n105. *Id.*

n106. *Id.*

n107. *Id.*

n108. Telephone Interview with Michael Petoskey, Chief Judge of the Grand Traverse Band of Ottawa and Chippewa Indians (Mar. 9, 1999) [hereinafter *March Interview with Michael Petoskey*].

n109. George Weeks, *Mem-ka-weh: Dawning of the Grand Traverse Band of Ottawa and Chippewa Indians* 105 (1992).

n110. *Id.*

n111. *Id.* at 106. Federal recognition is a prerequisite before an Indian tribe can negotiate with the state to set up gaming operations. As of January 1999, seven Indian tribes in Michigan operated 16 casinos, with four more tribes having negotiated gaming contracts with the state. Becky Yerak, *Casinos in Michigan: Four New*

Indian Casinos Challenged: Lawmakers File Suit, Say State Legislature Wrongly Approved Tribal Gaming Compacts, Det. News, Jan. 31, 1999, at C1. See also Around the World, Det. News, Sept. 22, 1994, at 5A.

n112. Weeks, supra note 109, at 107-09.

n113. Id. at 108.

n114. March Interview with Michael Petoskey, supra note 108.

n115. Id.

n116. Telephone Interview with Ada Pecos Melton, supra note 35. Melton, a member of a Pueblo Tribe, served as a consultant to the Grand Traverse Band as well as other Michigan tribes to help them set up peacemaker courts. Her eight-year-old company, based in Albuquerque, New Mexico, provides training and technical assistance to Indian nations on Indian justice issues and the development of tribal justice systems. Melton formerly worked as a facilitator for a juvenile offender program serving two Pueblo Tribes. Id.

n117. Id.

n118. Id.

n119. Telephone Interview with Michael Petoskey, supra note 9.

n120. Id.

n121. Telephone Interview with Jonnie "Jay" Sam, Associate Judge and Court Administrator for the Little River Band of Ottawa Indians (Feb. 1, 1999).

n122. Telephone Interview with Ronald Douglas, Associate Judge of the Saginaw Chippewa Tribal Court (Feb. 2, 1999).

n123. Telephone Interview with Roxann Bain, Chief Judge of the Lac Vieux Deseret Tribe of Lake Superior Chippewa Indians (Feb. 2, 1999).

n124. Telephone Interview with Bruce Hinmon, Court Administrator for the Little Traverse Bay Bands' Tribal Court (Feb. 2, 1999).

n125. Telephone Interview with Jonnie Sam, supra note 121.

n126. Id. "Ottawa" means "trader" or "at-home-anywhere-people." The Ottawa Indians trace their origin to Manitoulin Island in Ontario, Canada, but Ottawa members moved west into Michigan and other states after contact with European settlers. Ottawa Indians have lived in the northern Lower Peninsula of Michigan for the past 300 years. Van Alstine, *supra* note 14.

n127. Telephone Interview with Jonnie Sam, *supra* note 121.

n128. Id. The government payout arose from an 1836 land sale in which the federal government paid Ottawa and Chippewa Indians in northern Michigan just 15 cents an acre for more than 12 million acres of land. Indian tribes filed a complaint in 1948 claiming underpayment. In 1971, federal officials found that the land had been worth 90 cents an acre at the time of the sale. Congress appropriated \$ 10.3 million in compensation to three tribes, but the tribes could not agree on how to divide the money. It was placed in an interest-bearing account, and totaled about \$ 74 million when it was disbursed in 1997 to seven tribes, two that have been federally recognized since 1971, and two that are still awaiting recognition. Like the Little River Band, the Grand Traverse Band and the Little Traverse Bay Bands each received \$ 13 million in the legal judgment. John Flesher, *Five Michigan Tribes Close to Land Claim Settlement: House May Approve Bid to Divide \$ 64 Million Between Indians*, *Det. News*, Nov. 13, 1997, at E11.

n129. Telephone Interview with Jonnie Sam, *supra* note 121.

n130. Id.

n131. The Saginaw Chippewa tribal reservation of 1673 acres has a population of over 660. The reservation was established in an 1864 treaty. Tribal membership consists of Saginaw, Swan Creek, and Black River Chippewa Bands of the eastern-central Lower Peninsula of Michigan. Van Alstine, *supra* note 14.

n132. Telephone Interview with Ronald Douglas, *supra* note 122.

n133. Id.

n134. Id.

n135. Id.

n136. The Lac Vieux Deseret Tribe is located at the far western edge of Michigan's Upper Peninsula, about eight miles from the Wisconsin border and 45 miles southeast of Ironwood. The tribal reservation, which consists of about 28 acres, was established in 1988, but the Tribe has been a permanent Indian community since 1842. Van Alstine, *supra* note 14.

n137. Telephone Interview with Roxann Bain, *supra* note 123.

n138. Id.

n139. Id.

n140. Id.

n141. "Odawa" is the Native American word for the Anglo version "Ottawa." Id. The Little Traverse Bay Bands experienced nearly complete dispossession of their lands during much of the first half of the nineteenth century. The Tribe was a party to the massive Indian land sale of 1836, ceding most of its ancestral lands in Michigan. The Tribe was federally recognized in 1994. Van Alstine, *supra* note 14.

n142. Telephone Interview with Bruce Hinmon, *supra* note 124.

n143. Id.

n144. Id.

n145. The Grand Traverse Band first developed the concept for a peacemaker court based on Chief Judge Michael Petoskey's knowledge and familiarity with the Navajo peacemaking system. See *supra* note 9.

n146. The Navajo Nation has a population of 220,000 people. Its territory is the size of Ireland, stretched across 25,000 square miles in New Mexico, Arizona, and Utah. Yazzie, *supra* note 90, at 118. See also Lisa Driscoll, *Tribal Courts - New Mexico's Third Judiciary*, B. Bull. (N.M.), Mar. 18, 1993, at 2.

n147. Judicial Branch of the Navajo Nation, *supra* note 22, at 12.

n148. Id. at 10.

n149. Driscoll, *supra* note 146, at 6.

n150. Id. at 6-7.

n151. Id. at 7.

n152. James W. Zion, *The Navajo Peacemaker Court, Perception*, Vols. 15-4/16-1, at 49 (1992).

n153. Driscoll, *supra* note 146, at 7. To request peacemaking services tribe members may apply to Crownpoint, Window Rock, Tuba City, Kayenta, Chinle, Shiprock, and Ramah District Courts. In 1992, tribe members applying through the Chinle District Court in Arizona were the predominant users of the peacemaker court. Navajo Nation Judicial Branch, Addendums, *The Navajo Nation Peacemaker Court: An Introduction 1-2* (July 1992) (unpublished memorandum, on file with the University of Detroit Mercy Law Review).

n154. Judicial Branch of the Navajo Nation, *supra* note 22, at 14.

n155. See *id.*

n156. See *id.* at 10-11.

n157. *Zion*, *supra* note 152, at 51.

n158. See *id.*

n159. See *id.*

n160. See *id.*

n161. Judicial Branch of the Navajo Nation, *supra* note 22, at 18. In remote areas in the Navajo territory, threatening to punish an abuser for violating a restraining order is not a deterrent, although the peacemaking process that addresses the underlying problems of an abuser has been effective. *Id.* Chief Judge Michael Petoskey of the Grand Traverse Band has said the Tribe's peacemaker court would not handle domestic violence issues. See *supra* note 9.

n162. *Yazzie*, *supra* note 26, at 175.

n163. *Id.*

n164. *Id.* at 187.

n165. *Id.* at 175.

n166. *Driscoll*, *supra* note 146, at 3.

n167. See *id.* In 1985, the Judicial Reform Act passed by the Navajo Tribal Council established the current structure of the Navajo Tribal Court, granting more independence for the judiciary. The Navajo Supreme Court was formed under the Reform Act. *Id.*

n168. *Yazzie*, *supra* note 26, at 189.

n169. *Id.*

n170. Id.

n171. Yazzie, *supra* note 90, at 120. Peacemaking is effective because "it gets inside a person's head," something adjudication of a case rarely does. Peacemaking gets below the surface of the problem leading the wrongdoer and victim to the heart of the matter. Id. at 123.

n172. Id.

n173. Judicial Branch of the Navajo Nation, *supra* note 22, at 10. Restorative justice makes early intervention possible by curbing the conduct of a wrongdoer before more serious offenses are committed. For example, restorative justice may solve the problem of "hooliganism" before such bad behavior becomes a pattern of offenses that could lead to serious criminal charges. Id.

n174. Zion, *supra* note 152, at 48. See also Tso, *supra* note 37, at 17.

n175. Zion, *supra* note 152, at 48. Indeed, Navajos have a responsibility to treat everyone as their relatives, and therefore have a responsibility to help all people just as they would a relative. Translated into the Navajo system of justice, this concept means that "everyone is part of a community and the resources of the community must be shared by all." Yazzie, *supra* note 26, at 185.

n176. Zion, *supra* note 152, at 51. See also Tso, *supra* note 37, at 17.

n177. Yazzie, *supra* note 90, at 121-22.

n178. Id. at 122. Unlike a judge in an Anglo-European court, a *naat' aanii* is a teacher called upon to give an opinion on group decisions or the proper outcome of a case. Id. at 123. See also Judicial Branch of the Navajo Nation, *supra* note 22, at 13.

n179. Judicial Branch of the Navajo Nation, *supra* note 22, at 13.

n180. Id. at 14. The prayer rituals involved in peacemaking closely parallel rituals used during a traditional Navajo healing ceremony, in which supernatural beings are summoned to participate. Restoring harmony between the individual and the group, both human and supernatural, reintegrates the individual and gives that person internal motivation to heal. Id.

n181. Id.

n182. Id. at 15. The traditional stories about the Holy People, Coyote, or Horned Toad are fables that teach a lesson, and can be compared to the recitation of case law to support a legal argument in an Anglo-European court. Id.

n183. Id.

n184. *Id.* See also *Zion*, *supra* note 152, at 49; *Tso*, *supra* note 37, at 18.

n185. Judicial Branch of the Navajo Nation, *supra* note 22, at 15. The Navajo concept of compensation transcends the usual definitions of "reparation" and "restitution." Restitution is restoration of something to its rightful owner. Reparation is the act of making amends, or giving satisfaction for the wrong or injury. In Navajo peacemaking, the parties discuss what is needed to make an injured person "feel" better and compensation can be symbolic. *Yazzie*, *supra* note 90, at 123-24.

n186. Judicial Branch of the Navajo Nation, *supra* note 22, at 15.

n187. *Id.* One example of unusual restitution for a wrongdoing was when a young woman who had been sexually molested by a perpetrator was asked what she wanted as compensation, and she said, "six horses." Horses are valuable to the Navajos, and the compensation she demanded was customary in sexual offense situations. *Id.* at 15 n.51.

n188. *Id.* at 16.

n189. *Id.* A court clerk would distribute copies of the judgment and officially close the case.

n190. *Id.*

n191. *Id.* at 14. See also Grand Traverse Band Mnaweejeendiwin (Peacemaker) Division Mission Statement, *supra* note 4, at 7.

n192. *Gunning*, *supra* note 91, at 55.

n193. *Id.*

n194. *Id.* at 55-56.

n195. Grand Traverse Band Mnaweejeendiwin (Peacemaker) Division Mission Statement, *supra* note 4, at 7. Mediation favors an informal, neutral space with a common table, and peacemaking favors a relaxed talking circle. *Id.*

n196. *Id.*

n197. Judicial Branch of the Navajo Nation, *supra* note 22, at 15.

n198. Id. See also Grand Traverse Band Mnaweejeendiwin (Peacemaker) Division Mission Statement, supra note 4, at 7.

n199. Judicial Branch of the Navajo Nation, supra note 22, at 14.

n200. Id. at 15.

n201. Id. See also Grand Traverse Band Mnaweejeendiwin (Peacemaker) Division Mission Statement, supra note 4, at 7.

n202. Gunning, supra note 91, at 84.

n203. Id. Gunning specifically studied the Navajo peacemaking process. She noted that Navajo peacemaking closely parallels an indigenous justice system in the Philippines. Id.

n204. Id.

n205. Id. Unlike mediators, Navajo peacemakers are comfortable in making strong recommendations to participants as to how they should resolve their dispute. Id.

n206. Id.

n207. Id.

n208. LeResche, supra note 18, at 323. The Navajo Peacemaker Court has been viewed by many Native Americans as a positive contemporary model of traditional Indian justice. Id.

n209. Id.

n210. Id.

n211. Judicial Branch of the Navajo Nation, supra note 22, at 17.

n212. Id. at 18.

n213. See id.

n214. See id.