

**U. S. Department of Justice
Office of Justice Programs
810 Seventh Street, N.W.
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Native American Topic-Specific Monograph Series

Purpose

The purpose of the Native American Topic-Specific Monograph project is to deliver a variety of booklets that will assist individuals in better understanding issues affecting Native communities and provide information to individuals working in Indian Country. The booklets will also increase the amount and quality of resource materials available to community workers that they can disseminate to Native American victims of crime and the general public. In addition to the information in the booklet, there is also a list of diverse services available to crime victims and resources from the Department of Justice.

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CCAN believes that the information contained herein is factual and that the opinions expressed are those of the consultants/writers. The information is not however, to be taken as warranty or representations for which the Center on Child Abuse and Neglect assumes legal responsibility. Any use of this information must be determined by the user to be in accordance with policies within the user's organization and with applicable federal, state, and tribal laws and regulations.

Project Staff

Project Director/Editor - Dolores Subia BigFoot, Ph.D., CCAN OUHSC
Project Coordinator - Lana Grant, CCAN OUHSC
Project Staff - Janie Denton and Lisa P. Rhoades, CCAN OUHSC
OVC Program Specialist - Cathy Sanders, OVC, OJP, DOJ

Native American Elder Abuse

Authors

Dave Baldrige
National Indian Council on Aging
10501 Montgomery Blvd., NE #210
Albuquerque, NM 87111

Dave Baldrige is the Director of the National Indian Council on Aging.

Arnold S. Brown, Ph. D.
Northern Arizona University
Department of Sociology and Social Work
P.O. Box 15300
Flagstaff, AZ 86011

Native American Elder Abuse

Definitions of Elder Abuse

In recent years, critical questions in defining elder abuse have begun to be raised. The typical way of defining elder abuse has been to divide it into a number of types of mistreatments imposed on older people. For example, in one study of elder abuse among Navajo elders, the measurements used included questions related to 3,4 types of abuse: (1) neglect (being left alone and/or denied needed food, medicine and companionship); (2) verbal abuse (deliberately being insulted, frightened, humiliated, threatened and/or treated as a child; and (3) financial exploitation (having money taken from them and used for others' benefits).

In another example, when Native American officials on two Plains Indian reservations were themselves asked how they would define it, they categorized it in three ways: (1) physical abuse, or an infliction of personal harm; (2) primary (deliberate) neglect; and (3) secondary (non-deliberate) neglect. So-called financial exploitation was completely ignored (Maxwell & Maxwell, 1992). Another problem with defining elder abuse emerged when elderly Navajos were asked if their money had gone to someone else to determine whether or not they were being financially exploited. All of those who admitted that it had, all somewhat emphatically explained that it had been a matter of them *voluntarily* sharing their money with needful family members. Clearly, by their definition of the situation, they were not being exploited, but were themselves living up to an important cultural value (Brown, 1989). In a recent study of their attitudes about elder abuse (Brown, 1998), a similar point was made by several Native American elderly from seventeen different tribes about elder persons' money benefiting others.

The very use of the term "abuse" has recently been criticized as an adequate definition of this problem. Implied with this label is that wrongful acts take place with an understanding that certain individuals are the perpetrators and certain others (the elderly) are clearly the victims. A distinct tendency of conceptualizing the problem this way has been to criminalize elder abuse -- to place the total blame on the "abusers" and pass laws by which to prosecute them. One of the basies for criticizing the definition of elder abuse as criminal behavior has been that it fails to take into account many abuse-related factors. For example, the major focus is being placed on physical abuse when, in fact, studies clearly show that there are far fewer incidences of that type of abuse than any other, among all ethnic and racial groups (Phillipson, 1993). In actuality, the available data on elder abuse among Native Americans, as well as among other cultural groups, show that most elder abuse takes place in the context of what has been called "the obligation of care" (Hugman, 1995) -- elders cared for by informal caregivers who are mostly family members, whose actions are seldom criminal in nature (Brown,

1989 & 1998). Criminal definitions fail to address the enormous problems related to informal caregiving.

An Existing Legal Definition

In October of 1996 the Navajo Tribal Council enacted the "Dine Elder Protection Act." It was based on their policy "to continue the traditional respect which members of the Navajo Nation have for Dine elders," and with the purpose to "protect elders within the jurisdiction of the Navajo Nation from abuse and neglect."

In this bill, abuse was defined as: (1) Assault (the "attempt to cause bodily harm"); (2) Battery (actions "resulting in bodily harm or an offensive touching"); (3) Threatening (conduct that "places another in fear of physical or other harm"); (4) Coercion (forcing someone to engage in or abstain from conduct which the person has a right to abstain from or engage in"); (5) Unreasonable confinement, intimidation, or cruelty ("acts which result in physical harm or pain or mental anguish," on the part of such people as "a spouse, a child, other family members, caregivers"); (6) Sexual Abuse ("physical contact . . . for emotional or physical gratification" without "informed consent" by the elderly person); (7) Emotional Abuse ("infliction of threats, humiliation, or intimidation"); (8) Intimidation ("willfully placing another in fear of harm by coercion, extortion, or duress"); (9) Exploitation ("the use of funds, property or other resources of an elder for personal gain without the informed or true consent of the elder" and "failure to use funds, property, or other resources of any elder for the elder's benefit or according to the elder's wish."); (10) Abandonment ("desertion of an elder by the elder's family or caregiver(s)" and "refusing or neglecting to provide for an elder"); and (11) Breach of fiduciary duty ("by a family member or caregiver"). An "elder" is defined as "a person subject to the jurisdiction of the Navajo Nation and who is at least 55 years of age or older."

This legislation also lists what are called "Elder Protection Services." These are described as: (A) The responsibility of the Navajo Area Agency on Aging, "to meet the needs of the elder, the elder's family and caregiver(s);" (B) "A petition seeking an Elder Protection Order" that can be filed by "the Navajo Division of Health or any other interested person or party;" (C) "The elder, the elder's family or caregiver(s), if financially able to do so, will pay for some or all of the cost of services;" and (D) "The Navajo Division of Health will inform the elder of the protection services which will be provided."

Also defined in the law is the "Duty to Report Abuse." This "duty" is placed on "any person who has good reason to suspect that an elder has been or is being abused or neglected," who is legally "immune from civil or criminal liability," unless they "knowingly make a false report," in which case they are "subject to a civil penalty of up to \$750." The Division of Health is responsible to receive all such reports, investigate them within 72 hours, inform the elder's family and caregiver(s), and

"may petition the Navajo Nation Family Court for an Elder Protection Investigation Warrant." The Navajo Nation Family Court may then "issue an Elder Protection Investigation Warrant upon a showing of probable cause," and refer the matter to appropriate law enforcement officers. When it has been determined that abuse has taken place, Elder Protective Services will: (1) remove the elder from the abusive or neglectful situation; (2) remove the abusing person from the situation; (3) restrain the abusing person from continuing to abuse; (4) require families with a fiduciary duty; (5) require the abuser to pay restitution to the elder for any damages; (6) appoint a guardian; (7) name a representative payee; and (8) have the Navajo Division of Health provide the elder with needed services and care.

Indicators of Elder Abuse

In general, studies across America have shown that most elder abuse is related to the many problems of elderly people being cared for on a daily basis at home by informal caregivers, with neglect being the most prevalent form and physical abuse being the least prevalent. The few studies that have been done on elder abuse among Native Americans indicate that same pattern. For example, in the study on two Plains Indian reservations it was found that the amount of abuse was related to the poverty levels of both the elders and their family caregivers (Maxwell & Maxwell, 1992).

In the survey on elder abuse among Navajo elders, three types of indicators of the four types of abuse that were identified were found: (1) those having to do with the problematic conditions of the elders themselves; (2) those having to do with the problematic conditions of their caregivers; and (3) those having to do with their family problems. Neglect was found to be by far the most prevalent form of abuse and it was especially associated (from most to least strongly) with: (1) the number of hours of care per day that families were providing their older members; (2) the mental conditions (confusion) of the elderly persons being cared for; (3) how suddenly the elderly persons became dependent and in need of care; (4) families trying to share the caregiver responsibilities; (5) the extent that having to provide care created a family crisis; and (6) the elder's level of income. Verbal Abuse was found to be especially associated with only three of the problematic variables (from most to least strongly): (1) extent of family crisis due to caregiver responsibilities; (2) the mental condition of the elders; and (3) the suddenness of the elders becoming dependent. Physical abuse was found to be associated with only two of the problematic variables: (1) most strongly to the mental condition of the elders; and (2) less strongly with families trying to share the caregiver responsibilities. Then finally, Exploitation was found to be associated (from most to least strongly) with: (1) families trying to share the caregiver responsibilities; (2) suddenness of elders becoming dependent; (3) the number of hours of care per day that the elders said they needed; and (4) the number of hours of care per day that families were providing (Brown, 1989).

Awareness of Elder Abuse and Resources for Reporting and/or Treating

Reporting and treating elder abuse is largely dependent on awareness of the problem, a mandate to take action, and the authority to do so. Evidence from studies on this issue conducted among the Navajos and on two Plains Indian reservations indicate that there is a keen awareness of the problem on the part of tribal officials and on-reservation service providers. The Plains Indian officials who were interviewed were sufficiently aware of the problem to allow them to offer a very practical definition of the problem. A very recent survey of the attitudes of Native American elders from 17 different tribes also revealed that elderly American Indians themselves are very much aware and knowledgeable about the problems related to elder abuse on reservations. Most of those who had directly observed actual abuse cases were especially sensitive to the problems that caregivers encountered in their duties (Brown, 1998).

Furthermore, the survey of Navajo elders on elder abuse came about because of an increased awareness of the problem among those planning and implementing services for elderly across the reservation. Insight was needed on what could be done to prevent and correct the problem among those elders with whom they worked. As the data from the survey revealed, those for whom they provided services were no more protected from abuse than those with whom they were not involved (Brown, 1989). They were keenly aware of the problem but seemed helpless to do anything about it, to a large extent because no mandated policies or authoritative intervention programs yet existed.

More recently a survey of 152 service providers on the Navajo Indian Reservation (including those in social services, health care, law enforcement, volunteer work, and tribal officials) was conducted on elder abuse (Brown, Fernandez, & Griffith, 1990). It was discovered that over 90% of those service providers were very aware of the seriousness of the problem because they had had encounters with a number of elderly clients. Furthermore, how seriously they judged each type of elder abuse on the reservation closely matched the findings from the survey of Navajo elders. They were keenly aware and knowledgeable about the problem, but they also seemed helpless to overcome the problem, even though they presented appropriate actions that would help. A sizable majority indicated: (1) that no laws existed to treat abuse cases; (2) that the agencies at which they worked had no established procedures to deal with the problem; (3) that they had had no elder abuse training; but (4) that they would very much like to have such training.

However, as noted above, the Navajo Tribal Council passed a comprehensive law on elder abuse in 1996. It clearly establishes a mandate policy, identifies who is expected and required to report cases of elder abuse, explains which agencies are responsible to investigate and

prosecute cases and provide the services that the elderly victims may have, and provides the authority for everyone involved to act. The extent that this law has been effective in overcoming elder abuse is not yet clear. In its favor is the emphasis it places on the problems related to caregiving, but it does not outline specific programs to deal with that important aspect of the problem, such as training that would help families in how to respond to that responsibility and provide them with the necessary caregiver skills which most informal caregivers seriously lack.

Typical Abusers

All the Native Americans who have participated in elder abuse-related surveys, have also been asked to identify whom they believe most often act abusively toward elders. In every case, the people blamed the most were members of the elder victims' immediate families (spouses or direct descendants). The elderly Navajos who were interviewed and admitted having been neglected or abused in any way almost universally identified family members as the ones who had treated them abusively (Brown, 1989). Over 80% of the Navajo service providers interviewed blamed immediate family members for all types of abuse, compared to less than 10% of them who cited extended family members, and even fewer who blamed others in the community. They also identified these family abusers as those who were unemployed, living in poverty, and feeling an overwhelming sense of burden from their caregiver duties (Brown, Fernandez, & Griffith, 1990). Likewise, nearly three quarters (73%) of the elders from the 17 different tribes who were recently interviewed said that most elder abuse is done by family members (Brown, 1998). A majority of them also blamed mentally ill people, most of whom they undoubtedly also assumed were family members. Clearly, the assumption was, that most of the abuse committed by family members was done in the context of trying to provide the care that their elderly family members needed.

Typical Victims

The best available evidence to characterize who of the American Indian elders are most apt to be abused comes from the two surveys done on elder abuse on the Navajo Reservation. The elderly Navajos who were interviewed and indicated that they had been abused tended to be those who had suddenly become dependent, and those who had become mentally confused (Brown, 1989). Similarly, the Navajo service providers who were interviewed about elder abuse identified those who were most vulnerable to abuse as: (1) women; (2) those who were the oldest; (3) those who were socially isolated; and (4) those living only with their primary caregivers (Brown, Fernandez, & Griffith, 1990).

Tribal Awareness and Handling of Elder Abuse

A conference on elder abuse among American Indians, entitled "American Indians and Elder Abuse: Exploring the Problem," was held in

Albuquerque, New Mexico in 1989. The report of that meeting does not indicate much in-depth understanding of the problem related to elder abuse beyond the fact that it exists on Indian reservations. Instead it simply explained what different units of government ought to do. Specifically explored were: (1) the tribal role; (2) the federal role; (3) the state and community role; and (4) the Native American elder role. As far as tribes were concerned, the conclusion was that "tribes and tribal governments have the prime responsibility for responding to the problem of elder abuse through the development of programs that suit the specific needs of elders in the context of their unique social and cultural circumstances." They were also called on to "arrange for or encourage the delivery of special training for service providers, law enforcement personnel, judges, council members and individual elders...to raise awareness of the problem of elder abuse." A substantive suggested federal role was that "demonstration and research funds from various federal agencies should be targeted to help tribes address elder abuse." (Report of Albuquerque Meeting, 1989). The proposal to survey Navajo elders had already been developed by tribal officials, the funding had already been provided by the federal Administration on Aging, and the research had already been completed before the Albuquerque meeting. The proposal to survey Navajo service providers was developed by a local Indian Health Service worker and was funded by the Indian Health Service about the time of that meeting.

The new law on elder abuse passed by the Navajo Tribal Council indicates a major awareness of the problem for at least that tribe. As described above, it demonstrates an awareness of how serious the problem is among Navajos and gives evidence of some insightful concepts of how it needs to be dealt with. Particularly important is the emphasis it places on the issue of caregiving and the fact that care must be provided for elders who may be left with no care when abusers are removed from the situation. However, it fails to address the vital issue of help that families who provide elder care need in their caregiver responsibilities, which would also help to prevent incidences of elder abuse. The need for prevention is largely ignored.

Perhaps the most systematic response to tribal abuse issues was undertaken by the University of New Mexico's American Indian Law Center, Inc., which in 1990 published the "*Model Tribal Elder Protection Code*." Authored by Senior Staff Attorney Toby S. Grossman, the document was funded by the Federal Administration on Aging. Designed to provide technical assistance to tribes, the document contains a number of modular, locally- adaptable provisions which tribes can use to compare or create their own elder protection codes.

NICOA is aware of at least one other tribe--the Blackfeet Tribe (Montana), which has developed its own elder abuse code, and it is likely that other tribes have implemented such codes as well. As the Navajo experience indicates, however, the lack of tribal resources and trained personnel continue to present enormous barriers to the effective

implementation of tribal codes. Many tribes continue to rely on state adult protective services programs, even though the available assistance they offer is probably minimal.

Role of the National Indian Council on Aging

As the foremost national advocate for American Indian and Alaska Native elders, NICOA was successful, in 1992, in securing a key provision in the Older Americans Act (OAA). That year, a newly-created Title VII (Vulnerable Elder Rights Protection Activities), included a Subtitle B--"Native American Organization Provisions"--which authorized \$5 million annually for tribes to carry out vulnerable elder rights protection activities.

Unfortunately, the authorization has never received any appropriation, although NICOA continues to advocate for Subtitle B funding. Because Congress has not reauthorized the OAA since 1993, some advocates feel that Title VII provisions may not be funded in the foreseeable future.

NICOA also cooperates closely with the Indian Health Service *Elder Health Care Initiative*. This national program, operating with only nominal funding, offers no specific elder abuse initiatives. Nevertheless, the program has potential as a vehicle for elder abuse education initiatives targeted to Indian health care providers.

Every two years, NICOA produces a national conference on Indian aging, which has grown to become the second-largest Indian conference in the nation. The NICOA events are structured to attract both elders and the providers who serve them. In 1996, the conference drew 1,850 registrants to Albuquerque, N.M., including more the 1,000 elders from 130 tribes. In August 1998, the conference is scheduled for Bismark, North Dakota. The Attorney General has been invited to participate, and NICOA intends to include both elder focus groups on abuse as well as a presentation by TRIAD program representatives from the Department of Justice.

NICOA also participates in National Congress of American Indians (NCAI) field hearings regarding welfare reform and its potential impacts on Indian Country. Many advocates believe that the prevalence of financial and physical elder abuse will increase as welfare benefits are reduced or eliminated on reservations throughout the nation.

NICOA has created a questionnaire about elders' perceptions and concerns regarding abuse, and will continue to disseminate the questionnaire throughout the summer. An analysis is expected to be finalized by October, 1998.

Another very substantial role that the Council has recently played has been to co-sponsor (along with the National Center on Elder Abuse)

a nationwide "Multicultural Study of Attitudes Toward Elder Mistreatment and Reporting." Among other things, the Council provided the Native American sample of elderly people from 17 different tribes who were interviewed in that study. The purpose of the study was to gain a clearer understanding of how elderly people from very different cultural groups define elder abuse and how it ought to be dealt with in each of those groups. The analysis of the data from the Native American sample has been analyzed and reported. A copy of that report is available at the Council office in Albuquerque.

Available Conferences and Workshops on Elder Abuse

As described above, the National Association of State Units on Aging conducted an exploratory conference on Native American elder abuse. The meeting was called "American Indians and Elder Abuse: Exploring the Problem" and was held in Albuquerque in December of 1989.

After the survey of the Navajo elders was completed and the data had been analyzed, two workshops were conducted at different locations on the reservation. Invited to that workshop were elders, family members, service providers for the elderly, and health care personnel from across the reservation. The purposes of those workshops were to: (1) report what had been learned about elder abuse among Navajos; and (2) make and discuss recommendations of what could be done to prevent and treat elder abuse across the reservation.

In 1995 the National Center on Elder Abuse sponsored a meeting on Native American elder abuse in Albuquerque, to which tribal officials from many Indian reservations and those working at other agencies such as the National Indian Council on Aging and the Indian Health Service were invited. Those who had data of elder abuse on specific reservations were also invited to share that data. Particularly discussed was the feasibility of conducting a nationwide study on American Indian elder abuse.

All these workshops had good agendas and included many representatives from individual tribes and others with national orientations and connections. Unfortunately, there is little evidence that any constructive change has resulted from them. Much has indeed occurred among Navajos; however, none of the recommendations that emerged from the workshops calling for specific preventive efforts to educate the public and provide training for families and service providers have been neither planned nor implemented.

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Suggested Readings

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RESOURCES

Office for Victims of Crime

810 Seventh Street, NW
Washington, DC 20531
(202) 307-5983
<http://www.ojp.usdoj.gov/ovc>

Office for Victims of Crime Resource Center

Box 6000
Rockville, MD 20849-6000
800-627-6872
<http://www.ncjrs.org>

Center on Child Abuse and Neglect

CHO 3B-3406
940 NE 13th Street
P.O. Box 26901
Oklahoma City, OK 73109
<http://pediatrics.ouhsc.edu/ccan>

Bureau of Indian Affairs

Office of Tribal Services
1849 C Street, NW, MS 4603
Washington, DC 20240
(202) 208-2721
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Office of Justice Programs

American Indian and Alaska Native Desk
810 Seventh Street, NW
Washington, DC 20531
(202) 616-3205

Tribal Law and Policy Institute

P.O. Box 460370
San Francisco, CA 94146
(415) 647-1755
<http://www.tribal-institute.org>

U.S. Department of Justice

Office of Tribal Justice
10th and Constitution Ave., NW, Room 1509
Washington, DC 20530
(202) 514-8812

American Indian Development Associates

Ms. Ada Pecos Melton
7301 Rosewood Court, NW
Albuquerque, NM 87120
(505) 842-1122

National Congress of American Indians

1301 Connecticut Avenue NW, Suite 200
Washington, DC 20036
(202) 466-7767
<http://www.ncai.org>

National American Indian Court Judges Association

1301 Connecticut Avenue, NW
Washington, D.C. 20036
(509) 422-6267
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<http://www.nncac.org>

Colorado State University

Tri-Ethnic Center
C138 Andrews G. Clark
Ft. Collins, CO 80523
(970) 491-0251

Northern Plains Tribal Judicial Institute

University of North Dakota Law School
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