

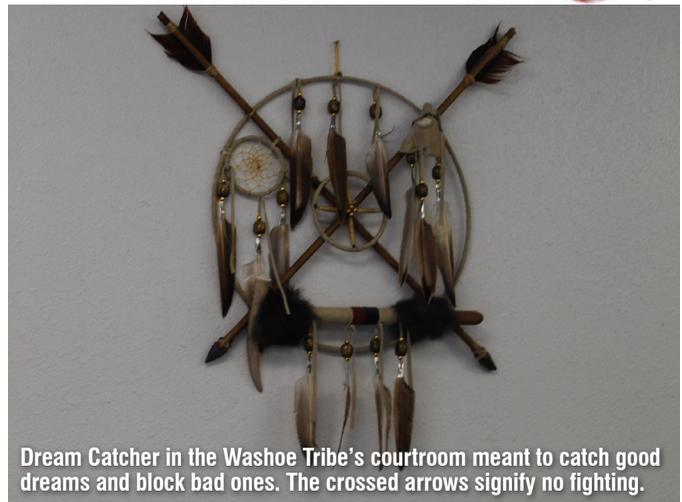
NEVADA LEGAL SERVICES TRIBAL COURT ADVOCATE TRAINING PROJECT

BY ANNAMARIE JOHNSON,
EXECUTIVE DIRECTOR, NEVADA LEGAL SERVICES

When President Lyndon Johnson included the idea of free civil legal assistance for the poor as part of his war on poverty during the 1960s, Native Americans were probably the segment of the population with the greatest poverty and the greatest lack of access to justice. Under President Johnson's old Office of Equal Opportunity Legal Aid Project, some of the first legal services offices opened were on reservations in western states. When President Nixon created the Federal Legal Services Corporation and made funding for free legal services to the poor a regular part of the federal budget, the continuation of legal services to Native Americans was ensured by creating a separate funding stream for Indian Legal Services within the Legal Services Corporation.

Nevada received its first grant for Indian Legal Services in 1974 when the Legal Services Corporation was created. The Indian Legal Services grant for the entire state went to the Nevada Indian-Rural Legal Services program in Carson City. The office served all reservations in Nevada and provided legal assistance for all low-income residents of the northern Nevada rural counties. In 1982, all of the programs receiving funding from the federal Legal Services Corporation merged to become Nevada Legal Services. The Indian Law Project continued to serve all the reservations from the Carson City office of Nevada Legal Services.

Funding for the Indian Law Project has waxed and waned over the years due to the vagaries of federal funding and the project has employed as many as five full-time staffers and as few as one full-time staff member. Even at



Dream Catcher in the Washoe Tribe's courtroom meant to catch good dreams and block bad ones. The crossed arrows signify no fighting.

the height of funding for the Indian Law Project, Nevada Legal Services has not had the resources to adequately serve the needs of all reservations. There are very few private attorneys in Nevada who are knowledgeable about federal Indian law or the separate law and order codes of Nevada's Tribes or who practice in tribal courts. Very few tribal members can afford to pay a private attorney to represent them. Therefore, if Nevada Legal Services cannot represent them — either directly or through one of the handful of pro bono attorneys working in the tribal courts — tribal members must represent themselves.

Nevada Legal Services has sought ways to close the access to justice gap on Nevada's reservations. Most tribal courts license tribal members to serve as lay advocates for other tribal members as a means to providing them with access to justice. One way Nevada Legal Services can help is by training the lay tribal court advocates, almost all of whom have no legal training or background. Nevada Legal Services received a grant from the Department of Justice's Bureau of Judicial Administration in 2005 – 2006, to develop our first Tribal Court Advocate



training program and the program was very successful. Many graduates of the program were tapped to serve as judges, prosecutors and other tribal court personnel. This helped strengthen the tribal courts; but it did not help increase the assistance available for tribal members with cases in tribal courts.

Unfortunately, the funding for our training programs was cut and Nevada Legal Services could not continue to provide the training.

With the Tribal Law and Order Act of 2010 signed into law last summer, the need for representation in tribal court only increased. The act allows tribes to opt into an increase in their courts' jurisdiction. Tribal courts would no longer be limited to imposing sentences in criminal cases to just one year in jail. Tribal courts can now impose sentences of up to three years in jail if the tribe decides to opt in. When a tribe opts in they are required to ensure that tribal members have access to representation in all criminal matters. While Nevada Legal Services (NLS) has received new funding this year to provide direct representation of individuals in tribal courts, it is not enough to cover the cost of hiring new staff to represent all of those who will need legal representation. NLS applied to the State Bar of Nevada's LRIS program for a grant to revive the Tribal Court Advocate Training program. NLS was awarded a grant of \$20,000 and the new program will begin this summer.

The Tribal Court Advocate Training program is an intense multi-day National Institute of Trial Advocates (NITA)-style training for advocates. The first day of the training is dedicated to instruction on federal Indian law and tribal law and order codes. During the remaining days of the training, advocates are taught the rules of evidence, the rules of criminal procedure and the methods of preparing a case for trial through a system of lectures and skills exercises. On the first day, the advocates are assigned to teams for the prosecution and defense and throughout the skills training exercises, the advocates use their case materials to learn direct and

cross-examination, opening and closing arguments, motion practice and witness preparation. On the final day, the criminal case is presented to the judge and goes to jury for a verdict. The advocates receive a certificate of completion upon graduating from the class. The certificate allows the advocate to call upon the training staff during the next 12 months for assistance in cases the advocate has in tribal court. The training staff is available to answer questions, edit and review pleadings, give advice on trial strategy or preparation and even to sit as second chair in a trial. At the end of the year, NLS will survey our graduates and ask what they would like to see in a follow-up training and will then conduct training on the most requested topics.

The Tribal Court Advocate Training project will conduct two multi-day NITA-style training sessions: one in the Elko area and one in the Carson City area. A year later, there will be two follow-up training sessions, again in the Elko area and the Carson City area. ■

ANNAMARIE JOHNSON is the executive director of Nevada Legal Services. She has been an attorney for 26 years and has spent her career in Indian Legal Services. Before moving to Nevada, she was the director of the largest Indian legal services program in the United States.

