

**ALASKA STATE LEGISLATURE**  
**HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE**

April 8, 2014  
8:09 a.m.

**MEMBERS PRESENT**

Representative Gabrielle LeDoux, Co-Chair  
Representative Benjamin Nageak, Co-Chair  
Representative Bob Herron  
Representative Sam Kito III

**MEMBERS ABSENT**

Representative Neal Foster  
Representative Kurt Olson  
Representative Lora Reinbold

**COMMITTEE CALENDAR**

PRESENTATION: "REFORMING JUSTICE FOR ALASKA NATIVES: THE TIME IS NOW"~ INDIAN LAW & ORDER COMMISSION REPORT~ "A ROADMAP FOR MAKING NATIVE AMERICA SAFER"

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

MICHAEL GERAGHTY, Attorney General  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Provided testimony related to the Indian Law and Order Commission Report entitled, "Chapter Two - Reforming Justice for Alaska Natives: The Time is Now".

TROY EID, Chairman  
National Indian Law and Order Commission  
Denver, Colorado

**POSITION STATEMENT:** Provided testimony related to the Indian Law and Order Commission Report entitled, "Chapter Two - Reforming Justice for Alaska Natives: The Time is Now".

DAVID AVRAHAM VOLUCK, Judge  
Tribal Court  
Central Council Tlingit & Haida Indian Tribes of Alaska;  
Sitka Tribes of Alaska  
Juneau, Alaska

**POSITION STATEMENT:** Provided testimony related to the Indian Law and Order Commission Report entitled, "Chapter Two - Reforming Justice for Alaska Natives: The Time is Now".

AURORA LEHR, Vice President  
Alaska Federation of Natives (AFN)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided testimony related to a summary of the report entitled, "A Roadmap for Making Native America Safer - Public Safety in Alaska As Seen Through an Independent Lens."

#### **ACTION NARRATIVE**

[8:09:45 AM](#)

**CO-CHAIR BENJAMIN NAGEAK** called the House Community and Regional Affairs Standing Committee meeting to order at 8:09 a.m. Representatives Kito III, Herron, LeDoux, and Nageak were present at the call to order.

**Presentation: "Reforming Justice for Alaska Natives: The Time is Now", Indian Law & Order Commission Report, "A Roadmap for Making Native America Safer"**

[8:10:50 AM](#)

CO-CHAIR NAGEAK announced that the only order of business would be a presentation entitled, "Reforming Justice for Alaska Natives: The Time is Now," Indian Law and Order Commission Report, and "A Roadmap for Making Native America Safer." Today's presentation is a continuation of a discussion on the Indian Law and Order Commission report published November 2013, and first heard by the committee on March 11, 2014.

[8:11:21 AM](#)

MICHAEL GERAGHTY, Attorney General, Department of Law, paraphrased from the following written remarks [original punctuation provided]:

Thank you for inviting me to today's hearing to continue discussion of the Indian Law and Order

Commission Report. I apologize again for my inability to attend the previous hearing on March 11 due to a long-standing scheduling conflict.

At the outset, I want to emphasize that I have been on record since day one acknowledging the importance of this report, and I have never shirked from the challenge expressed in the report that the state can and should be doing more to improve public safety for Alaska's Native people. In a moment I want to talk about some of the initiatives the state is pursuing, but first I would like to also respectfully express my areas of disagreement with the report.

First, I believe the report gave no credit for the notable progress that the state has made in improving public safety in rural Alaska, and I will discuss that in more detail. I also fundamentally disagree with the conclusion that ANCSA - the Alaska Native Claims Settlement Act - is a failed model. In fact, the only place I have ever read that assertion is in the ILOC report. Alaska Natives were deeply involved in the negotiation and settlement set forth in ANCSA. It was not imposed on anyone. Today, the regional corporations and village corporations created by ANCSA are among the state's most successful businesses, employing many thousands of Alaskans, including a substantial number of shareholders, both in the villages and in our urban areas. A steady job is important to the vitality and safety of any family. Granted, it may not be directly tied to safety in the villages, but it is hard to overstate the contribution of the regional corporations to the advancement of their rural and urban shareholders, not to mention the State of Alaska as a whole. So I do not accept that ANCSA is a failed model or that we should turn back the clock. Nor do I think Indian Country is the answer to Alaska's problems. In my opinion, the commission views Alaska's villages through the lens of the Lower 48 reservation system, where people understand that entering a reservation will subject them to tribal law, and non-tribal member residency on the reservation is often controlled

by the tribe. In contrast, since ANCSA's passage, Alaskans have been free to reside in any Alaska community and they expect to be governed by a uniform system of criminal laws. Non-tribal members have bought land and built lives in these communities. The commission's report does not address the difficulties for non-tribal members living in communities that will either be split between Indian Country and non-Indian lands, or enveloped into Indian Country.

It's a fact that most of Alaska's Natives do not live in rural villages. About 60% live in urban areas or hub communities and have access to all the criminal justice services that the commission found lacking in our rural communities: law enforcement, shelters, court facilities, treatment facilities and protective orders. How would creating more Indian Country in remote Alaska villages assist them? This is not to suggest that there are not serious issues facing Natives in these urban and hub communities, such as domestic violence and sexual assault. But I am suggesting that the problem in my opinion is much more nuanced and it is an over-simplification to suggest that forming reservations where tribes can exert exclusive jurisdiction is the solution to the public safety problems that afflict Alaska's Native peoples.

But these criticisms aside, I want to return to the theme I mentioned at the outset. My differences with the report should not obscure the fundamental point that there is more we can and should be doing with tribes, and tribal courts in particular, to make these communities safer.

In point of fact, before the report was issued, the Governor asked the Department of Law to draft an agreement whereby the state could delegate authority to tribal courts to deal with certain misdemeanor offenses that may occur in their communities. Under the proposed agreement, the tribal court will provide civil-based remedies for state law criminal offenses, including domestic violence and alcohol offenses. Members or non-members would be subject to these remedies,

provided that they have agreed to be diverted to this tribal remedy in lieu of state criminal prosecution. It is important to keep in mind that everyone is a citizen of the State of Alaska, tribal member or not, and regardless of where they live. They are guaranteed rights under our state constitution. However, if a person commits a covered offense in these communities, I hope they will conclude that facing a civil tribal court remedy would be far preferable to prosecution in state court, and a possible conviction on their record. The hope is that a culturally relevant remedy will be more effective for a first time domestic violence offender, for example, to help them get back on track by seeing the impact their actions have had on their family and within the local community.

The state is now in active negotiations with several tribes and hope to finalize the agreements shortly. We reached out to the Tanana Chiefs Conference in December with a draft, and we have had several meetings, discussed changes back and forth, and I believe we are prepared to now reach out to tribes within TCC to finalize and sign agreements. We have also reached out to Kake and Sitka and I hope to make progress with their representatives as well. This Limited Delegation Agreement, or LDA as we refer to it, I hope sends a strong signal to tribes that the state views collaboration with tribal courts as an important resource in the fight to improve public safety.

The ILOC report specifically encourages inter-governmental public safety agreements such as these. One obstacle to more tribes entering into these types of agreements is the lack of federal funding for tribes to operate.

In December of last year, the commission's chairman, Troy Eid, sent me a courtesy copy of a review he had written about a book dealing with Alaska Natives and American laws. I responded on the 16<sup>th</sup> of December as follows, and I quote:

*"Thanks, Troy. I will read this with interest.*

*I also want to follow-up on our meeting and your*

*gracious offer of help to assist the state in achieving the goals outlined in the commission's report.*

*Alaska's tribes desperately need funding for their tribal courts. In the course of the Department of Law's discussions with Tanana Chiefs Conference about the delegation agreement, TCC raised the issue that the BIA does not currently give grants for the region's tribes to operate the tribal courts or tribal police force. That funding is essential for tribes to expand successfully their public safety function in Alaska. It would be incredibly helpful to the state and to Alaska's tribes if you and/or the commission could become an advocate for Congress to provide that funding. Your advocacy on that issue would be in line with the report's recommendations for increased funding for tribal justice systems."*

In February I was in Washington for the annual meeting of the National Association of Attorneys General, and I met with the members of our delegation to advocate, among other things, increased funding for our tribal courts. This was a problem commented on several times in the ILOC report, namely the lack of federal support for tribal justice programs.

The Department of Law has also reached out to tribes interested in the LDA and offered assistance in completing the complicated federal Consolidated Tribal Assistance Program grant process, which is a possible source of funding for tribal courts.

The state is also pursuing agreements with second-class cities in Alaska, particularly villages, to encourage them to prosecute alcohol possession offenses under municipal law because current state law provides these villages the opportunity to create a panel comprised of local citizens, elders for instance, who can impose culturally relevant remedies in lieu of typical alcohol possession fines.

In November 2013, the DPS released proposed regulations that would allow VPSOs to carry firearms. These regulations include training and oversight requirements, and there are currently two bills before the legislature that would allow VPSOs to carry firearms. This was one of the specific recommendations coming out of the ILOC report.

As this body is aware, VPSO funding has been significantly increased under this administration. VPSOs currently serve many rural communities where tribes are located. They are hired by regional corporations but paid for by the state. They also attend the Police Academy in Sitka and they are supervised by AST. There are currently 121 funded positions and, while not all those positions may be filled, there has been a significant increase in the numbers during the last few years.

The state has also created new trooper posts in Emmonak, Selawik, and Hooper Bay. We have also increased VPSO oversight by adding three support troopers for Bethel, Fairbanks, and Kotzebue.

The state's Drug Abuse Resistance Education (DARE) program trains, at state cost, police officers and VPSOs across Alaska to teach a ten-week drug abuse resistance program to elementary, middle and high school students in their communities. DARE officers (who are often VPSOs) teach children critical decision making skills to help them make healthy decisions. Sixteen of the 38 communities receiving DARE during the 2012-2013 school year were VPSO communities. As part of the DARE program, DPS and the Northwest Arctic Borough School District teamed up to provide safety and security assessments to all ten village schools surrounding Kotzebue.

In 2010, the Ilisaqvik Tribal College in Barrow contacted the AST about the possible establishment of a public safety summer camp for their regional youth. In 2007, the AST, U.S. Marshal's Service, State Crime Lab, State Fire Service, and VPSOs developed the first Alaska Youth Academy. It was a trial program focusing on at-risk Native Alaskan young adults (age 15-18) in

an effort to steer them away from alcohol, drug abuse and the DV which plagues their communities. The Barrow camp was successful and the college invited the group of instructors back the following year. To date, the camps have grown to five statewide: Bethel, Barrow, Hooper Bay, Mountain Village, and Fairbanks. This year they will enter their fourth year of camps and they have reached out to hundreds of young adults. A new camp in Sitka will be established in June of this year.

In December of last year, the Department of Health & Social Services and Tanana Chiefs Conference signed Alaska's first foster care maintenance pass-through agreement. This agreement will allow the state to pass-through funds from the federal government directly to TCC to provide maintenance funds for foster care in tribally licensed foster homes. Signing of this agreement was the culmination of a long approval and negotiation process. In conjunction with this agreement, the department adopted a regulatory exemption from state licensure requirements for tribally licensed foster homes.

As you might imagine, through the Office of Children's Services, the state also interacts a great deal with tribal organizations throughout the state. For example, the tribal-state Collaboration Group meets three times each year and has done so for the past 20 years. It is a gathering of state and tribal leaders for collaboration on systems improvement, with particular focus on efforts to improve the disparity rates seen with Alaska Native children in the child welfare system.

The state also provides Rural Child Welfare Services grants to tribal grantees around the state. These grants provide funding for tribes to work in close proximity with the OCS case worker to support case management activities such as home visits, parental support and coaching to aid in the reunification or safety of children in placement, both Native and non-Native.

The Indian Child Welfare Act liaison helpdesk at OCS is staffed with employees of tribes or Native organizations who serve as invaluable resources for state social workers conducting relative searches in state child protection cases. OCS has in fact been recognized for its innovative approach to improving the search for ICWA-preferred placements.

OCS also participates in joint state/tribal training to educate staff on the history of Alaska Natives and tribal cultural practices. Tribes and OCS staff co-train a curriculum called Knowing Who You Are (KWYA), training that is mandatory for OCS staff and is provided by certified trainers from both tribes and OCS.

In conclusion, I have culled through a long list of projects in areas where the state actively collaborates with tribes on a number of different fronts. But I will return to what I said at the outset - we have a long way to go. I am not here to pat myself on the back, or to receive appreciation. There are serious challenges facing our Native peoples. There are no grounds for complacency. However, I believe with the leadership of the Governor, and the support of this body, we can find effective ways to make life better in these small communities. Returning to a reservation system is a step back to the past. Notwithstanding, the Indian Law and Order Commission is to be commended for focusing attention on this topic. I disagree with their recommendations, but not with the problem they have identified. As the commission stated in its report: "What policy adjustments the State of Alaska should make in support of greater tribal authority over criminal justice is something the state and its citizens should decide, not the Indian Law and Order Commission." I agree with that, and I pledge my commitment in trying to find ways to effectively solve this problem.

[8:28:32 AM](#)

CO-CHAIR LEDOUX inquired as to how much money the state would save if issues were diverted to tribal courts, assuming tribal courts have the funding and the ability to address issues such as domestic violence (DV) and driving under the influence (DUI). She suggested that the potential savings could be used to support the operations of tribal courts, instead of waiting for federal funds.

MR. GERAGHTY said he didn't know but the pilot project, through agreements with the Tanana Chiefs Conference (TCC) and other organizations, may provide the information needed to further study this point. The number of cases diverted from the system will determine how many fewer resources would be demanded from the state.

REPRESENTATIVE HERRON referred to a letter written February 1, 2013, by Mr. Geraghty [document not provided]. He asked whether Mr. Geraghty, after a year's reflection, would make any changes to that letter.

MR. GERAGHTY said all attempts were made to be factual in terms of the analysis of the law; at no time has his department tried to minimize the issues facing smaller communities. He opined the big issue has been with the means recommended by the Indian Law and Order Commission (ILOC) to deal with issues. He acknowledged he had not reread the letter recently.

[8:31:43 AM](#)

REPRESENTATIVE HERRON observed that the commission's recommendation was for the state to support local tribal authority over public safety and justice in rural communities. Furthermore, although the Department of Law (DOL) disagrees, the commission report indicates that DOL is actively resisting such efforts.

MR. GERAGHTY said he did not believe there has been active resistance to tribal authority since he has been attorney general. The Venetie case established that there is no Indian country in Alaska, with the exception of Metlakatla, but the commission argues there is an archipelago of Native allotments scattered throughout the state. He opined that defending the law as it stands is not equal to actively resisting tribal justice, and he restated his agreement with the commission that the state can and should do more, such as undertaking the major initiative working with tribal courts to seek diversion remedies. Part of the problem is that all citizens of the state

have constitutional rights, which are not to be forfeited or subjugated, and there are "very thorny legal issues here involved, and constitutional issues."

[8:33:42 AM](#)

REPRESENTATIVE HERRON remarked:

Mr. Attorney General, in your letter though, you say, it's on page 8, that there is no double jeopardy prohibition in Alaska. And so, if there is a local tribal court that takes an action against a non-member, nothing prevents you from you doing [that] as well. ... You talk about the Venetie case, and a lot of people talk about, 'it has to be based on land.' Shouldn't there be a consideration ... can't we have tribal law concurrent with the State of Alaska, and literally have a virtual land situation? It seems that we're way in the past [if] you have to have a piece of property to have effective tribal court proceedings.

MR. GERAGHTY expressed his interest in exploring the boundaries of that concept; in fact, the abovementioned agreement recognizes a virtual area without a fixed land base. The pilot project has his firm support, and he also fully supports having local communities engaged. He suggested that the federal government should provide resources so that tribal courts can successfully deal with public safety issues in their communities. However, at some point, "the extent of that virtual" will have to be determined, and there is something to be said for using the boundaries of a land base for clarity. He restated his disagreement with the conclusion to return to Indian country.

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REPRESENTATIVE HERRON recalled the Knowles Administration entered into the [2001] Commemorative Millennium Agreement which was followed by an opinion from DOL that recognized concurrent jurisdiction between the state and tribes on child protection proceedings. Two years later, [Murkowski Administration Attorney General Gregg] Renkes reversed that decision. For a clear understanding of the present situation - and to clarify the status with DOL - he asked whether the Renkes decision should be revoked and a current opinion issued by the attorney general that recognizes tribal jurisdiction.

MR. GERAGHTY responded:

As far as I know we have been working with the tribes on child protection related matters and so on for a number of years, now whether that was done pursuant to an informal revocation of the previous Renkes, which was really a policy decision, not a legal opinion, I don't know whether it's been formally revoked or not. In my book, everything I've learned, is that that is jurisdiction that our state supreme court has said that they enjoy, that they have, and we've not been fighting that.

MR. GERAGHTY said he could not speak to the formal status of the previous decision; in fact, DOL is working through the expansion of the [federal Title IV-E] program to allow tribally licensed foster homes. He assured the committee that child protection orders are processed every day by the court system and DOL.

REPRESENTATIVE HERRON asked whether DOL would consider an agreement allowing Village Public Safety Officers (VPSOs) to enforce tribal laws - as well as state laws - to address local justice issues.

MR. GERAGHTY stated that he would consider it, but brought up the question of which tribes have written codes. There are 78 tribal courts that have been formed, thus an agreement with the state would begin with delegating authority to enforce state criminal laws dealing with alcohol, domestic violence, and public safety issues in small communities. He said, "I'm just not conversant with the tribal laws as they exist and what they deal with, they may overlap with state laws in many instances, I just don't know. But I think that is an area to be considered."

[8:39:34 AM](#)

REPRESENTATIVE HERRON surmised from Mr. Geraghty's testimony that DOL is working toward a policy of state deference to tribal authority in tribal communities.

MR. GERAGHTY said DOL is trying to empower tribes to deal with public safety issues in their communities and, if an offender agrees to be diverted to the civil tribal court remedy, the state would defer to the remedy imposed by the tribal court. The point is to divert crimes covered by the Limited Delegation Agreement (LDA) if the offender agrees, and the agreement spells

out that the state is not responsible for the remedy imposed by the tribal court.

REPRESENTATIVE HERRON said the tribes and the state hope to craft a relationship so that tribal authorities - when appropriate with state law - can make for safer communities. He then turned attention to the Violence Against Women Reauthorization Act of 2013 (VAWA), Section [910], asked for the basis of the state's exemption from federal law.

MR. GERAGHTY explained that Alaska tribes are different than Lower 48 tribes. Lower 48 tribes are established in a reservation system based on land; for many years the state has tried to avoid any ambiguity or uncertainty in the law which would lead to litigation. Much of VAWA is limited in many respects to Indian country, which in Alaska only exists in Metlakatla; and he read [in part] from Section 905, as follows [original punctuation provided]:

**SEC. 905. TRIBAL PROTECTION ORDERS.**

Section 2265 of title 18, United States Code, is amended by striking subsection (e) and inserting the following:

“(e) TRIBAL COURT JURISDICTION.—For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.”.

MR. GERAGHTY said "that's to me, a very ambiguous and perhaps even loaded term." Part of his job is to avoid ambiguities in law that could lead to litigation and uncertainty. The state's view is that the exemption did not expand or retract any existing tribal court jurisdiction in Alaska, and tribal courts do have the authority to issue protective orders, which are subsequently enforced by the Department of Public Safety (DPS). He acknowledged that in order to shape the contours of jurisdictional boundaries for the state and tribal courts, there will be litigation for the courts to resolve, and the exemption was sought for clarification.

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REPRESENTATIVE HERRON pointed out that others hold the opposite view that Section 910 does cloud the issue and is likely to result in attempts by perpetrators to fight violations on jurisdictional grounds. Representative Herron questioned why it is not better to repeal Section 910 because it sends a message that Alaska women, Alaska Native women in particular, don't have the same rights [as other women in the U.S.] and it is an extremely sensitive issue.

MR. GERAGHTY acknowledged that the rate of victimization amongst Alaska Native women is "shameful" for the state and DOL. He restated his belief that tribal courts can issue protective orders in their communities, and DPS will enforce the orders without debate. He cautioned that some communities may not have the resources and staff to function as desired; in fact, he has advocated for funding along with the chairman of ILOC. The state continues its effort to clarify because it believes the Alaska Native Claims Settlement Act (ANCSA) was a "different model." The commission believes ANCSA is a failed model, but he said he disagrees with that conclusion.

REPRESENTATIVE HERRON stated that ANCSA has been modified 35 times, and another change may be possible to "make this work."

MR. GERAGHTY advised that many of the previous modifications and amendments to ANCSA have been to protect landholdings, shareholders' rights, and to prohibit the sale of stock to certain buyers. Although ANCSA is not sacrosanct, the proposed amendments to ANCSA would allow for a return to Indian country and he said he fundamentally disagreed with that recommendation.

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REPRESENTATIVE HERRON informed the committee he will provide additional questions in writing to the attorney general with a request for a written response.

[8:49:07 AM](#)

REPRESENTATIVE KITO III observed that at this point the discussion has focused on courts, and further observed that the state has agreements and works with tribal courts. He asked Mr. Geraghty to explain how the tribal courts deal with cases that involve members and nonmembers of a tribe.

MR. GERAGHTY said he was unsure as to whether tribal courts distinguish between members and nonmembers when the individual lives in their community. In child protection matters, for example, jurisdiction rests with the status of the child and thus if the child is a member of a tribe, tribal courts believe they have jurisdiction. He was also unsure if this is a uniform view. Currently there is a case pending before the Alaska Supreme Court involving the ability of a tribal court to exert jurisdiction over a person who has never lived in its community and is not a member of the community's tribe. The ruling on the Simmonds v. Parks case, and other pending cases, will define the parameters of jurisdiction. He restated that in child protection matters, membership of the child controls the question of jurisdiction.

REPRESENTATIVE KITO III agreed that further discussion and court cases will help provide "sideboards" to the questions of jurisdiction. He asked whether the agreements that the state has with tribal organizations - to empower them in matters of tribal law - are supportive of state law, so that the tribal governments would be acting as an arm of state law, or if tribal courts have their own laws and ordinances to enforce.

MR. GERAGHTY advised that LDA deals with state laws such as alcohol possession, DV, and minor theft offenses. If the offender agrees, his/her case would be diverted to tribal court for a civil-based remedy. In terms of tribal laws - he said he was not familiar enough to give a categorical answer - but presumed there may be an added step in the process; however, there are issues regarding state officers enforcing tribal laws, as many villages don't have tribal police officers or tribal law enforcement and thus rely on VPSOs, who are state officers. At this time, the focus is on state laws that affect public safety, and allowing tribes to take control of certain offenses for an appropriate civil-based remedy.

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REPRESENTATIVE KITO III, speaking to the enforcement of local jurisdiction, asked whether Alaska State Troopers (troopers) in Anchorage, for instance, enforce only state law or also enforce local ordinances.

MR. GERAGHTY explained that troopers enforce state laws and many municipalities have their own police force to enforce municipal laws. He acknowledged "there is some overlap," and deferred to DPS for further explanation.

CO-CHAIR LEDOUX questioned whether the rights of an individual, who may not be a member of the tribe and who is living in the community, could be taken away. She pointed out that there are covenants that run with the land such as homeowners' associations and property owners' associations. Co-Chair LeDoux posed a scenario in which a village decides to administrate according to tribal law, and the residents in the village agree to live and conduct business under the jurisdiction of a tribal court. She suggested this situation would be similar to certain conditions of property law as are, for instance, condominium associations.

MR. GERAGHTY pointed out that constitutional rights such as the right to a jury trial or to counsel, cannot be taken away in a land covenant.

CO-CHAIR LEDOUX noted that currently, the choice of jurisdiction by state or tribal court is given an offender after a crime is committed. However, in her scenario, an individual who purchases land in a village agrees to abide by the rules of the community and, if charged with a crime, agrees not to be tried by state court, but by a tribal court.

MR. GERAGHTY opined a prospective waiver of rights would require a written code of laws and would be affected by the nature of the crime; furthermore, tribal courts do not afford a right to counsel or to a jury trial, which are Western traditions. He cautioned that the aforementioned scenario would hold potential serious issues. He stressed that tribal courts are not necessary draconian and many of those presently living in communities would be content if diverted to tribal court.

CO-CHAIR LEDOUX further posited that those living in a gated community lose their right to free association, but have previously agreed to the restrictions thereof.

MR. GERAGHTY restated his caution about constitutional rights and creating land covenants. In further response to Co-Chair LeDoux, he acknowledged that there have been incidents in the past regarding public access to Tyonek, but he is not aware of continuing restrictive practices.

[9:02:02 AM](#)

TROY EID, Chairman, National Indian Law and Order Commission, referring to Mr. Geraghty's testimony, explained that since the

Indian Law and Order Commission report was released, he and the commission have said to TCC and other organizations in Alaska that the administration ought to clarify matters by recognizing the government-to-government relationship between the state and "Alaska Native nations." That relationship is part of federal law and does not "turn on" land status and the definition of Indian country or Indian reservations. He said every other state has clarified this relationship, as have governors of other states with Indian nations' boundaries within. Establishing a government-to-government relationship between Alaska Native nations and the state would lead to productive dialogue for all concerned. Furthermore, he took exception to the mischaracterization of the report on creating Indian country, or a reservation system, in Alaska. The commission believes strongly that there should be local control and accountability for tribal nations in Alaska so that tribal nations can make laws and be governed by them, as is required by federal law. This is not determined by whether nations have a certain amount of land or not, and he added, "It's not true legally and it's not true within the framework of either Public Law 280 or ANCSA." The commission has said that the state can accomplish this in a variety of ways; for example, the state can draw boundary lines for boroughs and municipalities and make political lines for self-government, therefore, lines can be drawn for Alaska Native nations. A government-to-government dialogue will make it possible to determine appropriate boundaries and ensure self-government at a local level, which will save the state money and will be more responsive to all; however, Mr. Eid stressed that this is not prerequisite upon who owns the land. He suggested that the legislature begin a dialogue with the Native nations to determine boundaries and strengthen intergovernmental cooperation. Mr. Eid noted that some communities may want to organize as a group, others may continue relying on the state, but others are ready to self-govern. He advised, "You don't have to create an Indian reservation system or talk about how different the Lower 48 is ... we're just talking about the American value of local self-government and the legislature's right to draw boundaries in the state of Alaska...."

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REPRESENTATIVE KITO III acknowledged that the state has a structure in place to allow for multiple local governments; however, state government is overarching above political subdivisions, such as cities, and thus city laws must be in compliance with state law. In this way, the state ensures that

all residents within a political subdivision are governed by consistent state law. He agreed that a "state to tribal relationship" is possible with 229 tribes, but the tribes are not political subdivisions of the state and their laws would not have to be based on state laws. Representative Kito III asked whether the commission recommends that the tribal governments work within the state framework, or if tribal governments should have their own laws, and the state would have to negotiate how tribal laws apply to members and nonmembers for each of the tribes.

MR. EID responded that Alaska has 229 federally recognized Alaska Native nations, and there needs to be a government-to-government recognition between the state and each of those nations. The number of Alaska Native nations creates a unique situation, and thus it will take a while to accomplish this task. When government-to-government recognition - not as political subdivisions, but as Alaska Native nations - is clarified, which can be done by an executive order or by [legislation], the Alaska Native nations will organize and determine the best way in which to work with the state to avoid an unwieldy, complicated process. Some communities will work together regionally, or in different ways, if given the ability to choose and if treated fairly and equally.

[9:11:47 AM](#)

REPRESENTATIVE KITO III surmised if the state is recognizing tribes as individual sovereigns, it would be important that the tribes have some written structure for their laws, which the state could recognize and work with, rather than "not knowing what kind of legal structure that tribe might have."

MR. EID opined that Native nations should still be allowed to choose, because they have federal status and the right is not optional because "the fact that they lost the land base did not take away their authority as sovereigns in the United States." Some Alaska Native nations already have very developed legal systems and thus may negotiate with the state so that they can enforce laws such as those involving alcohol or domestic violence protection. Others may want to wait, but the nations have their choice and will act responsibly at the local level. Mr. Eid agreed with Mr. Geraghty that the constitutional rights of everyone must be protected and there are ways to do so, such as cross-deputation. He restated that these issues must be addressed on a government-to-government basis between the state and the Alaska Native nations. At this time, because

recognition of the nations is unclear, there is confusion and hardship in federal law; for example, there was no reason to exempt Alaska from VAWA. Mr. Eid emphasized that [tribes] do not have to have land status to enforce local laws. The commission maintains that if a tribal court has a process for issuing restraining orders, said orders should be enforced and the rights of women protected.

[9:15:37 AM](#)

DAVID AVRAHAM VOLUCK, Judge, Tribal Court, Central Council Tlingit & Haida Indian Tribes of Alaska, informed the committee he also serves as a judge for the Sitka Tribe of Alaska and as presiding judge for St. Paul Island in the Pribilof Islands. Judge Voluck said the tribes with which he is affiliated "on the continuum, [are] more developed," have full written codes, and have been successful in receiving U.S. Department of Justice (DOJ) funds; in fact, between the three tribes, about \$1.5 million in federal funds have been provided to the state in support of tribal justice for Native people and rural communities. In Juneau, a grant was secured to build a family safety court. He agreed with Mr. Geraghty that Natives living in an urban area have equal access to justice services and the court system; however, the systems put in place by the Anglo-American legal system are foreign to many of the cultural life ways of the indigenous Native people. The areas of domestic violence and sexual assault are deeply sensitive issues, and the existing court system is frightening and callus to Native women. Therefore, having a culturally appropriate venue and forum increases the likelihood that victims will reach out for help. Judge Voluck said his interest as a tribal judge is not to foreclose the opportunity for access to the state courthouse, but to create another path. It is undisputed that there is a "human crisis on our hands in the state" and to add a few more public safety officers is not what the state needs. Adding another forum for Native people is essential, as demonstrated by the family safety court in Juneau which hears domestic violence protection orders which are taken to the courthouse to be registered, and then served by DPS personnel and municipal police officers. He advised that women are grateful for a more user-friendly forum in which to handle very sensitive issues. Conversely, he disagreed with Mr. Geraghty, and said that VAWA, Section 910, is not a clarifying measure, but is instead a cloud that creates ambiguity. For example, one of the exemptions for Alaska Native women and families was that a tribal court could issue a civil protective order on anyone. As a result of Section 910, Alaska Native women are the only class of women in

the U.S. who were singled out for disparate and unequal treatment under the aforementioned law. Judge Voluck stressed the importance of this issue - especially pertaining to domestic violence - because the state cannot afford to lose one minute in what could be a matter of life or death in the case of an Alaska Native women whose batterer is non-Native or a nonmember. Due to the effect of the exemption to this law, he said "If you want something that's airtight, if you want something that's guaranteed full faith and credit ... with the new law, I'm not sure I can give [an Alaska Native woman] that. ... And I think that should be disconcerting to anybody in this room that cares about our families, Alaska families."

[9:22:44 AM](#)

JUDGE VOLUCK continued to say that he also works on diversion courts and is encouraged by the attorney general's support of early intervention to keep youth out of the justice system and off of [the Alaska Court System online record] CourtView. He told of youth at the diversion court in Sitka who were grateful to be given a second chance that restored their ability to enter the military, which had been denied because of minor consuming violations. In addition, diversion courts can spend the time necessary to turn a minor consuming violation into a life-changing educational event, versus "a slap on the hand, a fine, and a blemish on CourtView." On a different point, Judge Voluck disagreed with Mr. Geraghty's statement that his department has not actively been discouraging tribal courts, but has focused its opposition on issues concerning land-based claims, Indian country, and ANCSA. Judge Voluck emphasized that in his experience, tribal courts issue child support orders for children in need, and have nothing to do with taxing and zoning land. He pointed out that the Alaska Court System has made clear that tribal courts have inherent retained sovereignty over their families, and their sovereignty has nothing to do with reservations or boundary lines. However, the state continues to battle over this issue, which has gone to the Alaska Supreme Court for a decision on whether tribal courts can issue child support orders for a tribal child. He posited this "is a grave waste of your resources and it is a grave waste to the very generation that we're all sworn to try to raise up." He advised that child support is a national mandate because children who are provided for have an increased chance to escape demographics. Judge Voluck expressed his lack of understanding as to why tribal courts encounter opposition from DOL over their authority to issue child support orders. He stated that the state is fighting its own citizens, which is counterproductive

because tribes provide resources and the ability to deal with local concerns in ways that are fundamentally different and shown to be effective. In fact, Western legal systems are turning to Native American traditional justice practices to unclog dockets and address dissatisfaction with the Anglo-American legal system. His experience is that tribal courts statewide go out of their way to be fair and to maintain due process for all. In response to an earlier question, Judge Voluck explained that when a nonmember is brought before him in a tribal court, he/she is welcomed in as a guest, given Judge Voluck's oath to treat him/her with the utmost fairness, and is encouraged to ask questions. In 99 percent of cases, nonmembers have stayed before the tribal court, because tribal courts are known to be trustworthy and helpful. Judge Voluck returned attention to the Renkes opinion, and said, "And so the Renkes opinion, as far as I can tell, is still the official opinion of the Department of Law." He emphasized that "the supreme court said it was flat-out wrong" and, even though there has been progress, he urged for a "paradigm shift, that you remove the old vestiges of the Indian wars that are being waged in your courts." He highlighted the savings brought to the Office of Children's Services (OCS), Department of Health and Social Services, and to the Alaska Court System by utilizing tribal courts so that the tribes can intervene early, and encouraged further savings by stopping the ongoing litigation. Judge Voluck closed, suggesting renaming the agreements from "limited delegation agreements" to "intergovernmental agreements" due to the paternalism implied by "delegation," and thereby allow parties to join in negotiations as partners.

[9:31:25 AM](#)

CO-CHAIR LEDOUX asked whether Judge Voluck considered state agreements with tribal courts similar to the situation in New York City, where Orthodox Jewish marriage agreements under Talmudic law are enforced by municipal courts.

JUDGE VOLUCK said yes. Although there are similarities, he cautioned that the agreements in Alaska are with sovereign Native nations which are governments, and thus the agreements must be government-to-government. Referencing his book "Alaska Natives and American Laws," co-authored with David Case, he said the federal government has said that Alaska Native tribes are not different than Lower 48 tribes and hold all of the same privileges, immunities, and authorities. The Alaska landscape is different, but "legally, a sovereign tribe is a sovereign tribe."

CO-CHAIR LEDOUX suggested that some are "too hung up" on the idea that tribes must have land. She expressed her belief that a local government that can solve problems in a cultural and local way is more important. In a similar manner, perhaps parties are "too hung up in the sovereign-to-sovereign" idea, instead of solving problems.

JUDGE VOLUCK spoke of how during the establishment of the reservation system, when government moved east to west with the settlement of the U.S., laws were "calcified around this idea of land." The Alaska Supreme Court has ruled that the question is more fluid than just about land. He agreed with Co-Chair LeDoux's warning of "losing the forest for the trees."

9:36:03 AM

AURORA LEHR, Vice President, Alaska Federation of Natives (AFN), stated that her testimony is a continuation from a previous hearing and expressed her appreciation for the participation of Mr. Geraghty and legislators. She informed the committee that an AFN organization, the Council for the Advancement of Alaska Natives, is comprised of leaders from regional nonprofits and statewide entities that serve Alaska Natives. The council has established public safety in rural Alaska as a priority, and has issued its recommendations in a summary of the document entitled, "A Roadmap for Making Native America Safer - Public Safety in Alaska as Seen Through an Independent Lens," provided in the committee packet. Most of the council's recommendations have been addressed by other speakers, however, she said the council's first recommendation or goal is that there needs to be a real partnership between the state and the tribes based on the understanding that said partnership is not a loss of authority for the state, but a gain of untapped resources. Ms. Lehr stated that most parties have agreed that it is time to make a change, move forward, and to seek creative approaches to problems. She reminded the committee that the ILOC report is not the first commission or report to cover the extreme living conditions in rural Alaska and the [lack of] access to resources, judicial resources, and public safety. Furthermore, she urged for a close review of the recommendations made by prior commissions, and for the reinstatement of the Millennium Agreement as a part of active policy to be followed by state agencies. Ms. Lehr also urged for revocation of the Renkes opinion, and clarity from the legislature and DOL. She said AFN is very supportive of intergovernmental and cross-jurisdictional agreements between tribes and the state, such as the agreement

underway between the state and TCC. She mentioned smaller, technical improvements that can be made. In closing, Ms. Lehr restated AFN's support for repealing Section 910 of VAWA through the proposed Safe Families and Villages Act of 2014, or by other Congressional legislation.

[9:42:18 AM](#)

CO-CHAIR NAGEAK, after ascertaining that no one else wished to testify, closed public testimony.

REPRESENTATIVE HERRON referred to a letter [not provided] Mr. Geraghty has written to the U. S. Senate Committee on Indian Affairs opining that tribes should not be allowed to take their lands into trust because that would lead to pollution and increased public safety problems. He asked for an explanation of Mr. Geraghty's position.

MR. GERAGHTY said the letter regarding the "Carcieri fix" suggested [pollution and public safety were] "one of the issues that could arise," by the creation of an archipelago made from the number of allotments totaling several million acres throughout the state. He emphasized that Alaska is one state, even though there are 229 federally recognized tribes with which the state should - and does - have government-to-government relations. Furthermore, the fact that the state is in negotiations with tribes implicitly recognizes their governments. Mr. Geraghty explained that the Carcieri fix refers to a 2009 U. S. Supreme Court decision, Carcieri v. Salazar, and other states also have issues in that regard; however, he denied that his letter said taking lands in trust would lead to the abovementioned issues. Mr. Geraghty cautioned against creating a "patchwork quilt" of jurisdiction throughout the state, and questioned whether local tribes have the resources to deal with all of the regulatory issues surrounding land, such as leasing land to developers.

[9:45:10 AM](#)

REPRESENTATIVE HERRON turned to the safety corridor to Cold Bay proposed by his constituents in the King Cove area, and the related legal challenges. He stated that DOL has issued a 180-day notice of intent to sue the federal government over the proposed safety corridor through the Izembek National Wildlife Refuge using [Revised Statute 2477]. He said his constituents in King Cove have chosen not to challenge U.S. Interior Secretary Sally Jewell's decision [not to allow construction of

a road through the Izembek National Wildlife Refuge] by building a road, because they do not want to break the law. However, the residents of King Cove believe that Secretary Jewell "broke the law, the Congressional Act" and ignored the Interior Department's trust responsibility. He asked whether Mr. Geraghty considered challenging the Jewell decision on behalf of the residents of King Cove and the state, on the grounds "that she violated the trust responsibility and broke the law per court decisions and the Act of 2009."

MR. GERAGHTY advised that Secretary Jewell's decision is subject to an active review at the moment and "all avenues are being pursued." He clarified that the state's 180-day notice of intent to sue does not mean the state will sue on a R.S. 2477 claim, although that is an option. Mr. Geraghty affirmed that the Alaska Congressional Delegation and the administration disagree with Secretary Jewell's decision and all remedies to reverse the decision are being explored.

REPRESENTATIVE HERRON stated his belief that Secretary Jewell's decision is "particularly annoying" because the secretary has violated her trust responsibility to Alaska Natives, and thereby indicated the federal government's attitude toward Alaska Natives and all Alaskans.

MR. GERAGHTY said he has discussed the Izembek National Wildlife Refuge on each of his three visits to the Secretary of the Interior.

[9:48:38 AM](#)

CO-CHAIR NAGEAK observed that the federal government's departments and agencies make decisions regarding access to lands. The departments and agencies come into areas that are owned by Native people, or federal wilderness areas, and the agencies set aside land for certain activities. Placing restrictions on activities usurps the power of Congress by restricting access and activities, although activities and access are mandated by federal law. He asked for the state's remedy against action in which restrictions on land that is owned by residents are mandated by agencies, and not by Congress.

MR. GERAGHTY said he shared Co-Chair Nageak's frustration and noted that DOL has challenged a number of decisions. This is a political issue in that if agencies overstep their bounds, Congress should act to rein them in. However, Congress is

gridlocked and unable to reach a decision. For example, after the U.S. Supreme Court overturned the Ledbetter v. Goodyear Tire & Rubber Co. case, Congress passed the Lilly Ledbetter Fair Pay Act of 2009, thus Congress has the ability to provide checks and balances when agencies "act in a vacuum," although challenging agencies in court is a very difficult issue.

CO-CHAIR LEDOUX returned attention to the New York City example of shared jurisdiction between the municipality and Talmudic law, and requested that Mr. Geraghty research whether courts would enforce a prior agreement made by residents to abide by tribal law.

MR. GERAGHTY agreed. Then calling attention to his earlier testimony, he acknowledged that the book review sent to him by Mr. Eid was of the book entitled, "Alaska Natives and American Law," by David Case and Judge Voluck.

CO-CHAIR LEDOUX gave another example of individuals agreeing in advance to certain terms, and thereby waiving their rights.

[9:54:53 AM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:55 a.m.