

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON TRIBAL AFFAIRS**

May 7, 2019

8:32 a.m.

MEMBERS PRESENT

Representative Tiffany Zulkosky, Chair
Representative John Lincoln
Representative Dan Ortiz
Representative Chuck Kopp
Representative Dave Talerico
Representative Sarah Vance

MEMBERS ABSENT

Representative Bryce Edgmon, Vice Chair

COMMITTEE CALENDAR

PRESENTATION(S): STATE AND TRIBAL CONSULTATION OPPORTUNITIES

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

MATT NEWMAN, Esq., Staff Attorney
Native American Rights Fund (NARF)
Anchorage, Alaska

POSITION STATEMENT: Provided testimony during the presentation on state and tribal consultation opportunities.

ELIZABETH SAAGULIK HENSLEY, Esq.
Landye Bennet Blumstein LLP
Anchorage, Alaska

POSITION STATEMENT: Provided testimony during the presentation on state and tribal consultation opportunities.

NATASHA SINGH, Esq., Co-Lead Negotiator
Alaska Tribal Health Compact (ATHC);
General Counsel, Tanana Chiefs Conference (TCC)
Fairbanks, Alaska

POSITION STATEMENT: Provided testimony during the presentation on state and tribal consultation opportunities.

PATRICK ANDERSON, Esq., Chief Executive Officer
Rural Alaska Community Action Program, Inc. (RurAL CAP);
Member, Alaska Federation of Natives (AFN) Council for the
Advancement of Alaska Natives
Juneau, Alaska

POSITION STATEMENT: Provided testimony during the presentation on state and tribal consultation opportunities.

ACTION NARRATIVE

[8:32:57 AM](#)

CHAIR TIFFANY ZULKOSKY called the House Special Committee on Tribal Affairs meeting to order at 8:33 a.m. Representatives Talerico, Lincoln, Ortiz, Vance, and Zulkosky were present at the call to order. Representative Kopp arrived as the meeting was in progress.

PRESENTATION(S): State and Tribal Consultation Opportunities

[8:33:29 AM](#)

CHAIR ZULKOSKY announced that the only order of business would be presentations on state and tribal consultation opportunities. She invited Mr. Matt Newman to speak as the first witness.

[8:34:14 AM](#)

MATT NEWMAN, Esq., Staff Attorney, Native American Rights Fund (NARF), stated that NARF is nonprofit law firm that serves Alaska's 229 federally recognized tribes as well as tribal individuals and organizations. He said he will provide the committee with an overview of what government-to-government consultation is, what it means, where the idea comes from, and the practicalities of it in Alaska.

MR. NEWMAN noted that tribal consultation and government-to-government consultation is not a new idea. Its origins go back very far and stem from the 1600 and 1700 Law of Nations. The expectation of that doctrine included that the newly minted United States in the 1700s would meet with representatives of other governments to talk about mutual interests and obligations. The Law of Nations was made applicable to the relationship of the United States with Indian tribes, tribal

nations. Some of the first treaties the United States entered as a newly independent nation were with Native nations, not European nations. Language in these early treaties included obligations for business by the sovereigns that they would consult and meet to negotiate with each other on a government-to-government basis on issues and concerns of mutual interest between the nations.

[8:37:08 AM](#)

MR. NEWMAN said this concept has evolved over the centuries to now be the modern government-to-government consultation system. Because it is described and laid out through executive orders, court decisions, and inter-agency policies, the notion of it is not solely federal. As the title implies, it is government to government and there is no limitation or restriction that that government-to-government consultation be solely between federal governments. (Indisc. - audio difficulties) ... consultations with city/municipal governments throughout Alaska, which means state governments as well as international. For example, on the North Slope there are international institutions like the Whaling Commission that involve international meetings between Alaska tribal nations and other representatives. So, it's a broad category that reflects those origins of mutual interests and issues that require the meeting of government officials.

[8:39:12 AM](#)

MR. NEWMAN explained that consultation, in a meaningful sense, is a process. It cannot be effective if it's reduced to solely one meeting and handshake. It is an ongoing process of gathering government officials to discuss topics, to identify areas of concern or agreement. It can result in a best practices model of policy and decision making where multiple levels of government or multiple governments are involved. It provides a forum where those governments can discuss and work out thorny legal issues.

MR. NEWMAN stated that as an attorney one of his jobs is to assess and identify risk for his clients and advise as to how to avoid those risks. Consultation, he continued, is powerful in doing the same thing. For example, the modern permitting system for a resource development project is exceedingly complex and is a mishmash of federal, state, and borough ordinances. When it is a complex system, particularly a legal system like resource development permitting, it is to everyone's mutual benefit to meet and identify risky or thorny issues as soon as possible.

From a risk analysis point of view, having the decisionmakers or the government policymakers in the room together having an ongoing dialogue is better for everyone and is going to make this complex system more efficient and work more smoothly. That is something that only governments can do.

[8:43:02 AM](#)

MR. NEWMAN pointed out that a common misperception of tribal consultation is that tribes are stakeholders or that their views and interests can be adequately represented in the written or oral public comment process. That perception, he advised, does not capture, reflect, or understand the status of a tribe as a government. Consultation is therefore critical, in his opinion. It cannot be the case where a borough, city, or tribe, or the State of Alaska can be dismissed or told by a government agency that its concerns should be written down for future review by the agency. No one would appreciate a situation where the Fairbanks North Star Borough was told that the Bureau of Land Management (BLM) has a project in the borough's region and BLM is not going to meet or talk with the borough about this project or its impact on the borough's citizenry, but the borough is welcome to send the BLM a letter. That situation would be unacceptable by any point of view.

MR. NEWMAN specified that that standard should be universal for all the governments that operate and exist within Alaska, including the state's 229 tribal governments. They are operating, functioning governments providing services to their citizenry. For them to represent the interests of the citizenry in any arena or respect, that ability to meet directly to consult on issues affecting their operations and their people is necessary. Consultation by and large is the means and the method that has been developed in the modern legal system. It provides that avenue for governments to come together to discuss issues and make it ongoing because no one wants a system in which boxes can be checked and one meeting held. Consultation is an effective medium and tool, but it must be meaningful. Results have been seen in Alaska and across the U.S. that when consultation is done meaningfully the outcomes are better. Those better outcomes serve the interests of both government and people, which is what everyone is after.

[8:47:12 AM](#)

REPRESENTATIVE LINCOLN requested Mr. Newman to elaborate on some of the risks he sees being mitigated through effective consultation on resource development and permitting.

MR. NEWMAN replied that one risk is that there are myriad laws and regulations that are applicable to and can be evoked by tribes. These are laws that go to the evaluation and protection of cultural resources, of tribal subsistence resources. One would like to think that agencies have good attorneys who are familiar with these laws and know the agency must comply with the provisions of law, but that often isn't the case. On the many issues that happen in Bush Alaska, tribal governments are very familiar with the unique laws because they live them every day and must deal with them every day. Obscure subsections of a federal law might be an interesting unknown thing to lawyers in Anchorage, but people in villages are living with and dealing with them every day and they can provide and do provide those kinds of necessary reminders early in the process. If that consultation occurs, they can tell folks from federal agencies that there is an issue that needs to be addressed. The consequences of not addressing have been seen time and again - if a process gets too far down the line and those legal requirements are not dealt with or addressed, it can derail everything and stop the work and the progress that was made. Consultation is a means and the method to avoid those kinds of situations and outcomes because government officials were talking and exchanging information earlier. That is the kind of best practices that consultation can achieve.

[8:50:31 AM](#)

CHAIR ZULKOSKY, regarding dispelling misperceptions around tribal consultation, requested Mr. Newman to elaborate on how treating tribes as public comment stakeholders is problematic.

MR. NEWMAN responded that it is problematic at the outset because it diminishes the role of what a government is, whether it is a tribal, city, or other government. A stakeholder is someone who has stakes or "skin in the game." But governments and tribal governments are larger than that, they play a more important role than that because tribes are not just operating for their own benefit. They are governments that have a citizenry that they must serve and act on behalf of. A tribe seeking to hold a consultation session is trying to represent its citizenry. Reducing a tribal body politic to the same treatment as a person in Anchorage where both have the ability to write a letter, is not a system by which the tribal

government is being treated as a government; it's being treated as just an organization, like, say, a Rotary club. An analogy would be that no one would find it acceptable that an elected city council would be told or asked to just participate in the comment process and fill out a letter. If the city council were to request a meeting with the policymaker at the state or federal level, it would be a situation in which everyone would expect that the city council's request would be honored because that council is working on behalf of the people who elected the members. The same is true for tribal government.

8:54:20 AM

REPRESENTATIVE KOPP submitted that the task of raising public knowledge and understanding of what tribal governments are, comes back to textbooks speaking of federalism. It's federal, state, and local government and the separation of powers and there isn't good discussion of treaties that didn't have expiration dates and where tribes and nations of Indian people were recognized in that status through treaties. A good start would be to have a more conscious push to recognize the federal layer of government, and then the state/tribal layer of government, and then local government because in that whole education of government and separation of powers, rarely does the subject of tribal powers as they are understood within a context of a government come up. In Alaska there is the unique situation of only one designated piece of land that belongs to a specific group of Indigenous people in Metlakatla. Then the state is divided up into Native corporations, but really no other tribes having designated land. So, the question is in what sense those tribes are a government without a connectedness to a land in the sense of a tribe in a Lower 48 state.

8:56:28 AM

MR. NEWMAN replied that the answer here is a unique one. Governments are entities that can exercise two forms of power, or power over two things - they can exercise sovereignty over a place, and they can exercise sovereignty over people. With its one-of-a-kind institutions, Alaska has tribal governments that do not by and large exercise sovereignty over a place. But, as confirmed by many court opinions and federal and state laws, Alaska has tribes that may exercise sovereignty over people. Tribal governments that existed before the Alaska Native Claims Settlement Act, and after the Act, perhaps do not have a land base, but they do have a citizenry to whom they are accountable and that elects them to govern. The exercise of sovereignty

over people continues even with the absence of that land base that is pointed to in the Lower 48 context with the creation and boundary lines of reservation or Indian country.

[8:59:17 AM](#)

CHAIR ZULKOSKY invited Ms. Elizabeth Saagulik Hensley to speak as the next witness. She noted that Ms. Hensley's law practice focuses on meeting the unique legal needs of Alaska Native corporations, tribes, and tribal nonprofits.

[8:59:29 AM](#)

ELIZABETH SAAGULIK HENSLEY, Esq., Landye Bennet Blumstein LLP, said the State of Alaska has a fabulous policy on the books in terms of supporting the government-to-government relationship between tribes and the state and consultation. It goes back to 2000 with Administrative Order No. 186 by Governor Knowles, followed up by the 2001 Millennium Agreement between the state and tribes. In 2017, Attorney General Jahna Lindemuth issued an opinion establishing that the State of Alaska understands there are federally recognized tribes in Alaska, and that the state itself recognizes the tribes and that they are separate sovereigns with inherent sovereignty and subject matter jurisdiction over certain matters. In 2018, Administrative Order No. 300 stated that it is a policy of the state to recognize Alaska tribe sovereignty by interacting and engaging with Alaska tribes on a government-to-government basis.

[9:01:26 AM](#)

MS. HENSLEY noted that various administrations over the past 19 years have done work to ensure that consultations happen between the state and tribes because why not have the right people in the room at the right time to talk about things of mutual concern? In broader legal context, consultation as practiced in the U.S. is a slightly lesser standard than the gold standard established by the United Nations (UN) Declaration on the Rights of Indigenous People (DRIP). The UN DRIP sets the gold standard for state interactions with Indigenous people. It requires consultation and cooperation in good faith with the Indigenous people through their own representative institutions in order to obtain the tribe's free, prior, and informed consent before adopting and implementing things that will impact the tribe. That free, prior, and informed consent element of the UN DRIP is the gold standard. As has been seen, consultation in the U.S. typically doesn't have consent on the part of the tribes as the

desired outcome. It often is a process, and consultation is something that will happen to ensure that tribal considerations are taken into account, but it doesn't tend to require consent. So, there is a big difference between the gold standard and what is done.

MS. HENSLEY said the UN DRIP has various articles and clarifies where free, prior, and informed consent should happen. It includes the adoption of legislation, administrative policies, or things like the undertaking of projects that affect Indigenous people, their right to land and caring for their resources, and so forth. She said she is sharing this to provide some context on what people and tribes in Alaska may be asking for in the U.S. context versus a global context where free, prior, and informed consent is mandated. It is not to say that Alaska's tribal consultation is not a positive thing. It is a very positive thing, it's a good business decision. It gets the right people in the right room together around the table or walking on the land and ensuring that the needs of tribal citizens will be served by the action being contemplated.

[9:05:08 AM](#)

MS. HENSLEY said there are millions of examples of where tribal consultation only makes sense and she will provide a few. The Violence Against Women Act (VAWA) requires the state to enforce tribal protection orders as if it were the order of the enforcing state. Protection orders are defined as any order issued "for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, or for the protection of victims of domestic violence, sexual assault, dating violence, or stalking." Ms. Hensley commended the committee's work regarding missing and murdered Indigenous women (MMIW). People may be asking what they can do to prevent murder from being the number three killer of Native women such as herself. So, VAWA is a tool for [Native women]. How can the section of VAWA that she just read be implemented without tribal consultation? How can the state implement a program of enforcing tribal protection orders if the state and the tribes don't consult and don't communicate about what that looks like and how to make it successful and how to ensure Native women are safe through VAWA? That is one arena where boots-on-the-ground tribal consultation is critical.

[9:07:19 AM](#)

MS. HENSLEY said another example is hunting and fishing, a subject matter that people feel very passionately about because they carry profound physical, cultural, and spiritual components. Many of the cultures around the state don't see fish and game and birds as resources to be allocated, in many communities they are relatives. Tremendous amounts of conflict arise around fish and game allocations. So, when it is known that there is an area that is rife with conflict, what can be done about it? One thing that can be done is to get around the table and consult. The state and tribes can sit down as governments and discuss how to do this better, how to make sure that people can hunt and fish without feeling like criminals, and how to make a system where people understand the regulations, and where hunters are not confused because there is such a broad array of regulations that are extremely hard to follow. This is an area where tribal consultation can really do some good things for tribal citizens as well as for Alaska residents. There are some pilots in place where tribes, the state, and the federal government have sat down and signed agreements to work together to cooperatively manage fish; for example, on the Kuskokwim and Yukon rivers. These are ways for better serving the people of the state.

[9:09:42 AM](#)

REPRESENTATIVE KOPP recalled that in 2013 or 2014 the Kuskokwim River had a very low run of king salmon. King salmon are a substantial portion of the subsistence lifestyle of [Native] families on this river. Even though the fishery was closed the families took salmon anyway, for which the administration then wrote misdemeanor tickets. He asked Ms. Hensley how this debacle could have been prevented. In this instance the state and its regulatory agency, the Alaska Department of Fish and Game (ADF&G), were managing a fishery running in direct conflict with traditional use. It resulted in one group of people being treated as criminals for trying to maintain a traditional use during a time of low returns.

MS. HENSLEY answered that that is exactly where tribal consultation needs to happen. Issues of resource shortage occur around the state periodically, but people still need to eat. Sometimes there is conflicting information about how healthy the stock is, how accurate the counts are, and so forth. Sometimes people will make the choice to continue to harvest and sometimes they won't. Concern about the population of a stock is exactly the type of situation where the state would want to call the tribes and ask that consultation take place to figure out how to

partner to ensure that the stock is healthy and that people get the food they need. On a couple of rivers, communities have taken some significant measures when they were concerned about stocks and, through their tribes, they imposed fishing moratoriums on themselves; it wasn't a state or federal agency coming and saying the tribes needed to stop fishing. This is exactly the time to place a phone call and get people together.

[9:13:40 AM](#)

REPRESENTATIVE KOPP concurred there are other examples but said that one stood out in his mind as a deeply troubling circumstance. Many people felt a significant injustice had occurred but there was a lack of understanding of how to move forward. He surmised there wasn't much state-tribal consultation at that time.

MS. HENSLEY replied it has been seen that when people come to the table, they can hammer out an agreement for cooperative management. When the Kuskokwim fishery crashed, an agreement for cooperative management was hammered out and people are implementing it. It hasn't been an easy thing, but people have been trying to stay the course and work together. People have very different perspectives on those types of things. The people who were fishing probably had a wildly different perspective from the enforcement officer who gave them the ticket. Getting to the table to ensure all those perspectives are shared before people get penalized, or fish when they aren't supposed to, is a very beneficial thing to do.

[9:15:28 AM](#)

CHAIR ZULKOSKY asked whether lack of state law requiring consultation precludes the state from engaging in tribal consultation.

MS. HENSLEY responded, "Absolutely not ... you don't need a law that says you have to consult." It is something inherent in a sovereign entity. The state is a sovereign, the tribes are sovereign; they can consult. There is nothing that precludes that in the state constitution or any state laws. It is 100 percent permissible. She offered her belief that had there been a constitutional problem, Governor Knowles, his administration, and his legal advisors would not have put in place the Millennium Agreement; Attorney General Jahna Lindemuth would not have issued an opinion that conflicted with state constitution or state law; nor would Governor Walker's Administrative Order

No. 300 have been put in place mandating government-to-government consultation. She noted that Governor Walker himself is an attorney and that he had a fleet of lawyers advising him, and she doesn't imagine he would have done something in direct conflict with the state constitution or laws.

[9:17:36 AM](#)

CHAIR ZULKOSKY invited Ms. Natasha Singh to speak as the next witness.

[9:17:49 AM](#)

NATASHA SINGH, Esq., Co-Lead Negotiator, Alaska Tribal Health Compact (ATHC); General Counsel, Tanana Chiefs Conference (TCC), said she will discuss the collaboration between [Alaska tribes] and the [federal] Indian Health Service (IHS) and the [federal] Department of Health and Human Services (HHS), how that plays out in Alaska, and how this consultation, negotiation, and work group with Indian Health Service plays out.

MS. SINGH stated that tribal self-determination is the only policy in U.S. history that has been successful. It recognizes that Native people know best how to solve their own problems and implement programs in their communities. It was championed by President Nixon and a Republican Congress. Tribal self-determination has historically been bipartisan and has developed over the decades since passage of the [Indian Self-Determination and Education Assistance Act in 1975]. It is where things are today with the Alaska tribes fully taking over the services provided to the tribes by the Indian Health Service.

[9:20:00 AM](#)

MS. SINGH explained that the tribes in Alaska were offered a demonstration project. Rather than competing against each other, the tribes decided in the 1990s to come under one demonstration so that all Alaska tribes were under one contract with the federal government. [Under the ATHC], the tribes speak with one unified voice with the Indian Health Service, which has benefitted the tribes. Alaska's tribes have taken over all services and annually negotiate the contract, which in federal terms is a compact, but really it comes up to an agreement where Alaska tribes say "yes, Indian Health Service, we know what's best for our people ... you don't know what's best ... and we're going to negotiate with you on how we take over the authorities and responsibilities to do that." In the responsibilities of

taking over the contracts, [ATHC] follows consultation policy with both the IHS and the HHS, each of which has separate consultation policies. There are negotiation rules and work groups, which isn't necessarily consultation, but the work groups get the discussion going. All work groups trigger a formal consultation if necessary.

[9:22:18 AM](#)

MS. SINGH related that the experience of Alaska tribes is that on the federal side the best consultations occur starting with a consultation policy. The policy should be written out with both the state and the tribes working on the purposes and then the policy itself. Even if it is working, it is important to revisit the policy for improvements. Just this week HHS will be revisiting its tribal consultation policy and the tribal side has many suggestions for improvements. Within a consultation policy, the purpose can be explicitly stated. In renewing consultation policies for different agencies in preparation for this discussion, the goal of eliminating health and human services disparities for Native people is what stands out. She urged that the state focus on that goal as well and that it is a reason why a formal tribal consultation policy should be had outside of regular public comments. Native people face extreme disparities, she advised, whether it be education, health care, or child protection. The state should be hyper-focused on the Native population because it should be wanting to fix these issues and asking how it can partner with the tribes to do so.

[9:24:22 AM](#)

MS. SINGH noted that that is how consultation works with IHS and [HHS], but negotiation is a little different. [The ATHC] sits down annually with the Indian Health Service to negotiate contract language and how funding is distributed. It is a very important process of the relationship as basically Congress mandated that IHS hire [the ATHC] to carry out IHS services and [the ATHC] negotiates with IHS the language on just how to do that. Each year [the ATHC and IHS] sit down for the equivalent of two weeks and hammer out the language.

MS. SINGH pointed out that in addition to negotiation and consultation there are work groups on a variety of issues, such as an information technology (IT) work group, facilities work groups, and the budget formulation work group. The budget formulation work group is important because it gets to the details of how the agency will reflect funding from Congress.

This is in recognition of health disparities in Indian country, so the agency gives a lot of weight to what the tribes say is needed to improve these disparities. This kind of budget formulation work group will be very helpful with the State of Alaska as the state considers its budget crisis.

MS. SINGH added that there are specific work groups for anything a statute might require, and that the agency would like guidance on how to implement. For example, if the facilities work group comes up with an issue that it cannot get beyond in its discussions, the work group will recommend a formal consultation where tribes will submit formal comments for the record. The Indian Health Service will then formally review the comments and will describe in its report how IHS considered each comment in creating a solution to the problem or a new regulation. It makes it very meaningful when the agency must respond directly to those comments.

[9:28:17 AM](#)

CHAIR ZULKOSKY recalled Ms. Singh's description that the best consultations begin with conversations about a consultation policy and that the policy include the purpose and goals. She asked whether there are any other aspects of consultation policy that would be helpful for the committee to know and understand.

MS. SINGH replied that because of the large number of tribes in Alaska it can be difficult to effectively communicate. So, it is helpful and important for a successful policy to lay out exactly how the consultation procedures will happen, including how a tribe will receive notice in the communication. Also important is to know the responsibilities on the specific agencies that the tribes are working with.

CHAIR ZULKOSKY recounted Ms. Singh's statement that there are negotiation rules that are set out between both parties. She requested Ms. Singh to briefly describe what some of those agreements are at the front end between both parties.

MS. SINGH responded that the rules have developed over time; the rules are organic and continually being updated each year. After negotiations the tribes and the agency will meet to talk about what worked and what didn't work and amend the rules. The foundation of negotiation is based on good faith and trust in the government-to-government relations. It sets out the rules of each player in the negotiation, including the lead negotiators for the agency and the tribes. It describes how a

tribe will submit a negotiation package. It sets out deadlines for language as it has been seen that if strict deadlines are not adhered to the grey area causes angst between the parties. It sets out other rules in the process of negotiation and timelines and sets out the rules for the funding tables, which get highly technical in how funding is distributed.

[9:32:10 AM](#)

MS. SINGH resumed her presentation, moving to discussion of the experiences that the Tanana Chiefs Conference (TCC) has had with various state departments in the past. She said one example is how the Office of Children's Services (OCS) improved once it grabbed ahold of the idea that Native tribal self-determination is what will work best for Native people to improve child protection disparities. She said she isn't sure OCS has a formal tribal consultation policy, but in the past OCS has taken discussions with tribes very seriously and really considered tribal comments and really implemented those comments throughout the department's policies.

MS. SINGH related that last week TCC met with [HHS Secretary] Price on issues of enforcing VAWA protection orders that TCC has had in its region. As well, TCC met with officers from the Alaska State Troopers. The informal discussion informed both sides of situations and it was agreed to have regular meetings between [Secretary Price] and TCC going forward because the discussion helped so much. Ms. Singh expressed her hope that other commissioners will do the same in reaching out and working with tribes, which has not always been the case in past administrations. Without a formal consultation policy that requires these commissioners to meet with tribes and consider their comments, it might not happen. In past administrations the department wouldn't even agree to meet with TCC or, when they did, they were unable to take TCC's comments seriously.

[9:35:08 AM](#)

MS. SINGH stated that a crisis of king salmon has also occurred on the Yukon River. The Yukon is perhaps one of the most challenging rivers in the nation on which to manage fisheries because the watershed covers so much area. Commissioner Vincent-Lang of the Alaska Department of Fish and Game (ADF&G), along with ADF&G's Yukon River manager, met with TCC and the Yukon River communities and only then were they able to have proper discussions and get the feedback that was needed to

change how the Yukon River is managed. Commissioner Vincent-Lang has agreed to continue these visits this summer.

MS. SINGH concluded by stating that tribal consultation is good government. A tribal consultation policy would recognize that there are 200 tribes within the state. These tribes have the same goals that the state does for trying to improve the health of Native communities and reverse the disparities that are faced. Alaska Native people make up almost 20 percent of the state and a tribal consultation policy would recognize that Natives are a special population.

[9:37:48 AM](#)

CHAIR ZULKOSKY invited Mr. Patrick Anderson to speak as the final witness.

[9:38:11 AM](#)

PATRICK ANDERSON, Esq., Chief Executive Officer, Rural Alaska Community Action Program, Inc. (RurAL CAP); Member, Alaska Federation of Natives (AFN) Council for the Advancement of Alaska Natives, stated he will talk about the value of having an actual discussion with tribes. As the Tribal Health Director [of the Makah Nation] he received under the rules of diplomacy for Indian country within the state of Washington consultation policy the authority to speak on behalf of the tribe. Under the protocols, if the chairmen were present the chairmen spoke, if the vice chair or a council member were present they had priority, and when it came to health matters he was, as the Tribal Health Director the official representative for the Makah Nation, able to speak to all matters. The process was very structured.

MR. ANDERSON related that the Northwest Portland Area Indian Health Board became the health experts. The board applied for grants on behalf of the 32 tribes in the state of Washington and did the research. The leadership, of which he was an alternate, consisted of tribally appointed officials who directed the executive director of the board to work in very complex, interrelated, and interdependent, matters. The last initiative he worked on while there was the Medicaid Section 1115 Waiver that Washington state had received. It ended up being a process that involved regular hospitals, health care institutions, county governments, and a variety of interrelated entities that were dealing with the issues of the heavy usage of Medicaid by

Medicaid patients. It was basically around addressing needs on a coordinated care basis.

[9:41:00 AM](#)

MR. ANDERSON said he was involved in the policy setting of the Indian Child Welfare Act, an Act that has been in place for longer than the 40 years he has been a member of the Alaska Bar. The issue is incredibly complex and every year more is found out about why Indian children do not thrive. Recently under the Trump Administration the issue of foster care was dealt with through a bipartisan effort. The goal is to keep foster children in stable families, preferably relatives. Knowledge has advanced during the 45 years of conversation, but it is because of having that conversation. He was on the Tribal Law and Order Commission several years ago when the commission was dealing with the Indian Child Welfare Act. He wrote Representative Geran Tarr's resolution of several years ago that dealt with adverse childhood experiences and childhood acquired trauma. That topic emerged in 1998 and advanced very quickly in Washington than in Alaska. Washington was more advanced than Alaska as the result of having had conversations that brought to light the complex issues.

[9:42:54 AM](#)

MR. ANDERSON referenced the work of Dr. Edgar Shein, a professor at the Sloan School who wrote about the concept called "humble inquiry." In health care it was realized that when people slide into chronic disease the most important attribute that can be had with them is a relationship - trust and a belief that their medical providers have their best interests at heart. In that context the concept of motivational interviewing was coined and the practice of it began in behavioral health. Motivational interviewing is the act of asking about the best interests of the individual being spoken to. When a relationship is formed with a physician the patient tends to trust that physician more. Members of this committee spend time in discussion and even if discussions are heated committee members have a relationship with each at the end of day and are able to understand each other's motivations and can perhaps discuss how to collectively come to the point of doing something about the incredibly complex relationships that people have.

MR. ANDERSON noted that Dr. Shein's concept of motivational interviewing changed and Dr. Shein began calling it humble inquiry. Mr. Anderson related that when he was a practicing

lawyer one of the inquiries he did was cross examination, which doesn't make anyone feel good. Humble inquiry, he continued, is what he believes tribal consultation should be all about. It is forming the relationships after successive leadership changes in government, including tribal governments, but having a foundation where difficult issues have been discussed and a structure has been established similar to what the Northwest Portland Area Indian Health Board came up with where issues can be discussed without anger or animosity and with an understanding of the limited resources that are available and knowledge is advanced.

MR. ANDERSON allowed he comes at this a bit differently than some of his tribal members. He has been involved in consultation and one issue was trying to convince the Indian Health Service to move away from the old Resource and Patient Management System (RPMS) Electronic Health Record (EHR) and to go to a commercial platform. However, the leadership decided to put over \$100 million into revising the old RPMS platform. Today he reads that, like the Veterans Administration, those platforms don't serve the needs of the customers or the patients and moving to a commercial platform is now happening.

[9:46:07 AM](#)

MR. ANDERSON said humble inquiry takes an individual away from the belief that he or she knows the best answer for solving a complex problem. He has lots of conversations with his staff on how to address some of the intractable issues that are being experienced - high levels of alcohol addiction, high levels of cocaine addiction, high rates of sexual violence, high rates of children's violence. A great approach is having a platform to discuss how to find solutions without wagging fingers about who is at fault, and that is where tribal consultation can take everyone. Humble inquiry means accepting that there are gaps in one's knowledge and that it takes great self-introspection and a conversation. Consultation goes both ways, but the start is being interested in the other's point of view.

MR. ANDERSON stated that as the executive director of two tribal organizations and one non-tribal organization over the last 15 years, he has been involved in a lot of the battles. In addition, he has served as parliamentarian for the Alaska Federation of Natives where policy resolutions are made and for the National Congress of American Indians where resolutions from tribal representatives are introduced. They are well thought out and the organizations go into Congress they get listened to.

However, they don't always get listened to in consultation but that just depends on the individual and his or her orientation, and by doing this a lot of problems have been addressed.

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MR. ANDERSON added that he administered the Village Public Safety Officer (VPSO) program for several years. While there are great difficulties in that program, it is one of the very few presences of police authority in a community; in many places it helps a community feel safe. That is connected to trauma and to a lot of negative issues that occur and to have a forum where tribal leadership can come in and in the context of a caring administration to actually be heard. Having the structure set up outside consultation to look at and discuss resolution of those issues is wonderful.

MR. ANDERSON said that RurAL CAP is currently in 60 villages. It is very difficult, so he understands the prior testimony about getting 229 tribes together. In the state of Washington he saw tribes come together and have the discussions framed by people who were very knowledgeable, essential to what [RurAL CAP's] diplomats do today. Ambassadors conduct a lot of [RurAL CAP's] formal protocols and then the state service, the diplomatic corps, are the ones who engage in attempting to problem solve and then they bring it back up. Mr. Anderson stated it would be wonderful to have that process, but he knows the committee has a hard deadline. He urged the committee to think about humble inquiry on the part of state. It is not a mandate, he pointed out, it is something that comes from the heart when talking and trying to find solutions to these incredibly complex problems that are faced by people every day.

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REPRESENTATIVE KOPP related that he is interested in the time that Mr. Anderson spent with the VPSO program, an area of special interest to committee members. He said the committee may be calling on Mr. Anderson for his thoughts on that program.

MR. ANDERSON replied he would like to share his ideas. He said it is very difficult in a community where everyone is related to have someone there addressing negative behaviors. That is a complex area - there is a huge corrections budget, but negative relationships are not managed very well. He reiterated that he would be happy to discuss his experience in the future.

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CHAIR ZULKOSKY said Mr. Anderson's statements about humble inquiry and making sure to ask about the best interests of the individuals being spoken to really resonated. For example, the state always wants the federal government to ask the state what is in the state's best interest. It seems appropriate to be able to extend that same type of relationship with local governments and federally recognized tribes in Alaska.

MR. ANDERSON responded that it is very important the Native community have a voice, but it is very important for the state as well. He served on the Sealaska Corporation board of directors for years and he has represented Alaska Native Claims Settlement Act (ANCSA) corporations. The billions of dollars in revenue that they bring to the total gross product for the State of Alaska is critical and important and it depends on the sovereign relationships that Alaska tribes have with the federal government. It is the same way with the Indian Health Service in that huge dollar amounts are being brought into the state. It is a benefit to the state to nurture that relationship and try to grow it because he believes it can be grown.

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ADJOURNMENT

There being no further business before the committee, the House Special Committee on Tribal Affairs meeting was adjourned at 9:52 a.m.