

**3/11/14 &
4/18/14
PRESENTA-
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AFN ILOC**

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ALASKA FEDERATION OF NATIVES



MOVING FORWARD IN PARTNERSHIP WITH ALASKA TRIBES TO ADDRESS PUBLIC SAFETY ISSUES IN RURAL ALASKA

Introduction and Background: In November, 2013, the Indian Law and Order Commission presented a comprehensive report to the President and Congress regarding public safety and Alaska Natives/American Indians, titled "A Roadmap for Making Native America Safer" (the "ILOC Report"). An entire chapter of the ILOC Report focused on "Reforming Justice for Alaska Natives: The Time is Now." The Commission found that access to public safety and justice in rural Alaska communities is wholly inadequate or non-existent, and made recommendations for improving such access. Just as with previous commissions before it, a main component of the Commission's recommendations is for the State of Alaska to support tribal authority over public safety and justice locally in rural communities instead of actively resisting such efforts.

This Committee held a hearing on March 11, 2014 regarding the ILOC Report, and received an overview of the Commission's findings and recommendations. A second hearing has been scheduled today in order to hear recommendations from the Alaska Federation of Natives (AFN) regarding how the State of Alaska might address issues raised by the ILOC Report. Following are recommendations from AFN for the State of Alaska's consideration:

Overall Recommendation: Partner with Alaska Tribes Moving Forward. Undeniably, there has been a turbulent history between the State of Alaska and tribal governments situated within its borders. Individually, many legislators, administration and agency officials have made great efforts to work with tribes and support tribal authority in rural communities. But overall, the State, and in particular, the State Legislature as a body, has resisted efforts to engage with tribal governments on these issues. If there is one most important recommendation AFN can make to this Committee, it is to ask that the Committee, and the Alaska State Legislature, open itself to the idea that partnering with tribes in the State is not a loss of its own authority, but a gain of untapped resources that has the unique ability to address public safety and justice issues in areas of rural Alaska that the State has not been able to. This is not a zero sum game in which any recognition of tribal authority is a loss of state authority.

The clear message from the ILOC Report is that a sea change is necessary; critical to the improvement of the public safety crisis in rural Alaska is a fundamentally different approach to tribal authority and jurisdiction. We ask that this Committee take the lead in guiding the Alaska State Legislature toward working with tribes as partners -- moving forward as partners to respond to public safety and access to justice issues.



SPECIFIC “NEXT STEPS”

More specific recommendations follow that are not intended to be comprehensive or exhaustive, rather they serve as a starting point for a continuing discussion working together with the Legislature.

- **Review and Adopt Recommendations from Prior Commissions.** Recommended specific actions the State could take in addressing rural justice and public safety in Alaska already exist. Examples include the *Alaska Natives Commission, Final Report, Volumes I-III* (1994) from the Alaska Natives Commission, the *Final Report to the Governor* (1999) from the Alaska Commission on Rural Governance and Empowerment, and most recently, the *Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission, 2006*, from the Alaska Rural Justice and Law Enforcement Commission (“Rural Justice Commission”).

The Rural Justice Commission was created by Congress to respond to needs related to justice and law enforcement in rural Alaska through Public Law 108-199. It consisted of Federal and State Co-Chairs and commissioners from numerous interests, including tribal authorities. The Rural Justice Commission (and prior Commissions) made numerous findings and recommendations that the State should review and consider implementing. The Rural Justice Commission’s Recommendations included (1) engaging in more partnerships and collaboration with tribes, (2) enlarging the use of community based solutions, (3) building additional capacity, and (4) increasing access to judicial services. In particular, the Rural Justice Commission found that the “State’s resistance to tribal courts” is a barrier to many proposed solutions, and recommended “tribes and the state reach agreement regarding tribal jurisdiction.”

- **Remove Obsolete Impediments to Tribal Authority and Encourage Better Relations with Tribal Governments.** In 2001, the Knowles Administration entered into a “Millennium Agreement” with Alaska tribes. The agreement was meant to be a “framework for the establishment of lasting government-to-government relationships.” In 2002, the State Attorney General’s office issued an opinion recognizing the concurrent jurisdiction of the State of Alaska and Alaska Tribes to initiate child protection proceedings. Two years later, with a new Administration, the Attorney General’s office issued an opinion reversing itself and asserting that tribes only have jurisdiction if a case is transferred under applicable federal Indian Child Welfare Act provisions, from state court. As political winds shift, the Millennium Agreement has since been ignored, and we are left with an AG opinion that has been rendered obsolete in a subsequent Alaska Supreme Court decision which found that the Opinion’s analysis and conclusions regarding tribal jurisdiction are wrong. To clarify the current status, the State should issue a current opinion recognizing tribal jurisdiction, or simply retract the 2004 opinion and leave the 2002 opinion in place. The Millennium Agreement should be resurrected and become an active policy document followed by State agencies. AFN recommends this Committee issue a formal request to the Attorney General for a new opinion in line with *Tanana*, or at a minimum revoke the 2004 Renkes opinion.

- **Support Intergovernmental and Cross-Jurisdictional Agreements Between Tribes and the State.** Currently, Tanana Chiefs Conference and the Department of Law are in discussions regarding an intergovernmental agreement to improve the delivery of justice in rural Alaska. AFN commends the Department of Law for working with TCC to engage in these discussions, and hopes that this is an effort that will result in a partnership between tribes and the State, perhaps as a beginning point. S.1474 the



Alaska Safe Families and Villages Act, includes an “Alaska Safe Families and Villages Self Governance Intergovernmental Grant Program.” This program encourages tribes and the State to enter into intergovernmental agreements relating to the enforcement of certain State laws by the tribes (e.g. misdemeanor alcohol or drug offenses).

In other areas, cross-jurisdictional agreements between Tribes and the State would support enhanced public safety and justice in rural Alaska. S. 1474 with proposed amendments also provides a mechanism for such agreements through the Alaska Safe Families and Villages Tribal Law Project.

- **Increase Efficiency and Provide Clarification Through Amending State Laws.** Alaska Supreme Court decisions have confirmed that Alaska tribes do have jurisdiction to exercise their authority in their communities. S.1474 and other efforts provide further support. The legislature can demonstrate the State’s willingness to partner with Alaska tribes moving forward by establishing clearer pathways in Alaska law for recognition and efficient processing of tribal court decisions. Examples include inclusion of tribal governments in Alaska’s UCCJEA, Uniform Enforcement of Foreign Judgments Act, paternity and vital statistics statutes, and civil and criminal procedure.

- **Enhance Collateral Efforts which support Public Safety and Justice in Rural Areas.** Tribal authority and efforts to address inadequate public safety and access to rural justice in Alaska are inter-connected with treatment programs, law enforcement, and victim assistance programs. A comprehensive approach would address these collateral efforts as well.

Examples:

- The majority of offenses in rural Alaska (criminal offenses, child protection, domestic violence) involve alcohol and drug abuse. Yet the State database does not sufficiently track an offender’s alcohol assessment/screening history. Judges need to know how many prior assessments have been done, and whether the offender is in compliance with any conditions which have been mandated. The criminal history database should be expanded to include assessment and compliance so that judges have a more accurate picture of efforts the offender has made to address alcohol or drug abuse issues.

- VPSOs are often forced to find shelters or “safe houses” for domestic violence victims, and have had to house them in their own homes because villages often have no such facilities. Support domestic violence programs with funding for domestic violence shelters and relocation travel for victims in life-threatening situations.

- **Support Successful Tribal Court Approaches.** There are numerous examples of tribal courts within the State that have successfully demonstrated the ability to deal most effectively with alcohol and drug abuse, child protection, and domestic violence issues locally. The Circle Peacemaking restorative justice approach in Kake, led by Magistrate Mike Jackson, is one such example. At the time of the Rural Justice Commission Report, Circle Peacemaking experienced a 97.5% success rate in sentences fulfillment, compared with the Alaska Court System’s 22% success rate. Tribal Courts within Tanana Chiefs Conference in the Interior routinely take jurisdiction in child protection matters and effectively work with families locally in the villages where they reside. The State should recognize such successes and seek ways in which to support them.



- **Support the Repeal of the Violence Against Women Reauthorization Act of 2013 (VAWA), Section 910.** A provision, Section 910, was inserted into the reauthorization of VAWA which provided a “Special Rule for Alaska” creating confusion around the ability of tribes in Alaska to issue and enforce domestic violence protective orders. S.1474, the Alaska Safe Families and Villages Act, contains a provision repealing Section 910. The State should support repeal of Section 910. There is currently a process in which tribes submit DV protective orders to state courts which are then entered into the state tracking system and enforced by State law enforcement. But Section 910 clouds the issue and is likely to result in attempts by perpetrators to fight violations on jurisdictional grounds. Repeal will remove the unnecessary uncertainty created by Section 910.

- **Support S.1474 the Alaska Safe Families and Villages Act, and AFN’s Proposed Amendments.** Senators Begich and Murkowski have jointly introduced S.1474, the Alaska Safe Families and Village Act. AFN has provided amendments to the legislation to the Senators that would include an “Alaska Safe Families and Villages Self Governance Tribal Law Project” which recognizes the concurrent jurisdiction of tribes exercising jurisdiction over matters relating to child abuse and neglect, domestic violence, drug offenses and, consistent with any local option law in effect in the community, alcohol-related offenses. This legislation if enacted as amended would further support tribal and State efforts to address child abuse and domestic violence, and the underlying drug and alcohol issues, most effectively in local communities.

House Community & Regional Affairs

Oversight Hearing on The Indian Law and Order Commission's Report, "A Roadmap for Making Native America Safer"

March 11, 2014



FACTS

- 75 Alaska villages have no police presence.
 - AK has the highest incidence of rape in the US, and it is the worst in rural areas.
 - The majority of Alaskan women have been victims of intimate partner violence or rape.
-
- Alaska is the only state with its own chapter in the six chapter ILOC Report.
 - Georgianna Lincoln and Wilson Justin served on the Commission's advisory committee.
 - The nine-member bipartisan Commission was headed by former US attorney for Colorado, Troy Eid, a Bush appointee.

FINDINGS

Alaska's approach to criminal justice issues is fundamentally on the wrong track.

Problems with safety in tribal communities are severe across the US – but they are systematically the worst in Alaska.

Domestic violence and sexual assault are more severe public safety problems in Alaska Native communities than in any other tribal communities in the United States.

Alaska's strongly centralized law enforcement and justice systems do not serve rural Native communities adequately, if at all.

The State of Alaska's approach to criminal justice creates and reinforces discriminatory attitudes about Alaska Natives and the governing capacities of Alaska Native Tribes.

CONCLUSIONS

Reform will not happen without local control over justice and self-governance.

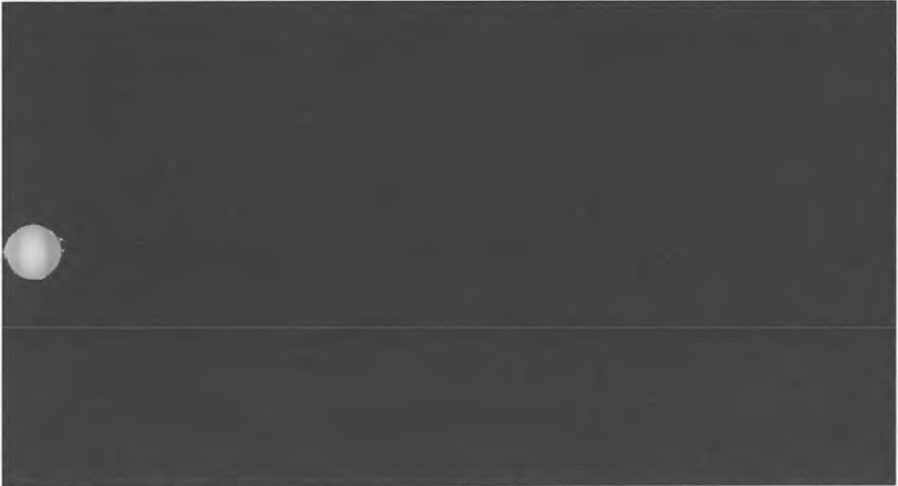
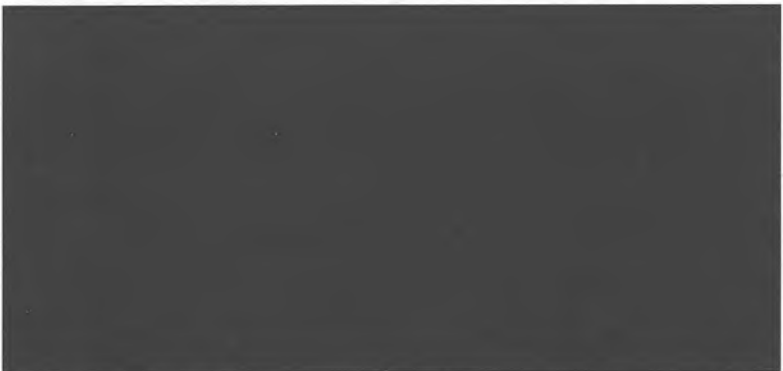
There is still only limited collaboration with tribal and other local governments, which could be the State's most valuable partners in public safety.

Alaska's approach to rural justice comes with high litigation costs, and could be avoided if State-Tribal relations were characterized by respect, recognition, and partnership.

Alaska can root out inefficiencies and wasteful spending in its current organization, taking advantage of cost-savings from the increased use of alternatives to detention and other innovations in community-based service provision.

Contact: Aurora Lehr
Email: aLehr@NativeFederation.org
Report available at:
<http://www.aisc.ucla.edu/iloc/report/>





REFORMING JUSTICE FOR ALASKA NATIVES: THE TIME IS NOW

Section 205 of the Tribal Law and Order Act of 2010 (TLOA) states, *“Nothing in this Act limits, alters, expands, or diminishes the civil or criminal jurisdiction of the State of Alaska, any subdivision of the State of Alaska, or any Indian tribe in that State.”* Yet, the Indian Law and Order Commission’s opinion is that problems in Alaska are so severe and the number of Alaska Native communities affected so large, that continuing to exempt the State from national policy change is wrong. It sets Alaska apart from the progress that has become possible in the rest of Indian country. The public safety issues in Alaska—and the law and policy at the root of those problems—beg to be addressed. These are no longer just Alaska’s issues. They are national issues.

The most recent example of harmful Alaska exceptions in Federal law and policy came with the March 7, 2013 enactment of the Violence Against Women Reauthorization Act of 2013 (VAWA Amendments). Title IX (“Safety for Indian Women”), Section 910, contains a rule that limits the Act’s “Special Domestic Violence Criminal Jurisdiction” to just 1 of the 229 federally recognized tribes in Alaska. Given that domestic violence and sexual assault may be a more severe public safety problem in Alaska Native communities than in any other Tribal communities in the United States, this provision adds insult to injury. In the view of the Commission, it is unconscionable.

Every woman you've met today has been raped. All of us. I know they won't believe that in the lower 48, and the State will deny it, but it's true. We all know each other and we live here. We know what's happened. Please tell Congress and President Obama before it's too late.

Tribal citizen (name withheld)

Statement provided during an Indian Law and Order Commission site visit to Galena, AK

October 18, 2012

The strongly centralized law enforcement and justice systems of the State of Alaska are of critical concern to the Indian Law and Order Commission. They do not serve local and Native communities adequately, if at all. The Commission believes that devolving authority to Alaska Native communities is essential for addressing local crime. Their governments are best positioned to effectively arrest, prosecute, and punish, and they should have the authority to do so—or to work out voluntary agreements with each other, and with local governments and the State on mutually beneficial terms.

While it is not within the scope of the Commission's work to address needed reforms within Alaska's State government, matters relating to the public safety of the Alaska Native communities are. The Commission's study of Alaska and its recommendations to Congress and the President are focused on what can and should be done to restore and enhance authority to local Native communities.

FINDINGS AND CONCLUSIONS

Centralized administration falls short of local needs. Forty percent (229 of 566) of the federally recognized Tribes in the United States are in Alaska, and Alaska Natives represent one-fifth of the total State population.¹ Yet, these simple statements cannot capture the vastness or the Nativeness of Alaska. The State covers 586,412 square miles, an area greater than the next three largest states combined (Texas, California, and Montana).² There are only 1.26 inhabitants per square mile—as compared to 5.85 for Wyoming, which is the next least populous state.³ (See map.)

Many of the 229 federally recognized tribes are villages located off the road system and “more closely resemble villages in developing countries” than small towns in the lower 48.⁴ Frequently, Native villages are accessible only by plane, or during the winter when rivers are frozen, by snow-machine. Food, gasoline, and other necessities are expensive and often in short supply. Subsistence hunting, fishing, and gathering (caribou, moose, reindeer, beluga whale, seal, salmon, halibut, berries, greens, etc.) are a part of everyday life. While Alaska Natives constitute a majority of the rural population, each community is nonetheless quite small; typical populations are in the range of 250-300 residents, many of whom share family or clan affiliations.⁵ Villages are politically independent from one another and have institutions that support that local autonomy—village councils and village Corporations.⁶ Historically, each village has managed its own local affairs, including issues of justice, and many are seeking ways to do so again. These conditions pose significant challenges to the effective provision of public safety for Alaska Natives.

*Justice efforts, however, are often hampered.*⁷ Problems with safety in Tribal communities are severe across the United States—but they are systematically the worst in Alaska. This is evident in an array of data concerning available services, crime, and community distress.

Alaska's True Proportion to the Continental United States



Table 2.1 Law Enforcement Personnel Serving Native Communities in Alaska

	DUTIES	TRAINING	LOCATION	FUNDED FORCE* (2011-12)	GUN?
State Troopers	Enforce all criminal laws Investigate crimes Assist other LE agencies Transport offenders Provide court security	15 weeks Accredited	Urban and rural posts across the state	373	Yes
Village Public Safety Officers (VPSOs)	Search and rescue Fire protection Emergency medical assistance Crime prevention Basic law enforcement	10 weeks	Rural villages	101	No
Village Police Officers (VPOs)	Basic law enforcement	2 weeks	Rural villages and tribes	104	Yes
Tribal Police Officers (TPOs)					

*Some positions may not be filled

Sources: (1) Division of Alaska State Troopers main website, Alaska Department of Public Safety, <http://www.dps.state.ak.us/ast/>; (2) Village Public Safety Officer Program website, Alaska Department of Public Safety, <http://www.dps.state.ak.us/ast/vpso/>; (3) *Legislative Hearing on S. 1192, Alaska Safe Families and Villages Act of 2011 and S. 1763 Stand Against Violence and Empower Native Women Act Before S. Comm. on Indian Affairs*, 112th Cong. 54 (Written Testimony of Joseph Masters, Commissioner, Alaska Department of Public Safety) (2013), available at <http://www.indian.senate.gov/hearings/loader.cfm?csModule=security/getfile&pageid=9515>

Our Tribe needs the State to recognize and respect our Tribal courts. We don't get much justice in Fairbanks.

*Curtis Summer, Vice Chairman, Tanana Village
Testimony before the Indian Law and Order Commission, Meeting in Tanana Village, AK
October 29, 2012*

Alcohol is probably 95 percent of our problem, but the State says we have no Tribal authority to fight bootlegging locally when they're hundreds of miles away—and only by airplane much of the year. The State and the Feds won't step up to prevent alcohol and drugs from flowing in here from Anchorage and Fairbanks. We're on our own, except they [the State] won't respect or enforce what we do.

*Dave Richards, City Manager, Fort Yukon, AK
Testimony before the Indian Law and Order Commission, Meeting in Fort Yukon, AK
October 30, 2012*

Most Alaska Native communities lack regular access to police, courts, and related services:

- ▶ Alaska Department of Public Safety (ADPS) officers have primary responsibility for law enforcement in rural Alaska, but ADPS provides for only 1.0–1.4 field officers per million acres.⁸ Since ADPS’s 370 officers cannot serve on a 24/7 basis, the actual ratio of officers to territory is much lower. According to ADPS, troopers’ efforts “are often hampered by delayed notification, long response distance, and the uncertainties of weather and transportation.”⁹
- ▶ Funding is available for just over 100 Village Public Safety Officers (VPSOs), although only 88 positions serving 74 communities were filled in 2011. Local Alaska Native Corporations hire VPSOs and villages have input into their selection; but, the officers actually work under Alaska State Trooper oversight. VPSO presence helps improve the coverage ratio, but technically their role is restricted to basic law enforcement and emergency first response. They do not carry firearms, although most offenders in rural villages do, a fact tragically emphasized through the death of VPSO Thomas Madole in March 2013.¹⁰
- ▶ 104 more officers serve 52 communities as Village or Tribal Police Officers, and both the Bristol Bay and North Slope Boroughs have borough-wide police departments. These officers do carry firearms, but the positions exist only in those communities with the economic resources to support them.¹¹
- ▶ At least 75 communities in Alaska lack any law enforcement presence at all.¹²
- ▶ Each of the four judicial districts in the Alaska court system serves rural Alaska, but the district courts frequently delegate responsibility to magistrates to serve low population, remote communities. Magistrates serving rural circuits visit individual communities regularly, but infrequently. Yet, often they are the sole face of the State court in Native villages.¹³
- ▶ By Federal law, Alaska Native Tribes may establish Tribal courts. As of 2012, 78 Tribes in Alaska had done so; 17 more Tribes were in the process of court development.¹⁴ However, funding constraints and narrow jurisdiction limit Alaska Tribal courts’ efforts. Not all Alaska Tribal courts are fulltime or even operated with paid staff. These courts typically address only child welfare cases, customary adoptions, public drunkenness, disorderly conduct, and minor juvenile offenses.¹⁵

[Alaska Natives experience the] highest rates of family violence, the highest rates of suicide, and the highest rates of alcohol abuse anywhere in the nation and, unfortunately, at the top of the list in Indian country in the United States. And those challenges...are exacerbated, in part, because of the enormous geographical size of Alaska, the remoteness of these communities, the skyrocketing costs of transportation, the lack of any economic opportunity, and the enormous gaps in the delivery of any form of government service, particularly from the State of Alaska.

*Mayor Bruce Botelho, Commissioner, Alaska Rural Justice and Law Enforcement Commission
Testimony before the Indian Law and Order Commission, Hearing at Tulalip Indian Reservation
September 7, 2011*

- The Emmonak Women’s Shelter, which closed for several weeks in 2012 for lack of resources, is “one of two facilities dedicated to domestic violence protection in the State. It is also the only facility located in a Native American community.”¹⁶ It is located “in a region in which there are few police officers, no transitional housing for women, and limited options for women seeking to escape.”¹⁷
- Alaska funds only 16 juvenile probation offices across all of Alaska; on average, each office’s service area is the size of Tennessee.¹⁸
- Of the 76 substance abuse treatment and/or mental health treatment centers in the State, most are in southern and southeastern Alaska, with approximately one-third in Anchorage alone; for residents of southwestern, central, and northern Alaska, help is typically provided a very long way from home.¹⁹

Alaska Natives are disproportionately affected by crime, and these effects are felt most strongly in Native communities:

- Based on their proportion of the overall State population, Alaska Native women are over-represented in the domestic violence victim population by 250 percent; they comprise 19 percent of the population, but 47 percent of reported rape victims.²⁰
- On average, in 2003-2004 an Alaska Native female became a victim of reported sexual assault or of child sexual abuse every 29.8 hours, as compared to once every 46.6 hours for non-Native females. Victimization rates, which take account of underlying population proportions, are even more dissimilar: the rate of sexual violence victimization among Alaska Native women was at least seven times the non-Native rate.²¹
- In Tribal villages and Native communities (excluding the urban Native population), problems are even more severe. Women have reported rates of domestic violence up to 10 times higher than in the rest of the United States and physical assault victimization rates up to 12 times higher.²²
- During the period 2004-2007, Alaska Natives were 2.5 times more likely to die by homicide than Alaskans who reported “White” as their race and 2.9 times more likely to die by homicide than all Whites in the United States.²³
- Alaska Natives’ representation in the Alaska prison and jail population is twice their representation in the general population (36 percent versus 19 percent).²⁴ Nearly 20 percent of the Alaska Natives under supervision by the Alaska State Department of Corrections are housed out of State, nearly all at Hudson Correctional Facility in New York State—4,419 road miles from Anchorage.²⁵

“It nonetheless bears repeating that the Commission’s findings and conclusions represent the unanimous view of nine independent citizens, Republicans and Democrats alike: It is the Commission’s considered finding that Alaska’s approach to criminal justice issues is fundamentally on the wrong track.”

- In Fairbanks, the city that serves a large rural and Tribal village population, Alaska Native youth who come into contact with the juvenile justice system are four times more likely than non-Natives to be referred to juvenile court and three times more likely to be sentenced to confinement.²⁶

Social distress, which can be a cause of crime or other threats to public safety, is also high among Alaska Natives and in Alaska's Tribal communities:

- The suicide rate among Alaska Natives is almost four times the U.S. general population rate, and is at least six times the national average in some parts of the State.²⁷
- In 2011, over 50 percent of the 4,499 reports of maltreatment substantiated by Alaska's child protective services and over 60 percent of the 769 children removed from their homes were Alaska Native children.²⁸
- More than 95 percent of all crimes committed in rural Alaska can be attributed to alcohol.²⁹
- The alcohol abuse-related mortality rate was 38.7 per 100,000 for Alaska Natives over the period 2004-2008, 16.1 times higher than rate for the U.S. White population over the same period.³⁰

Origins and further impacts. Why do these grave crime and safety issues persist in Alaska's tribal communities? Responsibility, it appears, lies primarily with the State's justice system.

In Alaska's criminal justice system, State authority is privileged: the State has asserted exclusive criminal jurisdiction over all lands once controlled by Tribes, and it exercises this jurisdiction through the provision of law enforcement and judicial services from a set of regional locations, under the direction and control of the relevant State commissioners. This approach has led to a dramatic under-provision of criminal justice services in rural and Native regions of the State. It also has limited collaboration with local governments (Alaska Native or not), which could be the State's most valuable partners in crime prevention and the restoration of public safety.

It is not the Commission's intent in any way to criticize the many dedicated and accomplished State officials who serve Native communities day in and day out. They deserve the nation's respect, and they have the Commission's.

Yet, control and accountability directed by local Tribes is critical for improving public safety. It brings to the table place-specific knowledge of what may work best to prevent crime and social disorder. It prioritizes the

use of scarce criminal justice resources according to community needs. It creates possibilities for intervention before disagreements or stressful situations become violent. It makes it easier for law enforcement officials to respond to crime, creates better access to the institutions of justice for victims and witnesses, and allows for trials by jury of a defendant's peers.

Through these improved means of responding to problems, de-escalating conflict, and providing justice, local control may even decrease demand for certain criminal justice services and related social services.⁵¹ By contrast, Alaska's criminal justice system can only weakly respond to crime, do little to prevent it, and ultimately, perpetuates public safety concerns.

The Commission appreciates the State of Alaska's support of the Commission's visits to the State during the course of performing its statutory duties, including, but not limited to the cooperation that Attorney General Michael Geraghty and the Alaska State Troopers repeatedly extended. Similarly, we are grateful for the senior Federal leaders who did not hesitate to enable the Commission's work or engage individual Commissioners on these important matters. Where this report differs on interpretation of law, legal issues, and policies, we want to make clear that it is not for a lack of dialogue or a willingness to engage in robust discussion and debates. (See Appendix F for letters from Attorney General Geraghty and Donald Mitchell, Esq.)

It nonetheless bears repeating that the Commission's findings and conclusions represent the unanimous view of nine independent citizens, Republicans and Democrats alike: It is the Commission's considered finding that Alaska's approach to criminal justice issues is fundamentally on the wrong track. The status quo in Alaska tends to marginalize and frequently ignores the potential of tribally based justice systems, intertribal institutions, and organizations to provide more cost-effective and responsive alternatives to prevent crime and keep all Alaskans safer. If given an opportunity to work, Tribal approaches can be reasonably expected to make all Alaskans safer—and at less cost.

The Alaska State Attorney General has reviewed the distinct history of Tribal-territorial and Tribal-State relationships regarding land occupancy, ownership, and jurisdiction for the benefit of the Indian Law and Order Commission (Appendix F). The Commission understands that from the State's perspective, Alaska's criminal justice system is rooted in U.S. statutory and case law. The Attorney General's review notes that given the U.S. Supreme Court's interpretation of the Alaska Native Claims Settlement Act of 1971 (ANCSA) in *Alaska v. Native Village of Venetie Tribal Government*,⁵² there is very little Indian country in Alaska (as defined by the Indian Country Act, 18 U.S. C. § 1151).

The Alaska Attorney General's review also emphasizes that Alaska is subject to P.L. 83-280, which assigns certain aspects of Federal jurisdiction

over Indian country to the State government.³³ The Attorney General takes the position that its law enforcement authority is exclusive throughout the State, maintaining that Tribes do not have a land base on which to exercise any inherent criminal jurisdiction.

In the Commission's view, each of the Attorney General's arguments is incomplete and unconvincing.

- The U.S. Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government* addressed fee land, not Alaska Native town site land or Alaska Native allotments, and a number of strong arguments can be made that this land may be taken into trust and treated as Indian country. Recently, for example, after exhaustively reviewing all the statutory authorities, a Federal court has decided that the Secretary of Interior does have authority to take land into trust in Alaska for Alaska Native communities.³⁴
- The State of Alaska rests its argument for exclusive criminal law jurisdiction on P.L. 83-280. Yet, courts within and outside Alaska have unanimously affirmed that P.L. 83-280 left concurrent State and inherent Tribal jurisdiction intact within Indian country. The State cannot simultaneously assert that, outside the Metlakatla Reservation, there is no Indian country in Alaska and that P.L. 83-280 prevails.
- Evidence in Alaska suggests that Tribes do have a land base on which to exercise criminal jurisdiction. At least some Alaska municipalities already are entering into agreements with Native villages that acknowledge the exclusive operation of Native law and law enforcement within overlapping municipal and village boundaries. One such example is the agreement between Alaskan city of Quinhagak and the Native Village of Kwinhagak.³⁵

Without doubt, the Commission understands that the structure of Alaska's criminal justice system is consistent with the overall organization of Alaska State government, which is more centralized than any other U.S. state's.³⁶ In Alaska, most State programs and functions operate from a designated hub or hubs, and less attention is paid in Alaska than in other States to developing local capacity. Given this orientation, when Federal policy augmented State authority to include authority over Alaska Native lands, the State reflexively absorbed and centralized that authority.

But understanding the history of Alaska's system does not imply that it should continue, especially as its population keeps growing. The serious and ongoing crime and disorder problems in rural and Native regions of the State are evidence that the system is deeply flawed and that it has failed. From the standpoint of public safety, to leave the system unchanged makes the State of Alaska's continued assertion of exclusive jurisdiction seem not only unwise, but also incautious. It also is indefensibly expensive

to all Alaskans in terms of the human and economic toll it is taking on this and future generations of Alaskans.

The VPSO and VAWA Amendment exclusions are two specific examples of way the organization and orientation of the State's criminal justice system fail to prevent crime and imperil public safety

- ▶ **The Village Public Safety Officer position.** The VPSO position is emblematic of the deficiencies in Alaska's criminal justice system for Tribal communities. These quasi-law enforcement field officers are paid by Alaska Native Corporations, but report to the Alaska State Patrol, and are not accountable directly to Alaska Native communities. They perform numerous nonpolicing functions, have limited training, and cannot carry firearms—despite the great volatility of many situations they encounter. There is no reason for Alaska to use this model other than cost savings. VPSOs themselves can be exceptional officers, but the plans to expand the VPSO system do not translate into the scale of public safety enhancements that are necessary.
- ▶ **The harms in the VAWA Amendments exclusion.** Title IX, Section 901 of the Violence Against Women Reauthorization Act of 2013 includes a special rule limiting the Special Domestic Violence Criminal Jurisdiction in the Act to the Metlakatla Indian Community, leaving 228 other Tribes in Alaska without its benefit. The VAWA Amendments provisions allow Tribal courts to exercise this jurisdiction even against non-Natives under certain circumstances, and in several respects may apply in the absence of Indian country (for example, when the victim is a spouse, intimate partner, or dating partner of a member of the participating Tribe). The civil provisions allowing for protective orders also are not tied to the requirement of “Indian country.” Exempting all but one of Alaska's Tribes from this legislation deprives them—and the State overall—of an essential tool in the fight against domestic violence and sexual assault.

Furthermore, crime and safety problems are only one the system's many negative consequences:

- ▶ Alaska's approach to providing criminal justice services is unfair. Alaska Natives, especially those living in rural areas of the State, have not had access to the level and quality of public safety services available to other State residents or that they should rightly expect as U.S. citizens. Given the higher rates of crime that prevail in Alaska Native communities, the inequities are even greater in relative terms. The State of Alaska's overarching lack of respect for Tribal authority further magnifies fairness concerns.

- Alaska’s approach creates and reinforces discriminatory attitudes about Alaska Natives and the governing capacities of Alaska Native Tribes. As long as the system that helped create the problems is allowed to persist, the general public will be tempted to assume that the fault lies with the victims—when instead, Alaska Natives and Alaska Native Tribal governments have had relatively little say in the way crime and justice are addressed in their communities.
- Alaska’s approach puts the State out of step with the rest of the United States and with international norms. As the State Attorney General’s letter demonstrates, Alaska steadfastly relies on ANCSA as the basis of its interactions with Tribes. But placed in context, ANCSA was the last gasp of Federal “Termination Policy,” which focused on ending government-to-government relationships with Native nations. A mere 4 years later, Congress passed the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638), and Federal policy moved strongly in the direction of Tribal empowerment. Since then, evidence has accumulated that Tribal self-government is the best means of improving outcomes for American Indians living in Tribal communities,³⁷ and international law has affirmed the importance of self-determination for Indigenous peoples.³⁸
- Alaska’s approach will lead to significant criminal justice and litigation costs. A variety of legal rulings and court decisions underscore the strong differences of opinion about State and Tribal government powers in Alaska. These decisions include: the 133-page opinion of the Department of the Interior Solicitor in 1993 that ANCSA had not terminated villages’ status as Tribes,³⁹ the U.S. Supreme Court’s decision in *Venette*, and the Alaska Supreme Court’s 1999 decision in *John v. Baker*⁴⁰ that Alaska Native Tribal courts can regulate internal domestic affairs even if Tribes do not have federally recognized Indian country. Without policy change, the future will look much like the contested past, only with much bigger and costlier problems compounded over time. As one expert has observed, “the extent of Tribal jurisdiction in Alaska is not yet clear, and will likely be the subject of State and Federal court cases for years to come.”⁴¹ Even if Alaska wins cases, the financial and social costs of litigation will be considerable and could be avoided altogether if State-Tribal relations instead were characterized by respect, mutual recognition, and partnership.
- Alaska’s approach may result in irrevocable harm. The 75 Alaska Native villages that lack any law enforcement presence must contend with the prevailing sentiment in the State, which the Commissioners frequently heard from State and Federal leaders, that they should “just move.” The Commission was told repeatedly, in other words, that many Alaska Natives should relocate to larger, semi-urban centers, where there are law enforcement,

Circle Peacemaking in the Organized Village of Kake is a community-based restorative justice process for both adults and juveniles. State judges can defer to it for sentencing decisions and community members can turn there before problems deteriorate into official concerns. Kake circle peacemaking focuses on restoring balance to offenders' lives and to healing ruptures in their family, clan, Tribe, and community relationships. While literally sitting in a circle, justice system personnel, village elders, service providers, and any interested or affected community members meet with the offender and victim(s) to "speak from the heart in a shared search for understanding of the event" and to "together identify the steps necessary to assist in healing all affected parties and prevent future crimes." Kake Circle Peacemaking has led to decreased substance abuse, decreased offending, which is reflected in recidivism rates as much as 40 percentage points lower than the comparable State of Alaska figure, and greater Tribal self-determination.⁴³

One of the vehicles of change which I view as a hopeful, empowering mechanism is catching on in some villages in this region. The Western way of locking people up to sit in a jail cell and receive three meals a day and not really have to do anything meaningful to make things right is not too effective....Some of our State Magistrates and some State Judges are offering the option of the offender who has been charged and pled guilty to a misdemeanor or lower offence, to go before their home communities and be in a circle and to take ownership of their mistake in a meaningful way which can only happen in the safety and caring of a circle by the people who helped raise you. This is an example of a positive solution.

*Mishal Tooyak Gaede, Tribal Court Facilitator, Tanana Chiefs Conference
Letter to the Commission,
October 31, 2012*

One of the concluding observations I would make is that as a result of our activities within the State we become painfully aware that there was a tendency to be a wide gap between State governments and Tribal governments with regard to the roles in rural Alaska.

*Mayor Bruce Botelho, Commissioner, Alaska Rural Justice and Law Enforcement Commission
Testimony before the Indian Law and Order Commission, Hearing at Tulalip Indian Reservation
September 7, 2011*

court services, and support for victims and offenders. For communities that already are under great stress from natural resource development, environmental degradation, climate change, competition over subsistence resources, complex restrictions on subsistence activities, high prices for food and fuel, and substandard housing and sanitation conditions, this relatively callous attitude toward village public safety may be the final straw, leading to the dissolution of villages and the abandonment of life ways forged in the crucible of the Arctic thousands of years ago. While cultural change is to be expected, it should be guided by community choices – not forced by colonial policy.

Making change. Some important initial reforms have gained toeholds within the current system, particularly within the Alaska State judiciary. In her 2013 “State of the Judiciary Address,” Chief Justice Dana Fabe of the Alaska Supreme Court praised both the State-deputized circle sentencing program, a traditional Native practice for restoring breaches in the community caused by wrongdoing, which the State has piloted as a sentencing practice in a limited number of State court proceedings, and Tribal courts, which are fully independent of State control:

Tribal courts bring not only local knowledge, cultural sensitivity, and expertise to the table, but also are a valuable resource, experience, and a have a high level of local trust. They exist in at least half the villages of our State and stand ready, willing, and able to take part in local justice delivery. Just as the three branches of State government must work together closely to ensure effective delivery of justice throughout the State court system, State and Tribal courts must work together closely to ensure a system of rural justice delivery that responds to the needs of every village in a manner that is timely, effective, and fair.⁴²

Backing up words with action, Justice Fabe and her colleagues have been instrumental in improving the enforceability of Tribal court orders concerning domestic violence and engaging State and Tribal courts in shared training meetings.

This outreach and innovation by the Alaska judiciary is impressive and welcome, but it falls far short of what is truly needed. More Tribal villages need Tribal courts and sentencing circles, and where such institutions already exist, greater Tribal jurisdiction could make them even more effective.

Native villages without reasonable access to law enforcement should have that access, and all of their law enforcement officers should have the training and approval to carry firearms subject to standards that accord with all State peace officers. Native village residents should be able to participate locally in substance abuse treatment, technology-assisted alternatives to detention, and anger management programs. Not only the

State's judicial branch, but also all of State government should be working in greater collaboration with Alaska Native Tribes. The immediate and overriding need is for a criminal justice system that fully recognizes, respects, and empowers their governments.

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. The Commission notes only that a variety of organizational models support greater empowerment and that the shift must include the financial means for Tribal governments to do their share. Among others, options include:

- collaborating with Tribes on other criminal justice issues
- deputizing Tribes to provide a wide array of criminal justice services
- delegating or deputizing Tribal judges, including the expanded use of circle sentencing and traditional dispute resolution
- leveraging the State and Tribal governments' concurrent criminal jurisdiction to develop specific, locally optimal criminal justice approaches
- adopting a policy of State deference to Tribal authority in Tribal communities

Questions about how Tribal government services will be paid for immediately draw attention to an important difference between village and urban Alaska communities. Village subsistence economies do not lend themselves to many traditional means of government revenue generation, such as imposing a sales tax. Instead, other forms of finance must be found. Tribal governments may have access to certain Federal income streams (especially if the Commission's recommendations concerning base funding are implemented), and some may have site-specific revenue opportunities, such as in wildlife management, extractable resources, and government contracts.

The State government can also generate funds for Tribal criminal justice programming by rooting out inefficiencies and wasteful spending in its current organization, taking advantage of cost-savings from the increased use of alternatives to detention and other innovations in service provision, and moving money out of regional centers when increases in Tribal capacity make the current extent of service provision unnecessary.⁴⁴

Regional Alaska Native Corporations, the largest beneficiaries from Tribal resources over the last four decades, also should increase their contributions to the governments that justify their existence. The bottom line is that as Alaska Native Tribal governments must have adequate finances to carry out the functions of government, meet their

responsibilities to citizens, and work to improve their citizens' lives. As a legal matter, such changes may require statutory and constitutional change in Alaska, as well as corresponding reforms to ANSCA and other laws.⁴⁵

While acknowledging that change in the criminal justice system that serves Native Alaska is primarily a State and Tribal responsibility, the Indian Law and Order Commission observes that there also is a role for Congress. By making relatively modest changes to law and policy, Congress can help create a jurisdictional framework that supports Tribal sovereignty, provides a clearer role for the State, and lays groundwork for the resolution of resourcing issues.

Because the vast majority of public safety concerns in rural and Native Alaska relate to substance abuse, minimizing harms from alcohol and drug use will be key to addressing public safety issues in Native villages. There must be creative thinking about substance abuse problems and other local public safety concerns, by a broader set of individuals, (especially Tribal governments, but others as well), who can leverage a wider set of resources.

When Tribal governments have a larger decision-making role, it is likely that even more locally based, therapeutic sentencing models will emerge; that treatment resources in Native villages will be more integrated with law enforcement; that criminal justice and social services will be deployed more often for prevention and harm reduction than for intervention and punishment; and that new players, such as nonprofit organizations or Tribal collaboratives, will join in. This is not to minimize the difficulty in solving problems related to transportation, access, and infrastructure, but to suggest that even for very entrenched problems like substance abuse reduction, expanding local Tribal governments' authority offers more hope than does the status quo.

RECOMMENDATIONS

2.1: Congress should overturn the U.S. Supreme Court's decision in Alaska v. Native Village of Venetie Tribal Government,⁴⁶ by amending ANCSA⁴⁷ to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.

The *Venetie* decision was based on an outdated and static understanding of ANCSA. Although that statute was first enacted under the influence of Termination Policy, it has been amended and reinterpreted many times since then, moving gradually but unmistakably toward a Tribal self-determination model. Thus, although the original language of ANCSA disavowed "lengthy wardship or trusteeship"⁴⁸ for Alaska Natives, later amendments deliberately extended restrictions on transfer of shares in Alaska Native Corporations out of Native ownership, and included other measures to ensure continued Native control of Alaska Native Corporations and the lands they own.⁴⁹

Further, as noted above, in 1993 the executive branch confirmed recognition of Alaska Native villages as federally recognized Indian nations with a government-to-government relationship with the United States. Since then Federal agencies have been providing services to Alaska Native villages that clearly qualify as Indian country much as they do for Tribes on reservation lands. Nothing in ANCSA expressly barred the treatment of these former reservation and other Tribal fee lands as Indian country. As a consequence, the *Venetie* decision has been widely criticized for failing “to honor longstanding principles of Indian law favoring the preservation of Tribal rights and powers until Congress clearly expresses its intent to terminate those rights and powers.”⁵⁰ Congress should step forward and correct the Supreme Court’s misguided interpretation of ANCSA.

2.2: Congress and the President should amend the definitions of Indian country to clarify (or affirm) that Native allotments and Native-owned town sites in Alaska are Indian country.

There is an archipelago of lands—individual Indian allotments and commonly held lands within Alaska Native town sites—that ANCSA did not affect. These are geographies over which the Federal government retains a trust responsibility, and they should be fully recognized as Indian country.

These parcels are not insignificant—conservative estimates place their total area somewhere between 4 and 6 million acres.⁵¹ If a land base is what is needed to exercise criminal jurisdiction (and other kinds of land-based jurisdiction), the change would clarify that at least some Alaska Native Tribes do have one. Furthermore, these lands are foothold from which Indian country in Alaska can be expanded.

2.3: Congress should amend the Alaska Native Claims Settlement Act to allow a transfer of lands from Regional Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the Federal criminal code; to allow Alaska Native Tribes to put tribally owned fee simple land similarly into trust; and to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities.

To assert substantial land-based jurisdiction, Alaska Native Tribes need more land, with a focus on restoring and consolidating Tribal authority within Native villages and town sites. Transfers of Regional Corporation land back to Tribes and conversion of this land to trust status makes that possible. Tribes also should have the option of converting any land held in fee simple to trust status to further enlarge the reach of territorial jurisdiction.

Where Tribes in Alaska pursue such land consolidation and create larger swaths of Indian country in Alaska, the argument for them to opt out of P.L. 83-280 jurisdiction (as provided for in Commission recommendation

1.1) is at least as strong as it is for P.L. 83-280 Tribes in the lower 48. Indeed, Alaska Native Tribes may have a stronger case for exiting State jurisdiction under P.L. 83-280 because the State of Alaska centralizes its jurisdiction much more than other States, allowing even less local control.

Significantly, there are benefits of larger Tribal land bases that extend beyond improved criminal justice. For one, larger land bases help secure economic opportunity, that is, market opportunities that could help fund Tribal government and subsistence activities that provide Tribal citizens with greater food and financial security.

In fact, a larger tribally controlled land base for subsistence may have a variety of positive consequences. It can be protective of the environment, as Alaska Native communities have a vested interest in sustaining ecological health. It can decrease the criminalization of subsistence harvesting by expanding the geography in which community members can harvest without facing a choice between breaking the law and feeding their families. And, it may decrease social distress (which ultimately relates to public safety concerns) by providing productive, self-esteem enhancing “employment” for community members.

Some lawmakers have considered ANCSA sacrosanct, and may object to its amendment. But the Commission notes that ANCSA has been amended many times before with the intention of protecting Alaska Native resources, and the Commission’s proposals share that commitment.⁵² Indeed, from its passage in 1971, ANCSA was amended by nearly every Congress for the next 35 years, so it is hardly set in stone.⁵³

Moreover, while the Commission’s proposals for amendment are relatively modest, its members also observe that ANCSA got Indian policy in Alaska wrong. ANCSA has strong similarities to the General Allotment Act of 1887, which by converting communal land into individual land assets was intended to assist American Indians in adapting to Western life ways. The legislation’s implicit assumption was that after a generation or two, Indigenous peoples would no longer desire Tribal settlement arrangements. But, by the early 1930s, the empirical evidence generated by five decades of allotment invalidated the idea that American Indians would assimilate or that land allotment was the best way forward.

The U.S. government acknowledged its error and repudiated its policy with the Indian Reorganization Act of 1934 (IRA).⁵⁴ While the IRA has been problematic in some ways, it firmly recognized Tribal sovereignty and Tribes’ right to hold lands in common. It also led to reinvestment in American Indian communities with the understanding clarified in P.L. 93-638 that local Tribal governments are best positioned to address the social and economic needs of their citizens. Forty years after the passage of ANCSA, the Commission finds that the United States again has empirical evidence that allotment—albeit in a newer form—does not work. As Congress did with passage of the IRA, it is time to respond to the evidence

As the Federal government feverishly works to ward off a looming cash crunch, Alaska needs to work with Tribes creatively to conserve dwindling resources. The models are already there. The proverbial wheel need not be re-invented. Isn't the goal to solve the problems associated with jurisdiction, not perpetuate them? States like Wisconsin, Maine, and Arizona are to be applauded in their efforts to push through outdated prejudices and fears to create cooperative, problem-solving protocols. In some States, a simple cup of coffee between historic adversaries grew into powerful partnerships. We stand on fertile ground to develop both responsible and effective tools to reduce the domestic violence epidemic in Alaska and enter a new age of mutual understanding and cooperation.

*Myron Naneng, Sr., President of the Association of Village Council Presidents
Alaska Dispatch
March 17, 2013*

Overarching Themes of the 2006 Alaska Rural Justice and Law Enforcement Commission Report

1. Engage in more partnering and collaboration, especially through cross-jurisdictional agreements
2. Make systemic changes to improve rural law enforcement, especially changes that would support the training and certification of more Tribal officers
3. Enlarge the use of community-based solutions, especially through the delegation of authority to Tribes to address juvenile matters
4. Broaden the use of prevention approaches, with a special concentration on cultural relevance
5. Broaden the use of therapeutic approaches, including linking these approaches to culturally appropriate child welfare services
6. Increase employment of rural residents in law enforcement and judicial services by recruiting rural and Alaska Natives, creating opportunities for in-community probation supervision, and contracting with tribes for community service
7. Build additional capacity through infrastructure investments in housing for public safety officers, holding facilities in rural Alaska, and improve equipment
8. Increase access to judicial services, especially through increased jurisdiction and funding for Tribal courts
9. Expand the use of new technologies, especially by learning from the implementation of tele-medicine

that Alaska Native nations are not going away and reaffirm the status of Alaska Native Tribal governments as the key players in improving the lives of Alaska Natives. The recommended amendments to ANCSA for the return of land assets and for financial support of Tribal governments are based on this understanding.

2.4: Congress should repeal Section 910 of Title IX of the Violence Against Women Reauthorization Act of 2013 (VAWA Amendments), and thereby permit Alaska Native communities and their courts to address domestic violence and sexual assault, committed by Tribal members and non-Natives, the same as now will be done in the lower 48.

The special rule applying Title IX of the VAWA Amendments to only one Native community in Alaska is inimical to providing effective public safety in Alaska. A simple fix is the removal of the one section relating to Alaska, which puts Alaska Native communities on par with Native communities throughout the nation. Allowing Tribal courts to issue protective orders, to enforce them, and provide the local, immediate deterrence effect of these judicial actions may be the single-most effective tool in fighting domestic violence and sexual assault in Native communities in Alaska. Significantly, many of the VAWA Amendments provisions apply even in the absence of Indian country and clearly should be in the purview of Tribal courts in Alaska.⁵⁵

2.5: Congress should affirm the inherent criminal jurisdiction of Alaska Native Tribal governments over their members within the external boundaries of their villages.

P.L. 83-280 does not fit well in Alaska, predicated as it was on the presence of Indian country as defined by the Federal criminal code. The changes wrought by ANCSA effectively diminished any real meaning for P.L. 83-280 in Alaska, yet it is the law that the State relies on to hold that Alaska Native Tribes cannot exercise concurrent criminal law jurisdiction over their own members, frustrating the development of local-level criminal justice institutions. Regardless of what lands Tribes own or whether they are considered Indian country, this recommendation offers an opportunity to use new tools to respond to the public safety crisis in Alaska Native communities.

These changes authorize Tribes to locally and immediately attend to violence and criminal activity. They make it easier to create State-Tribal MOUs for law enforcement deputization and cross-deputization, cooperate in prosecution and sentencing, and apply criminal justice resources for optimal, mutual benefit. Such reforms also facilitate the ability of Alaska Native Tribes and nations to work together for mutual benefit, such as creating intertribal courts and institutions. Of course, to make the most of this Federal affirmation, Tribes should take action to clarify and, as necessary, formalize Tribal law for governing their recognized territories, especially law that relates to public safety.

CONCLUSION

In the words of Chief Justice Fabe:

Every study or survey of rural justice over the past two decades has acknowledged the unique and compelling justice needs of Alaska's small and isolated villages. The Alaska Sentencing Commission, the Alaska Natives Commission, the Alaska Judicial Council, the Alaska Supreme Court's Advisory Committee on Fairness and Access, the Alaska Commission on Rural Governance and Empowerment, and the Alaska Rural Justice and Law Enforcement Commission, have each studied the issues thoroughly. Consistent among their recommendations is a theme heard with increasing urgency: the need for greater opportunities for local community leaders and organizations to engage in justice delivery at the local level. Quite simply, for courts to effectively serve the needs of rural residents, justice cannot be something delivered in a far-off court by strangers, but something in which local people—those most intimately affected—can be directly and meaningfully involved.⁵⁶

The Chief Justice's framing of the systemic dysfunction that flows from the State's existing justice system may give reason for hope. Yet hope is not a strategy.

The Indian Law and Order Commission is not the first advisory board to recognize the lack of access to safety and public safety services in Alaska Native communities. But it should be the last. The situation in Alaska is urgent and of national, and not just State or regional, importance. Only the combined efforts of Federal, State, and Tribal leaders will be sufficient to change course and put all Alaskans on a better path.

ENDNOTES

¹ The statistic includes those who reported American Indian and Alaska Native alone or in combination with other races. Data are available in *Demographic Profile for Alaska*, 2010 U.S. Census, accessed February 28, 2013, <http://live.laborstats.alaska.gov/cen/dp.cfm>

² *Alaska*, accessed September 6, 2013, <http://en.wikipedia.org/wiki/Alaska>

³ *List of U.S. States by Population Density*, accessed September 6, 2013, http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density

⁴ Alaska Federation of Natives, *Alaska Day 2012, Renewable Energy Solutions for Rural Alaska: Alaska Energy Brief*, May 2012, 4, accessed September 6, 2013, <http://www.nativefederation.org/wp-content/uploads/2012/10/2012-afn-cap-alaska-day-brief.pdf>

⁵ Estimates calculated from data on the webpage “Demographic and Geographic Sketches of Alaska Natives,” Alaska Natives Commission, accessed September 6, 2013, <http://www.alaskool.org/resources/anc/anc07.htm>

⁶ For a description of Alaska’s unique corporation model as created by the Alaska Native Claims Settlement Act of 1971, see DAVID S. CASE & DAVID A. VOLUCK, *ALASKA NATIVES AND AMERICAN LAWS* (2012)

⁷ *About VPSO Program*, Alaska Department of Public Safety, accessed February 22, 2013, <http://dps.alaska.gov/ast/vpso/about.aspx>

⁸ Together, the U.S. Federal government and Alaska and Alaska Native Regional and Village Corporations own 266 million rural acres in Alaska. A more expansive estimate of Alaska rural acreage—371 million acres—is based on developed and developable land in the state. The numerator in each estimate is 373 officers ADPS officers. For land figures, see *Fact Sheet, Title: Land Ownership in Alaska*, Alaska Department of Natural Resources, accessed February 23, 2013, http://dnr.alaska.gov/mlw/factsht/land_own.pdf; for ADPS employment statistics see Jennifer Hoage, *Crime Reported in Alaska 2011: Uniform Crime Reporting Program*, Alaska Department of Public Safety, 24, accessed February 14, 2013, http://dps.alaska.gov/statewide/docs/UCR/UCR_2011.pdf

⁹ *About VPSO Program*, *supra* note 7.

¹⁰ *Legislative Hearing on S. 1192, Alaska Safe Families and Villages Act of 2011, and S. 1763 Stand Against Violence and Empower Native Women Act Before S. Comm. on Indian Affairs*, 112th Cong. 54 (Written Testimony of Joseph Masters, Commissioner, Alaska Department of Public Safety) (2013), available at <http://www.indian.senate.gov/hearings/loader.cfm?csModule=security/getfile&pageid=9515>; *Frequently Asked Questions, Village Public Safety Officer Program*, Alaska Department of Public Safety, accessed February 28, 2013, <http://dps.alaska.gov/ast/vpso/faq.aspx>; and Dave Bendigner, *VPSO Thomas Madole Killed In Manokotak*, ALASKA PUBLIC MEDIA, March 20, 2013, accessed March 21, 2013, <http://www.alaska-public.org/2013/05/20/vpso-thomas-madole-killed-in-manokotak/>

¹¹ Masters, *supra* note 10; Alaska Natives and Law Enforcement (gateway page and publication list), Justice Center, University of Alaska at Anchorage, http://justice.uaa.alaska.edu/directory/1/law_enf_local.html.

¹² Masters, *supra* note 10.

¹³ Alaska Natives and the Courts (gateway page and publication list), Justice Center, University of Alaska at Anchorage, http://justice.uaa.alaska.edu/directory/a/alaska_natives_courts.html; ALASKA COURT SYSTEM, ANNUAL REPORT FY 2012, <http://courts.alaska.gov/reports/annualrep-fy12.pdf> (describing the structure of the Alaskan court system and discussing some of the problems with providing services in rural communities).

¹⁴ ALASKA LEGAL SERVICES CORPORATION, 2012 ALASKA TRIBAL COURT DIRECTORY i, <http://alaskatribes.org/uploads/2012-tc-directory.pdf>.

¹⁵ “Alaska Natives and the Courts (gateway page and publication list), Justice Center, University of Alaska at Anchorage, http://justice.uaa.alaska.edu/directory/a/alaska_natives_courts.

html; ALASKA LEGAL SERVICES CORPORATION, TRIBAL JURISDICTION IN ALASKA: CHILD PROTECTION, ADOPTION, JUVENILE JUSTICE, FAMILY VIOLENCE AND COMMUNITY SAFETY, 18-29 (2nd ed. 2012), <http://www.aktribaljudges.com/pdfs/Tribal%20Jurisprudence%20in%20Alaska%20-%20Winter%202012%20Edition.pdf>.

¹⁶ Cheryl Cedar Face, *Emmonak Women's Shelter Receives Emergency Funds*, AMERICAN INDIAN REPORT, July 6, 2012, <http://www.americanindianreport.com/wordpress/2012/07/emmonak-womens-shelter-receives-emergency-funds/>.

¹⁷ Timothy Williams, *With Grant, an Alaska Women's Shelter Can Reopen*, N.Y. TIMES, July 5, 2012, http://www.nytimes.com/2012/07/06/us/alaskan-womens-shelter-can-reopen-with-grant.html?_r=0.

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¹⁹ Alaska Drug Treatment Centers, National Substance Abuse Index, <http://nationalsubstanceabuseindex.org/alaska/facilities.php> (listing facilities); and Mental Health Treatment Facility Locator, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services," <http://findtreatment.samhsa.gov/MHTreatmentLocator/faces/stateSearch.jspx> (listing facilities).

²⁰ Marny Rivera, André B. Rosay, Darryl S. Wood, Greg Postle, & Katherine TePas, *Descriptive Analysis of Assaults in Domestic Violence Incidents Reported to Alaska State Troopers: 2004 at 7*, Justice Center, University of Alaska at Anchorage, JC 0601.04 (2008) <http://justice.uaa.alaska.edu/research/2000/0601intimatepartnerviolence/0601.04.dv-assaults.pdf>.

²¹ For victimization statistics, see Greg Postle, André B. Rosay, Darryl S. Wood, & Katherine TePas, *Descriptive Analysis of Sexual Assault Incidents Reported to Alaska State Troopers: 2003-2004*, Justice Center, University of Alaska at Anchorage at 41-42 (2007), <http://justice.uaa.alaska.edu/research/2000/0601intimatepartnerviolence/0601.02.sexualassault.pdf>; for population statistics (used to calculate victimization rates) see 2003 ANNUAL REPORT and 2004 ANNUAL REPORT, ALASKA BUREAU OF VITAL STATISTICS, http://dhss.alaska.gov/dph/VitalStats/Documents/PDFs/2003/annual_report/Web_Book2003.pdf and http://dhss.alaska.gov/dph/VitalStats/Documents/PDFs/2004/annual_report/2004web_book.pdf

²² Darryl S. Wood & Randy H. Magen, *Intimate Partner Violence Against Athabaskan Women Residing in Interior Alaska: Results of a Victimization Survey*, 15 Violence Against Women 497, <http://justice.uaa.alaska.edu/research/2000/0026.aknativewomen/0026.02.ahtna.pdf>

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²⁴ STATE OF ALASKA, 2011 CENSUS DEMOGRAPHIC PROFILE, <http://labor.alaska.gov/research> and STATE OF ALASKA DEPARTMENT OF CORRECTIONS, 2011 OFFENDER PROFILE, 13 <http://www.correct.state.ak.us/admin/docs/2011Profile06.pdf>

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²⁶ Michael J. Leiber, Joseph Johnson, & Kristan Fox, *An Examination of the Factors that Influence Justice Decision Making in Anchorage and Fairbanks, Alaska: An Assessment Study*, Technical Report prepared for the State of Alaska Department of Health and Social Services, Division of Juvenile Justice (2006), 31-32, <http://dhss.alaska.gov/djj/Documents/ReportsAndPublications/DMC/06AssessmentStudy.pdf>

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Control, Web-based Injury Statistics Query and Reporting System (WISQARS) [online], 2004-2008 Alaska Suicide Injury Deaths and Rates per 100,000, accessed March 4, 2013; Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting System (WISQARS) [online], 2004-2008 United States Suicide Injury Deaths and Rates per 100,000, accessed March 4, 2013; and Gretchen Day, Peter Holck, & Ellen M. Provost, *Alaska Native Mortality Update: 2004-2008*, ALASKA NATIVE EPIDEMIOLOGY CENTER (2011) at 4, http://www.anthctoday.org/epicenter/publications/mortality/AlaskaNativeMortalityUpdate2004_2008_17_jan_2012.pdf

²⁸ Alaska Department of Health and Social Services, Office of Children's Services, *Data Overview of Disproportionality in Alaska's Child Welfare System* (2012) <http://dhss.alaska.gov/ocs/Documents/icwa/pdf/Disproportionality-data.pdf>.

²⁹ Alaska Rural Justice and Law Enforcement Commission, *Initial Report and Recommendations* (2006) http://akjusticecommission.org/pdf/reports/ARJLEC_Initial_Report_Recommendations.pdf

³⁰ Gretchen Day, Peter Holck, & Ellen Provost, *supra* note 27 at 15, 263.

³¹ For example, in dry villages with law enforcement, there is a 40 percent lower rate of serious injury caused by an assault as compared to dry villages without a law enforcement presence. Darryl S. Wood & Paul J. Gruenewald, *Local Alcohol Prohibition, Police Presence and Serious Injury in Isolated Alaska Native Villages*, 101 ADDICTION 393 (2006).

³² 522 U.S. 520 (1998).

³³ While these statements are true, the Commission finds the Alaska Attorney General's argument to be inconsistent. The assertion of P.L. 83-280 jurisdiction is unnecessary if there is no Indian country in Alaska.

³⁴ *Akiachak Native Community v. Salazar*, Civ. 06-969 (RC), 2013 WL 1292172 (D.D.C. 2013).

³⁵ See *M.J. ex rel. Beebe v. United States*, 721 F.3d 1079 (9th Cir. 2013).

³⁶ David Jouffaian and Michael L. Marlow, *Centralization and Government Competition*, 23 Applied Econ. 1603 (1991).

³⁷ HARV. PROJECT ON AM. INDIAN ECON. DEVEL., *THE STATE OF THE NATIVE NATIONS: CONDITIONS UNDER U.S. POLICIES OF SELF-DETERMINATION* (2008).

³⁸ See UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES, especially sections 4 and 5, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf on February 28, 2013.

³⁹ Governmental Jurisdiction of Alaska Native Villages Over Land and Non-Members, Memorandum to the Secretary from the Solicitor, Department of the Interior (Thomas Sansonetti) (1995), <http://www.doi.gov/solicitor/opinions/M-56975.pdf> on February 28, 2013. The Opinion concluded that there were tribes in Alaska, but that their territorial jurisdiction had been limited by the by passage of the Alaska Native Claims Settlement Act.

⁴⁰ 982 P.2d 738 (Alaska 1999)

⁴¹ LISA JAEGER, *TRIBAL COURT DEVELOPMENT: ALASKA TRIBES* (3rd ed. 2002) at *Chapter 2: Tribal Jurisdiction Exercise by Alaska Tribal Courts*, http://thorpe.ou.edu/AKtribalct/chapter_two.html.

⁴² Dana Fabe, *The State of the Judiciary: A Message by Chief Justice Dana Fabe to the First Session of the Twenty-Eighth Alaskan Legislature* (Feb. 13, 2013) at 13, <http://courts.alaska.gov/soj/state13.pdf> on March 3, 2013. The Commission wishes to acknowledge the cooperation of Chief Justice Fabe and the Alaska State Judiciary during Commission field hearings and site visits including her meeting with Commissioners at the State Supreme Court in Anchorage.

⁴³ HARV. PROJECT ON AM. INDIAN ECON. DEVEL., *Honoring Contributions in the Governance of American Indian Nations, Kake Circle Peacemaking*, (2003), <http://www.hpaied.org/images/resources/publibrary/Kake%20Circle%20Peacemaking.pdf>; U.S. Dept. of Just., Natl. Inst.

of Just., “Sentencing Circles,” <http://www.nij.gov/topics/courts/restorative-justice/promising-practices/sentencing-circles.htm> (quotations); NEIL NESHEIM, *EVALUATING RESTORATIVE JUSTICE IN ALASKA: THE KAKE CIRCLE* (2010), <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/famct/id/293> (statistics).

⁴⁴ Experience with system reform in the lower 48 suggest that these cost savings are achievable. See, for example, ANNIE E. CASEY FOUNDATION, *FIXING A BROKEN SYSTEM: TRANSFORMING MAINE’S CHILD WELFARE SYSTEM 8* (2009) (describing the cost savings from structural reform) http://www.aecf.org/~media/Pubs/Topics/Child%20Welfare%20Permanence/Other/FixingaBrokenSystemTransformingMainesChildWel/AECF_FixingABrokenSystemFinal_Final.pdf;

⁴⁵ A complete analysis of these options is essential to lay the groundwork for a more cost-effective, tribally based criminal justice system that places greater emphasis on the power of local control and accountability. This includes such basic issues as ensuring that Tribal villages can swiftly enforce their own laws related to alcohol, domestic violence, and other pervasive challenges whose implications are predominately local in nature, as is common place in the lower 48. A worthwhile place to begin would be to extend the very general framework from enhanced Alaska Native tribal sovereignty articulated in DAVID S. CASE & DAVID A. VOLUCK, *ALASKA NATIVES AND AMERICAN LAWS* (2012), especially Chapter 10 (“Sovereignty”). While Case and Voluck do not examine criminal justice issues per se, their insights on the interplay among State, tribal, and Federal laws are instructive.

⁴⁶ 522 U.S. 520 (1998).

⁴⁷ 43 U.S.C. § 1601.

⁴⁸ 43 U.S.C. § 1601(b).

⁴⁹ See NELL JESSUP NEWTON ET AL., *COHEN’S HANDBOOK OF FEDERAL INDIAN LAW* § 4.07[3][b][ii][C] (2012 ed.).

⁵⁰ *Id.* at 355.

⁵¹ Natalie Landreth and Erin Dougherty, *The Use of the Alaskan Native Claims Settlement Act to Justify Disparate Treatment of Alaska’s Tribes*, 36 AM. INDIAN L. REV. 321, 345-46 (2012).

⁵² J. Tate London, *The ‘1991 Amendments’ to the Alaska Native Claims Settlement Act: Protection for Native Lands*, 8 STAN. ENVTL. L.J. 200 (1989).

⁵³ Case and Voluck, *supra* note 46 at 165.

⁵⁴ 48 Stat. 984 (1934), also known as the Wheeler-Howard Act or “Indian New Deal.”

⁵⁵ Sen. Mark Begich (D-AK) introduced a bill entitled “Alaska Safe Families and Villages Act of 2013” (S. 1474) on August 1, 2013, which was intended as a “fix” to the special Alaska exclusion in the Violence Against Women Act Reauthorization of 2013. However, the version Begich introduced fell far short of the version that many Alaska Native advocates had been expecting. Earlier draft language had proposed to supplement State jurisdiction in Alaska Native villages with enhanced Tribal and local authority to address domestic violence and reduce alcohol and drug abuse. The final bill was about the Tribes entering into agreements to implement State law, which advocates claim they do not need Federal legislation to do. *Native Sun News* reported that “Begich’s aide Andrea Sanders said the changes came about through consultations between both Alaska senators and the state’s Attorney General Michael C. Geraghty on July 31.” At the time of writing (fall 2013), S. 1474 had stalled in committee, but this outcome further underscores the importance of finally standing up for Alaska Natives’ rights, as implementation of the Commission’s recommendations would do. See Talli Nauman, *Violence Against Women Act Amendment Falls Short of Protecting Women*, NATIVE SUN NEWS, August 12, 2013, <http://www.indianz.com/News/2013/010769.asp> (re-print), and “S.1474: Alaska Safe Families and Villages Act of 2013,” <http://www.govtrack.us/congress/bills/113/s1474/text>.

⁵⁶ Fabe, *supra* note 42 at 8. These are the citations for the reports mentioned in the address: (1) Alaska Sentencing Commission, *1992 Annual Report to the Governor and the Alaska*

Legislature, <http://www.ajc.state.ak.us/reports/sent92.pdf>; (2) Alaska Natives Commission, *Final Report* (1994) http://www.alaskool.org/resources/anc_reports.htm; (3) Alaska Judicial Council, *Resolving Disputes Locally: Alternatives for Rural Alaska* (1992) <http://www.ajc.state.ak.us/reports/rurj92.pdf>; (4) Alaska Supreme Court Advisory Committee on Fairness and Access & State Justice Institute & State Justice Institute, *Report* (1997) <http://www.ajc.state.ak.us/Reports/fairness.pdf>; (5) Alaska Commission on Rural Governance and Empowerment, *Final Report to the Governor* (1999) http://www.commerce.state.ak.us/dca/RGC/RGC_Final_6_99.pdf; (6) Alaska Rural Justice and Law Enforcement Commission, *Initial Report and Recommendations* (2006) http://akjusticecommission.org/pdf/reports/ARJLEC_Initial_Report_Recommendations.pdf; (7) Alaska Rural Justice and Law Enforcement Commission, *Report to the United States Congress and the Alaska State Legislature* (2012) http://akjusticecommission.org/pdf/reports/ARJLEC_2012_Report.pdf; (8) Alaska Supreme Court Fairness and Access Implementation Committee, *2007 Status Report of the Alaska Supreme Court Fairness and Access Implementation Committee* (2007), <http://courts.alaska.gov/fair-access2007.pdf>. A report that is not mentioned, but makes similar points is: Alaska Advisory Committee to the U.S. Commission on Civil Rights, *Racism's Frontier: The Untold Story of Discrimination and Division in Alaska* (2002), <http://www.eric.ed.gov/PDFS/ED468839.pdf>.

House Community & Regional Affairs

Oversight Hearing on The Indian Law and Order Commission's Report, "A Roadmap for Making Native America Safer"

March 11, 2014



FACTS

- 75 Alaska villages have no police presence.
- AK has the highest incidence of rape in the US, and it is the worst in rural areas.
- The majority of Alaskan women have been victims of intimate partner violence or rape.

- Alaska is the only state with its own chapter in the six chapter ILOC Report.
- Georgianna Lincoln and Wilson Justin served on the Commission's advisory committee.
- The nine-member bipartisan Commission was headed by former US attorney for Colorado, Troy Eid, a Bush appointee.

FINDINGS

Alaska's approach to criminal justice issues is fundamentally on the wrong track.

Problems with safety in tribal communities are severe across the US – but they are systematically the worst in Alaska.

Domestic violence and sexual assault are more severe public safety problems in Alaska Native communities than in any other tribal communities in the United States.

Alaska's strongly centralized law enforcement and justice systems do not serve rural Native communities adequately, if at all.

The State of Alaska's approach to criminal justice creates and reinforces discriminatory attitudes about Alaska Natives and the governing capacities of Alaska Native Tribes.

CONCLUSIONS

Reform will not happen without local control over justice and self-governance.

There is still only limited collaboration with tribal and other local governments, which could be the State's most valuable partners in public safety.

Alaska's approach to rural justice comes with high litigation costs, and could be avoided if State-Tribal relations were characterized by respect, recognition, and partnership.

Alaska can root out inefficiencies and wasteful spending in its current organization, taking advantage of cost-savings from the increased use of alternatives to detention and other innovations in community-based service provision.

Contact: Aurora Lehr
Email: aLehr@NativeFederation.org
Report available at:
<http://www.aisc.ucla.edu/iloc/report/>



AFN
Report
Fact
Sheet

A Roadmap for Making Native America Safer Public Safety in Alaska As Seen Through an Independent Lens

The Indian Law and Order Commission is an independent national advisory commission created in July 2010 when the Tribal Law and Order Act (TLOA) was passed and extended earlier in 2013 by the Violence Against Women Act Reauthorization (VAWA Amendments). The President and the majority and minority leadership of the Congress appointed the nine Commissioners, all of whom have served as volunteers. One of the Commission's charges was to investigate, report on, and make recommendations to improve criminal justice in Native American and Alaska Native communities. The report, *A Roadmap For Making Native America Safer*, assesses the effectiveness of TLOA and makes recommendations for long-term improvements to the structure of the justice system in Indian country.

The Commission notes that problems with safety in Tribal communities are severe across the United States—but they are systemically worst in Alaska. An entire chapter of the Roadmap is dedicated to reforming justice in Alaska due to its vastness, Nativeness, and continued exemption from national policy changes.

"The public safety issues in Alaska—and the law and policy at the root of those problems—beg to be addressed. These are no longer just Alaska's issues; they are national issues."

Findings of the Commission

Perhaps the most central finding in the Roadmap is that, "State government authority is privileged over all other possibilities." Moreover, the Commission notes, the model of centralized administration of law enforcement and justice systems simply does not work in Alaska.

Statistics cited by the Commission are all too familiar reminders of the disparity in access to public safety mechanisms and the numerous negative effects for Alaska Natives. A lack of access to police, courts, and related services is common to the majority of rural communities and at least 75 communities lack any law enforcement presence at all.

The Commission unanimously disagrees with Alaska's Attorney General on the view that there is very little Indian country in Alaska and thus, the State's law enforcement authority is exclusive throughout the State because Tribes do not have a land base on which to exercise any inherent criminal jurisdiction.

Recommendations of the Commission

Throughout the findings and expositive sections of the report the Commission notes areas and methods of potential change. Although the five official recommendations are directed at Congress and the President, to fully implement them would require significant buy-in and participation by Alaska Native leadership. Major changes to the status quo are raised and bear serious examination by tribal governments, ANCSA corporations, and all Alaska Natives. Notably, the Commission recommends (re)establishment of Indian Country in Alaska and significant amendments to ANCSA.

TLOA
Report
Summary

Official Recommendations

2.1: Congress should overturn the U.S. Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.

2.2: Congress and the President should amend the definitions of Indian country to clarify (or affirm) that Native allotments and Native-owned town sites in Alaska are Indian country.

2.3: Congress should amend the Alaska Native Claims Settlement Act to allow a transfer of lands from Regional Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the Federal criminal code; to allow Alaska Native Tribes to put tribally owned fee simple land similarly into trust; and to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities.

2.4: Congress should repeal Section 910 of Title IX of the Violence Against Women Reauthorization Act of 2013 (VAWA Amendments), and thereby permit Alaska Native communities and their courts to address domestic violence and sexual assault, committed by Tribal members and non-Natives, the same as now will be done in the lower 48.

2.5: Congress should affirm the inherent criminal jurisdiction of Alaska Native Tribal governments over their members within the external boundaries of their villages.

Additional Recommendations

- Native villages without reasonable access to law enforcement should have that access.
- All village law enforcement officers should have the training and approval to carry firearms subject to standards that accord with all State peace officers.
- Native village residents should be able to participate locally in substance abuse treatment, technology-assisted alternatives to detention, and anger management programs.
- Increased tribal authority over criminal justice via:
 - collaborating with Tribes on other criminal justice issues;
 - deputizing Tribes to provide a wide array of criminal justice services;
 - delegating or deputizing Tribal judges, including the expanded use of circle sentencing and traditional dispute resolution;
 - leveraging the State and Tribal governments' concurrent criminal jurisdiction to develop specific, locally optimal criminal justice approaches;
 - adopting a policy of State deference to Tribal authority in Tribal communities.
- State government can also generate funds for Tribal criminal justice programming by rooting out inefficiencies and wasteful spending in its current organization, taking advantage of cost-savings

from the increased use of alternatives to detention and other innovations in service provision, and moving money out of regional centers when increases in Tribal capacity make the current extent of service provision unnecessary.

- Regional Alaska Native Corporations, the largest beneficiaries from Tribal resources over the last four decades, also should increase their contributions to the governments that justify their existence.

AFN Staff Response

The first three recommendations focus on the (re)establishment of Indian country in Alaska. While the idea has generalized support, opening ANCSA up to significant amendments must be thoroughly examined. If consensus is reached, a strategic plan would need to be developed to ensure other sections of ANCSA are not affected. It should be noted that the third recommendation is to allow for, not to require, the transfer of lands from Regional Corporations to Tribes.

Repeal of Section 910 is a key component of the bipartisan Safe Families and Village Act, S. 1474, as introduced by Alaska Senators Murkowski and Begich. AFN has requested hearings and markup on the bill and will continue to work with member organizations and the appropriate Senate staff to ensure this provision remains while making significant amendments to other sections prior to passage.

Because the final official recommendation, to affirm the inherent criminal jurisdiction, steers clear of amending the definition of Indian Country or ANCSA, it may be the path of least resistance for the Alaska Congressional Delegation and provide temporary relief while consensus is built on other options.

The State of Alaska is currently working with the Tanana Chiefs Conference to develop an agreement that would allow for misdemeanor cases to be handled by tribal courts. If such an agreement is made, it would create an opportunity for other communities to seek similar agreements. In the meantime, the Alaska legislature should hold hearings on the current state of domestic violence and criminal justice in rural Alaska rather than depend entirely upon the Governor's and Attorney General's offices to take action.

An immediate action that can be taken by Native communities, without waiting for outside actions, is building capacity of tribal courts and governments to enact and enforce tribal law. This includes development of tribal codes, courts, training of enforcement officers, and public education. AFN staff will communicate out links to code templates and technical assistance resources.



ALASKA FEDERATION
OF NATIVES

February 19, 2014

Representative Bryce Edgmon, Chair
Bush Caucus
State Capitol Room 410
Juneau AK, 99801

RE: AFN Board Resolution 13-15 Title: Request for Immediate Hearings in the United States Senate and House and the Alaska Legislature on The Indian Law & Order Commission's Report, "A Roadmap for Making Native America Safer"

Dear Chairman Edgmon:

Thank you for meeting with representatives from AFN's Council for the Advancement of Alaska Natives (CAAN) last week. We appreciate your leadership, as Chair of the Bush Caucus, and attention to issues that directly affect many Alaska Natives. As you know, this past November the Indian Law & Order Commission (ILOC) published a report titled, "A Roadmap for Making Native America Safer," with an entire chapter dedicated to conditions in Alaska. The ILOC, comprised of nine unpaid appointed members by the President and U.S. Congress who are experts on criminal justice in tribal communities, bases its recommendations on three years of comprehensive study of criminal justice in Native America.

The Bush Caucus' constituents, Alaska Native and non-native alike, are less safe than urban areas of Alaska by virtue of their remoteness. The ILOC report reveals inadequacies of State of Alaska criminal jurisdiction, which has led to an under-provision of criminal justice services in rural and Native regions of the State. A notable barrier identified is the status quo in Alaska to marginalize the potential of tribally based justice systems, as well as intertribal institutions and organizations to provide more cost-effective and responsive alternatives to prevent crime and keep all Alaskans safer. The report also contains key elements that could be discussed on the modification of the Alaska Safe Families and Villages Act of 2013 (SB1474).

AFN
Letter



ALASKA FEDERATION
OF NATIVES

While we do not necessarily agree with every recommendation made in the ILOC report, we recognize the opportunity to work with the State to improve public safety for all Alaskans. We believe this report is sincere, honest work that is focused on tackling the issue of rural residents and Alaska Natives disproportionately affected by crime, high rates of suicide, alcohol abuse, alcohol-related crimes, sexual abuse and domestic violence. Because we are hopeful that the solutions can come from within Alaska, we request your leadership in securing a hearing on the findings and recommendations of this ILOC report in either the Judiciary or Community & Regional Affairs Committees.

Thank you for your time and consideration.

Sincerely,

Julie Kitka, President
Alaska Federation of Natives

Cc:

Rep. Gabrielle LeDoux, Co-Chair, House Community & Regional Affairs Committee
Rep. Ben Nageak, Co-Chair, House Community & Regional Affairs Committee
Rep. Wes Keller, Chair, House Judiciary Committee
Rep. Bob Lynn, Vice Chair, House Judiciary Committee



Alaska Federation of Natives
Board Resolution 13-15

- TITLE:** REQUEST FOR IMMEDIATE HEARINGS IN THE UNITED STATES SENATE AND HOUSE AND THE ALASKA LEGISLATURE ON THE INDIAN LAW & ORDER COMMISSION'S REPORT, "A ROADMAP FOR MAKING NATIVE AMERICA SAFER"
- WHEREAS:** The Alaska Federation of Natives (AFN) is the largest statewide Native organization in Alaska and its membership includes 151 federally-recognized tribes, 134 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and run federal and state programs; and
- WHEREAS:** The mission of AFN is to enhance and promote the cultural, economic, and political voice of the entire Alaska Native community; and
- WHEREAS:** On average, in 2003-2004 an Alaska Native female became a victim of reported sexual assault or of child sexual abuse every 29.8 hours, as compared to once every 46.6 hours for non-Native females. Victimization rates, which take account of underlying population proportions, are even more dissimilar: the rate of sexual violence victimization among Alaska Native women was at least seven times the non-Native rate; and
- WHEREAS:** During the period 2004-2007, Alaska Natives were 2.5 times more likely to die by homicide than Alaskans who reported "White" as their race and 2.9 times more likely to die by homicide than all Whites in the United States; and
- WHEREAS:** Alaska Natives' representation in the Alaska prison and jail population is twice their representation in the general population (36 percent versus 19 percent); and
- WHEREAS:** The Indian Law & Order Commission was created by the Tribal Law and Order Act of 2010 (TLOA) to advise the President and Congress on Federal, State and Tribal reforms to strengthen criminal justice for the 566 Federally recognized Indian Tribes and Nations; and
- WHEREAS:** The Commission's goal is, "To end the public safety gap – the legacy of failed Federal laws and policies – that makes Native American and Alaska Native communities frequently less safe, and often dramatically more dangerous, than the rest of our country"; and
- WHEREAS:** In November 2013, the Commission planned and executed a report titled "A Roadmap for Making Native America Safer" that is an important

AFN
Resolution

assessment of Native American and Alaska Native public safety and criminal justice; and

WHEREAS: The report contains 40 major recommendations for making Native America safer; and

WHEREAS: The report states that Alaska's criminal justice crisis is a National problem, not just a State problem, that can be more effectively addressed if the Federal government and the State of Alaska strengthen rather than degrade Tribal sovereignty and local self-governance; and

WHEREAS: The Commission has found possibilities for safer, strong Native communities achieved through home-grown, Tribally based systems that respect the civil rights of all U.S. citizens and reject outmoded Federal command-and-control policies in favor of increased local control, accountability and transparency; and

WHEREAS: The recommendations require new Federal laws, others need executive branch policy changes, some warrant action by the Federal judiciary; others are State-level reforms; and still others are matters for Tribal citizens and their elected leaders; and

WHEREAS: Numerous similar investigations and reports on the status of public safety and access to justice for rural Alaskans have been produced over the past forty years with calls for hearings and solutions.

NOW THEREFORE BE IT RESOLVED that Alaska Federation of Natives requests the U.S. Senate Committee of Indian Affairs hold immediate hearings to hear from Alaska Natives on findings of this Commission report and the Alaska Safe Families and Villages Act of 2013 legislation (SB 1474); and

BE IT FURTHER RESOLVED that the AFN Board also requests hearings in the U.S. House of Representatives and the Alaska State Legislature's Senate and House Judiciary Committees to from Alaska Natives, the State of Alaska, and all involved in the delivery of criminal justice and safety in rural Alaska; and

BE IT FURTHER RESOLVED that the AFN Board recommends that its membership study this new federal report and identify recommendations which Alaska Natives want to see implemented immediately and prepare testimony of their positions and recommendations; and

BE IT FURTHER RESOLVED that AFN staff and members incorporate key elements of this report into discussions with the Alaska Congressional Delegation on the modification of the Alaska Safe Families and Villages of Act of 2013 (SB 1474); and

BE IT FURTHER RESOLVED that AFN supports the incorporation of demonstration projects, accompanied by adequate new resources, to demonstrate and build the capacity of Alaska tribes.

SUBMITTED BY: COUNCIL FOR THE ADVANCEMENT OF ALASKA NATIVES

ADOPTED BY THE AFN BOARD OF DIRECTORS ON DECEMBER 3, 2013



Rural justice a focus for Fabe in 'State of the Judiciary'

Chief Justice concerned for the areas of Alaska where the long arm of the law does not reach

Posted: February 13, 2013 - 5:24pm | Updated: February 14, 2013 - 1:14am

By MARK D. MILLER

JUNEAU EMPIRE

Alaska Supreme Court Chief Justice Dana Fabe may be the Alaska Court System's top official, but she devoted much of her "State of the Judiciary" speech to a joint session of the Alaska State Legislature Wednesday to tribal courts and rural parts of Alaska where the long arm of the law does not always reach.

Fabe referred repeatedly to previous State of the Judiciary speeches and the memoirs of past judges throughout her address, reinforcing her message that while Alaska has made progress toward bridging the "urban-rural divide" in providing judicial services to the remote communities that dot the state's Interior and coastal regions, it has more work to do.

After quoting from then-Chief Justice Jay Rabinowitz's 1992 State of the Judiciary speech on inequality in Alaska's rural communities, Fabe said, "While I stand before you today, 20 years later, with gratitude for all that we've accomplished together in our rural communities, I stand also with a heavy heart for all that we've not yet accomplished, for suffering that is not abated and for realities of village life that still cry out for meaningful solutions over two decades after Chief Justice Rabinowitz's poignant words."

Some judges whose jurisdictions include rural villages have sought to include village elders and other members of remote communities in court proceedings, according to Fabe — asking for their advice in handing down sentences, for example.

"Quite simply, for courts to effectively serve the needs of rural residents, justice cannot be something delivered in a far-off court by strangers, but something in which local people — those most intimately affected — can be directly and meaningfully involved," Fabe declared.

Fabe also spent some time during her address talking about courts that are actually outside the Alaska Court System: tribal courts, which coexist with state and federal courts.

"Tribal courts bring not only local knowledge, cultural sensitivity and expertise to the table, but also valuable resources, experience and a high level of local trust," said Fabe. "They exist in at least half the villages of our state and stand ready, willing and able to take part in local justice delivery. And just as the three branches of state government must work closely together ... state and tribal courts must work together closely to ensure a system of rural justice delivery that responds to the needs of every village that is timely, effective and fair."

In a similar vein, Fabe also mentioned early intervention programs and therapeutic courts that have expanded throughout Alaska over the past decade. The Juneau Therapeutic Court program began in 2005.

"Reaching early solutions works better not only for the families and children involved, but for courts as well," Fabe said. "Disputes resolved early are disputes that no longer fill our caseloads."

Fabe also acknowledged recent changes on the Supreme Court, including longtime Justice Walter L. Carpeneti's retirement last month.

Fabe praised Carpeneti's "patience, compassion, intelligence and integrity," to applause from legislators, while welcoming new Justices Joel Bolger and Peter Maassen to the court.

Sen. Dennis Egan, D-Juneau, called Fabe's address "interesting." He said he was glad to hear Fabe voice support for programs like the therapeutic courts.

"Of course, Juneau has one now, and I'm glad they are going to continue it," said Egan. "I think it's a great, great program for Alaska and it saves us a lot of money."

As to Carpeneti's replacement by Bolger leaving Juneau without a justice among the five members on the Supreme Court for the first time since its 1959 formation — a piece of trivia not mentioned in the speech — Egan said, "I'm still concerned about that."

"I would feel a lot happier if there was someone from Southeast, at least, on the bench," Egan said. "Hopefully next time."

Rep. Cathy Muñoz, R-Juneau, said of the address, "I thought it was a pretty good speech."

"I was impressed with her attention to community-based solutions and her encouragement for members of the judiciary to look for solutions that involve community members, involve the tribal court system, looking for ways to encourage alternative sentencing," said Muñoz, referring to one

Chief Justice
Dana Fabe
State of
Alaska

anecdote Fabe told about a young criminal offender in Sitka who was ordered to become a wood carver's apprentice by a tribal court, placing him on course to become a more productive member of society.

Sen. Bert Stedman, R-Sitka, remarked, "The tribal court in Sitka seems to be working good. It's smoothed things out in the community quite a bit. I think it's a good idea. I know it's not followed universally around the state, but it works well for the community of Sitka. I expect it to continue."

Asked what he thought of the speech, Stedman said, "It was all right." He said he was glad to hear about the evolution and "diversification" of Alaska's courts.

"I appreciated Chief Justice Fabe's focus on rural justice," said Rep. Jonathan Kreiss-Tomkins, D-Sitka. "I'm learning more about a lot of the examples she cited, but I've heard firsthand of the success of some of what she talked about — for instance, circle sentencing in Kake. ... So it struck me as highly appropriate and very welcome."

• Contact reporter Mark D. Miller at 586-1821 or at mark.d.miller@juneauempire.com.



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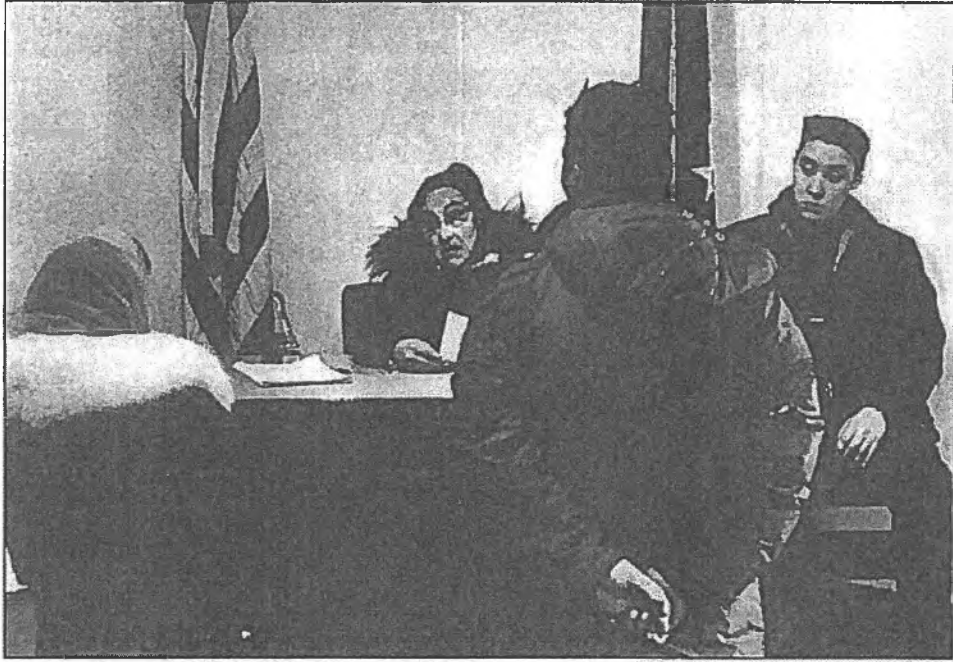


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THE STATE OF THE JUDICIARY



Barrow Magistrate Sadie Neakok, circa. 1960s.

***A MESSAGE BY
CHIEF JUSTICE DANA FABE
TO THE FIRST SESSION OF THE
TWENTY- EIGHTH ALASKA LEGISLATURE
FEBRUARY 13, 2013***



Cover Photo: Magistrate Sadie Neakok discussing marriage issues with a Barrow couple. Barrow Police Officer Morgan Sakeagak, Sr., is sitting with her. Taken in the mid-1960s. From The Frontier States, Time-Life Books, 1968.

STATE OF THE JUDICIARY

Chief Justice Dana Fabe

February 13, 2013

President Huggins, Speaker Chenault, Senators and Representatives, and guests. The State of the Judiciary presents a welcome opportunity to highlight both the achievements of the Alaska Court System and the challenges it faces, and on behalf of all the court system employees statewide I would like to thank you very much for the opportunity to speak with you today.

Before I begin my remarks, I would like to acknowledge my colleagues on the Alaska Supreme Court. Justice Daniel Winfree of Fairbanks is unable to join us in person today but sends his regards to all of you. A lifelong Alaskan, Justice Winfree was appointed by Governor Sarah Palin in 2007 and serves as our court's liaison to the National Conference of Bar Examiners, which sets best practices for determining admission to the practice of law. With us today is Justice Craig Stowers, who was appointed by Governor Sean Parnell in 2009. Justice Stowers chairs the court system's Security Committee, which is charged with ensuring the safety of our courthouses statewide. He will also join the Alaska delegation to the national Uniform Laws Commission, which proposes legislation to clarify and provide consistency in difficult areas of law.

Also joining us today are the court's two newest members, who are here for the first time. Justice Peter Maassen, who had a long and distinguished career in private practice, was appointed by Governor Parnell last summer. Justice Maassen will serve as Chair of the Supreme Court's Judicial Education Committee and as Chair of the Access to Civil Justice Committee. Our newest justice, Justice Joel Bolger, was appointed by Governor Parnell just last month. Justice Bolger is the first justice to serve at every level of the Alaska Court System: He previously served on the Court of Appeals, the Superior Court in Kodiak, and the District Court in Valdez. I have asked Justice Bolger to co-chair with Attorney General Michael Geraghty the Criminal Justice Working Group.

The last five years have been a time of exciting change for the Alaska Supreme Court, and all of us look forward to working together in the years ahead.

But I would be remiss not to mention an occasion that has made these times bittersweet for many of us, and has brought us no small dose of "separation anxiety": the retirement last month of former Chief Justice Walter Carpeneti. Those of you who have had the good fortune to know Justice Carpeneti – "Bud," as he is affectionately known – can no doubt understand our feelings of sadness and loss. He has been a beloved and devoted servant to our justice system for over thirty years, and he has left his mark in countless positive ways. As Juneau Superior Court Judge from 1982-1998, and as Supreme Court Justice from 1998 until his retirement, Justice Carpeneti exemplified the best qualities of a judge: patience, compassion, intelligence, and integrity. And as a leader in a variety of justice initiatives throughout this time, he has shown by example the truth of one of his strongest convictions: the importance of working together. His past efforts as Co-Chair of the Criminal Justice Working Group and as founder of the court's statewide educational outreach program, Supreme Court LIVE, have made a difference that will continue to be felt for many years to come. So I would like to take this opportunity to thank him, and to wish him and his wife Annie well in the next chapter of their lives. Bud, thanks for everything. We will miss you very much.

And finally, I would like to acknowledge the members of the court's administrative staff who are with us today: Christine Johnson, Administrative Director; Doug Wooliver, Deputy Director; Nancy Meade, General Counsel; and Lesa Robertson, Assistant to the Director. And joining us from the Alaska Judicial Council is Larry Cohn, Executive Director. We are fortunate to have such talented and dedicated people serving our justice system.

It has been over a decade since I first stood before you during my first term as chief justice. In the years since, your support has helped bring many positive changes to our justice system. We now have a statewide computerized case management system that has revolutionized access to court records. We

have a Family Law Self-Help Center that has provided vital and timely legal information to tens of thousands of families facing crises each year. And we have Therapeutic Courts across the state that have allowed countless Alaskans struggling with addiction and mental health issues to return to more healthy, law-abiding lives. These changes, and many others like them, have reshaped our justice system in a manner that has served Alaskans well. And we couldn't have made any of them without your unfailing support for improving the way we do things.

Yet some things have not changed in ten years. The fundamental mission of the Alaska Court System remains the same:

- to provide a fair and impartial forum for the resolution of disputes, according to the rule of law;
- to operate as efficiently as possible;
- to be accessible to all Alaskans; and
- to honor our country's promise of equal justice.

And we remain dedicated to being good stewards of the resources you have entrusted to us. Today, as the tradition of State of the Judiciary enters its fifth decade, I'm pleased to report that these core principles continue to guide us every day, and I'm proud to share with you some new ways in which they are being brought to life.

Fairness. Probably the foremost expectation that all of us have of our justice system is that it will be fair to all concerned. What people should expect from a judge is courtesy, respect, and thoughtful consideration. And what they should expect from the process is to understand what happened, and why. Even if a judge's decision ultimately goes against them, people can best accept it if they believe they were fully heard and fairly treated. Whether judges impose a term of probation as part of a criminal sentence or visitation and child support terms as part of a divorce decree, the manner in which they do so can have a critical impact on the parties' willingness to comply. And greater compliance

means fewer enforcement problems, fewer disputes, more peace for all concerned, and – ultimately – fewer public costs.

But how do we promote and maintain a climate of fairness? How do we ensure that citizens feel confident that their dispute will be resolved in an impartial manner in accordance with the rule of law? Well, if you go into a hospital lobby, you will often notice a sign containing a clear statement of your rights as a patient: that you are entitled to be treated with dignity and respect and to have your questions answered. Alaskans who come to court should have the same assurances. So today, I announce a pledge to each litigant, defendant, victim, witness, juror, or other person who is involved in a court proceeding: The judge and court staff will listen to you, treat you with respect, and respond to your questions. We will post this pledge in every courthouse in the state.

It may seem simple and obvious, but it is our belief that this pledge of fairness, consistently offered and openly displayed, will go a long way to remind everyone in our courthouses that ensuring fairness is an active process, for which there are no short cuts. Courtrooms must be places that foster understanding and respect for our laws, for the people affected by them, and for the judges who endeavor to uphold them. They must be places that help bring a sense of clarity, community connection, and confidence that justice will be served. It is in this spirit that we reaffirm to the people of Alaska that listening, respecting, and explaining are the hallmarks of what justice requires.

Efficiency. We have all heard the adage, “justice delayed is justice denied,” so we take the second goal of our mission – operating as efficiently, and expeditiously, as possible – very seriously. Over the past decade, many innovations rooted in technology have made our courts more efficient than ever before. Online services have greatly streamlined court functions that were previously burdensome to court staff and citizens alike. The CourtView case management system enables courts across the state to obtain case information instantly, and gives members of the public direct access to court dockets. Fines can now be paid electronically. Law enforcement officers can now file traffic

citations electronically in many communities, allowing them to avoid trips to the courthouse and devote more time to their core duties. Efforts to develop online methods for sharing discovery in criminal cases and for making bail conditions more readily available to law enforcement personnel continue to make progress. And we are actively pursuing "E-filing" procedures, which will allow court documents to be filed and transmitted electronically and will help pave the way to the paperless courts of the future. All of these advances owe their development to rapidly expanding technology, and – in no small way – to your support. They continue to change the face of justice delivery in our state, and their value and importance to the efficiency of our courts cannot be overstated.

Yet to me one of the most promising and exciting developments for court efficiency in recent years stems not from the marvels of computers, but from the commitment, determination, and generosity of caring and concerned human beings. The Early Resolution Project has taught us the immense value of early intervention in some of the most heated conflicts that come before us: divorce and custody disputes. The project began just a few years ago when an Anchorage judge joined forces with a team of volunteer attorneys to offer free legal consultations to unrepresented litigants soon after their cases were filed. A small budget was drawn from funds you allotted to help us improve our handling of children's cases. A special calendar was set each month when consultations took place and the judge was available to facilitate agreements between the parties. The project opened for business with a handful of cases and high hopes, but not much more. Yet what happened next exceeded all expectations and resulted in a program that is now recognized nationally for its success. Because it turns out that in these difficult cases, early intervention works, and it works overwhelmingly well. Since December 2010, the Early Resolution Project has handled over 420 divorce and custody cases in the early stages, and 80% have been settled successfully without the need for further proceedings.

Parties to a divorce or custody dispute don't benefit from long and adversarial legal proceedings to resolve their differences; they need swift and certain results that allow members of their family to move on with their lives.

When brought together by the court early in the case, parties can achieve satisfactory and lasting solutions that could be more difficult to achieve further down the road, when anger has grown, positions have hardened, and the legal process itself has left scars. And reaching early solutions works better not only for the families and children involved, but for courts as well: disputes resolved early are disputes that no longer fill our caseloads.

The Early Resolution Project was founded through the efforts of retired Anchorage Superior Court Judge Stephanie Joannides, Family Law Self-Help Center Director Stacey Marz, and the Alaska Pro Bono Program. It has continued through the strong support of the Court Custody Mediation and Visitation Project and Alaska Legal Services Corporation. And it owes its success to countless volunteer hours donated by local attorneys, including many in the Attorney General's Office, who are able to participate thanks to the support of Attorney General Michael Geraghty. I would like to recognize and thank these dedicated individuals and organizations for their vision and their tireless efforts on behalf of struggling families. But I would also like to commend all of you for the strong support you have given to this program, which has allowed it to expand to Juneau, Palmer, and – in the near future – Fairbanks. Together, we can offer hope and relief to parents and children faced with the heartache and pain of family breakup.

Access. The importance of early intervention brings me to another continuing concern: improving and strengthening access to justice in Alaska's rural communities. As we all know, providing judicial services in remote villages across our state has been an enduring and formidable challenge from the earliest days of the Territory. In his memoir, "Old Yukon," U.S. Territorial Judge James Wickersham reported walking for days across unbroken winter trails to hold court in isolated villages. As he described it:

It was 45 below zero this morning when we left Nation, but within an hour after it had gone down to -50 There was no sign of a trail during the forenoon and one of us had to go ahead of the dogs and snowshoe to get the team along

The difficulty and disruption entailed in linking sparsely populated communities to our justice system continued across the last century and through the time of Statehood, when the Alaska Court System was first established. Early state judicial officers often traveled by bush plane, boat, or dog sled to meet the justice needs of the people they served. Knowing the country and the customs was as important as knowing the law – because one's survival was at stake.

Yet despite the logistical hardships, early state court leaders were unwavering in their commitment to rural Alaska. In 1970, Chief Justice George Boney spearheaded the first "Alaska Bush Justice Conference," which passed the following resolution:

The locale of decision-making in the administration of justice in village Alaska must move closer to the village. To achieve this result there must be greater native participation at all levels in the administration of justice . . . there must be greater access to legal services and the process of justice in Village Alaska.

In his 1972 State of the Judiciary address, Chief Justice Boney recommended the construction of "no less than 50 . . . bush facilities" across the state. With your generous support, we now have modern facilities and a solid presence in 45 communities, including urban centers, regional hubs, and small villages. In just the past few years, we have opened modern rural courthouses in Aniak, Hooper Bay, and Nenana, and we continue to upgrade and expand existing rural facilities as needed, such as the renovation now underway in Nome. Also with your help, we have ensured that rural court locations are staffed with professional court personnel and linked by modern technology. Last fall, I convened a Magistrate Working Group, which focused on improving our system for training, mentoring, and evaluating those at the core of state rural justice delivery – our rural magistrate judges.

But exactly twenty years after Chief Justice Boney's call for rural expansion, Chief Justice Jay Rabinowitz recognized in his 1992 State of the Judiciary address that there was still much progress to be made in Alaska Native

communities. He said: “[T]he suicide rate is incredible, the high school dropout rate is incredible, the drug and alcohol abuse is way disproportionate to the numbers in our society. The figures in any facet of social activity cry out for an imaginative and immediate address.”

So while I stand before you today – yet another twenty years later – with gratitude for all that we have accomplished together for our rural communities, I stand also with a heavy heart for all that we have not yet accomplished, for suffering that is not yet abated, and for realities of village life that still “cry out” for meaningful solutions over two decades after Chief Justice Rabinowitz’s poignant words.

Every study or survey of rural justice over the past two decades has acknowledged the unique and compelling justice needs of Alaska’s small and isolated villages. The Alaska Sentencing Commission,¹ the Alaska Natives Commission,² the Alaska Judicial Council,³ the Alaska Supreme Court’s Advisory Committee on Fairness and Access,⁴ the Alaska Commission on Rural Governance and Empowerment,⁵ and the Alaska Rural Justice and Law Enforcement Commission,⁶ have each studied the issues thoroughly. Consistent among their recommendations is a theme heard with increasing urgency: the need for greater opportunities for local community leaders and organizations to engage in justice delivery at the local level. Quite simply, for courts to effectively serve the needs of rural residents, justice cannot be something delivered in a far-off court by strangers, but something in which local people – those most intimately affected – can be directly and meaningfully involved.

¹ Alaska Sentencing Commission, *1992 Annual Report to the Governor and the Alaska Legislature* (December 1992).

² Alaska Natives Commission, *Final Report* (May 1994).

³ Alaska Judicial Council, *Resolving Disputes Locally: Alternatives for Rural Alaska* (August 1992).

⁴ Alaska Supreme Court Advisory Committee on Fairness and Access, *Report* (October 1997).

⁵ Alaska Commission on Rural Governance and Empowerment, *Final Report to the Governor* (June 1999).

⁶ Alaska Rural Justice and Law Enforcement Commission, *Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission* (April 2006); and *Report to the United States Congress and the Alaska State Legislature* (January 2012).

By partnering with rural communities to facilitate and support more localized, community-based problem-solving, we can create outcomes that are not only better suited to the realities of rural life, but more lasting and cost-effective. As Chief Justice Daniel Moore observed almost twenty years ago in his 1994 State of the Judiciary address, “[t]he burdens of the work of the state today are enormous [but] . . . the best way to lighten a burden is to share it.” Promising vehicles for sharing the burden through state-local justice collaboration are emerging or being revived, and I would like to highlight them briefly today.

Sentencing in Villages. First, judicial officers in some remote regions are rekindling efforts to hold criminal sentencing hearings in villages where the crimes occur. Former Aniak Magistrate Arlene Clay, now 100 years old and in whose honor the new Aniak courtroom was recently named, served a dozen villages in the Yukon-Kuskokwim region from 1960-1977. It was a time when there were few phones, few planes, and few resources for law enforcement in the region, yet Magistrate Clay traveled to villages often – by boat or dog team if needed – and always felt it was vital to understand village values and concerns when making decisions affecting village residents. Before she sentenced defendants, she made sure the elders or village council were asked for input.

Judge Nora Guinn of Bethel, a Yup’ik woman who in 1968 became our state’s first Alaska Native judge, took a similar approach to rural justice. She said:

Over the years I tried to include people – involve people – in all of my court activities. . . . I started what we call an advisory sentencing court. . . . I’d have them sit and after the people came up and pled guilty . . . we would send them out and we’d sit and talk about it. And I’d say now what would you advise? . . . I stress this person is from your village. He’s your relative. He’s your friend. If you aren’t going to help him, nobody else is going to really try to help him because we don’t know how to help him.

Following the example of these early pioneers, some judicial officers make a point of traveling to villages for sentencings to the extent they can. For example, former Bethel Superior Court Judge Leonard Devaney held sentencings in St. Mary’s, Aniak, Chevak, Toksook Bay, and Napaskiak, among

other communities, during his recent decade-long tenure on the Yukon-Kuskokwim Delta. Sometimes the imposed sentence required reporting to village authorities or engaging in village-based treatment.

Other judicial officers are implementing a practice known as "circle sentencing," which is designed to give a whole village the opportunity to participate. Magistrate Judge Mike Jackson of Kake, an Alaska Native of Tlingit and Haida ancestry, has facilitated local sentencing circles in his community for many years. Judge Eric Smith of Palmer has convened a circle in the Glennallen area to assist with the sentencing of two young men convicted of vandalizing a fire station. And most recently, Magistrate Judge Christopher McLain of Galena and a team of Interior state and local justice officials have held circle sentencings in the villages of Galena, Huslia, Nulato, and Tanana. While judges make the final decisions in these cases, many believe that the sentences have more local acceptance because the community is included in the process. And by the same token, many are convinced that the defendants respond more appropriately because they know the community cares. Whatever form they take, sentencings in villages allow state justice officials to work more closely with local communities to adopt village-centered solutions to village-centered problems.

Tribal Courts. A second trend that holds promise for improving access to justice in remote villages is the growing role of tribal courts in resolving a range of local justice issues. When I began my legal career in the mid-1970s, you didn't hear much about tribal courts in the legal problem-solving context; in fact, you rarely heard much about tribal courts at all. But there have been significant changes in the landscape of state-tribal relations in recent decades, and these changes encourage us to work more cooperatively together.

As you know, the existence of tribes or tribal courts in Alaska is a question of federal – not state – law, and for two decades the federal government has recognized Alaska Native tribes. These tribes have become involved in a wide range of activities affecting the welfare of Alaska Native people, from health care, to social services, to community and economic development. Against this backdrop, it is important to weave a more clear role for tribal courts into the

overall fabric of our justice system if we are to be truly responsive to the needs and concerns of Alaska's Native people.

State and federal statutes and court rules already authorize state courts to enlist the assistance of local organizations such as tribal courts and elders' councils when seeking to resolve certain types of cases. For example, the Minor Consuming Alcohol statute allows a state court to refer an offender to a "community diversion panel" and to require the offender "to comply with conditions set by the panel, including counseling, education, treatment, community work, and payment of fees." In addition, Alaska Civil Rules specifically endorse local dispute resolution in civil cases by allowing parties to "agree to resolve disputes, subject to court approval, by referring them to tribal courts, tribal councils, elders' courts, or ethnic organizations." Finally, Alaska Child in Need of Aid Rules authorize state courts to transfer jurisdiction of CINA proceedings involving tribal children to tribal court in accordance with the federal Indian Child Welfare Act. Yet despite these and other opportunities for tribal court or elder council involvement, cooperation and coordination are often hampered by the same factors that have always posed a challenge for rural justice delivery: geographic distance, isolation, and cultural and language differences, among others.

These challenges are not limited to Alaska. The national Conference of Chief Justices has long urged increased communication and collaboration with tribal courts across the country and the reduction of jurisdictional conflicts between federal, state, and tribal courts. Most recently, in 2011, the organization endorsed a resolution encouraging greater information sharing between federal, state, and tribal courts to better protect Native children. Today, I'm pleased to report that in Alaska we are making some progress toward addressing these concerns.

Shortly after my term as chief justice commenced last year, the court system and tribal justice groups sponsored joint training on circle sentencing that included both state and tribal judges and provided a valuable opportunity for us to learn from each other. Tribal Court Judge Natasha Singh of Stevens Village,

Chief Tribal Court Judge Ellen Sovalik of the Native Village of Barrow, and Chief Judge David Voluck of the Sitka Tribe of Alaska each brought a wealth of personal and professional experience to the issues. And this coming fall, I will invite tribal court judges to join our training sessions on procedural fairness and working effectively with self-represented litigants.

In addition, we are fortunate that Alaska Legal Services Corporation has recently completed the 2012 Alaska Tribal Court Directory, which lists ninety tribal courts across the state and the types of cases they handle. As many of you know, Alaska Legal Services Corporation has played a vital role in rural justice delivery for over four decades, and continues to provide civil legal assistance to many rural residents each year. The value of Alaska Legal Services Corporation's presence in our rural regions cannot be overstated, and the detailed directory it has created no doubt stems in part from its familiarity with, and long-term commitment to, the legal needs of Alaska's rural people. The directory will greatly enhance the ability of state and tribal courts to connect, communicate, and develop a network of working relationships – all very important steps on the path toward demystifying state and tribal court processes, fostering common understanding, and building the bonds of shared purpose.

In many cases, tribal courts are handling relatively minor problems that would likely never reach the state court system, yet have a degrading impact on a community's sense of security and well-being. And some of the risky behaviors they seek to address, especially in young people, might never come to the attention of state law enforcement. For example, during a recent visit to Southeast, Justice Maassen and I were able to meet with Chief Judge Voluck and Judge Peter Esquiro of the Sitka Tribe of Alaska. They told the story of a young tribal member who was starting to get into trouble. The teen was brought to tribal court on a Minor Consuming Alcohol charge under a cooperative program with the City and Borough of Sitka called the "Tribal Youth Diversion Effort." The tribal judges decided he needed a role model who could help him focus his energy in more positive ways. Because the youthful offender expressed an interest in and talent for wood carving, he was directed to serve an

apprenticeship with a local Master Carver. The young man responded well to the tribal court's efforts and has been successful since in avoiding any further trouble with the law.

"We are always searching," Chief Judge Voluck explains, "searching for what will spark their inner fire. What are they interested in? What are their unique gifts? How can we overcome two major hurdles facing rural Alaskan youth: boredom and apathy?"

As we have learned elsewhere, early intervention matters, and makes a huge difference in the effectiveness of outcomes. And for many isolated villages, the simple reality is that early intervention for tribal members is often more likely to come from local tribal courts than from state courts that are miles away.

Tribal courts bring not only local knowledge, cultural sensitivity, and expertise to the table, but also valuable resources, experience, and a high level of local trust. They exist in at least half the villages of our state and stand ready, willing, and able to take part in local justice delivery. Just as the three branches of state government must work together closely to ensure effective delivery of justice throughout the state court system, state and tribal courts must work together closely to ensure a system of rural justice delivery that responds to the needs of every village in a manner that is timely, effective, and fair. In short, we must *all* work together if we are to meet the tremendous challenge of bush justice. To borrow the nautical expression for rousing help in an emergency, the crisis in our villages demands "all hands on deck."

It is my hope that we can put behind us the days when villagers express doubt and dissatisfaction with our delivery of justice because it happens too far away from them. It is my hope that we can put behind us the days when opportunities for mutual assistance, support, and coordination between state and local authorities are lost because no clear lines of communication or cooperation are in place. And it is my hope that we can put behind us the days when minor village problems become major ones because confusion over respective roles means justice responses that are too little, too late.

No matter how much we hear about the urban and rural divide, what happens in our rural areas concerns all of us, and affects all of us. When lives in our rural communities are diminished by problems that have persisted for generations, we are all diminished – not only in our collective soul and spirit, but in very concrete terms as well. When Alaska Native men and women occupy over a third of our prison beds, we are paying the costs. When Alaska Native children make up over half of our children in need of aid, we are paying the costs. Alaska's Native people are our first people, and they have rich histories, strong traditions, and vibrant cultures. To change the patterns of the past, years of studies and lifetimes of shared experience tell us we must do what we can to help local justice methods take hold and flourish. And we must listen and learn from local people – the people with the most at stake.

I don't suggest that the judicial branch has the answers. Quite the contrary, we have as many questions as anyone. But I am here to reaffirm that we remain committed to being an active and engaged partner in efforts to better serve our rural communities, and we look forward to working with you and local entities on creative and effective ways to do so. If we are successful, the Chief Justice who stands before you yet another twenty years from now will be able to report new and promising progress towards healthier rural communities, not the sad and stubborn patterns of the past.

Equality. Finally, I would like to speak to the final, overarching ideal embodied in the court system's mission: the promise of equal justice. The ideal of "Equal Justice Under Law" is carved in the edifice of the U.S. Supreme Court and etched in the soul of our country. There is probably no principle of our justice system for which Americans are more rightfully proud. But as we all know, aspiring to equal justice is only the first step; ensuring it on a day-to-day basis, in a state and nation as diverse as ours, has been a major journey throughout our history. I believe the journey to equality is one that is never truly over, because we must always be vigilant to protect and defend it. But when we

see landmarks along the way, it is important to celebrate, and in Alaska we have cause for celebration.

Last summer, new Bethel Superior Court Judge Charles Ray was sworn in as Alaska's first deaf judge – and the only full-time deaf trial judge currently serving in our country. Judge Ray cannot hear, but because of modern real-time transcription technology, he can provide a full and fair opportunity to be heard to the same extent as any other judge. We recognize that, in true Alaskan fashion, Judge Ray, the court system, and the people of the Yukon-Kuskokwim Delta are breaking trail. There are rocky stretches, and difficult twists and turns, but through patience and hard work we have learned that the terrain is readily navigated, and we are confident that the path forward will soon be clear, well worn, and easy to follow. When this happens, it will reflect a great accomplishment not only for Alaska, but for our country as a whole. Because it will be a monument to the principle that people should not be excluded from public service because of disabilities that do not affect their capacity to serve. And it will be a vital step forward in our country's centuries-long struggle for equality – for everyone, everywhere.

Equally promising on the path to equal justice is the increasing effort statewide to increase racial, ethnic, and gender balance in our legal profession and judiciary. Alaska is one of the most diverse states in the nation, with a one-third minority population. Yet of the 4,000 lawyers who practice in our state, only a tiny handful are minorities. And our numbers of women and minority judges have for many years been far lower than in most other states. Yet one of the best ways to build trust and confidence in the promise of equality in our justice system is to ensure that the bar and bench reflect equality. In recent years, Alaska has made progress in achieving a stronger reflection of equality in our judiciary, thanks in large part to the Alaska Judicial Council, which has nominated many highly qualified women and minorities for judgeships, and to Governor Sean Parnell, who has appointed them.

Every new installation of a judge is an occasion for excitement and celebration, but given our history I would like to make special mention of several

new judges who have joined Alaska's judiciary in recent years: Kotzebue Superior Court Judge Paul Roetman, one of only three Hispanic judges appointed since statehood; Anchorage District Court Judge Pamela Scott Washington, our state's first African-American woman judge; and Anchorage District Court Judge Jo-Ann Chung, our first Asian-American woman judge. It is also with great pleasure that we welcome several new women judges: Alaska Court of Appeals Judge Marjorie Allard, the first woman to serve on our state's intermediate appellate court, the Alaska Court of Appeals; Anchorage Superior Court Judge Catherine Easter; Dillingham Superior Court Judge Patricia Douglass; Fairbanks Superior Court Judge Bethany Harbison; and Anchorage District Court Judges Leslie Dickson and Jennifer Stuart Henderson. All of these judicial appointments were made by Governor Parnell, who has been a leader in bringing us closer to the ideal of an Alaskan judiciary that reflects the rich diversity of Alaskans themselves.

It is vital that we continue to inspire future generations of minorities and women to see the road to a judgeship as one that is open to them. Last October, we presented Color of Justice, a program developed by the National Association of Women Judges to encourage young women and minority youth to pursue careers as judges, at Sitka's Mt. Edgecumbe High School, which is 95% Alaska Native. And Supreme Court LIVE, our program that brings supreme court oral arguments in actual cases to high school auditoriums, will travel next to our northernmost community, Barrow, a predominately Inupiaq community. Since their inception, both programs have encouraged thousands of young Alaskans to consider legal and judicial careers.

Equally exciting is a new partnership in higher education that promises to make the road to law school easier to follow. Seattle University School of Law and the University of Alaska Anchorage last year announced their intent to explore a new Alaska law school partnership, which will allow students to obtain a Seattle University law degree without leaving Alaska for the full three years of coursework. The cost of leaving family, jobs, and communities behind to attend law school out of state has always been prohibitive to many young Alaskans

interested in legal careers. Economically disadvantaged students, including many minority and rural Alaskans, face particularly high hurdles. So the new program plans to use work-study arrangements and distance-learning opportunities to cut in half the time required outside Alaska. We believe this innovative approach will open the door to legal and judicial careers much more widely and equally than ever before, and will in the long run help create a legal profession and judiciary with stronger Alaskan roots and broader Alaskan perspectives. Seattle University's law school is one of the most highly rated in the country, and Seattle University's President is Father Stephen V. Sundborg, who grew up in the Territory of Alaska and is the son of one of the framers of Alaska's Constitution, George Sundborg. These circumstances make us especially proud and hopeful for the success of this Alaska law school partnership, and we are grateful to everyone who is working to make this vision a reality.

Conclusion. In conclusion, the Alaska Court System continues to strive to meet the responsibilities that Alaska's constitution and laws have placed upon us, and to earn the trust and confidence of Alaska's people. We continue our efforts to remain true to our ultimate mission, which is to be fair, efficient, and accessible to all Alaskans, and to serve our justice system's highest promise: equal justice under law. There is not a day – or a moment – when we are not humbled by these duties or indifferent to the impacts our efforts to discharge them have on our fellow citizens. So we try to execute them with all the wisdom, knowledge, skill, and integrity that we can humanly bring to bear. And there is not a moment when we are not mindful of the vital support you have always given us, and the great benefit it has been not only to us, but to all the people of Alaska. Alaska's justice needs – whether urban or rural – are diverse and daunting. But you have been with us every step of the way as we have tried to meet them, and we are deeply grateful.

Thank you again for the opportunity to speak with you today.

Kimberly Clark

From: aurora.lehr@gmail.com on behalf of Aurora Lehr <alehr@nativefederation.org>
Sent: Thursday, March 06, 2014 9:51 AM
To: Lisa Vaught
Cc: Kimberly Clark
Subject: witnesses for March 11 CRA presentation

Good morning,

The following individuals will provide testimony during Tuesday's CRA presentation:

Aurora Lehr, Vice President, AFN

Troy Eid, Chairman, Indian Law & Order Commission (telephone)

Holly Handler, Attorney, Alaska Legal Services

1st Sgt. Jason Creasey, Sr., VPSO, Bristol Bay region (telephone)

We are waiting to hear back on two more possible witnesses and will let you know as soon as possible. Will likely have a powerpoint at beginning of presentation.

Thank you,
Aurora

Aurora Lehr
Vice President
Alaska Federation of Natives
Direct: 907-263-1305
Main: 907-274-3611
alehr@nativefederation.org

Testimony



THE STATE
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GOVERNOR SEAN PARNELL

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March 7, 2014

By Email & 1st Class Mail

Melanie Bahnke
Chair, Council for the Advancement of Alaska Natives
Alaska Federation of Natives
1577 C Street, Suite 300
Anchorage, Alaska 99501
mbahnke@Kawerak.org

Dear Ms. Bahnke:

Thank you for your letter dated March 3, 2014, and the invitation to appear before the House Community & Regional Affairs Committee hearing on March 11, 2014. Unfortunately, I will be out of state on the date of the hearing as a result of a long-planned trip and I will not be able to testify. I have referred your letter to the Administration and I am hopeful that the state will have an opportunity to present on this important subject.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael C. Geraghty".

Michael C. Geraghty
Attorney General

cc: By Email
Representative Gabrielle LeDoux, Committee Co-Chair
Representative Ben Nageak, Committee Co-Chair
Heather Brakes, Legislative Director, Office of the Governor
John Moller, Senior Rural Affairs Advisor, Office of the Governor
Kimberly Clark, Legislative Administrative Assistant



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March 28, 2014

By Email & 1st Class Mail

The Honorable Gabrielle LeDoux
Representative and Co-Chair
Community & Regional Affairs Committee
State Capitol, Room 416
Juneau, AK 99801-1182
Representative.Gabrielle.LeDoux@akleg.gov

The Honorable Benjamin Nageak
Representative and Co-Chair
Community & Regional Affairs Committee
State Capitol, Room 428
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Re: April 8 Committee Hearing on the Indian Law & Order Commission Report

Dear Representative LeDoux and Representative Nageak:

Thank you for your letter dated March 26, 2014. My apologies at having to decline the invitation from AFN to testify at the previously scheduled meeting on March 11. As I mentioned in my correspondence, a long-standing conflict involving travel out-of-state prevented me from appearing. I also have a keen interest in this subject and did not want to delegate someone else from within the Department of Law because the issue is far too important.

I look forward to appearing before the committee on the morning of April 8.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael C. Geraghty".

Michael C. Geraghty
Attorney General

cc: By Email:
Rep. Bob Herron, C&RA Committee Member
Rep. Neal Foster, C&RA Committee Member
Rep. Kurt Olson, C&RA Committee Member
Rep. Lora Reinbold, C&RA Committee Member
Rep. Sam Kito III, C&RA Committee Member
Heather Brakes, Legislative Director, Office of the Governor

A Roadmap for Making Native America Safer Public Safety in Alaska As Seen Through an Independent Lens

The Indian Law and Order Commission is an independent national advisory commission created in July 2010 when the Tribal Law and Order Act (TLOA) was passed and extended earlier in 2013 by the Violence Against Women Act Reauthorization (VAWA Amendments). The President and the majority and minority leadership of the Congress appointed the nine Commissioners, all of whom have served as volunteers. One of the Commission's charges was to investigate, report on, and make recommendations to improve criminal justice in Native American and Alaska Native communities. The report, *A Roadmap For Making Native America Safer*, assesses the effectiveness of TLOA and makes recommendations for long-term improvements to the structure of the justice system in Indian country.

The Commission notes that problems with safety in Tribal communities are severe across the United States—but they are systemically worst in Alaska. An entire chapter of the Roadmap is dedicated to reforming justice in Alaska due to its vastness, Nativeness, and continued exemption from national policy changes.

“The public safety issues in Alaska—and the law and policy at the root of those problems—beg to be addressed. These are no longer just Alaska’s issues; they are national issues.”

Findings of the Commission

Perhaps the most central finding in the Roadmap is that, “State government authority is privileged over all other possibilities.” Moreover, the Commission notes, the model of centralized administration of law enforcement and justice systems simply does not work in Alaska.

Statistics cited by the Commission are all too familiar reminders of the disparity in access to public safety mechanisms and the numerous negative effects for Alaska Natives. A lack of access to police, courts, and related services is common to the majority of rural communities and at least 75 communities lack any law enforcement presence at all.

The Commission unanimously disagrees with Alaska’s Attorney General on the view that there is very little Indian country in Alaska and thus, the State’s law enforcement authority is exclusive throughout the State because Tribes do not have a land base on which to exercise any inherent criminal jurisdiction.

Recommendations of the Commission

Throughout the findings and expositive sections of the report the Commission notes areas and methods of potential change. Although the five official recommendations are directed at Congress and the President, to fully implement them would require significant buy-in and participation by Alaska Native leadership. Major changes to the status quo are raised and bear serious examination by tribal governments, ANCSA corporations, and all Alaska Natives. Notably, the Commission recommends (re)establishment of Indian Country in Alaska and significant amendments to ANCSA.

Official Recommendations

2.1: Congress should overturn the U.S. Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.

2.2: Congress and the President should amend the definitions of Indian country to clarify (or affirm) that Native allotments and Native-owned town sites in Alaska are Indian country.

2.3: Congress should amend the Alaska Native Claims Settlement Act to allow a transfer of lands from Regional Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the Federal criminal code; to allow Alaska Native Tribes to put tribally owned fee simple land similarly into trust; and to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities.

2.4: Congress should repeal Section 910 of Title IX of the Violence Against Women Reauthorization Act of 2013 (VAWA Amendments), and thereby permit Alaska Native communities and their courts to address domestic violence and sexual assault, committed by Tribal members and non-Natives, the same as now will be done in the lower 48.

2.5: Congress should affirm the inherent criminal jurisdiction of Alaska Native Tribal governments over their members within the external boundaries of their villages.

Additional Recommendations

- Native villages without reasonable access to law enforcement should have that access.
- All village law enforcement officers should have the training and approval to carry firearms subject to standards that accord with all State peace officers.
- Native village residents should be able to participate locally in substance abuse treatment, technology-assisted alternatives to detention, and anger management programs.
- Increased tribal authority over criminal justice via:
 - collaborating with Tribes on other criminal justice issues;
 - deputizing Tribes to provide a wide array of criminal justice services;
 - delegating or deputizing Tribal judges, including the expanded use of circle sentencing and traditional dispute resolution;
 - leveraging the State and Tribal governments' concurrent criminal jurisdiction to develop specific, locally optimal criminal justice approaches;
 - adopting a policy of State deference to Tribal authority in Tribal communities.
- State government can also generate funds for Tribal criminal justice programming by rooting out inefficiencies and wasteful spending in its current organization, taking advantage of cost-savings

from the increased use of alternatives to detention and other innovations in service provision, and moving money out of regional centers when increases in Tribal capacity make the current extent of service provision unnecessary.

- Regional Alaska Native Corporations, the largest beneficiaries from Tribal resources over the last four decades, also should increase their contributions to the governments that justify their existence.

AFN Staff Response

The first three recommendations focus on the (re)establishment of Indian country in Alaska. While the idea has generalized support, opening ANCSA up to significant amendments must be thoroughly examined. If consensus is reached, a strategic plan would need to be developed to ensure other sections of ANCSA are not affected. It should be noted that the third recommendation is to allow for, not to require, the transfer of lands from Regional Corporations to Tribes.

Repeal of Section 910 is a key component of the bipartisan Safe Families and Village Act, S. 1474, as introduced by Alaska Senators Murkowski and Begich. AFN has requested hearings and markup on the bill and will continue to work with member organizations and the appropriate Senate staff to ensure this provision remains while making significant amendments to other sections prior to passage.

Because the final official recommendation, to affirm the inherent criminal jurisdiction, steers clear of amending the definition of Indian Country or ANCSA, it may be the path of least resistance for the Alaska Congressional Delegation and provide temporary relief while consensus is built on other options.

The State of Alaska is currently working with the Tanana Chiefs Conference to develop an agreement that would allow for misdemeanor cases to be handled by tribal courts. If such an agreement is made, it would create an opportunity for other communities to seek similar agreements. In the meantime, the Alaska legislature should hold hearings on the current state of domestic violence and criminal justice in rural Alaska rather than depend entirely upon the Governor's and Attorney General's offices to take action.

An immediate action that can be taken by Native communities, without waiting for outside actions, is building capacity of tribal courts and governments to enact and enforce tribal law. This includes development of tribal codes, courts, training of enforcement officers, and public education. AFN staff will communicate out links to code templates and technical assistance resources.



ALASKA FEDERATION
OF NATIVES

February 19, 2014

Representative Bryce Edgmon, Chair
Bush Caucus
State Capitol Room 410
Juneau AK, 99801

RE: AFN Board Resolution 13-15 Title: Request for Immediate Hearings in the United States Senate and House and the Alaska Legislature on The Indian Law & Order Commission's Report, "A Roadmap for Making Native America Safer"

Dear Chairman Edgmon:

Thank you for meeting with representatives from AFN's Council for the Advancement of Alaska Natives (CAAN) last week. We appreciate your leadership, as Chair of the Bush Caucus, and attention to issues that directly affect many Alaska Natives. As you know, this past November the Indian Law & Order Commission (ILOC) published a report titled, "A Roadmap for Making Native America Safer," with an entire chapter dedicated to conditions in Alaska. The ILOC, comprised of nine unpaid appointed members by the President and U.S. Congress who are experts on criminal justice in tribal communities, bases its recommendations on three years of comprehensive study of criminal justice in Native America.

The Bush Caucus' constituents, Alaska Native and non-native alike, are less safe than urban areas of Alaska by virtue of their remoteness. The ILOC report reveals inadequacies of State of Alaska criminal jurisdiction, which has led to an under-provision of criminal justice services in rural and Native regions of the State. A notable barrier identified is the status quo in Alaska to marginalize the potential of tribally based justice systems, as well as intertribal institutions and organizations to provide more cost-effective and responsive alternatives to prevent crime and keep all Alaskans safer. The report also contains key elements that could be discussed on the modification of the Alaska Safe Families and Villages Act of 2013 (SB1474).



**ALASKA FEDERATION
OF NATIVES**

While we do not necessarily agree with every recommendation made in the ILOC report, we recognize the opportunity to work with the State to improve public safety for all Alaskans. We believe this report is sincere, honest work that is focused on tackling the issue of rural residents and Alaska Natives disproportionately affected by crime, high rates of suicide, alcohol abuse, alcohol-related crimes, sexual abuse and domestic violence. Because we are hopeful that the solutions can come from within Alaska, we request your leadership in securing a hearing on the findings and recommendations of this ILOC report in either the Judiciary or Community & Regional Affairs Committees.

Thank you for your time and consideration.

Sincerely,

Julie Kitka, President
Alaska Federation of Natives

Cc:

Rep. Gabrielle LeDoux, Co-Chair, House Community & Regional Affairs Committee
Rep. Ben Nageak, Co-Chair, House Community & Regional Affairs Committee
Rep. Wes Keller, Chair, House Judiciary Committee
Rep. Bob Lynn, Vice Chair, House Judiciary Committee



Alaska Federation of Natives
Board Resolution 13-15

- TITLE:** REQUEST FOR IMMEDIATE HEARINGS IN THE UNITED STATES SENATE AND HOUSE AND THE ALASKA LEGISLATURE ON THE INDIAN LAW & ORDER COMMISSION'S REPORT, "A ROADMAP FOR MAKING NATIVE AMERICA SAFER"
- WHEREAS:** The Alaska Federation of Natives (AFN) is the largest statewide Native organization in Alaska and its membership includes 151 federally-recognized tribes, 134 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and run federal and state programs; and
- WHEREAS:** The mission of AFN is to enhance and promote the cultural, economic, and political voice of the entire Alaska Native community; and
- WHEREAS:** On average, in 2003-2004 an Alaska Native female became a victim of reported sexual assault or of child sexual abuse every 29.8 hours, as compared to once every 46.6 hours for non-Native females. Victimization rates, which take account of underlying population proportions, are even more dissimilar: the rate of sexual violence victimization among Alaska Native women was at least seven times the non-Native rate; and
- WHEREAS:** During the period 2004-2007, Alaska Natives were 2.5 times more likely to die by homicide than Alaskans who reported "White" as their race and 2.9 times more likely to die by homicide than all Whites in the United States; and
- WHEREAS:** Alaska Natives' representation in the Alaska prison and jail population is twice their representation in the general population (36 percent versus 19 percent); and
- WHEREAS:** The Indian Law & Order Commission was created by the Tribal Law and Order Act of 2010 (TLOA) to advise the President and Congress on Federal, State and Tribal reforms to strengthen criminal justice for the 566 Federally recognized Indian Tribes and Nations; and
- WHEREAS:** The Commission's goal is, "To end the public safety gap – the legacy of failed Federal laws and policies – that makes Native American and Alaska Native communities frequently less safe, and often dramatically more dangerous, than the rest of our country"; and
- WHEREAS:** In November 2013, the Commission planned and executed a report titled "A Roadmap for Making Native America Safer" that is an important

assessment of Native American and Alaska Native public safety and criminal justice; and

WHEREAS: The report contains 40 major recommendations for making Native America safer; and

WHEREAS: The report states that Alaska's criminal justice crisis is a National problem, not just a State problem, that can be more effectively addressed if the Federal government and the State of Alaska strengthen rather than degrade Tribal sovereignty and local self-governance; and

WHEREAS: The Commission has found possibilities for safer, strong Native communities achieved through home-grown, Tribally based systems that respect the civil rights of all U.S. citizens and reject outmoded Federal command-and-control policies in favor of increased local control, accountability and transparency; and

WHEREAS: The recommendations require new Federal laws, others need executive branch policy changes, some warrant action by the Federal judiciary; others are State-level reforms; and still others are matters for Tribal citizens and their elected leaders; and

WHEREAS: Numerous similar investigations and reports on the status of public safety and access to justice for rural Alaskans have been produced over the past forty years with calls for hearings and solutions.

NOW THEREFORE BE IT RESOLVED that Alaska Federation of Natives requests the U.S. Senate Committee of Indian Affairs hold immediate hearings to hear from Alaska Natives on findings of this Commission report and the Alaska Safe Families and Villages Act of 2013 legislation (SB 1474); and

BE IT FURTHER RESOLVED that the AFN Board also requests hearings in the U.S. House of Representatives and the Alaska State Legislature's Senate and House Judiciary Committees to from Alaska Natives, the State of Alaska, and all involved in the delivery of criminal justice and safety in rural Alaska; and

BE IT FURTHER RESOLVED that the AFN Board recommends that its membership study this new federal report and identify recommendations which Alaska Natives want to see implemented immediately and prepare testimony of their positions and recommendations; and

BE IT FURTHER RESOLVED that AFN staff and members incorporate key elements of this report into discussions with the Alaska Congressional Delegation on the modification of the Alaska Safe Families and Villages of Act of 2013 (SB 1474); and

BE IT FURTHER RESOLVED that AFN supports the incorporation of demonstration projects, accompanied by adequate new resources, to demonstrate and build the capacity of Alaska tribes.

SUBMITTED BY: COUNCIL FOR THE ADVANCEMENT OF ALASKA NATIVES

ADOPTED BY THE AFN BOARD OF DIRECTORS ON DECEMBER 3, 2013



Rural justice a focus for Fabe in 'State of the Judiciary'

Chief Justice concerned for the areas of Alaska where the long arm of the law does not reach

Posted: February 13, 2013 - 5:24pm | Updated: February 14, 2013 - 1:14am

By MARK D. MILLER

JUNEAU EMPIRE

Alaska Supreme Court Chief Justice Dana Fabe may be the Alaska Court System's top official, but she devoted much of her "State of the Judiciary" speech to a joint session of the Alaska State Legislature Wednesday to tribal courts and rural parts of Alaska where the long arm of the law does not always reach.

Fabe referred repeatedly to previous State of the Judiciary speeches and the memoirs of past judges throughout her address, reinforcing her message that while Alaska has made progress toward bridging the "urban-rural divide" in providing judicial services to the remote communities that dot the state's Interior and coastal regions, it has more work to do.

After quoting from then-Chief Justice Jay Rabinowitz's 1992 State of the Judiciary speech on inequality in Alaska's rural communities, Fabe said, "While I stand before you today, 20 years later, with gratitude for all that we've accomplished together in our rural communities, I stand also with a heavy heart for all that we've not yet accomplished, for suffering that is not abated and for realities of village life that still cry out for meaningful solutions over two decades after Chief Justice Rabinowitz's poignant words."

Some judges whose jurisdictions include rural villages have sought to include village elders and other members of remote communities in court proceedings, according to Fabe — asking for their advice in handing down sentences, for example.

"Quite simply, for courts to effectively serve the needs of rural residents, justice cannot be something delivered in a far-off court by strangers, but something in which local people — those most intimately affected — can be directly and meaningfully involved," Fabe declared.

Fabe also spent some time during her address talking about courts that are actually outside the Alaska Court System: tribal courts, which coexist with state and federal courts.

"Tribal courts bring not only local knowledge, cultural sensitivity and expertise to the table, but also valuable resources, experience and a high level of local trust," said Fabe. "They exist in at least half the villages of our state and stand ready, willing and able to take part in local justice delivery. And just as the three branches of state government must work closely together ... state and tribal courts must work together closely to ensure a system of rural justice delivery that responds to the needs of every village that is timely, effective and fair."

In a similar vein, Fabe also mentioned early intervention programs and therapeutic courts that have expanded throughout Alaska over the past decade. The Juneau Therapeutic Court program began in 2005.

"Reaching early solutions works better not only for the families and children involved, but for courts as well," Fabe said. "Disputes resolved early are disputes that no longer fill our caseloads."

Fabe also acknowledged recent changes on the Supreme Court, including longtime Justice Walter L. Carpeneti's retirement last month.

Fabe praised Carpeneti's "patience, compassion, intelligence and integrity," to applause from legislators, while welcoming new Justices Joel Bolger and Peter Maassen to the court.

Sen. Dennis Egan, D-Juneau, called Fabe's address "interesting." He said he was glad to hear Fabe voice support for programs like the therapeutic courts.

"Of course, Juneau has one now, and I'm glad they are going to continue it," said Egan. "I think it's a great, great program for Alaska and it saves us a lot of money."

As to Carpeneti's replacement by Bolger leaving Juneau without a justice among the five members on the Supreme Court for the first time since its 1959 formation — a piece of trivia not mentioned in the speech — Egan said, "I'm still concerned about that."

"I would feel a lot happier if there was someone from Southeast, at least, on the bench," Egan said. "Hopefully next time."

Rep. Cathy Muñoz, R-Juneau, said of the address, "I thought it was a pretty good speech."

"I was impressed with her attention to community-based solutions and her encouragement for members of the judiciary to look for solutions that involve community members, involve the tribal court system, looking for ways to encourage alternative sentencing," said Muñoz, referring to one

anecdote Fabe told about a young criminal offender in Sitka who was ordered to become a wood carver's apprentice by a tribal court, placing him on course to become a more productive member of society.

Sen. Bert Stedman, R-Sitka, remarked, "The tribal court in Sitka seems to be working good. It's smoothed things out in the community quite a bit. I think it's a good idea. I know it's not followed universally around the state, but it works well for the community of Sitka. I expect it to continue."

Asked what he thought of the speech, Stedman said, "It was all right." He said he was glad to hear about the evolution and "diversification" of Alaska's courts.

"I appreciated Chief Justice Fabe's focus on rural justice," said Rep. Jonathan Kreiss-Tomkins, D-Sitka. "I'm learning more about a lot of the examples she cited, but I've heard firsthand of the success of some of what she talked about — for instance, circle sentencing in Kake. ... So it struck me as highly appropriate and very welcome."

• Contact reporter Mark D. Miller at 586-1821 or at mark.d.miller@juneauempire.com.



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