

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672

1412 SCOMM 52. JOINT SPEC. COMMITTEE ON LOCAL OPTION LAWS 1985-86

village needs by developing methods for enhanced interaction between state and village processes as we had come to understand them. These methods were to be sustainable and acceptable to village consumers and justice policymakers and field operatives. We satisfied consumers and field operatives but not policymakers.

The Problem Board Experiment

The problem board experiment was grounded in careful study of the village council process both historical and contemporary throughout the 75 villages which comprise Eskimo Alaska. Assessment of village councils through study of their records and on the scene investigations led to our proposal to the court to test the proposition that a non-adversarial mediation panel could be established in villages. It would deal with matters then deemed inappropriate for either modern councils engaged in fining and jailing extralegally or magistrates (Conn and Hippler, 1974a). In association with the Eskimo village of Emmonak we worked on the process. It was in fact a process of rediscovery since Emmonak had only recently delegated its dispute adjustment to village police and a magistrate. The state had provided these Western law figures with a portable "holding facility" (jail).

The council had been able to drop its role as fining and jailing council. It had done this with some relief.

Villagers recognized that an element of the earlier process was missing. The magistrate spoke of the family counseling she was called upon to undertake. She desired something like the old council to take up this activity. Problems with juveniles and

other problems not clearly legal were mentioned. These were reflective of disputes heard by the village council.

With the village we devised what we called conciliation boards (drawing upon literature on village complaint boards in Ceylon). Villagers changed the name to problem boards. Villagers selected persons capable of problem solving, young and old, all Yupik speaking. They rejected the village priest when he volunteered.

The researchers determined that voluntary conciliation under Alaska law could be used as an alternative to prosecution for misdemeanors in most cases. They emphasized that the board would not and could not fine or jail persons. This would be left up to the magistrate (Conn and Hippler, 1974b).

The village developed the concept on its own. We had anticipated that matters would flow naturally from police to the magistrate and then be diverted by her to the problem board. In fact, what occurred was that matters moved directly and independently to the board (Conn and Hippler, 1975).

The problem board during its test phase dealt with matters which did not have clear legal remedies. These often involved situations involving alcohol which, if left uncounseled, were expected to result in violence.

For example, the board counseled A who gave liquor to B, causing family chaos. It counseled C who teased D for using welfare money to play bingo. When E, a teacher aide, kicked F, a

student, it drew E and G (his parent) together to work out a compromise. It dealt with difficult family problems involving drinking, wife beating and child abuse. Juvenile matters were often considered.

In the main, it anticipated violence. It had no power to fine or jail but could refer (and be referred) cases to and from the magistrate and the police.

The Court Experiment with Problem Boards

When the model became an experimental "program" within the court system, the court personnel in charge selected test villages with little concern for institutional relationships with councils or magistrates.

While the problem board provided a mechanism for Native language speakers of all educational backgrounds to participate, only some villages were given to understand that one's skills at negotiation and conciliation and not youth and education were primary criteria. Others selected callow untrained youth for their boards.

Court personnel did not feel comfortable with village experience at dispute adjustment. They held a workshop for problem board members at an urban resort and had members of the American Arbitration Association employ models of conciliation drawn from labor, prison and other urban settings to teach the Eskimos how to resolve disputes.

Some test villages on their own grafted the board into their

processes with varying degrees of success. In village X near Bethel the board found a niche between the police and now-fining and jailing council (Conn, 1975b). Others saw the problem board as a weak substitute for either a magistrate or council.

The court hired an attorney and anthropologist to evaluate the boards. Although the report was favorable to those boards which had been active, it stressed the limited number of matters heard (Marguez and Serdahely, 1977) and not problems avoided by board activity.

The court's response was to end its association with the experiment. From its perspective, the boards had failed because they had not replaced either magistrates or extra-legal councils which fined or jailed when magistrates or outside assistance was not available.

Although the court disassociated itself from the project, a 55 village survey two years later discovered three of the six problem boards established were still in operation (Angell, 1979b).

Paralegals

Unlike the new, urban private law legal assistants who have evolved into a discrete professional category by taking upon themselves a variety of lawyer's tasks, we viewed rural paralegals located in towns and villages as capable of performing activities not then undertaken by either professionals or members of the village justice systems (Conn and Hippler, 1973b; Conn, 1974).

The town paralegal's work was to combine town and village justice. By moving out from the town to villages where crimes had occurred, the rural paralegal would investigate and report back to the professional those social facts (as well as legal facts) overlooked by police. The police report had almost exclusive bearing on legal decisions, such as bail, screening, charges, case organization and disposition. No longer would the professional have to depend on a police report or on conventional wisdom among field professionals to evaluate his case with an eye toward its impact on the real community affected.

Our belief in village paralegals stemmed from several considerations. First, we had recognized and reported on the dependence of the rural justice process upon paralegals in a variety of village roles (Conn and Hippler, 1973b). Second, we were convinced that the state legal process would not be introduced in village Alaska with any balanced concern for the integrity of either the Western process or understanding of the village law process, its strengths and its weaknesses. We perceived that, at best, state justice agencies would make village connections with a magistrate and a policeman. The screening function so essential to the integrity of both systems, carried on previously by the council, or left to a village policeman would be ignored or left to chance (Conn, 1975a). Professionalization would increase the tendency to intervene in village matters without concern for the propriety of that intervention on the single dispute or on the village law process.

Projects Accomplished and Their Bureaucratic Response

In the years that followed we were able to test the proposition of the town based paralegal who worked for either a district attorney or public defender. A training-tutorial mechanism was established in both Nome and Bethel.

Bush professionals, especially prosecutors, remarked that their professional collaboration with villages were enhanced. Trainees became serious members of the rural process.

Yet in this instance as in many others where plans proposed or actually implemented at the town and village level received strong support from field professionals and village residents alike, reaction from urban bureaucracies was indifferent or hostile.

LEAA representatives from Seattle questioned the use of \$100,000 to underwrite the establishment of regional training programs whose end result was apparently four new paraprofessionals. Their concern was sufficient to induce the state Criminal Justice Planning Agency in Juneau to ignore the project.

The state attorney general had promised in writing to budget permanent positions for successful trainees. He attempted to renege on his promise. Only the threat of newspaper exposure by the Bethel trainee saved his job. He was the only Native member of the rural Department of Law.

A paralegal trainee with the Public Defender Agency also received high marks. Yet when the agency was in need of a second

town attorney, she was encouraged to resign. She became a magistrate.

The Alaska Division of Personnel unilaterally defined paralegal positions and established testing procedures. No provision was made for rural job requirements (including language competence). The district attorney's paralegal failed the test.

Village Paralegals

The Alaska Legal Services Corporation established paralegal positions in Native villages on Alaska's North Slope. These trainees were educated to discover and investigate Western law problems and to channel cases into the state process and back into the village realm.

Yet, when Alaska Federation of Natives funding from its federal CETA program disappeared, the village paralegals lost their positions, becoming more in a long line of Native men and women "trained into oblivion."

What do these experiments suggest about rural justice? It would appear that no experiment, however well attuned to village needs or cultural values, however well-received by villagers and however useful to field operatives and their limited resources will succeed without overcoming priorities both ideological and institutional which are more important than a rural justice system that works.

The Present

A 1977 study of 55 villages indicates that the carnage of

village Alaska is now truly impressive with murder, rape and violent crime rates two and three times the state average and many times those of the nation (Angell, 1981a).¹¹

Village councils persevere in 25 percent of the sample surveyed, skewed in fact to favor villages with magistrate service (Angell, 1981a). Villages depend upon outside police service or service of constables who act as liaisons to state troopers. Village control has been weakened and not strengthened.

The court system has disavowed rural trials where facilities are inadequate to house personnel (Supreme Court rule 18-1). It has disavowed experiments with alternative forms of dispute resolution. It has not acted upon plans proposed to it to attempt circuit riding. It trained and then forgot court interpreters (See Annual Report, Alaska State Court System, 1981).¹²

When its developed in-house research organ discovered that Natives in urban courts receive longer prison terms for non-violent offenses (Alaska Judicial Council, 1979), its judges attacked the problem by bringing up to the level of Natives, non-Native's sentences and not by encouraging correctional alternatives (Alaska Judicial Council, 1980).¹³

Magistrates placed in earlier days exist as curious anachronisms in rural villages, hearing fewer cases than councils did in their extra-legal state or even than the problem boards rejected by the court (Alaska State Court System, 1981).

Paralegals trained to work with bush district attorneys and

public defenders have been forced to resign by their bureaucracies even in the face of support by field personnel. The state personnel department has developed a test for such state positions which ignores language and job competence and emphasizes skills in math competence.

The Department of Public Safety has received funds to place village police in villages along with detention systems, creating a partial Western system.¹⁴

The Division of Corrections has provided no new correctional personnel to rural Alaska in ten years. Its dubious contribution has been to make old town jails (in Bethel and Nome) over into modern town jails.

Since police are more mobile than other components of the system, and more receptive to bush service, this means construction of law systems that could make of villages "closed institutions" with guards and cells (Goffman, 1961).

We as researchers, fascinated both with cultural pluralism and committed to research leading to reform, must search our souls and consider whether or not the fruit of our labor has resulted in a legal process acceptable to any standard of justice or to none at all. Those of us who are lawyers first and anthropologists second must consider whether we should steer away from research and lend our skills to law reform and political pressure and not to adaptation of the legal process and roles to fit small village situations.

Were researchers deceived or did they allow themselves to be deceived? Were they blind to overriding political considerations that made of "cultural relevance" a convenient excuse for bureaucracies to employ unless or until they were prepared to establish a partial copy of their system in village Alaska, a system unacceptable by either state or village standards?

We who are infatuated with the opportunities for redefining a state law process to benefit an environment marked by cultural pluralism may find our work manipulated by those who underwrite it and apparently embrace it. From our global perspective should we not be impressed by the political imperatives that govern the entire process of bush justice? Chief among these is a battle for control of resources and populations which relinquishes none of that control to indigenous minorities on any terms without a fight.

In Alaska, for example, it must be asked whether state authorities want village Alaska to survive. Is it not likely that state authorities would prefer an in-migration of Natives into its cities, that in 1991 Natives sell their shares of land claims awards and rest easily on their dividends in Anchorage condominiums?

Destabilization of village life may in the end be desired over improved service. Despite the historical adaptation of Western law process to changing social and economic needs, present policymakers and field operatives believe that the systems in which they function are a kind of evolutionary by-product, natural

and appropriate to all places and persons within the American political domain.

Though we may have scholars and historians who decry the phenomenon, is it not the underlying message of Alaska legal development that the consumers and their problems must fit the process and not the converse (See Friedman, 1973)?

The force of legal assimilation is the dominant force and adaptations in the name of cultural imperatives are mere pauses (or worse than this, excuses) which conceal a longer term trend.

As researchers, we in Alaska have tinkered with the system. We have listened and attempted to innovate within the system. What we did not accomplish was to draw Natives into the process as players, capable of negotiating change, posssssing power and ultimately manipulating the system as co- or near- equals to other players.

Manipulation and partial control of the system does not mean participation in bush conferences, seats on advisory committees or even membership in lower ranks of justice or police bureaucracies. It means negotiating on legal process from positions of power.

References

- Alaska State of
1959 Constitution of the State of Alaska, Juneau, Alaska: Lieutenant Governor.
- Alaska, State of
1973 Supreme Court, Rules of Court, Seattle, WA: Book Publishing Company.
- Alaska, State of, Court System
1981 1980 Annual Report of the Alaska Court System, Anchorage: Alaska Court System.
- Alaska, State of, Judicial Council
1970 'Conference Resolutions', of the First Bush Justice Conference, Girdwood, Alaska. (unpublished paper)
- Alaska, State of, Judicial Council
1980 'Report of the Advisory Committee on Minority Judicial Sentencing Practices, Ch. 42, SLA 1979.' (unpublished paper)
- Angell, J.E.
1979a Alaskan Village Justice: An Exploratory Study, Anchorage: Justice Center, University of Alaska.
1979b Public Safety and the Justice System in Alaskan Native Villages, Anchorage: Justice Center, University of Alaska.
1981a Public Safety and the Justice System in Alaskan Native Villages, Jonesboro, TN: Pilgrimage.
1981b Interview with Stephen Conn.
- Bayley, B. et al.
1980 A Statistical Analysis of Discrimination in the Alaska Criminal Justice System, Vancouver, WA: Cascade Research Center.
- Case, D.S.
1977 'Twenty Four Ordinances to Enforce Local Laws Through the Alaska "Village" Council', Anchorage: Alaska Federation of Natives, Bush Justice Committee.
1978 The Special Relationship of Alaska Natives to the Federal Government; an Historical and Legal Analysis, Anchorage: Alaska Native Foundation.
- Conn, S.
1974c 'Report to the Chief Justice', recommendations for reform of the court system in rural Alaska. (unpublished paper)
1975a 'Perspective on Small Village Justice Systems', prepared for the Alaska Judicial Council. (unpublished paper)
1975b 'Napakiak, Selawik, Gambell and Savoonga, Wainwright

- and Manokotak: Five Research Monographs on the Operation of State Criminal Justice System,' prepared for Alaska Judicial Council. (unpublished paper)
- 1976 'Village Life on Trial: Corrections and the Bush', narrative report for the Alaska Bar Association for Improvement of Corrections. (unpublished paper)
- 1981a 'Satellite Villages, Bethel and State Liquor Policy in the Modern Era', report pursuant to NIAAA grant. (unpublished paper)
- 1981b 'Alcohol Control and Native Alaskans--From the Russians to Statehood: The Early Years', report pursuant to NIAAA grant. (unpublished paper)
- Conn, S. and Garber, B.K.
- 1971 Moment of Truth: The Special Relationship of the Federal Government to Alaska Natives and Their Tribes, Anchorage: Justice Center, University of Alaska
- Conn, S. and Hippler, A.
- 1973a 'Traditional Northern Eskimo Law Ways and Their Relationship to Contemporary Problems of Bush Justice', in Occasional Paper #10, Fairbanks: Institute of Social, Economic and Government Research, University of Alaska.
- 1973b 'Paralegals in the Bush', UCLA-Alaska Law Review 3-1: 85-102.
- 1974a 'Conciliation and Arbitration in the Native Village and the Urban Ghetto', Judicature 58-5:229-235
- 1974b 'Final Report, Emmonak Conciliation Board, A Model for a New Legal Process for Small Villages in Alaska', report of National Science Foundation project prepared for presentation to the Alaska State Supreme Court. (unpublished paper)
- 1975 'The Village Council and Its Offspring: A Reform for Bush Justice', UCLA-ALASKA LAW REVIEW 5-1:22-57
- Easley, P.P. (ed.)
- 1973 The Administration of Justice in Village Alaska (Barrow, Bethel, Dillingham, Fort Yukon, Nome and Kotzebue), Juneau: Alaska Criminal Justice Planning Agency.
- Friedman, L.M.
- 1973 A History of American Law, New York: Simon and Schuster.
- Goffman, E.
- 1961 Asylums, Garden City, NY: Anchor Books and Doubleday and Company.
- Jenness, D.
- 1962 Eskimo Administration: I. Alaska, Arctic Institute of North America Technical Paper 10, Ottawa.

- Kydd, D.L. (ed.)
 1979 Towards a Legal Education and Information Program for Natives, Saskatoon: Native Law Center.
- Marquez, J.E. and Serdahely, D.J.
 1977 Alaska Court System Village Conciliation Board Project Evaluation, Anchorage: Alaska Court System.
- Milan, F.
 1964 'The Acculturation of the Contemporary Eskimo of Wainwright, Alaska', Anthropological Papers of the University of Alaska 11:1-95, Fairbanks: University of Alaska.
- Morrow, W.G.
 1974 'Riding Circuit in the Arctic', Judicature 58-5: 236-241.
- Murton, T.O.
 1965 The Administration of Criminal Justice in Alaska, 1867 to 1902, Berkeley: School of Criminology, University of California. (unpublished Master's thesis)
- Nix, W.
 1972 'Subgrantee Professional Report', Juneau: Alaska Department of Public Safety. (unpublished paper)
 1973 Interview with Stephen Conn.
 1977 Interview with John E. Angell.
- Schwartz, B.
 1973 'CJPA to Hire Native Criminal Justice Planner', Alaska Criminal Justice Reporter 3-4, Juneau: Alaska Criminal Justice Planning Agency (August).
- Second Magistrates Advisory Committee
 1978 'Tentative Draft Recommendations of the Second Magistrates Advisory Committee', prepared for the Alaska State Supreme Court. (unpublished paper)
- Second Magistrates Advisory Committee
 1979 'Recommendations of the Second Magistrates Advisory Committee', prepared for the Alaska State Supreme Court. (unpublished paper)
- Timbers, B.
 1973 Interview with Stephen Conn.

CASES CITED

Gregory v. Alaska, 550 P.2d 374, 1976.

Footnotes

1 In the 566,000 square mile state of Alaska, half of the population live in towns and villages usually accessible only by river, sea or air. Within the latter rural population are 55,000 Indians, Eskimos and Aleuts who reside in about 140 villages with populations from 25 to 700 persons and 300 persons on average. Another half dozen Native towns have populations from 1,500 to 3,000 persons. "Bush justice" is the Alaskan term for legal process which affects these predominantly Native villages and towns.

2 Criminal Justice Planner Butch Schwartz reported that only 10.8 percent of Alaska's LEAA block grants and 11.1 of all LEAA funds directly benefited bush areas. Eighty percent of this amount went to construct five jails and to police programs. Schwartz, 1973:4. Angell (1981) reports that while small white communities are isolated for purposes of data collection in police statistics, village Alaska is included in a catchall category. Nearly all white communities have a judicial officer.

3 There are at least 112 small predominantly Native Alaskan cities (termed "Native villages") without resident state judicial officers. John Angell (1981) reports that only half of about 55 villages surveyed had even a part time policeman.

4 Said the State Supreme Court in Gregory v. State (1976), "We. . . recognize that the trial court is obligated to be certain that each citizen, when involved in a criminal matter, is aware of the various rights guaranteed him by the Alaska and

United States Constitution." To this was footnoted the following:

"The Anglo-American system of justice differs substantially from the traditional Indian, Eskimo and Aleut systems, which pre-dated Western cultures by hundreds of years. The cultural difficulties experienced by many of the Alaska Natives as the contemporary Anglo-American institutions reach out to the bush communities require that the State legal system use extreme care in cases of this nature. Therefore, in those areas where a substantial portion of the populations consists of Native Alaskans, we urge the administrative office of the court system to develop bilingual explanations of basic rights for those who appear in criminal proceedings so that all citizens are clearly aware of their constitutional rights." Gregory at p. 380.

5 Of course differing discoveries by researchers or journalists or complaints lodged in higher courts had differing impacts on state bureaucracies.

For example, the Department of Public Safety actively supported research which discovered that violent crimes had overrun limited village and state resources. Its desire was to shift resources from urban areas (where they competed with urban police) to rural sectors. Village police were taken under the wing of the Department of Public Safety (and even funded in 1981 by them) as useful aides capable of dealing with minor drunken behavior without usurping primary police activities when major crime occurred.

6 Annotated descriptions of twenty articles, books, and papers written by Conn on rural justice appear in Donna L. Kydd, Ed., Towards A Legal Education and Information Program for Natives, Native Law Center, University of Saskatchewan, Saskatoon, Canada, 1979.

7 "During . . . (1972) the Village Policemen handled ten felony cases, 418 misdemeanors, and numerous noncriminal complaints. Seven of the felonies resulted in court action and 128 of the misdemeanors resulted in court action. One hundred and fifty-one of the misdemeanors were handled by the Village Policemen without court or Council action." (Village Police Training Annual Report, 1972, p. 1.)

As the project director described it in presenting other statistics for the year which showed court action on 63 cases and council action on 171, "[They] also illustrate a unique relationship of two branches of government within the Criminal Justice system." (W. Nix, Subgrantee Professional Report, April 11, 1972, p. 2.) The report noted, "the council has levied \$1,835.00 in fines, and 38 days of jail time. In almost every case, days of work for the village satisfied council sentences."

8 In 1973, the Department of Law passed over protest passages of a book on formation of a second class city to be used by many villages. The book stated that councils could fine or jail persons for violation of local ordinances if the offender agreed to the punishment. See What's a Second Class City?, pp. 2-3, Cooperative Extension Service, University of Alaska in cooperation with the Department of Community and Regional Affairs, State of Alaska, 1972.

9 When, for example, it was discovered by the Alaska Federation of Natives that the Dillingham magistrate was a racist missionary who demanded that Natives swear off drink, who per-

suaded them not to request an attorney and who refused to visit surrounding villages, the court could do nothing. His refusal to send in documentation of his cases also prompted no disciplinary action.

Ironically when magistrate A retired and was replaced by B, a legal services attorney, B was fired by the presiding judge for living with a mate in an unmarried state. The supreme court upheld the presiding judge.

10 Angell (1981) estimates that in villages he surveyed, legal professionals, other than troopers, appeared once a year or less. His conclusions seem to be reflected in an evaluation by village officials of state government agents. See Angell's chart reproduced as Appendix 1.

11 See Appendix 2.

12 Alaska Native adult males comprised 32.2 percent of the state jail population in 1980. Source: Frank Sauser, State Division of Corrections. The Native population (average age 16) comprised 16 percent of the population.

13 See Appendix 3.

PUBLIC OFFICIALS ASSESSMENTS OF
QUALITY OF JUSTICE AND SELECTED PUBLIC SERVICES

	GOOD		OK		NEEDS IMPROV.		INADE- QUATE		NO SERVICE		N.R./ DON'T KNOW	
	#	%	#	%	#	%	#	%	#	%	#	%
Village Police	7	13.7	6	11.8	20	39.2	5	9.8	13	25.5		
AST	13	25.5	12	23.5	14	27.5	10	19.6	1	2.0	1	2.0
A F & W	7	13.7	6	11.8	17	33.3	13	25.5	4	7.8	4	7.8
Magistrates	14	27.5	7	13.7	8	15.7	3	5.9	14	27.5	5	9.8
Legal Services	8	15.7	10	19.6	7	13.7	7	13.7	14	27.5	5	9.8
Prosecutor	3	5.9	11	21.6	9	17.6	5	9.8	11	21.6	12	23.5
Defense Services	4	7.8	9	17.6	3	5.9	4	7.8	20	39.2	11	21.6
Probation/Parole	8	15.7	8	15.7	7	13.7	8	15.7	12	23.5	8	15.8
Local Jail	2	3.9	3	5.9	11	21.6	9	17.9	22	43.1	4	7.8
Mental Health	4	7.8	3	5.9	6	11.8	4	7.8	29	56.9	5	9.8
Medical Services	15	29.4	11	21.6	17	33.3	4	7.8	2	3.9	2	3.9
State Jail	6	11.8	13	25.5	2	3.9	2	3.9	16	31.4	12	23.5
Educational Services	22	43.1	9	17.6	18	35.3	2	3.9	0	0	0	0
Fire	0	0	3	5.9	19	37.3	9	17.6	19	37.3	1	2.0
Welfare, Unempl.	10	19.6	16	31.4	13	25.5	6	11.8	2	3.9	4	7.8
Youth Services	0	0	1	2.0	7	13.7	13	25.5	28	54.9	2	4.0

APPENDIX 1

Source: Angell, John E. (1981) Public Safety in the Justice System in Alaskan Native Villages, page 39.

APPENDIX 2

COMPARISON OF ALASKA VILLAGES, ALASKA STATEWIDE, AND UNITED STATES CRIME RATES

CATEGORY OF CRIME	RATES*		
	ALASKA VILLAGES	ALASKA STATEWIDE	UNITED STATES
Homicide	28.4	10.9	8.8
Rape	99.2	50.3	26.4
Robbery	127.6	96.5	195.8
Aggravated Assault	326.0	286.5	228.6
Burglary	936.8	1310.2	1439.4
Vehicle Theft	446.5	3272.6	2921.3
Simple Assault	354.3	783.7	446.1

*Per 100,000 population in 1977.

Source: Angell, John E. (1981) Public Safety in the Justice System in Alaskan Native Villages, page 27.

APPENDIX 3

STATEWIDE JUVENILE ARREST RATE PER 100,000 INDIVIDUALS

1978 STATEWIDE COUNT

	<u>White</u>	<u>Black</u>	<u>American Indian</u>	<u>Other</u>	<u>Total</u>
Burglary	368	12	98	67	545
Larceny	1,361	85	304	43	1,793
Drug Abuse	419	15	57	19	510
Liquor Laws	403	3	308	183	897
All Other Offenses	230	7	67	15	319
Curfew & Loitering	173	2	32	19	226
All Crimes	3,998	149	1,300	500	5,947

1978 STATEWIDE ARREST RATE PER 100,000 INDIVIDUALS

	<u>White</u>	<u>Black</u>	<u>American Indian</u>	<u>Other</u>	<u>Total</u>
Burglary	245.7	212.6	951.8	275.7	286.9
Larceny	908.9	1,506.5	2,952.6	176.9	943.8
Drug Abuse	279.8	265.8	553.6	78.2	268.4
Liquor Laws	269.1	53.1	2,991.4	753.2	472.2
All Other Offenses	153.6	12.4	650.7	61.7	167.9
Curfew & Loitering	115.5	35.4	310.8	78.2	118.9
All Crimes	2,670.1	2,640.9	12,626.3	2,057.8	3,130.5
<u>Base Population</u>	149,735	5,642	10,297	24,297	189,970

Source: Bayley, Bruce, et al (1980) A Statistical Analysis of Discrimination in the Alaska Criminal Justice System. Vancouver, Washington: Cascade Research Center.

BUSH JUSTICE AND DEVELOPMENT IN ALASKA:
WHY LEGAL PROCESS IN VILLAGE ALASKA HAS
NOT KEPT UP WITH CHANGING NEEDS

Stephen Conn, Esq.
Professor of Justice
School of Justice
University of Alaska, Anchorage

to be delivered at

"Social Impacts and Issues Related to Northern Development"

Northern Frontier Development Sessions
Western Regional Science Association

Monterey, California
February 22-25, 1984

Introduction

For more than ten years, as researcher and as attorney, I have studied what Alaskans term "bush justice," the delivery and implantation of state law and order services upon nearly twenty percent of Alaska's population who reside in more than one hundred isolated villages and towns.¹

The legal services herein described are fundamental to the American legal culture. They include:

(1) police services - the expectation that some level of police protection and some level of reaction to crimes can and will occur on a daily basis and with regularity;

(2) judicial and dispute resolution services - an expectation that a forum will be available to deal with minor and major disputes and law violations by adults and by juveniles; and

(3) representational services - that trained advocates will interpret law for citizens and represent either community or individual interest when they are in conflict.

There is a further premise operative in American legal culture. It is the notion that the machinery of law is guided by community needs and expectations.

Community needs are expressed through a local law base. Community will is reflected then in the enforcement of laws desired by the community. Direct participation in each of the above named activities is a second way that community needs are met. Local people are not only law givers but implement the law given as players in the system. Finally, the American process

provides for participation by local citizens as jurists, as witnesses, complainants and observers.

There are evident tensions within any community. Although there is a tendency to speak of villages in Alaska as though each (or all) have a single personality there are tensions between individual interests and some illusive "community will," even there.

To address these evident tensions, checks and balances are developed in the American legal process. Thus, we depend not merely upon an erudite judge to discover the truth, but also upon a clash between competing interests within the legal system.

The notions that individual communities within larger societies are entitled to have a law process which is appropriate to their needs and to some extent guided by the political and social will of that community is not necessarily an attribute of all legal cultures in all countries. However, it is very much the sense of American law in the history of its development. Perhaps because American communities received only the law services which they choose to pay for and engraft, institutions of law and law jobs tended historically to be directly reflective of problems and solutions which needed a legal solution. Legal process shared the stage as a secondary player with other forms of social control. As communities from colonial times onward perceived that social control through familial and economic structure could no longer contain forms of deviant behavior, these forms of deviance were recast as legal deviance. Procedures were

implanted to address them which were legal rather than social.

Even then, the formal legal approach remained as a backdrop to social control for most members of small communities. Communities in the American West moved from non-legal social control to vigilante justice (termed here extra-legal) to formal justice in what was not in fact a sequence so much as a succession of overlapping waves. This interaction between social non-legal control, extra-legal social control and formal legal control is a complex relationship which few social scientists and most assuredly few legal professionals understand. In fact, as the Alaska case will demonstrate, few legal professionals desire to understand that elements of non-legal social control, extra-legal social control and formal legal process complement one another and compete for favor and dominance in the same place at the same time.

Extra-legal process does not disappear with the assertion of authority by official forms of law and order. It can and does reassert itself in communities where formal law is incapable of meeting broad-based community expectations.

These three components of the legal culture of village Alaska and of virtually any community large or small each service its needs. The components interact and interrelate.

Non-legal Social Control

Non-legal social control has rules and sanctions which can be viewed as the etiquette of the setting. While etiquette is a term which suggests no more than the finishing touches of behav-

ior, it is used here to encapsulate those non-institutionalized rules and sanctions which separate members from strangers. Rule violation can drive members into exile; sanctions can drive members mad.²

The etiquette of the setting (Black, 1976:36) derives its force from a desire of persons to belong to a group, and to retain the advantages of membership then and in the future.

This process of social control works very well upon persons engaged in longterm and dependent relationships. It works very poorly when strangers are involved, persons with no special stake in the community or concern for the community's perception of them. It works very poorly when the arbiters of etiquette are called into question or when once cohesive societies lose their cohesion (Conn and Hippler, 1973).

Extra-Legal Control

Within the category of extra-legal control and processes are both appendages and repackaged versions of formal law and appendages and repackagings of non-legal social control. Lines of identity and control flow in both directions.

The village council has been the historical vehicle for extra-legal activity in village Alaska (Conn and Hippler, 1975). Extra-legal process binds and draws upon both non-legal social control and legal authority but in fact has a separate identity. Extra-legal process institutionalizes in a demi-legal fashion, non-legal social control. It collects and focuses social pressure upon recalcitrant members and "educates" strangers (or

persons with very limited knowledge of or stake in village opinion). It often "legalizes" social pressure by means of threats or enforcement of fines or other legal sanctions (Conn and Hippler, 1974).

Extra-legal process also draws upon and controls formal legal process to the extent that it determines when formal intervention should occur. It is reinforced by formal legal process in an unofficial manner when it is granted the authority to accomplish a variety of sublegal tasks or to report formal law violations. This role has the effect of extending the reach of official law into places and circumstances where it cannot or will not reach on its own. What the extra-legal authority receives in exchange for this responsibility is a kind of derivative power which it can direct to other less clearly authorized tasks.

"Unless you listen to us with respect to this now-institutionalized non-legal rule violation, X" says extra-legal authority, Y, "We will report you and call into play intervention by formal authority for law violation, Z" (see Conn, 1976:217-24).

Extra-legal authority brokers social control and law and packages both into a new form. That form and its role is highly changeable because it is most dependent upon the forces and demands of non-legal social control and the forces and demands of state law givers. In Alaska these state law givers operate from towns which service clusters of villages.³

Extra-legal authority is the dynamic force which "makes law

happen" in places where neither social control nor formal law can or will dominate the hearts, minds and lives of the people involved. It is most susceptible to changing needs, but it is also most fragile of the three named forces which make up legal culture in village Alaska.

Formal law has power beyond the comprehension of its own purveyors to drive extra-legal authority from its place in the center of legal culture. It can displace without replacing extra-legal institutions which have institutionalized rules which are not legal and which have proffered the desired approaches to problem solving and dispute resolution be they legal or extra-legal. Ironically, it can also weaken extra-legal authority by inaction when that same authority requests intervention. Formal law must not be either too strong or too weak in its association with extra-legal authority. It must allow extra-legal authority to guide it in this respect.

To assess the role of state law in meeting the changing needs of village Alaska one must understand a longterm and historic relationship between Eskimo or Indian social control, hybrid forms of village-based extra-legal authority, and town-based personnel who represent state legal process.

The legal process which addresses the needs of village Alaska and operates therein is usually poorly conceptualized by students of the subject. Yet without correct conceptualization one cannot understand why that process has faltered and failed even as more state resources have been introduced into the process.

How can more equal less?

The village of P, 40 miles from town, typifies this curious phenomenon. P has every resource presently available to rural communities by way of law and order. It has a resident part-time magistrate to handle misdemeanors. Its two cell lockup and police station houses the office of a state trooper constable, a Village Public Safety Officer (VPSO), and a village policeman. The former is an employee of the Department of Public Safety who handles criminal offenses of every kind in P and in neighboring villages of Q and R. Trooper constables are allowed to remain in rural locations permanently and are hired against somewhat reduced standards in order to attract rural persons who might not qualify as troopers or desire to rotate into the cities.

The VPSO is an unarmed multipurpose policeman, trained in emergency medical care and in firefighting, who handles lesser offenses and holds the scene for either town-based troopers or for the trooper constable. VPSO's are paid by the legislature through the Department of Public Safety and regionally-based non-profit Native corporations (see Sellin, 1981).

Town-based services include a trooper contingent, a superior court judge, a public defender, a soon-to-be-placed district attorney, and a legal services attorney. Correctional probation-parole services are provided from Nome. Youth services are provided in town.

P, along with about sixty other villages, has adopted a state local option law which prohibits importation or sale of alcoholic

beverages.

Eight years before I surveyed the same village justice system. P had a magistrate then as now. The difference was that eight years ago she was hiding from her intoxicated husband. One of its local village police had burned down his own home during a drinking bout. The other was drunk during our visit.

The magistrate and police operated out of a modular court and lockup facility (a trailer) barged up the P river by the court system. The magistrate had stacks of unopened legal materials in her office.

In town, the trooper contingent was half of its present composition (two instead of four). The town had a magistrate, but no lawyers other than a legal services attorney. The town had an Alaska Native correctional aide for both juveniles and adults.

Today there is more law available to P if law is the accumulation of law givers or legal resources. The village policeman, the town-based youth services aide and the magistrate are Alaska Natives. However, the village policeman and magistrate are from other villages. Other figures are non-Natives and are from other places. Problems of "arresting one's brother," often voiced as the reason why hiring local residents has been difficult for justice agencies, had been obviated by hiring transient figures, both Native and non-Native.

P has a magistrate. One hundred and thirty-five other villages lack any state-appointed judicial officer. P has a VPSO.

At least eighty villages lack a VPSO and must hire and pay their own police. P has a trooper constable. Only a very few villages have trooper constables.

P has changed in other ways. Its population has nearly doubled in the eight years between field visits from 400 to 750 people. It has a high school in its village. It has television and a phone system, new in eight years. A bridge spans the P river. It has three flights from town daily instead of one.

Yet the village council has complaints about its legal situation. Small kids and young people drink and disobey curfew. The magistrate is never in her office. The town has no interest in these small matters. The VPSO and trooper constable make unnecessary arrests. They pick on people. They influence the magistrate to sentence residents to fines and jail terms out of proportion to the offense. The police don't listen to the council and question local ordinances.

The police are unhappy. The youth jeer at them. The town social worker and youth services aide tell the VPSO to leave the kids alone.

In August, 1983, a summertime population of young adults repealed the local option law. For three months arrests were constant, at least four times the number of arrests during the previous seven months of 1983. The council had to take to the streets when the village police quit working. Council members put 27 persons in two cells in a single night.

The village voted to ban importation again in November. But, complain the councilmen, people have learned to sneak liquor into the village.

"Why can't we search their baggage?" they ask (see Lonner and Duff, 1983).

A neighboring village repealed the local option law after three suicides in rapid succession. People have discovered that the law does not enforce itself and that there are severe limits on the way it can be enforced constitutionally.

There is a numbing sense of loss in P. Councilmen tell the author the same stories about the old council of the 1930s and 1940s that they related to him in 1976: The council once put a woman and a man who misbehaved outside without clothes. Children were switched with willow branches for acting out.

Is this nostalgia for Eskimo law ways? Is it nostalgia for a time when non-legal social control and council justice played a central role in dealing with legal needs? Or is it nostalgia for a legal system in which some element of authority remained in the village?

P's city council is not the village council of yesteryear. Its agenda is heavy with projects not unlike those of any small town in America.

It meets with its professional grantsman on important capital improvement projects; wooden sidewalks for the village, new washers and dryers, and transfer of school housing to the

village.

The council members are a mix of young and old. All are aware that P floats in a sea of legal jargon and regulations.

When P's council considers applications for the jail attendant, the issue of an applicant's age arises. Can an applicant be under 19? Council members scurry to find the answer in the magistrate's set of statutes and in her administrative regs. Not finding it, they call the corrections officer in Nome to find out.

The fear of breaking the law and being sued is very real. That this sensitivity is so prevalent and so very high in places where the ability to bring or respond to a law suit is close to nonexistent is one of the ironies of bush justice today.

Those who view village initiatives to improve their legal system as attempts to challenge the state legal system or even to separate the village as a legal place from the system that envelops the village sadly misinterpret the village perspective. For village Alaska, the time when Eskimo peoples floated free of Western law is a distant moment in time as removed from village experience as it is from most community experience in the Western United States.

A working relationship between formal law, extra-legal authority and social control has persisted since the late 19th century (Conn, 1980). What is now different for village Alaska is the level of autonomy available to the extra-legal component

and, through it, to P. There has been a relationship between the three aspects of P's legal culture since the first teacher-missionaries appeared on the scene. What has changed is the shape of the legal process as well as P's capacity to guide that process to its determined needs.

The Structure of the Legal System

With the exception of the village policeman, each member of P's legal community has been hired and is subject to control by a different state or town-based bureaucracy. Each has a vertical relationship to persons outside of the village that guides the way each does his or her job. In fact, the state legal agents in P relate to town in the exact fashion that town-based professionals relate to Nome (the hub of the judicial district) and that Nome-based professionals relate to superiors in Anchorage and in Juneau.

P experiences law and order as it is served up by a coalition of vertically directed figures placed in P and subject to removal from P by town and city-based supervisors.

P experiences law but does not guide it. P is given the law which separately trained and separately assigned representatives of separately managed state bureaucratic units see fit to provide.

What P can obtain from state law is some after-the-fact reaction to P's most serious problems. If P complains to any single bureaucracy about its service, the chances are good that its agent in P will be removed to X, Y or Z or any of a hundred

plus villages who lack the resources of P and would very much desire them.

What P has received is a "trickle down" justice system of parajudges and parapolice, mere scraps of an American law system injected into an Eskimo village. P is a base for a collection of random legal offerings it does not guide or control.

Bush justice has become rural ghetto justice.

Development in a Village Context

Changes in Alaskan village life have occurred within the context of Alaska development during the past two decades. The replacement of territorial government with state government, the development of transportation and communication networks, the Alaska Native Claims Settlement Act, the construction of the TransAlaska Pipeline and consequent explosion of government spending have all left their marks on the village landscapes.

While division of these events into historical stages is difficult - most especially because regions of bush Alaska have historically felt change at different times and at different degrees when compared with each other or when clusters of villages are compared in a single region - two periods are notable for their influence when the combined forces of development and changing legal needs are considered.

First, the early 1960's when Alaska state law personnel replaced territorial law personnel in the towns which service village Alaska. They refused to reinforce prohibitions on Native

drinking by extra-legal village authority, the single most persistent role of white legal officialdom from the Russians to statehood (see Conn, 1980).

In a shift of legal position which caught many villages by surprise, the state refused to validate village council bans on the manufacture of hootch or to impose other limits on transportation of liquor from towns (Conn, 1982). The district attorneys and bush troopers were prepared as a de facto matter to reinforce enforcement of villages rules by transposing some of these violations into state law violations after several attempts by the council to act. The very limited allocation of police and prosecutorial services to rural Alaska sharply diminished the reliability of this approach and, consequently, the credibility of both state law and council justice in the eyes of many villagers.

This weakening in the working relationship between formal law and extra-legal mechanisms such as the village council was coincidental with developmental shifts that demanded more legal presence in the villages rather than less.

In Southwestern Alaska where the largest numbers of village Eskimos and Indians reside, Bethel emerged as a source of wages and liquor. In the midst of a population explosion, the region's young men and women migrated toward villages more proximate to Bethel.⁴

In a series of meetings, the Association of Village Council Presidents decried the opening of a liquor store and bars in Bethel. Councilmen equated the death of their young men in

alcohol-related accidents, shootings and suicides to war; they requested legal advice to contain Bethel's influence on their villages (Conn, 1982:25-27).⁵

What they received were admonitions against illegal acts by their councils and advice that only Bethel citizens could deal directly with Bethel's liquor situation whatever the impact on surrounding satellite villages. Councilmen were told to write the governor and the Alcohol Beverage Control Board. As to their own local problems, they were advised to develop consensual approaches to problems which could not be dealt with by state law.

Without reliable support from town-based legal personnel, councils became more like police courts which meted out fines and even jail terms and less like brokering institutions which stressed compromise and counseling as a prelude to "calling in the law."

Village councils could not act as courts under state law. Only court appointed magistrates could undertake that task. The court system placed magistrates in about sixty villages in the late 1960s, employing War on Poverty funds, but were never pleased by the administrative and operational problems caused by designating parajudges to distant villages. After two magistrate study boards met to consider the subject in the early and mid-1970s, the court system retreated to the proposition that town-based judicial officers should handle village problems large and small once they were termed "legal." The size of the magistrate

system was not increased.

What placement of magistrates accomplished from the village perspective was to implant an agent of state law into the village. He or she had unquestioned authority to handle minor criminal matters and small civil claims. What she lacked was the capacity to buttress social control in the village with approaches familiar and acceptable to village people. Village councils had autonomy which magistrates lacked. Also, removed from their jurisdiction were children's problems and a range of extra-legal prohibitions on behavior.

Magistrates could displace but not easily replace the extra-legal brokering component of village culture (Conn and Hippler, 1973). As part-time court employees very low on the organizational totem pole, they were also in no position to initiate reforms.

The Structure of State Law and its Influence

The destabilization of village council justice occurred for reasons which would have continuing influence on the issue of legal planning to meet changing village needs, both in the 1960s and in the decade thereafter.

The legal process of Alaska was packaged constitutionally in separately administered, highly centralized departments and divisions. The court system, the Department of Public Safety, the Department of Law, the Division of Corrections (and later the Division of Youth Services) and the Public Defender Agency emerged as independently administered fiefdoms (Conn, 1981).

For most of these agencies, bush responsibilities were satisfied by placing departmental representatives in as few regional centers as possible and by drawing villages' problems into towns and cities.

Only the Department of Public Safety viewed the bush as its principal constituency as urban police departments made trooper work less essential in the state's population centers. But this enthusiasm for bush service on the part of the troopers did not result in placement of officers in all settlements as in Canada. The troopers, also, chose to follow the territorial model and place its detachments in towns.

Each component of the justice system had its own determined service boundaries. The court system continued to use the judicial districts inherited from riverboat days (with some slight variations). Decisions on professional placement and decisions on data gathering and record keeping were independently made. Records on village Alaska were intermingled with those of urban centers by all agencies.

To what extent had the state accepted its responsibility to offer services to Native villages in rural Alaska?

Though it can hardly be verified scientifically, there appears to have been an inherited state governmental attitude that the federal government would take care of Native problems, this despite the fact that Congress in 1958 extended territorial (later state law) over criminal and some civil offenses in Indian country within Alaska.⁶

In territorial days there had been some structural division between governance for whites and governance for non-whites in the territory. The special provision for schooling of Alaska Natives as Native Americans in Bureau of Indian Affairs village and boarding schools was a good example of this division. Hospital care for Natives through Alaska Native Service facilities was another.

Teaching and law and order had been introduced together by deputizing teachers who set about organizing early village councils (Strickland, ed., et al., 1982:764). Though both federal and state officials had apparently forgotten it by statehood, the Congress and Interior department had validated the village councils' authority to act as tribal governing bodies of Indian Reorganization Act communities in the 1930s. This potential tribal legal authority of villages to handle some of their own law and order matters was not argued again until nearly twenty-five years after statehood (Case, 1978).

Although villages near Bethel discovered in the early 1960s that a working relationship between formal law and village authority had broken down, many other rural areas did not see this as critical until later. Developmental events had impacts that differed from region to region and within regions.

A good example of the latter variation were coastal villages in the Bethel region that remained relatively immune to the social convulsions of town life, wage earning opportunities and bootleggers until the late 1970s (Conn, 1982:71-74). Even to the

mid-1970s, these villages demonstrated themselves statistically to be very free of alcohol-related accidents and crimes when compared with the villages near Bethel and with upriver Athabascan villages. Communication links both by phone and airplane were problematic. Church influence was strong. So strong was social control, both institutionalized and non-institutionalized, that recurrent offenders found it expedient to move away. Even in Bethel, villagers from this coastal cluster did not drink to excess or "let off steam."

However, by the end of the 1970s, telephone communication and air transportation had improved. A village high school kept the children at home. Letters to the Assistant District Attorney from the coastal villages reflected the change: complaints of drunken violence and youth in trouble with liquor and drugs predominated.

The 1970s

This decade was marked by the megaprojects which brought oil wealth to Alaska. No longer could the state plead poverty when the plight of village law and order was discussed.

Oil revenues flowed with pipeline oil. However, even earlier than that, the Law Enforcement Assistance Administration promised to reward the state bureaucratic network with federal funds to develop and to supplement criminal law service in rural and in urban Alaska.⁷ This led to the establishment of the Governor's Commission on the Administration of Justice and to the creation of its staff arm, the Criminal Justice Planning Agency.

Chief Justice George Boney took the helm of the Governor's Commission. He wrote and spoke of regional bush justice centers to train rural persons to take up law-related activities. Along with Vic Fischer of the Institute of Social and Economic Research he convened the first of what would become three conferences on bush justice in the decade.

In addition, each major developmental project spawned social and economic impact statements which addressed the way that village life would be affected by the project at hand.

All of these heady developments could not have been more promising for bush justice improvements through coordinated state planning. They provided:

1. A financial *raison d'etre* for collaboration among state justice agencies.
2. Strong leadership from the court system to direct the Governor's Commission toward rural justice problems.
3. The first of three slates of bush justice recommendations, these drawn from non-Native expertise from Alaska and Canada (along with symbolic bush representation) as well as periodic social impact statements from state, federal and private experts on proposed construction projects.
4. A planning agency to plan.

Added to this was important new leverage on the part of the "Native community." While reapportionment decisions had begun to erode bush legislative representation, the emergence of Native corporations had provided the Native minority with new political

clout. Further, Native leadership who had lobbied Congress effectively could transfer that expertise to the halls of the state legislature.

What Did Occur

The first bush justice conference in 1970 acknowledged the importance of village councils to the administration of justice in remote Alaska (Alaska Judicial Council, Bush Justice Conference, 1970:2). It gave equal weight to the need for Native participation at all levels of the administration of justice. (Id:2).

Although few participants in this conference were Native people from rural Alaska, its agenda of recommendations spoke to many practical failings of the state system to address rural needs. It requested trials to be held in rural areas and increased travel by police and courts.

Yet this agenda for reform, as well as two other slates of recommendations which flowed from two other bush justice conferences, ultimately came to naught.

The reason was that would-be reformers, including University scholars and an Alaska Federation of Natives bush justice team, were essentially outsiders to both the bureaucratic decision-making process and to the state political process.

The Law Enforcement Assistance Administration

Early in the decade a young part-time criminal justice planner named Butch Schwartz reported to the Commission that only

10.8 percent of Alaska's LEAA block grants and 11.1 percent of all LEAA funds directly benefited bush areas. Eighty percent of this amount went to construct five jails and to fund police training programs (Schwartz, 1973:4).

To understand this diversion of LEAA funds to urban and central bureaucratic needs, one needed only to examine the composition of the Governor's Commission. On the Commission sat agency heads or designees, the police chiefs of Alaska's largest cities, legislative representatives and a lone rural representative. That latter person was usually a bush magistrate or a person with no connection to any organization engaged in the legal or political process.

Chief Justice Boney died in a boating accident in May, 1972. From that time forward the Commission served as a conduit for funneling federal money into established state bureaucracies and to urban police departments. Smaller police departments and other non-line social service agencies were left to scramble for the leavings after the feast.

There was no centralized process for translating studies, even LEAA-funded studies, into plans of action.⁸ The position of the Criminal Justice Planning Agency and LEAA representatives in the Seattle region was that Indian matters should be dealt with and funded by the Indian desk of LEAA despite the fact that "Indian villages" in Alaska are, with one exception, non-reservation communities subject to state criminal law.

When the Criminal Justice Planning Agency finally did fund a

study to garner "hard data" on the rural situation in 1977, it discovered that the hard data did not exist. It questioned police and local officials for estimates of crime.

John Angell (1979) analyzed and later published (1981) this material from questionnaires designed to discover the state of bush justice in 55 villages selected because of the presence of some components of the Western system (such as a state magistrate). His report described the delays of as much as three days⁹ in service from town-based police and the near absence of knowledge of justice components other than the state troopers (see Appendix 1). It also depicted what may be the highest rate of reported crime in the United States (see Appendix 2).

The Angell report stressed that while small white communities were isolated for purposes of data collection in police statistics, village Alaska was included in a catchall category.

The State Legislative Approach

Bush Alaska was viewed constitutionally as the great unorganized borough subject to governance as a whole by the state legislature, acting as its borough assembly. ANCSA's division of Alaska into cultural sectors for purposes of the Act came to be employed as a de facto way to deal with rural Natives through their non-profit regional corporations. The court system (among others) fought off an attempt to realign its districts to this grid, arguing that it would place judges under too much local pressure.¹⁰

The state legislature listened to state departments, cities

and towns in rural Alaska, but not to the villages. Early in the decade drunken behavior was decriminalized. This change removed from the arrest dockets Native persons who were often rounded up en masse in Alaskan cities and towns (Friedman, 1970). The process of collection of inebriates had already given way to a "waiver" program that made court appearances unnecessary. Cities and towns continued to collect numbers as high as half of the resident Native population under protective custody provisions (Conn and Boedeker, 1983). However, villages were in no position to use this dragnet approach. The net effect for them was to repeal drunk in public and drunk in private ordinances leaving no replacement for villages.

Bush legislators during the first half of the decade focused on issues relative to successful implementation of land claims and on the bellwether issue of high schools for the villages. No consideration was given, either by the state legislators or by the state agencies who deal with youth and family services, to the impact year-round of a youthful presence in small villages where the high schools were constructed.¹¹

Village high schools were introduced in the context of regionally-based school districts. Village parents discovered that power in these districts reposed in the towns which served as regional centers, in the unionized faculty and in the school administration.

Regionalization of services contracted by the state or federal government through the non-profit Native corporations

(whose good work had aided in the passage of the Alaska Native Claims Settlement Act) emerged as the practical working relationship between state agencies and the villages. Regional corporations became friendly conduits for state and federal funds for studies such as the 55 village study and for more recent programs such as the Village Public Safety Officer Program.

Whether villages were entirely satisfied with this arrangement was not as clear. In 1977 village council members went to Washington to soundly rebuke a plan to make non-profit regional corporations into "Indian tribes" for purposes of the federal trust relation. (United States Senate Select Committee, 1978; see also, Conn and Garber, 1981).

In this critique of formalization of the regional community at the federal level, they were joined by urban Native leaders who argued that the Land Claims Act's Native corporations, both village and regional, provided a structural basis for carrying out governmental responsibilities without the creation by Congress of a new tribal relationship (see testimony of Roy Huhndorf, Select Committee 1978:404-407).

Just as villages were reluctant to give over absolutely local governmental authority, so were Native leadership, schooled in the political process of land claims, unwilling to see power dissipated among many tiny villages. That strategy had been one unsuccessfully pursued by the state during the Congressional debate over the Claims Settlement Act (Berry, 1975).

For the state to deal with non-profit corporations or rural

school districts as conduits for state programs the reins of which remained in state hands was different from a unilateral conveyance of state power to regionally-based governmental structures. When this last approach occurred in the decade it demonstrated how jealously guarded was the concept of centralized state authority.

Development of the legal process on the North Slope Borough well illustrates the political and administrative tensions engendered by an official sharing of power with rural Alaska. After its stormy beginning (marked by oil opposition to the formation of a local taxing authority) the North Slope Borough requested and assumed boroughwide authority for police powers in the seven villages and one town in that 4,000 person Inupiat region (McBeath and Morehouse, 1980).

As originally conceived, the North Slope Borough Police were to be a tri-service (police, paramedic, and firemen) effort shepherded into existence by former state trooper and court personnel employed by the NANA Development Corporation as well as by the Department of Public Safety (see Moeller, 1978:16 and NANA Development Corporation, 1976).¹²

Rifts between the consultants, state troopers and North Slope Borough Government lead to the peremptory removal of the single trooper post on the region. Tensions between the Department of Law and the new police operation lead to a period when few cases were prosecuted by the Fairbanks office of the Department of Law. Two white campers were killed by a Native man whose earlier case

had been dismissed for lack of prosecution. News reports spoke of violence in Barrow and anti-white hostility. In fact, what had occurred was the breakdown in collaboration between justice agencies when a borough agency displaced a state agency.

Confronted with cases which were not prosecuted, the North Slope Borough undertook a massive campaign of proactive protective custody apprehensions. Five years would pass before the court system, Public Defender and Department of Law would begin to locate resident professionals in Barrow to give what became a massively overpoliced rural district some balance in its Western legal process.

Conceptualization of the Problem and Its Solution

Attempts over the decade to conceptualize the legal needs of rural villages against the backdrop of social change often lead even sympathetic observers to provide program planners and program implementers with excuses for their failures.

For example, writings during the period described the problem of bush justice as one of a culture clash between Native law ways and state law. It was believed that anthropologists could probe Native law ways and discern from that analysis those aspects of Native law ways which kept the legal system from functioning. The operative assumption was that law did not work in Native villages because the consumers of law were not prepared to appreciate it.¹³

Certainly there was some truth to the proposition that Western law remained a confusing mystery to villagers; yet that

confusion stemmed largely from the signals given off by state law representatives, especially the de facto arrangements given credence by town-based officials who were then transferred to another post leaving no institutional memory in their wake.

Village council process and village council records from the turn of the century reflected de facto working relationships induced by Western law officers as much as they reflected ingrained Eskimo or Athabascan attitudes toward conflict resolution.

State law administrators did not want to hear that the customary law system in the villages was formed by the bush law ways of Western law agents and not of Natives.

Moving from what was perceived to be a cultural adaptation problem of Eskimos and Indians, the justice agencies spoke of solving their clients' problems by offering bilingual explanations of their clients' rights or by educating students to the American law system. This same view that the bush justice problem stemmed from cultural misunderstandings had a second negative effect. There was strong resistance to either institutionalization of the de facto working relationship between formal law and extra-legal process or to suggestions that classic Western law jobs or procedures be adapted to the unusual bush environment.

Even though an urban legal process could not be introduced into any small village due to lack of funds and appropriately credentialed personnel (as well as to lack of agency interest or

commitment), plans which suggested that paraprofessionals or conciliation panels be authenticated as components of the system were uniformly rejected (see Marquez and Serdahely, 1977).

The Magistrate advisory panel of judges and lawyers recommended that the court system disassociate itself from alternatives to dispute adjustment in rural villages even as national figures urged an increase in options to going to court (Second Magistrate Advisory Committee, 1979:22).¹⁴

This paranoia demonstrated not only a lack of appreciation of the rural law process as it evolved historically but a lack of appreciation for American legal history and the persistent adaptive component to American legal machinery.

The Institutional Impetus for Reform

When suggestions for adaptation or reform of traditional law jobs or institutions were made, their central ingredients were often strongly colored by bureaucratic imperatives.

In 1980, the Department of Public Safety requested state funding for Village Public Safety Officers who would replace village police, persons trained periodically but paid through village and job training funds (Department of Public Safety, 1980). The troopers acknowledged that "Rural Alaska has the distinction of having the worst record for public safety of any of the 50 states" (Id:1).

Unlike former proposals for the training and hire of local police, the VPSO program was designed to assure village officers

that pay would be reasonable and reliable. Funds were solicited by the Department of Public Safety to be paid through the non-profit Native regional corporations to the personnel in the villages.

The Department cited the danger of death by fire in rural Alaska, "the greatest loss of life due to fire. . . in the entire Western World" (1980:2). The policing function of VPSO was to be coupled with training and work in fire fighting, search and rescue, and emergency medical treatment.

"This broadened job responsibility should enhance the perception of these Village Public Safety Officers by other village residents. No longer would he only be a policeman and be associated with just arresting people. Now he would be cast in a more favorable role, such as rendering medical assistance, organizing search and rescue efforts, developing fire protection program and similar efforts" (Id).

A similar working relationship between "demi-police" and "real police" had been proposed to the North Slope Borough. The North Slope Borough had opted for a trooper-style police operation of its own.¹⁵

The initial trooper proposal called for villages to decide whether VPSOs carried firearms, (Id:7). Later regulations required that VPSOs meet marksmanship standards of urban police officers. The end result of the VPSO program was to solidify the jurisdictional presence of the Alaska State Troopers in rural Alaska.

The VPSOs were viewed as components of an essentially informal or extra-legal government structure. The troopers, unlike other state agencies, had consistently recognized that village councils and problem boards which mediated disputes served a necessary function in absence of effective enforcement of local ordinances which dealt with minor problems.¹⁶ The same report called for strengthening of the ordinance structure and development of local mechanisms for dispute resolution (Id:9) as well as introduction of a state statute banning importation of alcohol into dry villages.¹⁷ However, the question remained whether the level of formal law enforcement was sufficient to deal with those problems not amenable to an informal or customary solution even where (as Angell had discovered) councils continued into the late 1970s to deal with legal matters in an extra-legal manner.¹⁸

The Department of Public Safety's options were proscribed by its need to maintain a territorial jurisdiction and by its unionized personnel structure. Even as it admitted its own lack of success in bringing law and order to villages, it could develop no other solution than a police aide program for villages, a program which left individual police as unarmed "lone rangers" in small villages.

The Department's proposal for VPSOs acknowledged the continuing failure of law enforcement in the bush as well as trooper jurisdiction "in almost all rural areas. . ." (1980:1).

"From their bush outposts they attempt to respond immediately to emergencies as quickly as possible to felony cases, and rou-

tinely to misdemeanors but their efforts are often hampered by delayed notification, long response distance, the uncertainties of weather and transportation and limited manpower and budget" (Id:1).

The lack of follow-up to previous training efforts, "the high turnover in personnel caused by low salaries and the difficulties that face a village policeman who may have to arrest friends and relatives, have all combined to generally frustrate law enforcement at the village level. As a result, many problems in the villages remain unresolved.

"Not surprisingly, the extent, type and frequency of crime in rural Alaska is not known due to lack of a local reporting mechanism and a state records system that yields data only on a regional, rather than a community basis" (1980:2).

The trooper proposal did not seek to displace Department of Public Safety jurisdiction. As in the case of earlier LEAA programs, (Village Police Training Programs) the Department requested additional troopers to town locations in order that follow-up contacts be maintained with village police on a monthly basis.

Actual police work in state law offenses remained in trooper hands. VPSOs, it was said could accompany troopers and even take the place of a second trooper "thus easing the manpower problem being experienced by Troopers at bush outposts" (Id:6-7).

VPSOs were to meet their law enforcement functions, chiefly

enforcement of village ordinances with a "serviceable, distinctive uniform and parka, handcuffs and baton but without a handgun" (Id:7).

Institutional Perspectives as Planning Perspectives

The court system and the trooper organization have taken two dissimilar positions with respect to meeting the needs of village Alaska. However, similarities in their points of view are worth noting.

The court system began to place lay magistrates in the villages in the late 1960s, but then convinced itself that town-based judges could better receive the business of the court. Although it fought back attempts to redistrict the court to create new rural zones, it did provide a Bethel and a Barrow "service area" along with a superior court judge in each place.

Other rural towns (such as Dillingham) which serve as regional service centers have not been so fortunate. So, also, have 135 villages been left without a judicial officer.

The court system has rejected proposals that its magistrate act as probation or as youth services officers, that it "cover" for the failings of other state agencies even as it decries those failings when they raise difficulties for the court system (Second Magistrate Advisory Committee, 1978).¹⁹

The trooper organization is equally self-centered in its assessment of rural Alaska. However, unlike the court, its home base is in rural Alaska; its concern with effective law enforce-

ment and an increased trooper presence is genuine.

Yet one must wonder whether alternative models to rural law enforcement are overlooked in order to retain a trooper presence in rural Alaska. Do villagers want police who do three jobs instead of one and who are unarmed? Some critics suggest that three jobs in three households are more acceptable.

One must wonder whether other organizational models of policing have been dismissed or ignored because the Alaska State Troopers, like the court system, view the problem from a distinctly ingrained institutional perspective.

Development in The Villages - The Impact Statements Planning For Change

One can argue that the Pipeline Project and its peak construction years from 1974-76 was, in fact, no more than one of several sources of change on the Alaska village scene since the early 1960s.

The pipeline had an acknowledged and direct impact on interior villages and on the villages of the Inuit North Slope. Yet its secondary impact as oil wealth was translated into state subsidies and state appropriation touched every village. Substantial improvement in communication and transportation through satellite telephones and new landing strips eroded distance as an obstacle to material improvement, but also as an obstacle to the importation of alcohol and drugs. The Molly Hootch legislative compromise caused high school construction in more than eighty villages and had as its secondary impact the

transfer of school age villagers from boarding schools and towns to year round residence in villages.

Development of state and federal services made towns which act as regional centers attractive to villagers who sought employment. Village growth near regional centers was an early expression of development in the 1960s. So, also, did significant reduction of infectious disease and infant mortality change village population patterns. A succession of housing projects in the late 1960s and early 1970s brought wage earning opportunities, new living patterns and new demands for cash payment for fuel oil.

ANCSA's influence on villages ranged from employment in village corporations to systematic reordering of village lots and public and private property. Hunting technology improved to such an extent that subsistence activities came to be matters which expended vastly less time; cash needs for such equipment demanded that the hunter find wages to pay for this new snow-go technology.

Development of Native villages has not then been as directly influenced by specific projects or events in Alaska as by the results of federal and state money spent in rural Alaska. While impact statements dealt at length with the impact of a pipeline construction project near one or more Native villages, they were not required when high schools were constructed in eighty or more villages or when telephone service was improved.

It is the secondary and tertiary waves of developmental

influences that change the texture and content of village life.

State agency information regarding villages or their law and order components was close to nonexistent during this peak period of developmental flux.

Alaska Planning and Management prepared an Alaska Community Survey of 271 villages for the state in 1972. The material provided did not include any reference to law and order services (Alaska Planning and Management:1972).

The Interior Department's pipeline impact statement (1972) stressed the overriding impact of the Claims Settlement Act as a catalyst for economic and social change (1972:252). Its authors viewed pipeline impact upon Natives as principally a product of geographical proximity to construction (1972:238).

The state's comments on the pipeline project (Alaska:1971) foresaw little more village impact than "more money being put into the economy of rural villages through wages sent home" (1971:153).

"Little effect is expected on village family structure if the head of the household works on the pipeline project and returns periodically during his employment" (Id.).

Criminal activity would occur, the state predicted, where large numbers of persons concentrated.

"The rest of the criminal justice system will be burdened in proportion to the increase in crime that occurs" (1971:154).

When the state officially examined the impact of TAPS construction on the administration of criminal justice it stressed that with the exception of the troopers and Anchorage and Fairbanks police departments, "most police agencies in the state almost totally lack comprehensive criminal activity statistics" (Alaska:1976, 12).

Given "a lack of an overall comprehensive and systematic process for collecting, maintaining, retrieving and analyzing statistics generated by criminal justice agencies" (Id.), the Department of Law could only speculate on the reasons for a rise from two percent to four percent of statewide reported criminal activity from 1969 to 1973 in the rural Western and Northern Regions (1976:32). It suggested that the rate of crime reported related to increased Alaska State Trooper activity "rather than an unprecedented rise in crime" (Id.).

When the Rural Impact Information Program in Fairbanks attempted to study the impact of TAPS on interior Athabascan communities, it discovered that there were "no figures to determine the extent of [child abuse, rapes, assaults, and suicides] or their incidence compared with that of the pre-pipeline period. Without these figures it is impossible to judge the impact of the pipeline on crime rates" (Rural Impact Information Program, 1977:96).

What was the pipeline construction's impact then on crime in rural communities? The Rural Impact Information Program discovered that data was recorded according to detachment boundaries

which encompass urban and rural places and which do not coincide with boundaries of other state or Native organizations. (See Rural Impact Information Program, 1977:95.)

Equally problematic were the limited numbers of law enforcement personnel stationed in the interior; troopers were stationed in hub communities of Ft. Yukon, Galena, McGrath, Tok and Delta Junction and prepared to respond to major crimes (Id.).

Although the report failed to discover the direct impact of the pipeline on crime, several traits of rural villages did emerge which suggested how problems could emerge.

First, villages lost key personnel to pipeline employment leaving operation of the village to less qualified persons (1977:100). In this vein, better trained village police were siphoned off to take up jobs as pipeline security personnel.

One of the most often repeated anecdotes of the pipeline period was the story of persons who had left their village for pipeline employment including the layover in Fairbanks only to return when it was discovered that their families had been threatened by village drunks. As the rural impact program discerned, population decrease can work serious harm on small villages although impact funds appeared to be directed at places where population and the impact on services would increase.

Real income was often said to fall in villages since jobholders made their purchases elsewhere (1977:101). Charter traffic increased while the size of regularly scheduled craft was

reduced. The result was that "booze bombers" could arrive when large items such as food or construction materials were left at transfer points for long periods (1977:139).

Conclusions from the Pipeline Experience

One of the authors of the 1971 and 1976 state reports on the impact of TAPS on rural crime was candid in his appraisal of these reports in a recent interview. He said that the state had enough concentrated opposition to the pipeline construction project without feeding that opposition more ammunition in the form of predictions of crime in rural villages (Havelock interview, 1983).

Even if the state had desired to measure the impact of this developmental project, it could not. It lacked baseline data. The region involved also lacked fundamental law and order services.

Angell (1979) concluded:

Alaska has two separate and unequal justice systems. The system which exists in the commercial population centers of the state is highly articulated, readily identified, staffed, funded and extensively managed. Its problems are reasonably well documented, although not completely solved. The system in the rural Native communities of the state is invisible. It is invisible because data concerning its operations are infrequently accumulated and it has not been the subject of the kind of scrutiny given the urban system.

Due to the dearth of information about the Bush Justice system, its problems are difficult to identify and comparisons of its efficiency and effectiveness with other justice operations have not been previously done . . ." (Angell, 1979:72).

Recommendations of the Rural Impact Information Programs for

future "impact" situations in rural Alaska deserve republication:

Data on conditions in rural communities should be gathered and published on a regular basis, not just during impact periods. Adequate planning for impact situations is not possible without an understanding of existing conditions. A meaningful analysis of impact is impossible without baseline data with which to make comparisons.

State record-keeping should allow retrieval of information relating specifically to rural areas. Most state departments currently divide the state into regions containing at least one urban area, and regional reports make it impossible to differentiate between statistics for rural and urban areas.

State departments should monitor the demands made upon their services as a result of impact and should evaluate the adequacy of their response to those demands. The monitoring effort should continue throughout the impact period and should not be limited to providing justification for increased budgets.

. . . .

Increase in population should not be the only criterion for determining a community's need for impact assistance. Some communities that do not experience population growth nonetheless experience indirect impacts such as loss of valuable manpower. Assistance to these communities might take the form of training of additional members of the community in vital skills so that the loss of one resident does not endanger the delivery of a community service (Rural Impact Information Program, 1977:iii).

These recommendations suggest that beneath and even more significant than the absence of legal planning for rural Alaska is the lack of accountability of the state governmental system to its rural constituency. There can be no planning because the prerequisites for planning are absent in their entirety. There is no basis for connecting need with change.

What other data might be employed, assuming that criminal justice data is limited to cases reported to the trooper organi-

zation and ultimately packaged into differing geographic boundaries?

Public Health Service data has proven useful to measure levels of alcohol-related violence in separate village settings even when this same violence does not come to the attention of the criminal justice system (Conn, 1982; see also, Kelso, 1977). Boedeker and Conn (1983) were able to evaluate the use of two different police responses to drunken behavior against levels of alcohol-related violence in the home in two Native town settings. In short, one must plan with data that is not first and foremost criminal justice data.

The state government of white, urban Alaskans²⁰ has no picture of the needs in Native village Alaska and appears not to desire one. It dismisses subjective evaluations but in nearly twenty-five years of statehood has not made any significant effort to develop a plan to capture the data it needs or to provide the most basic services.

Yet even with baseline data, the components of the justice system are operated from selfish institutional perspectives which emphasize service only when that objective coincides with institutional self-interest.

In another paper, I wondered aloud whether the state of Alaska desires villages to exist (Conn, 1981). The emphasis on towns and on regional models in non-legal fields as well as legal has tended to strip away even residual power from the villages in matters governmental.

Yet it is to the villages and not to towns that those Alaska Natives who live on the land and who live for the land gravitate and reside. Villages, unlike urban centers, are staging points for the historic life of Alaskan Natives. They are not reservations or museums. As human habitations, they are not frozen in amber.

Alaska Native villages must be given the autonomy and the resources to develop systems of social control which are respectful of both individual and community values. These systems of law should mesh with readily available outside legal resources but not be overwhelmed by them.

Leeway must be granted for experimentation and evaluation. Villages that desire to Westernize their systems must be allowed to do so in a rational manner.

The rural Alaskan environment must be something more than an internal colony of state government.

Alaska government must hire and promote persons who know and love the bush. An authentic dialog between government and the villages must occur.

Until these things happen, there will never be planning. Planning requires knowledge, commitment and authority to act.

Alaska has yet to meet its legal responsibilities to its citizenry in the bush.

NOTES

¹ In the 566,000 square mile state of Alaska, half of the population live in towns and villages usually accessible only by river, sea or air. Within the latter rural population are 55,000 Indians, Eskimos and Aleuts who reside in about 140 villages with populations from 25 to 700 persons and 300 persons on average. Another half dozen Native towns have populations from 1,500 to 3,000 persons.

² So complex is this etiquette in Eskimo villages that drunken behavior may be seen as taking "time out" from the pervasive compliance with sophisticated social cues and fear of sanctions. Characterization of drunken behavior as "being crazy" means that one is not responsible for one's actions (Conn, 1977).

³ Towns are where the superior court, district attorney, public defender, corrections or youth services officers and legal services attorneys work and reside.

⁴ In the 1960's the Native population in the Bethel region showed an annual increase of 29.4 per thousand with a crude birth rate of 45.9, one that Tussing and Arnold noted (1969) was perhaps the highest birth rate in the world. Deaths by tuberculosis have been contained in the 1950's by Public Health service campaigns and infant mortality reduced. The net result was a young population (median age 16.5 in 1969) with increasing pressure upon elders in the villages who exercised traditional

guidance and social control (See Hippler and Conn, 1973).

Population increases were significant in both the town of Bethel and in surrounding villages.

Bethel, the only natural deep fresh water port, established itself as administrative center of the region as well as prime market for fish processing. Its population grew from 651 in 1950 to 1,258 in 1960, and 1,600 in 1966, fed primarily by young Natives who sought access to the limited but new wage opportunities available in that town. Village traffic to Bethel by snowmobile or plane in winter and by boat in summer increased.

Villages surrounding Bethel also grew in population. For example, Akiachuk grew from 179 persons in 1950 to 310 persons in 1966. Kwethluk grew from 242 to 375 persons in 1966. Napakiak grew from 139 to 254 in the same period and Napaskiak from 121 to 215. The neighboring communities of Nunapitchuck and Kasigluk on the Johnson River had, by 1969, combined populations of 626.

Bethel's share of the region's population, estimated by Tussing and Arnold to have changed from 7.9 percent in 1950 to almost 13 percent in 1967(1969:33) occurred because economic development focused there. Along with establishment of State and Federal bureaucracies for the region, came a housing fabrication plant and modern homes, establishment of a regional high school with dormitory facilities and a fishprocessing plant.

While an estimated 70 to 80 percent of the male work force could find seasonal work during the summer as commercial fisher-

men, cannery employees, or as laborers and tradesmen in Bethel's economic boom, no more than 5 percent of working-age Native population were regular wage earners (1969: 38).

Natives were thus marginal to the region's economy and still largely participants in the subsistence economy. Capital received in wage earning was used to purchase new hunting technology (such as snowmachines), technology which substantially reduced the gap between expert hunter and fisherman and non-expert with some consequent secondary influence on social control by old of young.

Transfer payments (especially welfare) went to about a fourth of the Native households (Tussing, Id.).

Thus, while Bethel as town came to have an allure and importance, not uncommon in prompting outmigration from villages by the young, especially villages distant from the town, population increase was also evident in villages surrounding Bethel. Both the towns and villages were changing from villages of yesteryear.

⁵ For the village leaders to make a connection between Bethel and its liquor and increasing deaths of young people who traveled to and from Bethel was entirely appropriate. Later studies of Native mortality (including homicide and suicide) especially those by Krauss (1977) show a replacement of deaths by infectious diseases with high rates of deaths by accidents, suicide and homicide, far in excess of non-Native population during the 1960-1969 period.

Village leaders correctly recognized that violent death, associated with alcohol use, had established itself as a leading cause of mortality with the decrease in infectious diseases.

⁶ Public Law 280, Act of Aug. 8, 1958, Pub.L.No. 85-615, 72 Stat. 545 (codified at 18 U.S.C. Sec. 1162, 28 U.S.C. Sec. 1360).

⁷ Pub.L.No. 90-351, Secs 101-601, 82 Stat. 197 (codified as amended in altered sections of 5,42 U.S.C.).

⁸ Angell (1979) indicates that Alaska criminal justice plans from 1969 to 1977 "devote only passing reference to the rural Native villages of the state" (Angell, 1979:56). The 1978 plan listed nearly all white communities with police whatever their population while ignoring larger Native communities with police (Id:57).

"[C]rime statistics available apparently could not be arranged to reflect the crime rates in Native villages. Therefore, crime rates apparently have not been considered in rural planning" (Id).

⁹ The head of the Department of Public Safety, when confronted with this data, suggested that trooper involvement in the survey had caused village officials to minimize the actual length of time necessary to respond. He suggested that seven days was a more likely figure (Nix interview, 1977).

¹⁰ Redistricting to better service rural Alaska was recommended by the Alaska Judicial Council, Judicial Districting Report With Proposed Recommendations, July 1974. The court rejected the pro-

posal.

11 In a soon-to-be-released study on urban and rural institutionalization within the Alaska juvenile justice system, David Parry (1983) estimates that 37 percent of Alaska's young people live in villages and towns where there are no youth services officers.

12 "The NANA consultants were careful to explain that the new organization was to supplement rather than replace the Alaska State Trooper activity in the Borough. It is clear they did not anticipate any state trooper reduction in personnel in the North Slope" (Angell, 1977:9).

13 The State Supreme Court in Gregory v. State (1976) stated, "We also recognize that the trial court is obligated to be certain that each citizen, when involved in a criminal matter, is aware of the various rights guaranteed him by the Alaska and United States Constitution." To this was footnoted the following:

"The Anglo-American system of justice differs substantially from the traditional Indian, Eskimo and Aleut systems, which pre-dated Western cultures by hundreds of years. The cultural difficulties experienced by many of the Alaska Natives as the contemporary Anglo-American institutions reach out to the bush communities require that the State legal system use extreme care in cases of this nature. Therefore, in those areas where a substantial portion of the populations consists of Native Alaskans, we urge the administrative office of the court system to develop bilingual explanations of basic rights for those who appear in criminal proceedings so that all citizens are clearly aware of their constitutional rights." Gregory at p. 380.

14 "Policy Regarding Alternative Processes for Local

Resolution of Minor Disputes. While the court should encourage villages and appropriate agencies to experiment with alternative processes for out of court resolution of minor disputes, the court should not become actively involved in selecting, implementing, or evaluating alternative processes." Second Magistrate Advisory Committee, 1979:29.

15 When Barrow traded its town police for the trooper-style Borough Police and began a campaign to rid its streets of drunks, the social scientists were prepared to see a direct connection between oil and the resulting "crime wave" (Klausner and Foulks, 1982). In fact, the police activity was very similar in its magnitude to another rural town where no oil development had occurred (Conn and Boedeker, 1983).

16 "During . . . (1972)" wrote project director (and later head of the Department of Public Safety) Bill Nix, "the Village Policemen handled ten felony cases, 418 misdemeanors, and numerous noncriminal complaints. Seven of the felonies resulted in court action and 128 of the misdemeanors resulted in court action. One hundred and fifty-one of the misdemeanors were handled by the Village Policemen without court or Council action." (Department of Public Safety, 1972, p. 1.)

As the project director described it in presenting other statistics for the year which showed court action on 63 cases and council action on 171, "[They] also illustrate a unique relationship of two branches of government within the Criminal Justice system." (W. Nix, 1972:2) The report noted, "the council has

levied \$1,835.00 in fines, and 38 days of jail time. In almost every case, days of work for the village satisfied council sentences."

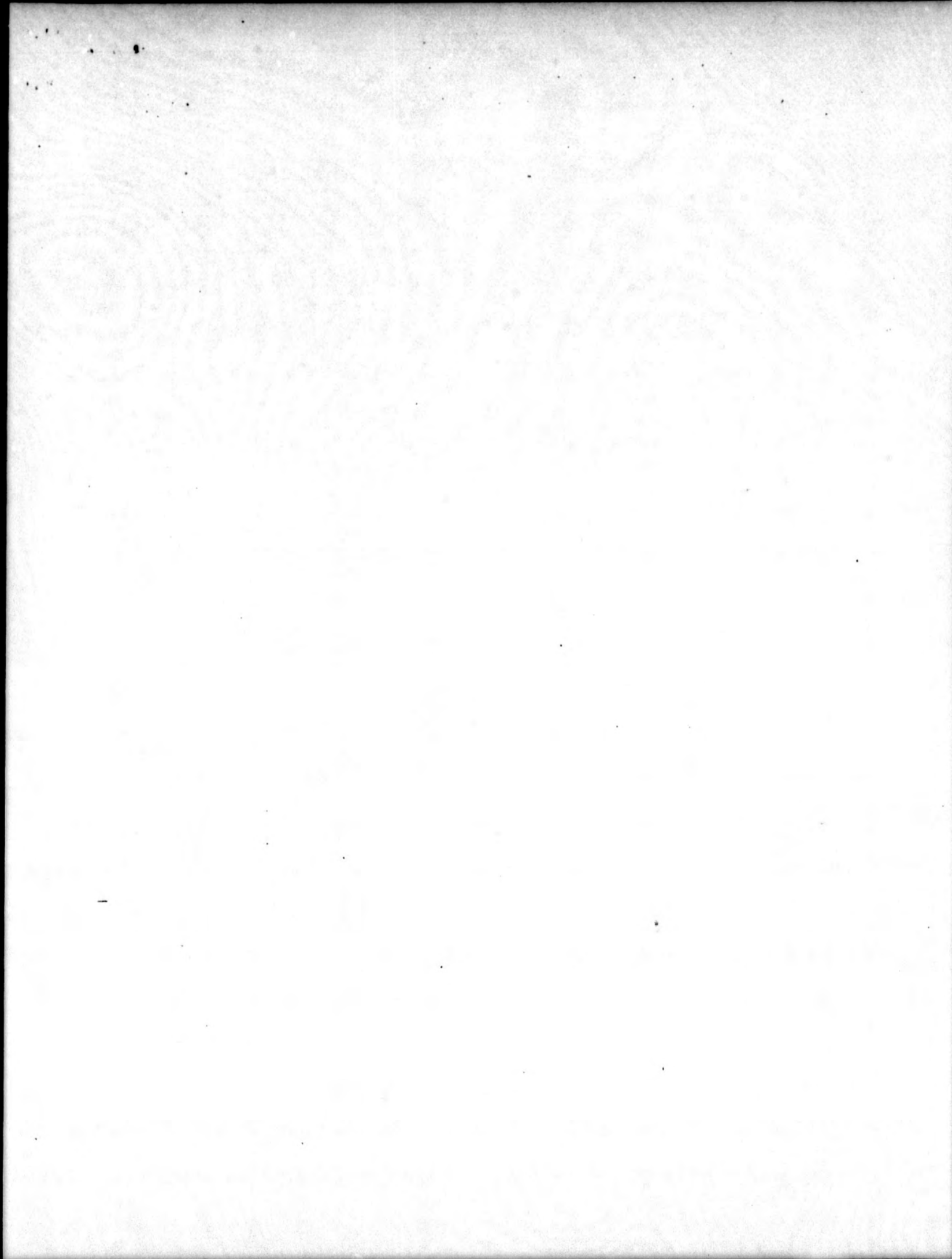
Criminal Justice Planning Agency personnel discouraged training of councilmen with village police, viewing the former as inappropriate recipients of LEAA funds.

17 However, an attorney general's opinion warned against development of "judgment boards" other than courts designated by the state court system (Condon, 1982).

18 The 55 village study revealed that even in a sample skewed towards communities with magistrates, twenty-five percent of the villages surveyed continued to use extra-legal councils or the more modern "problem boards" to solve some of their criminal law disputes.

19 E.g., when rural defendants must be sent to jail for lack of adequate probation-parole services in rural Alaska.

20 Natives make up 23 percent of the state's population yet they hold only 2.8 percent of the state's jobs, according to Alaska Native Brotherhood spokesman Robert Willard. "Native Hire Efforts Promised, Questions," Tundra Times Vol. -20, No. 47 November 23, 1983, p. 4.



BIBLIOGRAPHY

- Alaska Judicial Council
1970 "Conference Resolutions, First Bush Justice Conference, Girdwood, Alaska" (unpublished paper).
-
- 1974 Judicial Districting Report With Proposed Recommendations. Anchorage: Alaska Judicial Council.
- Alaska, State of, Department of Law
1971 Comments on the Proposed Trans-Alaska Pipeline. Juneau, Alaska: Department of Law, State of Alaska.
- Alaska, State of, Department of Law, Criminal Division
1976 An Impact Analysis of Construction of the Trans-Alaska Pipeline on the Administration of Criminal Justice in Alaska. Juneau, Alaska: State of Alaska Department of Law.
- Alaska, State of, Department of Public Safety
1972 "Village Police Training Annual Report." Unpublished grant report to the Criminal Justice Planning Agency.
-
- 1980 The Village Public Safety Officer Program: A Conceptual Design to Improve Law Enforcement and Public Safety in Rural Areas of Alaska. Juneau, Alaska: Department of Public Safety.
- Alaska, State of, Planning and Management
1972 Alaska Community Survey Alaska Planning, Management. Anchorage, AK: State of Alaska Department of Community and Regional Affairs.
- Angell, John E.
1977 "A Study of the North Slope Department of Public Safety, A Technical Assistance Report." Unpublished report for Mr. Ken (sic) Moeller, Director, North Slope Borough Department of Public Safety, Barrow, Alaska.
-
- 1979 Alaskan Village Justice: An Exploratory Study. Anchorage: Justice Center, University of Alaska.
-
- 1981 Public Safety and the Justice Sysstem in Alaskan Native Villages. Jonesboro, TN: Pilgrimage.
- Anonymous
1983 "Native Hire Efforts Promised, Questioned," Tundra Times, Vol. 20, No. 47, November 23, p. 4.
- Berry, Mary Clay
1975 The Alaska Pipeline: The Politics of Oil and Native

Land Claims. Bloomington, Indiana: University of
Indiana Press.

Black, Donald

1976 The Behavior of Law. New York: Academic Press.

Case, David

1978 The Special Relationship of Alaska Natives to the
Federal Government. Anchorage, AK: The Alaska Native
Foundation.

Condon, Wilson

1982 "Local Judgment Board and Protective Custody Ordinance."
Unpublished Memo from Wilson L. Condon, Attorney
General, by John B. Gaguine, Assistant Attorney General,
to Palmer McCarter, Director, Local Government
Assistance, Department of Community and Regional
Affairs, July 19, 1982.

Conn, Stephen

1976 "The Extralegal Forum and Legal Power: The Dynamics of
the Relationship - Other Pipelines," in Fogelson and
Adams, Anthropology of Power: Ethnographic Studies from
Asia, Oceania and the New World (Studies in Anthropology
Series). New York: Academic Press.

1977 Strangers in Our Midst. Unpublished research paper.

1980 "Alcohol Control and Native Alaskans - From the Russians
to Statehood: The Early Years." Presentation to 1982
Annual Meeting, Academy of Criminal Justice Sciences,
Louisville, KY.

1981 "Alaska Bush Justice: Legal Centralism Confronts Social
Science Research and Village Alaska (Second Draft).
Presentation to IUAES Commission on Contemporary Folk
Law Meeting/Symposium, Bellagio, Lake Como, Italy.

1982 "Town Law and Village Law: Satellite Villages, Bethel
and Alcohol Control in the Modern Era - The Working
Relationship and Its Demise." Presentation to the 1982
Meeting of the American Society of Criminology, Toronto,
Canada.

Conn, Stephen and Bonnie Boedeker

1983 "An Analysis of Outpatient Accident Trends in Two Dry
Eskimo Towns as a Measure of Alternative Police
Responses to Drunken Behavior," paper delivered at the
Academy of Criminal Justice Sciences Annual Meeting, San
Antonio, TX, March 24, 1983.

Conn, Stephen and Bart K. Garber

- 1981 Moment of Truth: The Special Relationship of the Federal Government to Alaska Natives and Their Tribes - Update and Analysis. Anchorage, AK: Justice Center, University of Alaska.

Conn, Stephen and Arthur Hippler

- 1973 "Traditional Northern Eskimo Law Ways and Their Relationship to Contemporary Problems of Bush Justice," ISEGR Occasional Paper #10. Fairbanks, AK: Institute of Social, Economic and Government Research, University of Alaska.

-
- 1974 "The Changing Legal Culture of the North American Eskimos," Ethos 2, 2:171-88.

-
- 1975 "The Village Council and Its Offspring: A Reform for Bush Justice," 5 UCLA-Alaska Law Review, Fall, No. 1, 22-57.

Friedman, Martin

- 1970 "The Problem of Drunk in Public Offenses in Alaska," Alaska Law Journal 17-20.

Havelock, John

- 1983 Interview.

Kelso, Dennis

- 1977 Social Systems Indicators of Alcoholism and Alcohol Abuse in Alaska, Vol. IV, Final Report, 1975. Juneau, AK: State Office of Alcoholism.

Klausner, Samuel Z. and Foulks, Edward F.

- 1982 Eskimo Capitalists Oil, Politics, and Alcohol. Totowa, New Jersey: Allanheld, Osmun and Co. Pub., Inc.

Kraus, Robert F., M.D.

- 1977 "Eskimo Suicide." Unpublished study supported by National Institute of Mental Health Research Grants MH 18749 and MH 23233.

Inner, Thomas D. and Duff, J. Kenneth

- 1983 Village Alcohol Control and The Local Option Law. Anchorage, AK: Center for Alcohol and Addiction Studies, University of Alaska.

MacAndrew, Craig and Robert E. Edgerton

- 1969 Drunken Comportment. Chicago: Aldine Publishing Co.

Marquez, Judith E. and Douglas J. Serdahely

- 1977 Alaska Court System Village Conciliation Board Project Evaluation. Anchorage, AK: Alaska Court System.

- McBeath, Gerald A. and Morehouse, Thomas A.
1980 The Dynamics of Alaska Native Self-Government. Lanham, MD: University Press of America.
- Moeller, Kim L.
1978 Challenge to The Police Role in Rural Alaska: The North Slope Borough Experience. Barrow, AK: Department of Public Safety, North Slope Borough.
- NANA Development Corporation
1976 "North Slope Borough Plan for Public Safety Services." Anchorage: NANA Development Corporation.
- Nix, William
1977a "Subgrantee Professional Report." Juneau, AK: Alaska Department of Public Safety (unpublished paper).
-
- 1977b Interview with John E. Angell
- Parry, David
1983 "Institutionalization of Juveniles in Alaska." Unpublished research paper, Justice Center, School of Justice, University of Alaska.
- Rural Impact Information Program
1977 The Impact of the Trans-Alaska Oil Pipeline on Rural Communities in Alaska's Interior. Fairbanks, AK: Fairbanks Town and Village Association.
- Schwartz, Butch
1973 "CJPA to Hire Native Criminal Justice Planner," Alaska Criminal Justice Reporter 3-4. Juneau, AK: Alaska Criminal Justice Planning Agency (August).
- Second Magistrates Advisory Committee
1978 "Tentative Draft Recommendations of the Second Magistrates Advisory Committee," prepared for the Alaska State Supreme Court (unpublished paper).
-
- 1979 "Recommendations of the Second Magistrates Advisory Committee," prepared for the Alaska State Supreme Court (unpublished paper).
- Sellin, John A.
1981 "Village Public Safety Officer Program: First Annual Evaluation: Department of Public Safety." Fairbanks, AK: Tanana Valley Community Collge (unpublished paper).
- Strickland, Rennard et al.
1982 Felix Cohen's Handbook of Federal Indian Law. Charlottesville: Michie and Bobbs-Merrill.
- Tussing, Arlon R. and Robert D. Arnold
1962 Eskimo Population and Economy in Transition: Southwest

Alaska. Unpublished paper prepared for French Foundation of Northern Studies, Fourth International Congress, Rouen, France, November.

United States Department of the Interior

1972 Final Environmental Impact Statement on Proposed Trans-Alaska Pipeline. Volume 1. Introduction and Summary. Washington: Government Printing Office.

United States Senate Select Committee on Indian Affairs

1978 Consolidating Alaska Natives Governing Bodies. Hearings Before the United States Senate Select Committee on Indian Affairs, Ninety-Fifth Congress, First Session on S.1920 and S.2046. Washington: U.S. Government Printing Office.

CASES CITED

Gregory v. Alaska, 550 P.2d 374, 1976.

Source: Angell, John E. (1981) Public Safety in the Justice System in Alaskan Native Villages, page 37.

PUBLIC OFFICIALS ASSESSMENTS OF QUALITY OF JUSTICE AND SELECTED PUBLIC SERVICES

	GOOD		OK		NEEDS IMPROV.		INADE- QUATE		NO SERVICE		N.R./ DON'T KNOW	
Village Police	7	13.7	6	11.8	20	39.2	5	9.8	13	25.5		
AST	13	25.5	12	23.5	14	27.5	10	19.6	1	2.0	1	2.0
A F & W	7	13.7	6	11.8	17	33.3	13	25.5	4	7.8	4	7.8
Magistrates	14	27.5	7	13.7	8	15.7	3	5.9	14	27.5	5	9.8
Legal Services	8	15.7	10	19.6	7	13.7	7	13.7	14	27.5	5	9.8
Prosecutor	3	5.9	11	21.6	9	17.6	5	9.8	11	21.6	12	23.5
Defense Services	4	7.8	9	17.6	3	5.9	4	7.8	20	39.2	11	21.6
Probation/Parole	8	15.7	8	15.7	7	13.7	8	15.7	12	23.5	8	15.8
Local Jail	2	3.9	3	5.9	11	21.6	9	17.9	22	43.1	4	7.8
Mental Health	4	7.8	3	5.9	6	11.8	4	7.8	29	56.9	5	9.8
Medical Services	15	29.4	11	21.6	17	33.3	4	7.8	2	3.9	2	3.9
State Jail	6	11.8	13	25.5	2	3.9	2	3.9	16	31.4	12	23.5
Educational Services	22	43.1	9	17.6	18	35.3	2	3.9	0	0	0	0
Fire	0	0	3	5.9	19	37.3	9	17.6	19	37.3	1	2.0
Welfare, Unempl.	10	19.6	16	31.4	13	25.5	6	11.8	2	3.9	4	7.8
Youth Services	0	0	1	2.0	7	13.7	13	25.5	28	54.9	2	4.0

APPENDIX 1

APPENDIX 2

COMPARISON OF ALASKA VILLAGES, ALASKA STATEWIDE, AND UNITED STATES CRIME RATES

CATEGORY OF CRIME	RATES*		
	ALASKA VILLAGES	ALASKA STATEWIDE	UNITED STATES
Homicide	28.4	10.9	8.8
Rape	99.2	50.3	26.4
Robbery	127.6	96.5	195.8
Aggravated Assault	326.0	286.5	228.6
Burglary	936.8	1310.2	1439.4
Vehicle Theft	446.5	3272.6	2921.3
Simple Assault	354.3	783.7	446.1

*Per 100,000 population in 1977.

Source: Angell, John E. (1981) Public Safety and the Justice System in Alaskan Native Villages, page 26.

THE INTERRELATIONSHIP BETWEEN ALASKA STATE LAW AND THE
SOCIAL SYSTEMS OF MODERN ESKIMO VILLAGES IN ALASKA:
HISTORY, PRESENT AND FUTURE CONSIDERATIONS

by

Stephen Conn
Professor of Justice

Panel on Law and Social Systems
1985 International Sociological Association Conference
Aix En Provence, France

August 26-31, 1985

School of Justice
University of Alaska, Anchorage

SOJ # 86003

ABSTRACT

Yupik and Inupiat villages in Alaska (the territory and the state) experienced a process of legal socialization that was strongly influenced by serious constraints in the allocation of resources. These constraints resulted in legal socialization into what was in essence a second legal state system and provided an opportunity for cultural autonomy by Eskimo villages even though this de facto situation did not recognize these groups as sovereign tribes. The actual implantation of a single full-blown legal system in village Alaska in the mid-1970's has resulted in a loss of control and serious efforts by Alaska villages to reinstitute village law ways as tribal legal process.