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This paper will examine the historical, present and future interrelationship between Western law and social systems of Eskimo villages in Alaska.

The historical analysis will encompass the period prior to statehood when a variety of military and civilian authorities introduced Western law into Alaska Inupiat and Yupik communities.

The present for these same purposes will encompass two periods, that of the early statehood period, 1959-1970, and that of the oil boom and land claims era, 1971-1982. Clues to the future relationship begin to emerge in 1982 and thereafter.

Eskimo Villages in Alaska - Communities of Resilience and Change

Who are the Eskimos?

Alaska's Native population, 16 percent of the total in 1980 (U.S., Interior, 1984:E-5) includes 7,338 Inupiat, 17,474 Yupik and 5,174 Siberian Eskimos among its indigenous population of 64,103 Indians, Aleut and Eskimos (1984:E-7). With few exceptions these Eskimo populations continue to live on village sites of long archeological duration, set close to land and water resources that remain critical components of village economy. In fact, thirty-five percent of Alaska Natives report that half or more of their food continues to come from subsistence resources (ISER, 1984:9).

Residence in small, medium and large villages occurs among between 95 and 99 percent of Alaska Eskimos (U.S., Interior, 1984:E-7). However, in two western and northern Inupiat regions,

Native towns of 2,000 plus persons have attracted 38 percent (Kotzebue) and 53 percent (Barrow) of the resident Native population. Thus, while net outmigration from villages to urban cities has been more than offset by high birth rates, internal migration within the discrete regions of Alaska continues to be noticeable and important.

Average villages number from 300 to 700 persons, more than half of whom are children.

The Early Period

Inupiat and Yupik villages in Alaska have different historical patterns of development both socially and legally (see Case, 1984:353-60). This paper will focus on certain common factors in the development of relationship between these groupings and agents of Western law.

As stated, both groups were and are heavily dependent upon hunting, fishing and gathering of other wild resources. Villages were, then, with few exceptions, not places to which Alaska Natives were removed to replace subsistence activity with government rations, but rather staging areas for such activities. Villages were the places, then, where semiautonomous family groups came together and rubbed elbows. Historically and in the present day, family groupings determine residence patterns in most villages.

The literature of legal anthropology often serves up Eskimo peoples as primary cultural examples of peoples without law, living in states of primitive anarchy (see Hoebel, 1954 and

Pospisil, 1964). The focus for these scholars and their apparent litmus test has been the existence of extra-familial institutions and figures (e.g., leaders) capable of settling public disputes with secular sanctions and at the same time articulating rules which will guide future relationships within the larger society. In this search for what is effectively supra-political structures, more subtle deinstitutionalized forms of law ways have been overlooked.

If one examines the legal development of peoples such as the Eskimo whose structure of political organization and leadership was often temporal from the perspective of legal socialization, a more valuable and instructive assessment of village law and its association with Western law emerges.

Socialization has been defined as a "developmental process through which persons acquire societal orientations and behavior patterns" (Tapp, 1970 quoted in Friedman, 1977:69).

According to June Tapp and Felice Levine, legal socialization:

delineates that aspect of the socialization process dealing with the expression of legal beliefs and behaviors, the internalization of "rule" norms, the conditions obtaining legal compliance, and the learning of deviant and compliant modes. It focuses on the development of individual standards for making sociolegal judgments and for using the legal network for resolving conflicts, pressing claims, and settling disputes. Covering the "positive" and "negative" sides of learning, specifically for the institution of law and generally for all human rule systems with authoritative validity, legal socialization considers both the processes and products of reasoning about "legal" norms. Whether "law," "norm," or "rule" is used, each conveys some obligation and expectation of compliance; but none

precludes the possibility of disobedience. (1977:85)

It is evident then that even nonjural processes are capable of instilling in members of a cultural group both a normative focus and predispositions regarding the appropriate ways to avoid or engage other persons when conflicts (or potential conflicts) emerge in group living.

The search for law, then, among groups less dependent on institutionalized law draws one down pathways that are often those not taken by political and legal anthropologists. Child rearing, for example, has attributes of legal socialization among its many purposes (Briggs, 1970; Conn and Hippler, 1973a). So does the etiquette of hunting sessions and other rituals normally viewed as nonlegal by Western eyes (Chance, 1966 and Graburn and Strong, 1973).

Eskimo law ways had at its core nonconfrontational, individualized underpinnings. In small groups individuals learned to read subtle cues in personal behavior (see Conn and Hippler, 1973b). Right behavior was taught through observation and through ritualistic lectures in men's houses in both Yupik and Inupiat society. Right behavior was strongly associated with appropriate readings of other known individuals, their patterns of relationships and dealings. Appropriate reactions or non-reactions to breaches of etiquette were selected accordingly. Persons who did not act normally (that is, persons who gave off inappropriate cues) were considered not only deviant, but also crazy and dangerous. Security lay less in the capacity to call

into play a form of formal legal intervention than in a well-developed capacity to read the meaning of another person's behavior in time to avoid danger by nonconfrontation or to react to danger preemptively.

For Eskimo society, then, strangers represented special threats. One did not know their motivations, formed as they were out of unknown alliances and, perhaps, obligations to undertake revenge (Spencer, 1959). Harmony within the group was formed by tensions in equapose, strengths and obligations in relative balance, and above all, knowledge of strengths and weaknesses widely shared among co-resident factions.

Within a reference frame of a typical face-to-face society, gossip, ostracism and avoidance, all mainstays of classic social control, formed effective public remedies for deviance so long as the deviator was a person whose personal alliances and strength were not overpowering. In such a situation, a bully (like a stranger) could cause ripples of unrest that ended only with removal of the offender or withdrawal of the persons offended.

Western Legal Socialization: Early Agents of Change

Intervention by agents of governmental authority varied among Alaska regions.¹ However, patterns of change in the Yukon-Kuskokwim area and on the Northern and Western coasts of Alaska show significant similarities (Oswalt, 1967).

In Inupiat Alaska, villages experienced, by the late 19th century, the beginning of a trait which could be said to be the hallmark of Western law for small settlements, seasonal and

sporadic intervention by agents of American criminal law who sought and discovered law violators served up by non-Natives or by village councils (Murton, 1965). Once discovered, these violators were removed from the community for lengthy periods and, often, forever. The Coast Guard cutters were an early expression of this phenomenon, fixated as they were with control of guns and liquor (Healy, 1889). Territorial marshalls and agents for the suppression of liquor among the Indians were later examples; state troopers were but a final example of the same form of Western law.

Yupik villages experienced this same process although in slower stages, prompted not by whaling but by early gold strikes and the missionary process.

This pattern of authoritative intervention from outside the community was coupled with efforts by teachers and missionaries on the scene to institutionalize law (Jenness, 1962). The result of this effort was the first Eskimo legal institution, the village council.

For these Western law figures, councils appeared to be less law-givers than intermediaries drawn together as a coalition of principal groups within the community. In some Yupik villages at an earlier time, the Russians had recruited traditional leaders as the Tsar's representatives (Case, 1984:359). Whether because of epidemics which shattered older groupings among Yupik, or because of more accurate perceptions that leaders among Eskimos were effectively leaders among equals, the council format was

introduced as a device to reorder Eskimo village societies to the needs of education and missionary programs. Early rules of these institutions were so loaded with matters of practical importance to teachers and missionaries, especially concerns of the school, that some commentators have dismissed village councils as little more than colonial instruments (Milan, 1964).

However, a close perusal of council records of more than fifty years duration suggests that these bodies were sufficiently flexible to allow participants to draw on their own approaches to problem disposition in ways that were not disruptive of earlier forms of social control (Ulgunik, 1946-70).

In other papers, I have described council process in some detail (Conn, 1975; Conn and Hippler, 1973b, 1974b, 1975). However, suffice it to say here that social control over minor problems was given a point of denouement that had previously existed only in the men's house and in smaller group settings. Within the council a group consensus could be formed and those persons with whom other forms of social control had not succeeded could be confronted with their deviance and allowed to confess and be reintegrated into the society.

Eskimo councils worked as transitional institutions for both Western agents of authority and indigenous peoples while other neocolonial Indian courts remained the fixtures of those who imposed them (Conn and Hippler, 1974b). That they were successfully grafted onto the developing legal socialization of Eskimos is best evidenced by their continuing viability even in later

years when overt support for councils dropped away and government policy shifted focus to Western courts and police.

The success of councils seems to have stemmed in part from their coherent integration with political patterns of old and new settlements. Little or no attempt was made by agents of change to stack families and clans into leadership and follower roles. The traditional process of dispute adjustment, one that was distinctly nonadversarial and that allowed for redemption without punishment was another feature of council justice: it allowed for appropriate responses by both deviant and those who commented on deviance as representatives of the community (Conn and Hippler, 1975). The parlance of council justice was often that of Western courts. Ordinances were described and punishments were set. But, as often as not, the process of council justice was not carried through to punishment unless such punishment could be understood as entirely justified by preexistent social relationships (e.g., when elders punished young people or when insiders instructed persons with limited connections to the community). This council procedure with its emphasis on confession and contrition also reflected the less than legal socialization of missionaries who sought contrition from sinners.

Finally, and most importantly, the shadow of another system fell over councils from their inception and backstopped councils in areas where their own restrained approach may not have sufficed.

Agents of education, the Coast Guard, the military and

finally secular territorial law focused their attention on violent behavior, serious offenses by and against non-Natives and, above all, the complex issue of drinking and violence related to drinking (Conn, 1980). These matters were served up to Western law interveners; these serious offenders were removed for punishment in distant courts.

Western law was introduced to Inupiat and Yupik villages with a distinct and limited focus. Drinking and drinking behavior was viewed as the primary source of trouble among indigenous peoples. Other aspects of law - its civil side, for example - were hardly apparent in Eskimo villages until the 1970s. Western law as it arrived in Eskimo villages and when it arrived was about the suppression, use and sale of hootch and little else.

Further, whatever its ritualistic content, Western law served as a vehicle for removal of offenders. Whatever happened to offenders, they were removed for extended periods during which tempers could cool and feuds could be put to rest.

In another paper, I have argued that the impact of prohibitory policy of Western law, the counterpoint to drunken behavior taught Alaska Natives by other non-Natives who drank around them, had a powerful negative influence on development of meaningful controls within the Eskimo groups (Conn, 1980). However, the point most relevant here is that Eskimos were taught by a steady stream of Western law agents that (1) drinking behavior could not be controlled by individual Eskimos or by Eskimo groups if it began and that (2) Western legal institutions were the pri-

mary actors in hootch (and later liquor) suppression.

What Western agents of law taught by word and by deed was confirmed by the inner logic of Eskimo law ways. Eskimos who drank became different persons. As such they were indifferent to social cues and seemingly immune from punishment for inappropriate behavior.

When non-Natives suggested that Eskimos who drank "did not know what they were doing," Natives were prepared to believe it so subtle and complex was their system of law ways (Conn, 1985b).

Councils functioned, then, within a halo of externally imposed Western law that kept hootch manufacture and consumption to a minimum and that removed violent, repeat offenders. As such councils were left with matters involving rational persons who could be counseled and advised to behave in ways which would not result in conflict. Councils often focused on embryonic conflicts, all but invisible to non-residents who had not monitored as closely interpersonal relationships.

With all of this emphasis on council process, one should never forget that most problems among Eskimos, both Yupik and Inupiat, remained outside of the domain of either village councils or Western law. Critical issues of resource sharing and wildlife management remained outside of this sphere as did most matters of intra-familial conflict. What village councils dealt with usually involved matters with the potential of being transformed into Western law violations at some point in their maturation. Whom councils dealt with was equally important. Persons

selected for council justice had failed to pick up cues communicated through other forms of social control. If they were not strangers to the village, they were at least persons who had social ties of less significance to the group.

Village councils emerged as vehicles to reinforce traditional social control and to act on legal matters not deemed suitable for official intervention. Councils bound social control and law together. But as their role became more legal and less bound to social control, this critical balance of legal cultures was lost in Eskimo villages.

Late Territorial and Early State Period

It is often forgotten how significant non-legal changes are to legal process. In the late territorial period and early statehood period changes in population and sources of economic development in towns brought to the fore the limits of a system of combined village and state justice which had worked effectively for many years.

In another paper, I describe critical meetings held between the Association of Village Council presidents and state officials in the early days of statehood (see Conn, 1982).

Village council presidents came together to share notes on ways to control an upsurge in liquor consumption from the emerging regional center of Bethel. They spoke of young men going to Bethel for wage earning jobs and drowning on the way home after initial encounters with Bethel bootleggers. They sought revalidation from federal and state representatives of

their commitment to suppress liquor use within their villages and council authority to act as fining and jailing courts when liquor appeared in their villages.

They were told that council justice was illegal and that Western intervention would be limited to liquor-related occurrences after they happened. As will be seen, they were promised police intervention if they employed rules similar to state statutes. But no other formal authorization of their authority was granted.

More than the legal status of councils had changed. Their source of assistance from Western police agents faded at the precise time when changing birth rates, migration patterns within the region (e.g., strangers within the village) and availability in Bethel of wages and liquor made the friendly isolation of villages a less dependable buffer against too many problems, especially too many problems that were liquor-related (Tussing and Arnold, 1969).

Further, the state of Alaska had a different legal agenda for bush Alaska. The new state had inherited a mandate from Congress that it provide exclusive criminal law jurisdiction (Case, 1984). The new state equated law enforcement with sovereignty. Its policymakers were less prepared than agents of territorial law to share power officially with Native groups. If the state's resources were insufficient to deal with problems in more than 200 geographically isolated villages, it was not prepared to say so. Policymakers assumed that as time progressed, its legal

mechanisms and its legal agents would be sufficient to cover the Alaska environment.

The Yupik village leaders who met in Bethel did not focus on their right to mete out law and order as an end to itself. Instead, they persistently focused upon development of a realistic working relationship between village law and agents of state law. Their attention was riveted upon problems of disintegrative violence and means appropriate to resolve them. They viewed state responsibility in liquor prohibition as central - that was the law's role after all (Conn, 1982). The Alaska and federal representatives focused upon what was authorized under state law and what was not authorized ignoring nearly completely the paucity of resources the state could focus on 57 Southwestern Alaska villages and 29,000 people scattered among them. Ignored also were legal expectations developed in more than a half century of legal occurrences.

The critical division between law as a symbol of authority and law as a means to anticipate and curb violence was to confuse every dialog between Eskimos and Alaskans from that time forward.

Critical Factors in the Oil Boom and Land Claims Era and Their Bearing Upon the Relationship Between Social Structure and Law

No period of time has seen as many external and internal forces at work on Alaska village life than the decade-and-a-half of the present era. What follows is not taken to be a comprehensive assessment. Rather, those matters selected are chosen because (with the wisdom of hindsight) they are clearly forces

which have affected and will affect the relationship between law and the social system of villages for decades to come.

A. The Younger Population Emerges as a Social Force

In the culmination of a trend beginning in the 1950s and 1960s, infant mortality dropped 29 percent between 1970 and 1980 (ISER, 1984:4). The Indian Health Service's campaign to eradicate tuberculosis, influenza and other respiratory diseases also bore fruit. The net result (along with outmigration by some employable younger adults) has been to make of village adults a minority group wedged between larger populations of young and old. Accidents, suicides and homicide replaced infectious diseases as the leading causes of death (Kraus, 1977).

The youthful population in Alaska villages became over the decade of the 1970s a year round population. In what was the first of several political initiatives within the state political system, Alaska Natives pressed for and received high school systems in smaller villages. No longer would young people who desired secondary school education leave the village for a regional town or distant city. Now 92 new high schools appeared in villages, managed by regional school boards based in the towns (Parry, 1983).

B. The Emergence of Town-Based Government and Quasi-Governmental Corporations

Towns which had served as regional centers for limited federal health and social services emerged in the decade as the staging points for state services of every kind, including state

law services. The town-village relationship became more significant than the relationship between distant urban centers and the bush when delivery of services and matters of local government were concerned. On the North Slope, an organized borough government, fueled with tax revenues from oil exploration, displaced the state with a regional government that provided police and health and welfare services unlike any experienced by the seven villages in years previously (McBeath and Morehouse, 1980). The state was induced to provide a superior court judge, district attorney and public defender to the town and region by the upsurge in law enforcement and consequential rise in recorded criminal law violations.

In the nearby Western NANA region with its ten villages, the town of Kotzebue emerged as a regional center without the delineation of an organized borough. In this town, as in Dillingham, Nome and Bethel in other regions, nonprofit corporations emerged as quasigovernmental institutions. These entities, the forerunners of for-profit corporations which had been defined in the land claims process, now drew upon Congressional legislative authority and state political clout generated by land claims to take over authority for management of many federal and state programs.

Educated Natives, especially females, found work in town-based bureaucracies. Thirty-nine percent of rural Natives worked in local or state government by 1980, up 17 percent in a decade (ISER, 1984:9). So also did non-Natives. Their numbers in rural Alaska increased by 64 percent while Natives increased by 18 per-

cent (U.S., Interior, 1984:IV-10). More significantly, the numbers of non-Natives versus Natives in rural Alaska changed from 50,900 to 39,000 in 1970 to 81,000 to 46,000 in 1980 (Id.)

Non-Natives were the primary recipients of state jobs in the bush and even of jobs in Native corporations. As law services and other services increased, so did permanent or at least semi-permanent non-Native presence in both towns and villages. The developed sense that non-Natives were effectively "taking over" coupled with a perception that leading families of Alaska Natives had assumed positions of power in town-based governments and regional corporations, laid the basis for the changes in village political process which will certainly determine the relationship between local law and village life in the next decade.

C. Emergence of Controls Upon Hunting and Fishing

At least as significant as the failure of criminal law agents to intervene when needed was the apparent implantation of legal controls on hunting and fishing. Northern and Western Inupiat who had hunted caribou year round above the Yukon River now discovered that fish and game controls would be imposed upon them in the name of conservation. Laws which had lain unenforced on the books were now enforced to protect migratory waterfowl and sea mammals.

When Alaska Federation of Native-sponsored teams surveyed villages on bush justice problems in the mid-1970s, they discovered more complaints about fish and wildlife enforcement than about treatment of Native crime and criminal law defendants (see

McKenzie, 1976).

It appeared to village people that state and federal law showed more concern for fish and animal life than for village people.

The Process of Legal Change During the Claims Settlement Decade

The decade of the land claims settlement began with what could be described as a commonly shared perception by villagers and policymakers that bush or rural Alaska was ill-served by the state legal process.

Three "bush justice" conferences were held in the decade. Although each one was dominated by a different constituency (the first, high policymakers and academics, the second, villagers and legal services attorneys and the third, line bureaucrats), there was a remarkable consistency in the resolutions which flowed from each session.

First and foremost were expressions of felt neglect. At no time in the state's history had reliable legal services been available to small villages. Villagers complained less about the quality of services delivered than of the failure to provide them (Alaska Judicial Council, 1970).

As I have discussed in other papers, federal law enforcement assistance appropriations and later state appropriations tended to increase the power of highly centralized state bureaucracies. Town-based teams of judges, prosecutors and defense attorneys

(with corrections officers) brought a rapid increase in criminal justice activity into nearly every region (Conn, 1985a).

At the village level, however, every extension of state service brought increased levels of disempowerment and frustration. What had been a notable characteristic of the decades prior to statehood and the first decade thereafter - derivative power lent to small villages to carry out dispute settlement and social control - now evaporated as state service implanted itself in the towns. The state legal apparatus developed "eyes and ears" in the villages by hiring "parapolice" and "parajudges" whose primary function was to hold the scene for town-based professionals and to report law violations by village councils who sought to take the law into their own hands (Conn, 1984). The extra-legal activity of village councils which had been the mainstay of both village and state legal authority in an earlier time now was suppressed unless it could be cast as a form of diversion from state legal authority and controlled in that context.

Although the shared point of view among justice policymakers, Native consumers and academicians was that the system of Western law implanted in rural Alaska did not meet adequately basic needs of citizens within the realms of law enforcement and dispute settlement, constituencies had fundamentally different senses of the root causes of the problem and its appropriate solution.

Policymakers understood the problem as a failure of the Alaska village people to understand Western law and its operative premises. This failure was rooted in "cultural difference," most

especially the education Alaska Natives were presumed to have received in their own law ways, an education which had effectively miseducated them in Western legal terms.

A solution to the problems of law services posited by policymakers and acted upon by academicians was to study traditional law ways and, drawing upon these studies, to reeducate Alaska Natives to Western law. Traditional law would be a basis for comparisons.

Such studies were accomplished (Conn and Hippler, 1973a). However, what they revealed was that traditional law ways had already been substantially influenced by interaction with agents of Western law. In fact, the purported clash between "traditional law ways" and "Western law" was at base a clash between a village legal process mutated and redesigned to fit the demands of earlier agents of Western law during a period of benign neglect of Native villages with a new definition of law services initiated by urban justice bureaucracies who had only recently discovered bush Alaska.

Thus conflicts over bush justice were not cultural conflicts except as they conveyed a conflict between two historical epochs of Alaska legal culture, an epoch of territorial and early statehood and an epoch of modernization fueled by oil wealth and a claims settlement.

The assumption of many town-based officials that village councils could carry out all matters of legal activity, drawing upon consensual authority only, had proven to be erroneous.

There was significant division between young and old over drinking behavior. Younger people had learned to question the legitimacy of village council authority.

In short, councils had seen their historical authority to act stretched beyond its limits and its credibility questioned and undercut both by young people and by outside agents of law who happened to observe it.

If this pattern of events had not caused councils to reject a central role in legal process, another change would have lead to the same result. The Alaska Native Claims Settlement Act favored villages who incorporated as second class cities with title to townships within the village core (Conn and Garber, 1981). At the same time, state revenue sharing and state appropriations favored villages who were transformed juridically into mini-cities. As a result the village council of yesteryear became the city council of the 1970s. Each day's mail plane brought letters from state and federal agencies and a workload which caused councils to look for someone else to handle the cat and dog problems of village conflict which had taken up winter evenings and days in years previously.

Finally, many villagers shared the belief of state officials that the best solution to their problems was total incorporation into and dependence upon the state legal process. Whether this meant placement of a state justice of the peace into the village to take over hearings or simply more frequent visitation of state judges to the village, legal process was not then identified with

something as illusive as tribal "sovereignty." It was simply an activity that the state was charged with accomplishing. It was the state's job to do.

When academicians wrote that justices of the peace in small villages did not handle problems in the way that councils did or that people expected, justice policymakers showed marked disinterest. After all, they concluded, what state judges did was correct and what councils did was illegal and incorrect.

Villagers also were unimpressed. Law was the state's business and it should spend money and energy sufficient to hire someone to do the job.

The earlier epoch, marked as it was by benign neglect of village Alaska, had also allowed Eskimo villages to use village councils as the focal point of institutionalized village social control. Those who decided to tolerate autonomy in matters of law by village councils had not been policymakers of justice agencies, but rather embattled field operatives in rural towns who simply could not take on caseloads of other than the most serious criminal law offenses.

The academicians who studied bush justice in the 1970s tended to embrace a pattern of continuing semi-autonomy in matters of village law (Conn, 1974a, 1975). They suggested that a formalized entity which handled disputes in a "council-like" fashion could probably anticipate and prevent many violent encounters through early intervention (Conn and Hippler, 1974b). They saw as the ideal form of law for modern villages a continuation of

the pragmatic working relationship between community law and town-based state personnel, with some rational division of authority struck between village and town, based on the problems to be addressed and the resources and approach best suited to deal with the problems. What this implied, however, was that each justice bureaucracy reconsider the law jobs and machinery to be offered to bush Alaska, redefining those roles and legal mechanisms to fit the consumer and not anticipating that consumers and their communities would adapt to fit the law jobs and machinery proffered.

The academicians point of view was not accepted by either justice policymakers or by villagers.

Village leaders in the 1970s were not committed to the principles of autonomy or even community control of law problems. What they had experienced in the name of community control was a process which had forced village councils to handle problems they believed should be left to outside authorities. Because of ineffective police intervention, even after repeated requests for assistance, councils had been transformed into courts that threatened fines and other sanctions that one and all knew were unenforceable and even illegal rather than deal with matters suitable to compromise (Conn, 1982).

This point of view which governed village ideas about law and the way it should be accomplished was itself a product of living with an ongoing relationship between village processes of social control and state processes. Without planning or intent, the

state had reconstructed a working relationship after statehood based upon the limited resources available in state hands. Its representatives, usually state troopers or, later, assistant district attorneys, developed and distributed "village rules" which could be imposed on two or three occasions in minor cases without first notifying the trooper. After several tries, the council was to call into play trooper intervention (Conn, Id.)

This mutual responsibility for law in the villages allowed the state to concentrate on more serious matters, presumably allowing village councils to handle the lion's share of problems. Villagers were given the impression in meetings with state and federal officials that this approach, though illegal, would pass muster on the village side. There, it was assumed, that village consent, backstopped by trooper authority, would convince villagers to abide by village law in most, if not all, cases. There was no allusion to a basis for village law, civil or criminal, in tribal authority even when villages could demonstrate that they had been organized as Indian tribes under the Federal Indian Reorganization Act (Case, 1984). Villages which did not seek much outside intervention were viewed as "progressive villages," those which took care of their own problems. The issue of how problems were resolved was not vital; limitations of demands upon town-based officials was considered most significant.

The working relationship between state and village legal process broke down almost as soon as it was crafted into place. The state could never live up to its responsibilities because the numbers and diversity of problems for which intervention was

demanded outran the state's resources. Village councils lost credibility when pressed to demonstrate that they could apply ultimate sanctions, like jail terms and fines, and not merely mediate and prevent trouble, they failed either to carry through or to draw into play a Western legal process which would carry through.

Youth, whose education in Western law, as urban law, began with VISTA volunteers who questioned council authority and continued through social sciences courses, movies and finally satellite TV, did not perceive that the counseling experienced before village councils was "law" as Americans understood it.

If so many other factors had not caused village law to erode, the magnitude of drinking problems, problems associated with town-based bootleggers and town-based wage opportunities, improving transportation and communication, made the business of law too generalized and frequent for a council whose only rock of support was its ability to draw upon village consent.

Village Natives looked for Native and non-Native figures to intervene and deal with their problems as paid state employees. Law became a job like any other and less directly a tribal or civic duty, a job with considerably less financial or social rewards than the negative social connotations ascribed to it and to those who took it up.

The State of Alaska, organized constitutionally, into highly centralized bureaucratic units for the delivery of policing, judging, lawyering and correction ran vertical lines into vil-

lages by means of para-police, para-judges and other aides when it was necessary to implant any representative of their bureaucracy (Conn, 1985b). Agency efforts concentrated on the building up of town-based systems in the regions.

Villages were perceived as places lacking physical and human resources sufficient to establish urban justice systems (see Second Magistrate Advisory Committee, 1978, 1979). Through professional education, and then through bureaucratic alignment and pay, efforts was made to focus the loyalty and identity of state magistrates and village police (through several programmatic permutations) on their parent agencies, the court or department of public safety, rather than upon their village and its government.

With this in mind, it may be easier to see how a village such as X on the North Slope and state justice planners could arrive at very much the same conclusion: that law was state law and no other law and that state law jobs were for state employees to accomplish.

X had carried forth a form of council justice for more than seventy years as its records could attest when a local personage was nominated to be magistrate in the early 1970s. From the first day of his employment, the council rejected further complaints made to it. Even when complainants returned to state that each did not want to file a written complaint or to put anyone in jail or have him fined, the council refused to handle matters arguing that the state employee should handle the job.

When few cases appeared on the magistrate's roster for

several years, the court system removed the post from X and dismissed the magistrate, retrieving its typewriter, law books and government forms.

Only after this occurred did the council, grudgingly return to the business of hearing disputes, requesting repeatedly that the magistrate post be returned (Conn, 1975).

The same village turned over its policy authority to a boroughwide police authority. For years it had complained about inadequate police service from a single trooper in Barrow. When the borough did not, at first, respond with its promised police service, juvenile vandalism and break-ins caused resident teachers to panic. The council merely referred teachers to the Borough Assembly.

Policing by the borough did finally come to the seven villages on the North Slope including X. Because this transformation of a Western law service was the only one accomplished by rural Natives, what occurred is instructive. It revealed something about the influence of deprivation. The North Slope Borough introduced areawide policing in a bush region without parallel in Alaska. Trooper-type officers, virtually all non-Native from out of state, were placed in two-man contingents in each village. A ten man plus unit began to patrol the 2,500 person town of Barrow (Conn and Boedeker, 1983).

Spiraling crime statistics and quantum leaps in protective custody apprehensions for drunken behavior would cause scholars to conclude later than social upheaval had come with oil reve-

nues (Klausner and Foulks, 1982). In fact, what occurred would occur in any small town or community assuming levels of policing take a quantum leap. The clearance rates for crimes reported (when tabulated) were such that nearly every reported crime resulted in an arrest (Moeller, 1979).

The North Slope villages moved from a period of historical underpolicing to overpolicing. Even then, village councils did not intervene to mediate or divert any of these arrests nor did they request to do so.

Policing in villages in the rest of the state was increased through training of village police and then through indirect hiring by the Department of Public Safety of Village Public Safety Officers. These VPSOs were paid through state appropriations to nonprofit Native corporations based in the towns, but were trained and directed by state troopers (Sellin, 1981).

Here, as with state magistrates and North Slope Borough police, control and guidance of law officers was said to be in the hands of town-based police and not in community hands. As village police were transformed into persons not merely trained but paid by the state, their role was narrowed from that of a typical American policeman in a small community who carries arms and makes arrests to that of unarmed agent of the trooper, prepared to hold the scene until troopers arrived to investigate and make arrests.

Throughout this transformation of bush justice in the 1970s, councils found not only that they were relieved of responsibility

for doing "law work," but that they were rarely consulted on matters of law in their communities. Troopers intervened when they decided to intervene. Legal figures came and went. Consultation with councils became ritualistic and pro forma if it occurred.

Despite repeated requests by councils that they be informed when and on what conditions that released defendants would be returned to their home villages, officials in towns usually ignored councils when such decisions on release were made or when such information was communicated. Similarly, when it was suggested that councils be involved in sentencing, a corrections officer polled a council and had each member vote on preselected terms of years to which a defendant might be sentenced rather than obtaining from the council a more subjective assessment of the defendant's place within the village.

Councils were employed only when defense attorneys or prosecutors wanted to stress village opinion in the context of an individual case.

At the same time, justice professionals systematically warned their underlings (professional and paraprofessional) in towns and villages that village ordinances were illegal in content or in preparation, that village police departments were untrained and that village law systems were constitutionally suspect.

The Local Option Law and its Rationale

In 1980 rural legislators lobbied into state law legislation which allowed villages to vote on several forms of local alcohol regulation, among them an option which provided that a village

could prohibit the importation (though not the private and personal use) of alcohol (Lonner and Duff, 1983).

Villages viewed this local option as an exercise in local control, not unlike the authority each had enjoyed when in territorial days, each could outlaw the manufacture and possession of hootch under federal law.

What villagers discovered, however, was that this local option, a formalized grant of state authority, was narrow and circumscribed. Importers of liquor had to be caught with valid search warrants. Liquor slipped into town as before and did not make villages dry or give the village control over liquor use.

The reaction to this law is important for viewing the future of law in rural Alaska through the prism of legal socialization or living with the law as it has been experienced in nearly one hundred years of village associations with agents of Western law.

Frustration with the state system's inability to generate local controls on drinking and drinking behavior have caused villages to meet to discuss non-legal solutions and non-state solutions (Justice Center, 1985).

Native Alaska villages, including Inuit and Yupik villages, now appreciate the limits of service that can be provided by state agencies which are town-based. Not only drinking behavior, but also youth problems and drugs concern these villagers.

Juvenile Matters

In territorial days, U.S. Commissioners (local justices of the peace) sentenced youthful offenders to out-of-state institutions and took the position that juveniles should be housed at federal expense (Moeller, 1942:1-5) in Murton, 1968). There were no juvenile reformatories in the territory and no territorial funds employed to deal with Native delinquents. As a result, extra-legal council proceedings about juvenile behavior were supported by officials. However, after statehood came the transfer of juvenile matters to state superior courts where, it was thought, more "helping" resources existed. Unfortunately, superior courts were not located in rural places other than Nome until the mid-1970s when Kotzebue, Bethel and Barrow were added. The net result was that juvenile process reached the towns long after this authority had been lost to village councils and a youth problem had begun. At best, youth services officers reach very serious matters in small villages, leaving all other juvenile problems neglected. The Western system has ignored, then, the demographic bulge of youth in Eskimo and other Native villages while denying authority to councils or even state magistrates to act in anything other than emergencies (see Parry, 1983).

Eskimo juveniles and their elders have discovered, then, that the law affecting them has diminished in impact with the transfer from village justice to state authority.

The pervasive absence of village control over community concerns has begun to impress rural villagers. This concern relates

to many matters, not those of law only but also to schools now organized and guided by town-based regional education attendance areas and to other youth needs including recreation. Concern with state regulation of local subsistence activities after futile attempts to influence developmental decisions have also given rise to an increased demand for local authority.

Tribal Governments - The Next Step?

I think it critical to understand that Alaska Native villages did not consistently press for tribal legal autonomy as the relationships between villages and state law matured. If anything, they seemed acquiescent in the replacement of their own instruments for ordering by less effective but official state agencies.

Villages pressed for more control and autonomy through the local option law and more recently through tribal government because the villages discovered that the state was not true to its own ideology or legal commitment to serve all citizens. The court stopped placing magistrates into villages leaving about 130 with no local judicial officer to handle small criminal, civil or juvenile matters. The state police were satisfied in the end to place parapolice in small villages to "hold the scene." In pressing matters such as juvenile behavior, the state was prepared to place no youth services officers in small villages where nearly 30 percent of Alaska youth reside.

Out of frustration, then, villages have reconsidered their roles as arbiters of legal matters. This discontent has had several allies.

Since 1980 the numbers of young Native inmates in state jails has doubled from 16 to 34 percent (Alaska, Division of Corrections, 1984). The reasons are many. However, some inmates see ineffective village law as a primary reason for their own fate. These inmates now press for reforms of bush justice.

The deadlines in the claims settlement bill have set in motion initiatives aimed at protecting Native lands. One initiative has been to revitalize moribund tribal governments. Thus tribal sovereignty has become the rallying point for those who desire improved and village-based government services, those hostile to the regions and the state and those desirous of protecting land and resources from outside regulation, from taxation and from legal claims against Native corporations whose investments have soured, corporations that own the land in rural Alaska.

In 1982 village leaders from more than 70 communities formed the United Tribes of Alaska. Their touchstone was "tribal sovereignty," a concept long recognized as a core attribute of Indian government in American federal Indian law. It signifies a residue of governmental powers which any tribal government can exercise unless or until those powers are explicitly removed by Congress (Strickland, 1982). Sovereignty exists in the context of the political relationship between the federal government and tribes, those semi-dependent domestic nations, recognized by the American constitution and by caselaw as a "third order of government."

The scope of tribal governmental authority in Alaska is murky at this juncture, given the Alaska Native Claims Settlement Act's extinguishment of aboriginal land and hunting rights and that Act's refusal to set up reservations of land upon which tribes could govern (see Mintz, 1985). Yet Native leaders have taken Congress and its word at face value. They view ANCSA as a land settlement only and point to Pueblos in the American Southwest as examples of tribal communities which exist on other than lands held in trust by the federal government.

When interviewed recently, UTA chairman, Shelton Katchatag described how sovereignty could be used as a governmental tool by Alaska people. Said Katchatag:

Under sovereignty, governments can regulate subsistence economies, they can provide what are now called social services (including education, health, police and court services), they can tax, set the policies and directions for any enterprise (commercial or otherwise) the people might choose to get into. The overall goal of a government is to provide for the security and physical safety of their members, guide an economic system whereby members can not only have all the comforts of life, liberty and the pursuit of happiness, but also feel that their work as a group is productive and not just for themselves but for their community. (Katchatag, 1985:C-1)

However, when asked for examples of current tribal governmental activity, Katchatag gave a single example of a youth court organized under the joint authority of the village of Sitka and the U.S. Congress by the terms of the Indian Child Welfare Act of 1978 (which designates villages named in ANCSA as tribes for purposes of the Act).

Tribal governments are measured in American court cases, not

only by doctrinal assessments of sovereignty, but also by their acts as tribal governments. Put another way, tribes have learned that unless they use tribal authority, they may not be accorded legal status as tribes even if they are theoretically entitled to it.

Alaska villages, with few exceptions, have allowed their tribal governmental roles to atrophy as city governments, regional governments and the state have taken over nearly every role of tribal government which Katchatag described.

The issue, then, for tribes in Alaska is twofold. First, should each press for autonomous standing, a third order of government, dependent neither on state or federal authority? If this posture is sought as "sovereignty" in the American legal framework, it implies freestanding governmental authority that is not dependent upon delegations of power from either the state or federal government. Second, whether power is delegated or not, over what realms of governmental activity should tribes assert jurisdiction?

Inupiat and Yupik villages in Alaska may not be at liberty to establish freestanding third orders of government. First, because given a federal court system that is aggressively hostile to expansive interpretations of tribal rights, the final decision on tribal sovereignty in Alaska may well be left to a political result within the halls of Congress, a result necessarily satisfactory to the state as well as the tribes. Second, tribes will necessarily move forward with little or no expectation that eco-

conomic windfalls will favor their development. In fact, the momentum behind many tribal movements is distinctly non-developmental, concerned as it seems with preservation of subsistence-based economies.

Village governments in Alaska appear, however, to be overly modest when examples of their past governmental experience are requested. In fact, by acting as traditional governments and as city governments, local communities have very complex and active records as governments within their domains.

Alaska Eskimos have adapted their own legal culture to that of Western law as they were taught it through a working relationship that developed in the 19th century. This is not to say that Eskimo legal culture is dead; it has evolved to meet the requirements of Western law.

As tribal governments are considered, it will be important to recognize this evolution and not to substitute federal Indian law doctrine for a pragmatic assessment of this phenomenon. Specifically, the separate sovereign status of Alaska Native tribes under federal Indian law should not require that, once established, Alaska Native tribes "revive custom" or retreat in time to a pre-contact system of law ways. In the case of Alaska Natives, institutionalization of their legal systems did not occur until contact with Western law. Certainly no one would advocate the deinstitutionalization of Eskimo law as a necessary attribute of modern tribal sovereignty. Instead, the process of pragmatic development of that legal system should continue as

before with an eye toward Eskimo legal expectations, Eskimo problems and appropriate legal machinery in small, rural villages.

Given the persistent influence of other legal authorities on villages' legal process over time, it is unlikely that villagers will seek more than a further refinement of their historical working relationship in delivery of governmental services. Although this may not please ideologues on either the state or village's side, it will comport with law and government as villagers have been educated to it. The end result will be based upon a pragmatic assessment of problems and the best means to divide authority for their resolution. It will imply a formal division of power long resisted by state and federal authorities. However, it is not likely to involve a substantial reintroduction of customary approaches to dispute adjustment unless both village and state leaders are sold on their practical viability in what both perceive as the modern world.

In short, both villages and the state have addressed matters of legal responsibility from a perspective which places high values on assimilation and pragmatism and not upon legal pluralism as more than a means to an end.

There is little on the horizon to suggest that this process of legal socialization will cause either tribes or the state to change course.

Tapp and Levine write of legal levels of legal socialization, drawing analogies from work by students of childhood education.

They suggest that persons should move from levels in which blind obedience to authority or compliance out of peer pressure give way to critical assessments of law and probing inquiries into the rational bases for laws. The latter dimension amounts to "legal literacy" (Tapp and Levine, 1974).

If one examines the interplay of Western law and village law among Eskimos there is little within the inner logic of the two to assist in developing legal literacy. Eskimo council justice lost its own logical basis as institutionalized social control as it became a tool of Western legal process. Western legal process appeared powerful but increasingly arbitrary and unreliable as its agents revealed their ignorance of their own system's earlier limited commitments to rural villagers.

What has driven a new generation of Eskimos to a posture of demanding legal control over their own destiny is not the rationality of what they have experienced but its irrationality.

Perhaps this is the only way that legal literacy - a desire to engage and manipulate the legal process - is achieved.

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PERSPECTIVE ON SMALL VILLAGE JUSTICE SYSTEMS

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Introduction

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What justifies a study of conflict adjustment in small villages? Many lawyers and judges do not see any relevance in a detailed consideration of dispute adjustment in native villages as an underpinning of standards and goals formulation. Their view is that there is one legal process and that if adjustment is to occur, it is the consumers who will have to adjust if they are to benefit from it.

The response to this argument is severalfold:

First, Alaska has tolerated and even endorsed several systems of justice in the past and even today to compensate for the absence of professional services to the bush communities. Thus, it can be argued that the extant legal processes in bush Alaska historically supported by agents of formal law although at variance with the system's own rules, laws and procedures, can undergo change only when the message of these systems is understood. Consumers who have been misled deserve to be acquainted with the reasons for change.

Second, in the future the legal process will need to remain active in small villages as well as in larger villages and cities. To be active and yet whole, it must integrate village norms, roles and procedures because they convey a particular perspective on law.

Third, legal professionals should recognize that many common law formulations of criminal conduct are based on entirely subjective formulations of likely conduct among reasonable western men. These subjective formulations are

the end product of evaluation of western writers and commentators on western man, his motivations and his attitudinal sets.

As Alaska addresses populations that have only recently meshed with Euro-American societies, it should consider if it intends to continue the development of criminal law and procedure. Or does it intend merely to apply dogmatically criminal law definitions whether or not they are appropriate to measure conduct of peoples in Alaska society? Alaska village law gives us clues to new formulations of criminal conduct and responsibility that should be borne in mind by professionals who deal with "cases from the village." It also gives those who draft standards realistic and factual measures to relate system changes to the real Alaska justice system as it is operating in smaller communities of our state.

PERSPECTIVE ON SMALL VILLAGE JUSTICE SYSTEMS

An evaluation of justice systems in six of eight villages by the staff member of the Judicial Council suggests that there are some shared expectations and attitudes regarding the use of law as a device for social control or conflict resolution. It also suggests that nearly every village has a different response to social problems and that individual villages show markedly different rates of success in handling problems which are either criminal or have in their character the potential of criminal conduct as villagers perceive it.

1. The Overview

Village justice systems are directed toward daily crime prevention of minor offenses rather than sporadic reaction to crime and serious punishment for serious offenses. They view the state system as reactive only and not very efficient, thorough, or communicative in that role.

Crime prevention in the village figures into definition of criminal conduct by ordinance or by councils, judges, police and others when they deal with alleged misconduct or consider it. Local legal figures respond earlier or desire to respond earlier than the state legal process often allows to less overtly serious acts of misconduct. The purpose of responses is not primarily or unduly punitive if measured in fines or jail sentences. Nearly every village applies levels of sanction to misconduct which range from counseling and warnings about future conduct to expulsion of strangers. The

over-riding goal seems to be an attempt to define and maintain an actual consensus among community people regarding conduct. Criticism of the posture of the village legal process by some villagers indirectly supports this majority perspective because that criticism invariably refers to unequal application of the law. (see below). The police and council suggest increased codification of misconduct but defer finally to the public desire for codification.

Unequal application might characterize the process of village law. This suggests, upon further analysis, how village law differs from the outside legal process.

Village law calls necessarily for a personalized response to social deviance. This response is unequal in form by definition. While the majority of villagers can be dealt with informally through gossip ostracism and social cue until they violate a serious norm, a minority must receive early official attention when they violate any norm on the perimeter of the village code. The law as it is officially applied is applied unequally because that official response must take the form of publically renewing a social contract between the offender and the village, a contract others endorse without this formality.

By enlarging the scope of codified law, as well as the maximum punishment for violations of codified law, councils and police lay the basis for earlier contact with likely serious law violators. However, when the community believes that a matter does not yet require codification and makes this known

to police, councils, magistrates or others, these officials will usually let the matter rest. If, as frequently occurs, a model code arrives with certain provisions that are not appropriate subjects for official concern, these provisions will be adopted but then officially ignored.

In sum, the codified law defines normatively the outer limits of official response to acts by those who cannot be reached through other than official response. All official response is carefully considered. The resulting application is unequal by any objective measurement but the objective is an equal consensus regarding the real substance of law within the village.

The implications of challenging the village justice system by asserting learned individual rights are serious for the challenger and for the village. One does not merely challenge the particular norm and its application to his conduct. Instead, he challenges the shape of the consensus which governs village conduct as well as the authority of the agents of law in the village to shape that consensus by selectively applying norms to likely dissidents.

Thus, when a resident of Selawik in his late twenties returned by service in the military and challenged the application of the curfew upon him and his friend who had not served, the curfew ceased that night to be law for young adults.

x The modern enforcement of norms governing alcohol possession and use are in precisely the same vulnerable category. With each application of the law against possession of alcohol upon persons who are not significantly tied to the

village; the council or magistrate tests the validity of that norm and its continuing relevance to the village.

Each case is potentially an arena for law reform.

An admission of guilt is a renewal of the consensus, a consensus with no basis in state law. Concurrence in the judgment of the council or magistrate as symbolized by payment of a fine, receipt of a warning or other sanction is a further test of the norm as a fixture of that consensus.

Therefore, it is not surprising that villagers encourage cooperation by the offenders and do not test the ultimate power granted to them by the ordinances, passed by the village, in every case. First violations are never dealt with severely. Their disposition is in fact a further step in a process of negotiation leading to conformance with policies which are supported by the ordinances.

2. Outside Assistance

Villages which depend upon outside assistance substantially as a means to shore up crime prevention (e.g. for an outside magistrate or trooper to sit with the council and warn an offender) generally lose some of their capacity to maintain a local posture of concern regarding criminal acts when the outsider does not appear. Although villages desire local magistrates, their presence is not particularly significant in laying the basis for community consensus regarding antisocial acts and their consequences. Their presence does symbolize state support for village law. Whether or not that law conforms to state statute, magistrates apply it. More

significant are trained village police who work in close liason with councils. They are most useful when they are directed by council intent and lend and receive authority from the council.

Problems -- Concern with juvenile behavior and liquor is widespread. So also is concern for creating activities which provide recreation sufficient to absorb juvenile energies. Where no great dichotomy has been created between juveniles and adults in pursuance of fishing and hunting activities, there seems to be less need to create many purely recreative activities directed to the needs of the "youth culture." Also, parents and older relatives retain authority borne out of acknowledged expertise in land, sea and river activities sufficient to counsel young persons when requested by police, councilmen and others. Where juveniles and young adults have little interest or talent in subsistence activities or have some developed symbolic disdain for village economic activities while away at school, there is less implicit rapport between older persons and younger and consequently less overt rapport for the directives of village institutions, be they governmental, eclesiastic or traditional in origin.

3. Standards and Goals

Within the framework of standards and goals for the courts, the function of village mechanisms for social control and dispute settlement falls broadly within the area of screening and traditional diversion. These activities are carried out by police, juvenile intake officers, prosecutors, or formal diversion agencies in the urban arena with the formal or informal assistance of problem-oriented agencies. In the village

there is no necessary parallel alignment of social service aides, police and courts. Each is an agent of a separate, non-cooperative, outside agency. Also there is little expectation that agencies which act from outside of the village will return offenders with a plan that befits village intent or village authority patterns.

Each outside agency acts "through" the council or other leadership structure to a greater or lesser extent in selecting, placing or training its representative in the village or in "communicating with" the village. However, the ultimate ability of the council to coordinate and structure the work of these agents depends on its perception of their authority over them, knowledge of their job skills and discretion, the council's active relationship to their "master" bureaucracy and even the council's desire to share its own work or, again, involve itself in work of other people who receive stipends to do it.

In the villages studied, there are few examples of outside professional support or imposed programs or roles which were well attuned to the village pattern of justice. The best examples of personal support are expressions of approval of particular troopers or prosecutors for particular village activities directed toward dispute settlement. The problems with this support are that it is easily withdrawn by the next law officer or prosecutor and recently that it may not be supportive of liquor or juvenile case disposition. This form of support has its antithesis in letters or state-

ments by attorneys, justice system personnel, or others that merely tell the village that it is out of step with state law and may be subject to sanction if it continues.

Second examples of support that seem favorable are the conciliation board that works as an accessory to the magistrate and constable in Emmonak and trained constables who are personally able to attune their training to the norms which define village conduct. The magistrate appears to be more of a symbolic guarantee to villagers that they will continue to have control over most criminal offenses than an institution that replaces the several-layered level of inquiry into misconduct that councils and police employ in smaller villages.

Problem Offenses in the Villages and Rules of Conduct

In the villages studied the ideal norm to be enforced was that there should be no liquor in the village and no drinking there by strangers or villagers. Each village council or village magistrate had learned through formal or informal communication that this norm was not supported by state law. Several villages acted formally through ordinance, police, council or magisterial activity to address the transportation of liquor into the village, the presence of any quantity of liquor in a private dwelling or persons who gave any indication of conduct, by "smell" or otherwise, of having imbibed within or outside the village.

Summary of Approaches

[to be added]

Those persons who evoked the strongest overt concern in this category by village authorities were persons who were not permanent residents, either native or non-native. These persons were warned in the first instance with greater or lesser success. In several instances they were expelled when warnings did not work. The special focus on non-residents or persons who were natives married into resident native families seemed to have several motivations. First, strangers were more generally outside of non-legal controls imposed through families, cooperative activities, etc.; they were perceived as having no long-term stake in continued, harmonious residence in the village. Second, the local authorities had more trepidation about the strangers' attitudes and respect for village authority--they were sober or intoxicated and had concrete reasons for this trepidation.

In some villages drinking or even overt distribution of liquor by residents was not dealt with at all, while strangers were warned. In other villages more strenuous sanctions were placed on long-term residents who drank or possessed liquor and who held positions of authority than upon anyone else.

One reason that residents were treated differently is that the authority of police and councilmen was counterbalanced by other more critical social relationships between the untrained police or the councilmen as co-residents with the offender. When council officers or police who drank were officially ignored, the structure of law in the village was wounded in terms of its central role of defining a consensus

among villagers regarding social conduct, especially its role in achieving a consensus that included young people. Where officers or their children were sanctioned with equal or greater force, the result was that the council reinforced its capacity to define social norms even when those norms were known by co-villagers to be different from categories of criminal offense defined by state law and agents of state law.

The second level of liquor offenses which emerged related to conduct while liquor was present in the village. Where liquor was tolerated in private dwellings, the focus of law enforcement was upon 1) persons who distributed liquor to others who committed or were likely to commit antisocial acts ranging from public display to discharging firearms; and 2) persons who created disturbances in their homes or outside, causing panic or injury among non-drinkers.

The concern with introduction of liquor into villages was not merely that the transporter will go home and get drunk. Villagers observed that persons would share the liquor. Those who took the liquor would drink for the effect. When the original owner of the bottle or his guest became intoxicated, the bottle would be taken by younger persons or others outside of the original circle. The villages desired what might be labeled as "dram shop" statutes which focused blame on those who initiated drinking by others, legal blame for all of their conduct. For while the recipient might not foresee his later conduct, those who initiate drinking could.

The norm is not generally enforced by magistrates because it does not usually appear in model ordinances. Magistrates exercise less discretion than do councils or police. The norm appears to underlie the concern for keeping liquor out completely because villages are not usually capable of employing young, untrained police who are themselves susceptible to and peers of drinkers to stop the social or commercial flow of liquor once it has begun.

The second target of social control where importation and private possession was tolerated is the drunk. Villagers separate completely the drunk personality from the sober person. They do not blame the drunk person for his acts when he is again sober. The drunk person is perceived as dangerous to himself first and to others as a second matter. Thus, jailing of a drunk until he is sober is supported as a way to insure his safety first and the safety of others as a second matter.

A restatement of law or intoxication from the village perspective might be this: a drunk person is a person who is out of control. He is crazy. One drinks with him or one flees from his^m to the safety of another house in the village. If one has authority, he should intervene and lock him up, whether or not the drinker is an adult or juvenile.

The support for this formulation of intoxication in state statutes, criminal process or in the common law is scant, unless new interpretations are argued to revise common law interpretations of criminal law.

For example, many violent offenses in villages occur after both victim and offender have been drinking. If the offender received his liquor from the victim, could one argue that his intoxication was not voluntary but perhaps his only line of defense short of retreat? Suppose this fact pattern included the following: That A (the victim) arrived already intoxicated in B's house. That A and B had certain unresolved problems between them known to both that could bubble to the surface when A was intoxicated. That B could only leave his own house or drink with A. What should B do in mid-Winter in a village where police protection is scant? Should B be held responsible for his ultimate acts?

Less theoretical is the position of state law which has repealed intoxication as a criminal offense. From the perspective of a villager any intoxicated person in a dwelling where firearms are also present might be viewed as a person with the probable intent and the present capacity to commit grave bodily harm. Could he look to state law for support if he acted on this expectation?

At no place does village justice and state (common law) diverge in suggested definitions of conduct or in suggested response by that legal process than in dealing with the voluntarily intoxicated co-resident who comes to one's house to offer his booze.

Stated below are summaries of the differences.

The village: Some natives in the village are persons who are in danger of committing criminal offenses to

others or to themselves when they drink. We know who they are. The desired response is for police to lock them up at once.

The state: The intoxicated person under state law is suitable for transferral to alcoholic rehabilitation centers which do not exist in the village for "treatment."

The village: The person who responds to some intoxicated persons in his community, responds to persons who are out of control. He must flee, join in or react with sufficient force to protect himself against imminent bodily harm.

The state: The person who responds to an intoxicated person under state law deals simply with a person in need of medical treatment. If the drunk refuses assistance, he must be left alone.

Villages focus their attention upon lesser levels of intoxication or mere possession of liquor because they determine that dealing with situations which have progressed is dangerous and more difficult for an untrained police officer who must live with the intoxicated person and his friends and who lacks rehabilitation facilities. Past experience tells them that certain persons are known to become violent when they drink. Those persons have entered the "zone of perpetration" of more serious conduct (in the jargon of the common law) when they drink. Other persons will merely cause material inconvenience to family and friends that smaller villages are not capable of absorbing

through social agencies.

Consideration of Council Process in light of Alcohol Abuse

The hearings generated by accounts of persons drinking or possessing alcohol take on further importance when evaluated against the definitions of alcoholic conduct suggested above.

When dealing with a sober person, the council can remind him of the village ordinance, remind him of penalties which are imposed, and point to dangers which result from his past alcohol-induced conduct. While the disposition of offenses before the Council or council-like bodies serves a broader purpose in establishing and reaffirming community norm, its primary purpose is to establish the parameters of the relationship between the village authority and the individual.

The individual has been warned. He has had an opportunity to see what rule and what penalty will be imposed when he acts in a particular way. It may also be made clear to him that liquor will not justify certain bad acts because the motivations for these acts are known to exist even when he is sober. Thus, the council tells the offender that although liquor symbolizes non-responsibility, that it will not be used by him as a screen behind which to hurt certain persons.

The basis for this kind of pointed warning is shared knowledge of villagers regarding past acts of the offender, information that only villagers possess. By acknowledging that shared knowledge, the offender frees the council and

police to take action upon him when he breaks the law that they might not otherwise take, because both the offender and community might feel that the action was unreasonable, motivated by personal animus, or vengeful.

Because relationships are not impersonal in the village the village authorities construct a basis for reaction upon the personal relationship by making parts of it into a "social contract" that is acknowledged by both sides. That contract is often recorded in council minutes or a village constable notebook or indirectly in magistrate reporting forms. (The structure of the latter documents is defined outside of the village and so is less flexible.)

-- While personal contracts between offenders or prospective offenders made in consideration of continued unbothered residence in the village would be entirely outside of the realm of possibility in larger villages or impersonal urban environments, they are less difficult to make and to enforce in smaller villages. They supplement and enhance the deterrent effect of fines and jail terms which are meted out. In fact, in smaller villages they reaffirm the authority of village leaders who at this point in time can look to less overt support for their work from outside legal representatives.

The number of persons who must be dealt with directly by the village authority is never very large. This mere handful of persons has given off signals to other people that they are sometimes candidates for concern. The reaction of these persons to liquor is known; it can be anticipated in a non-punative process which tells the person that others know and are concerned.

Juvenile Offenses

Young juveniles are usually treated as adults with respect to drinking. For other matters, such as speeding on sno gos, sniffing glue, breaking windows with BBs, or simply "lacking respect," attempts are made to deal with the problem through a series of informal steps. Where this process has broken down, there are several reasons for it. There is a substantial lack of support by the judicial system, the police and corrections for reinforcement of informal approaches or other intermediate steps short of removing juveniles to a formal process or to institutions which do not prepare them to return to village life. Facilities and programs for juvenile correction are absent in all villages, large and small. Suggestions that group homes be established in smaller villages are met with chagrin. Villages seem to know the limits their present capacity for reaction with respect to juveniles and to fear for them.

In villages which demonstrate general social cohesion, counseling and warnings by the police, council and parents seem to be adequate measures. Even in these villages second levels of treatment have emerged. In Manokotak juveniles have been told to work in response to glue sniffing. This work is supervised by police. In Selawik, the juveniles have been fined and jailed.

Some juveniles expect to be treated in the same manner as adults. Others now believe that no juvenile justice system is functioning in villages and have a limited under-

standing of the problems they would confront if they were removed to superior or family court in a large village, town or city.

In general, however, no village studied that demonstrated a capacity to deal with liquor related problems among adults had a "juvenile problem." The capacity of the village to deal effectively with adult problems signaled a consensus which allowed it to deal with minor offenses committed by any age group. Juveniles tended to be impressed with the overall hypocrisy of the system or the overall commitment of the system of law that they observed at work in their village to a greater extent than the detail of response to juveniles by police, magistrates or others.

Relevance for the Justice System as a Whole

Village justice is built upon one-to-one relationships and directed toward a consensus regarding appropriate conduct. Modern techniques of surveillance and information retrieval pale in comparison with the day-to-day awareness of villagers. The village legal process can apply this information and draw from it signals regarding potentially explosive conduct. When it fails to predict these occurrences or intercept them, it fails because of the uncertain mandate to act provided village authorities by the village or by the outside legal process.



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Stephen Conn
8/22/74

REPORT TO THE CHIEF JUSTICE

Introduction

In the preparation of this report I have read all commentary arising from the magistrate advisory committee, read the office files of the magistrate supervisor, and interviewed persons inside and outside of the court system.

In previous unpublished plans I have focused on problems.¹ In this report I attempt to define a working rural justice system. Instead of beginning with discussions of formulas for circuit riding by superior court judges and professionals, I approach this problem from the other end of the system. I seek to define a viable justice system from the bottom of the system. I believe that many issues raised by you and others, such as frequency of superior court trials in the bush, failure to communicate the results of trials back to communities, and "native control of village justice," can be worked out if the justice system is peopled with adequate staff in residence or near residence at its bottom. These individuals will solicit hearings and professional assistance and information for disputes which cannot be resolved in the locale without this professional assistance.

Despite the theoretical appendage of rights to private citizens, our system is directed by advocates who manipulate the system and demand a response from it on behalf of these private citizens. The role of the court, as I see it, is to lay a structural basis in rural Alaska to enable comparable manipulation of the system from the bush where professional advocates do not exist.

¹Please also read the comparative analysis of ABA and bush process which deals with problems of bush process.

These reforms will allow disputes to be resolved in legal forums close to the local community if they can be but at the same time will shore up the individual rights of citizens so that they can petition to the best forum available with knowledgeable representation or advice wherever that forum is situated.

If attorneys resided in every Alaskan community, they would probably demand adequate forums, adequate interpretation of the process, and would provide adequate review of the system. The court is placed in the difficult position because it must compensate for an absence of these demands for due process by attorneys who have not seen fit to bring necessary cases even when they reside or work in the bush.

The direction of case law offered to attorneys and citizens is ideal. Yet it is attorneys who have not chosen to take advantage of Alvarado. It is the physical absence of attorneys who make inactive broad use of right to attorneys offered to citizens by the court.

I feel that attorneys who are wedded to our system have the ultimate responsibility for its failure in the bush. If no attorney desires to practice before a magistrate, the issue appears to be how can the magistrate court function as a judicial process which is dependent upon advocacy? I suggest solutions in this study.

The major innovation of this study, if adopted, would be to formalize ties between professional justice, the local judicial function, and the new and old process of dispute settlement in rural Alaska. Dispute settlement as a function of the justice system may wither away as it has in other states to be born anew in early diversion projects in urban areas. However, the demand for dispute

settlement, called "counseling" in magistrate reports or "council justice" in village Alaska, seems to be continuing. It is as much a product of logistics as a product of the social realities of small village residence.

The thrust of this report for the court system is threefold:

1. Recognition of and dependence upon dispute settlement for minor criminal and civil offenses and minor juvenile cases.
2. Support and training for community adjudication of community criminal offenses defined in ordinances along with limited support of sentencing on misdemeanor cases and arbitration of lesser civil cases.
3. Retention of authority for larger civil cases and adjudication of state criminal offenses by the professional judiciary and a small number of specially designated magistrates.

If the rural justice system peopled by trained paralegals is active, it will define its own limits and demand of professional attorneys and judges that they come into the bush to try cases when those limits of paraprofessionalism are reached. No one will have to recommend increased circuit riding in the abstract; it will be demanded as a natural extension of the process of local justice.

The problem of bush justice has been the broad division between bush justice and professional justice. We have at present separate systems bridged only tentatively by the service area concept which has pulled professional justice into several larger villages and towns.

I am prepared to discuss the ideas presented here at your convenience.

Stephen Conn

Magistrates

The court should eliminate magistrates in communities where district judges can sit on a weekly basis, where caseload is minimal, and where particular linguistic or social factors do not require that a judge from the particular rural area reside and hold court in the region. Where magistrates are allowed to continue, they should undergo a new process of selection, reselection, and training outlined below. Their jurisdiction should be directed to encompass administratively defined clusters of villages.

Overview

In some areas of the state, particularly in Southeast and in communities in South Central, the magistrate system is an anachronism. In other areas, only the local magistrate can preserve community well-being by providing rapid disposition of minor criminal law violations. The suggestions I am outlining here will meet with some political opposition from small white communities and from the magistrate association. However, the court can meet that opposition today. If it does not implement reforms of the magistrate system soon, the system will be saddled with freewheeling city courts such as that of Anchorage. These courts will make a fiction of the unified justice system.

Judicial Service Areas - Overview

The court should press for elimination of all judicial district boundaries. I do not subscribe to the Judicial Council reforms because:

1. Retention elections at the level suggested have little meaning in any modification of the Missouri Plan. The electorate is not likely to be informed regarding the work of a judge, except by fringe groups and by the

official reports of the Judicial Council which may be products of inter-agency compromise.

2. The districts suggested will generate political pressure for residing judges that will not necessarily relate to need for service.

Although I do not subscribe to the Hicks proposition, I fully endorse his intent. I think that development of micro-service areas which relate to the needs of smaller villages for magistrates will allow the court to prune away the magisterial function and displace incompetent magistrates under a plan which will appear to be something other than an attack on magistrates. It will also allow for meaningful local participation in selection and retention of local judges.

How to Proceed

First, define clusters of communities which could be served expeditiously by either a district judge who visits one town in the cluster on a weekly basis to hear all cases or by a resident magistrate in one of the towns. A cluster should encompass a population base of 1500. Four or five villages should be included. Intravillage travel by snowmobile or by charter should be possible.

Exceptions to the cluster concept will immediately be raised. Some of these will be valid--for example, those communities which are very isolated and which generate small caseloads. Other situations will require compromise--for example, Tok which takes up federal drug arrestees; if this pattern is to continue, perhaps the federal government should subsidize that operation. It does not follow that Athabaskan communities should be served by a Tok magistrate. The Haines magistrates face similar pressures from outside. The Kodiak magistrate has a substantial caseload and is perhaps suitably professional to be elevated to the district court level.

The result of the cluster definition on magistrates should be twofold.

First, some magistrate positions in Southeast and in South Central should be eliminated. Their work should be taken up by traveling district judges.

Second, even where magistrates, both Native and non-Native, are presently sitting within a cluster of villages, the definition of a cluster will be an appropriate time to select anew the magistrate who can best serve that cluster. The nature of that process of selection is described below.

As the cluster is defined, the court is in an excellent position to call upon sister agencies to provide adequate services to each cluster. I think that each cluster should have at least one trained constable, one lay advocate, and one correctional aide. Conciliation or mediation boards or council members in each village should assist in the resolution of minor disputes referred to them by the magistrate or constable or privately initiated. Compromises effectuated should be communicated to either the magistrate of the cluster or to the district judge who serves the cluster.

Magistrate Review and Selection

A traveling committee of the magistrate supervisor, a Native selected by the regional corporation or other private citizen, and a judge familiar with the region should meet with villagers in each cluster and obtain nominees for the magistrate position. These nominees should be interviewed. The final selection should be made by the committee. The magistrate should serve for a probationary period of one year. During that period he would be subject to administrative removal, based on his record of activity and acceptance of training. At the end of that period he would stand for retention in an election held within that cluster. Elections should be held every two years thereafter. Elections should be held after a public hearing on the extant magistrate, magistrate candidates, and magistrate activity generally.

.....During the same period of reorganization, the State Public Defender
Agency and Alaska Legal Services should solicit applications for a lay advocate to work on behalf of local agencies within every cluster where the agencies cannot provide regular weekly service by professionals. This determination will require candor; it should be demanded. The courts will promise to go to bat for appropriations sufficient to fund these positions through the state and federal budgetary processes of these agencies.

The Department of Public Safety will be approached to fund at least one constable position in each cluster or to provide regular service unless there is a trooper who either resides in the cluster or who can efficiently serve the cluster. Again, candor or its absence will determine the success of this reform.

Finally, the Division of Corrections will be approached to select a lay correctional aide in each cluster.

The National Center for Dispute Settlement can work in conjunction with the court to develop mediation boards in each village. Members of the Emmonak board can assist in training. After a trial period, funding for this project should be solicited in part from monies from non-profit regional corporations. This funding, payment of members on a per meeting basis, will be minimal but symbolic.

Functions of the Magistrates

Clerical and recording functions of the magistrates should be removed to clerks' offices situated in larger villages and towns.² As a rule, magistrates should only hear and dispose of cases resulting from violations of village ordinances. These ordinances should have been modified in severity of their

²Flavin suggested that civil actions should be filed in Dillingham.

penalties. They should provide for issuance of citations in lieu of arrests. If magistrates retain jurisdiction over any misdemeanors, only specially qualified magistrates should conduct trials on state misdemeanors. Magistrates should be allowed to sentence offenders in cases which they cannot try in the misdemeanor category. Their training will reflect a role which will interlock with the activity of the Division of Corrections and the work of mediation boards in each village.

Civil Actions

Because defenses in equity cannot be raised in magistrate court and issues of fraud and warranty are complex to present by laymen, civil jurisdiction is usually limited to seemingly clear-cut actions on personal or commercial debts. It could be argued that this limited jurisdiction offers a convenient instrument for enforcement. However, the way civil authority is used seems questionable.

Several magistrates have informed me that they informally discussed complaints with potential defendants, pointed out the consequences of a suit, and obtained payment for potential plaintiffs. Magistrates therefore became collection agents.

Alaska Legal Services by board rule does not represent clients in disputes of under \$500 in value. It cannot represent both sides.

I suggest that magistrates could be recipients of civil actions to be transmitted to superior court or to the unified trial court and could in the alternative arbitrate small claims. Arbitration would allow magistrates to look behind contractual claims to defenses in equity and detailed matters of fraud without regard to rules of evidence. Lay advocates could assist in preparation of problems for arbitration.

Mediation of many small civil disputes could occur in villages. Cases which could not be mediated could be sent to the magistrate-arbitrator or to district court. Finally, lay advocates could investigate and assist in transmission of more complex cases against non-villagers to superior court.

Whether or not magistrates retain their civil jurisdiction, the lay advocate can point to legal issues and prepare them for superior court when change of venue has been requested from urban to rural courts or provide investigation for civil attorneys who file in district or in superior court.

In this vein, I suggest that no reform of small claims court rules will compensate for the lay consumer's inability to prepare his case and present it. I have suggested to Charles Bird that either paralegals or attorneys be provided consumer participants or the small claims court be scrapped in favor of a non-litigious forum such as arbitration forum which will receive cases originally where parties concur or where cases are directed to the arbitrator from district or superior court.

Juvenile Jurisdiction

The primary candidate for legal systems in every village is the juvenile. All magistrates should be equipped as masters of superior courts to engage in informal disposition of juvenile offenses. They are in a particularly good position to decide whether or not the juvenile should be removed and a petition filed in superior court. Their position should be enhanced by a lay correctional aide and mediation board who can deepen informal disposition and counseling with parents and others in the village. As stated elsewhere, community rehabilitation is not a real alternative in most villages today.

Sentence Review and Review of Magistrate Professional Conduct

The Role of Lay Advocates. The immense amount of professional frustration with the magistrate system is related directly to concern with their capacity to wield substantial power in a community as an agent of the legal system -- without a process of peer review which every other judicial officer confronts. Part of this review is by fellow judges, both formal and informal. Part is the continuing interaction of judges with attorneys. While other judicial officers operate within a system of checks and balances maintained by fellow professionals, the magistrate does not.

I have suggested that limitations be placed on the breadth of sentences which magistrates may mete out by directing their authority through model ordinances. Without legislative amendment in the case of misdemeanors, this reform will occur by persuasion and by reform of adversaries (see below). I do not believe that any external monitoring of magistrates will compensate for the on-site observation which attorneys provide in larger areas. For this reason, I believe that endorsement of lay advocacy as a check on the magistrate system is the most astute step the court can take.

Lay advocates (and constables who act as prosecutors) learn and teach the magistrate how the adversarial process works as no education course can. Each participant benefits professionally.

For this reason, I recommend that lay advocates be employed to offer independent advice to defendants (as the uniform standards on criminal justice suggest by implication) and further, that they provide representation in magistrate courts when attorneys are unavailable. In civil cases their primary

function will be to direct parties either to superior court and outside attorneys or, if appropriate, to magistrate-arbitrators or mediation boards. In criminal matters, as stated, the constable should act as lay prosecutor to balance out court proceedings where the lay advocate appears. Lay advocates may suggest mediation as an alternative to criminal complaints.

I do not think that the bar will challenge this arrangement if ongoing supervision is provided by attorneys to lay advocates. However, if the plan is challenged, I think that the case law favors this alternative to representation by an attorney when one is not reasonably accessible to an attorney.

Communication of Sentences. A regularized procedure should be developed to communicate back to villages through councils or, ideally, through a mediation panel which brings offender and victim together, the detail and court disposition outside of the village. The reform often suggested has not been implemented.

Who Can Sentence? The court must end the jailing and fining of individuals by village councils if its own integrity is to be preserved. This approach to dispute settlement should not be endorsed by prosecutors or troopers. Even if median panels are not organized immediately, councils can be informed regarding their potential roles as compromise seekers under Alaska statute.

Attorneys and Indigency. Magistrates should know how much legal representation costs if private attorneys appear and should be able to weigh this against the apparent resources of the defendant. The magistrates should be provided with a formula for determining indigency either by rule or in their training.

Training

No large conferences of magistrates should be held in large cities. No magistrates should be trained with justices of the peace in Alabama. Magistrates of superior competence should be elevated to district judgeship or, as

special masters, do district judge work and be trained with other judges both inside and outside of Alaska. As an alternative in near urban areas, young attorneys should be recruited to serve as magistrates as a subsidy to their development of private practice in these regions and to encourage the disbursement of attorneys generally.

Rural magistrates should be trained in small groups in small villages by a training team that does not merely reflect interagency politics but by the magistrate supervisor and selected attorneys who have regularly handled bush cases for the defense, for the prosecution, or for legal services. These attorneys should be encouraged to obtain leaves of absence from their regular work to carry out this work.

The training should relate to the real work done by magistrates and not the theory of that work. An indication of that work should come from broader disbursement and evaluation of the data report forms now disbursed to selected villages. Examples of present magistrate hearings should be videotaped for study. Trooper records, letters and communications to troopers, village constable notebooks, and council records should be studied.

The Handbook

The handbook has been substantively improved from drafts which I criticized previously. However, in its transformation from a handbook into a well written Manhattan telephone directory, it has lost much of its clout as a cookbook of law or as a training vehicle.

The problem with covering everything you always wanted to know about being a judge is that it frightens lay persons off and makes them very defensive about their expertise as it relates to their literacy. The evolution of the library in villages has a similar effect.

Alaska does not have to reinvent the wheel to provide useful training for magistrates. Indian judges have been trained in the Southwest. The parajudge projects provide some decent material. More important than this are materials developed for the Reginald Heber Smith Fellows and VISTA programs for young law graduates, bar review materials of PLI, and more recently, the uniform bar review courses. Finally, there is excellent material developed for paralegals by the Paralegal Institute and a hornbook on paralegalism written by the country's foremost authority on paralegalism, Professor William Statsky of Antioch Law School.

I suggest that the magistrate supervisor, Hicks and Burke (for example), pull together this training material and develop:

1. Short workbooks on magistrate functions which relate to clearly stated hypothetical cases, the forms employed, and finally to relevant portions of the handbook and the law library.

The best examples of these learning materials in Alaska so far are the short and clear outlines developed by the troopers.

2. The handbook should be divided into shorter binders.
3. Videotapes by representative district court judges, public defenders, prosecutors, and correctional officers addressed to their interlocking roles with magistrates and using explicit examples should be produced.
4. Consultation by several national figures with the teachers. In private correspondence, William Statsky has offered himself for one or two three-day weekends after January, 1975. The emphasis here will be on teaching methods, material, and content.
5. Irrelevant discussion of the history of the court, contempt powers, etc. should be deleted from the handbook and treated briefly in outlines.

Integrating Teaching with other Professionals in the Cluster

Despite some voiced misgivings by Snowden, who suggested that confusion of roles could occur, I believe that magistrates, lay advocates, constables, lay correctional specialists, and members of mediation boards should be instructed in a joint session which encompasses several clusters but occurs in one village. These individuals should learn jointly how they can work together and be tracked through hypothetical cases. Then they can be pulled apart to work in seminars with their peers. This team teaching can take place along with adult legal education beamed through movies, lectures, or village TV in the host village. This education should explain the work of each figure and the limits of his power.

The physical style of these conferences should be very basic--Minto style. Arrangements should be made with local schools to feed individuals. Housing should be in armories in sleeping bags. There should be no per diem, just actual expenses.

Supervision

Not only should the magistrate supervisor be on the road constantly but supervision should also flow from those professionals nearest the scene. Each paralegal should have a personal and professional point of reference. Where professionals are so poorly disbursed that they cannot assume this responsibility, the court must put all of its weight behind persuasion to better disburse correctional officers, legal service attorneys, prosecutors, etc. Radio communication should be available between these key professionals and paralegals.

The round-table conference calls and professional-paraprofessional shop talks between PHS doctors and village health aides offer a model for these communication patterns. The magistrate supervisor should survey extant communication services and be very, very aware of the improved telecommunication system which is now developing. He should use it to offer program material for village education on TV, for example, and schedule his own visits around this program material.

The magistrate supervisor must be aware not only of the lines of communication between magistrates and judges but also the ties between other paralegals and their professionals. His view should reflect a realization that the court process functions effectively only in conjunction with an adequate response by and adequate cooperation with sister agencies.

The Job of the Magistrate Supervisor

It is very clear that the job of the magistrate supervisor is an immense undertaking. There is a large administrative task which only a business school graduate could effectively undertake. I suggest that there are few business school graduates who also are attuned to the rigorous schedule of bush travel and education which is the substantive end of this job.

Perhaps a solution would be to attract as interns business school graduate students to work in liaison with Snowden and the supervisor.

Other Tasks as Yet Unmet

Several other important jobs must be accomplished even if the magistrate system is improved in isolation of the other reforms I have suggested for other agencies.

1. Although the files revealed that different judges gave different forms to their magistrates and that an absence of uniformity of forms was perceived as harmful, I found no indication that anyone was concerned with taking on this problem. A small task force of law clerks could accomplish it. It is an absolute prerequisite to the training I have suggested.

2. One of the stated tasks of the magistrate supervisor was to keep abreast of cases flowing from the court as well as new statutes and to summarize these developments for magistrates. Sending magistrates Supreme Court opinions is an absolute waste of time. Material sent to the bush must be digested. The Clearinghouse Review is an obvious model for this newsletter. While in-house newspapers which eulogize the departed and tell what a good job the court is doing may give an organization a spirit de corps and personality, they are just more paper to stacked on more paper in magistrate offices. The newsletter I am suggesting should be filed and indexed. Even the Alaska Bar Bulletin would be better than anything now going to magistrates. Not the law reviews, please. Several recent cases on the state disorderly conduct statute and on written replies to civil actions,³ for example, deserve clear explanations. In the near future, magistrates will continue to be the legal advisors in bush communities.

3. The magistrates should know who to contact and where responsibilities lie with respect to the modular facilities. They should know how to obtain reimbursement for guard duty.

4. Magistrates who speak Yupik should receive cassettes which offer to them the best developed Yupik explanations of legal matters developed by the interpreter program.

³Even the new form developed in response to the Aguchak case was considered incomprehensible by Native students in my class.

5. As discussed by the magistrate advisory committee, the issue of magistrate removal should be defined procedurally. My own predilection is toward very limited security for magistrates during a probationary period. However, this should be coupled with a hearing process that does involve magistrates as well as court personnel on a hearing board and afford administrative due process to magistrates who have tenure and approval by voters.

6. Ordinance revision in villages is absolutely necessary if magistrates are to focus upon ordinance violations and effectively create a two-tier system of law enforcement, by means of local ordinance and state law.

Ordinances

Local ordinances continue to have an important function for villagers. If correctly drafted, they can form a less complex level of normative law and of legal penalty. For example, local ordinances could result in citations rather than in jail or fines. Also, they could include civil remedies such as restitution. Finally, drunk statutes are still relevant to villages without alcoholism programs.

The Rural and Local Affairs Agency and the Cooperative Extension Service have done a poor job of creating ordinances which are useful to villages and which interrelate to other justice needs. One reason for this is that they look to legal assistance from the Department of Law. This assistance has been scant.

I suggest that a grant be solicited for development of ordinances to be written and distributed in regional seminars or by means of the attorneys for the regional corporations. These ordinances should reflect justice system

interests. The model statutes should not merely incorporate the maximum sentence but should develop statutes of limited criminality which point to the three to five offenses which are common to villages and easy to handle there:

1. disorderly and drunk
2. simple battery
3. simple property damage
4. joy riding in boats and snowmobiles
5. misuse of property

The preamble to the statutes could discuss the range of available correctional alternatives in the village cluster. Each village ordinance can be listed along side the state statute which would indicate the more serious offense that might be charged.

Given these ordinances, one can consider focusing magisterial activity as the trier of cases upon local ordinance cases from each village in his cluster as well as upon the arbitration of small claims where either the plaintiff or defendant resides in his "cluster of villages." Magistrates should continue to hold preliminary hearings in state felonies and to arraign persons and issue arrest and search warrants.

Mediation Panel

Within the new ordinances, provision should be made for the appointment of a mediation panel. This panel could be composed of council members or of persons independently appointed. They could provide a symbolic incentive payment for these mediators in the amount of ten dollars per session per

mediator. All compromises effected by mediators should be presented to the nearest magistrate for review.

The mediators should:

1. Assist the magistrate, intake officer, or superior court judge in informal disposition of juvenile cases which arise in the mediators' village.
2. Take small claims assigned by the magistrate.
3. Effectuate compromises of misdemeanors under Alaska statute.
4. Take various non-criminal pre-arrest matters involving inter-personal conflict (e.g., Emmonak's cases).

Corrections

Each cluster of villages should have a lay correctional aide. The aide will perform the following tasks:

1. Advise magistrates and mediators and judges, when the offender is removed, of facts bearing upon disposition of offenders. Particularly relevant are past history of the offender and opportunities for correction within the village, the detailed conditions under which a suspended sentence or suspended imposition of sentence might be imposed.
2. Advise correctional personnel of useful training or treatment for the offender which might occur outside of the village in order that the incarcerated offender might be returned to the village to a position of responsibility or usefulness. In discussions with personnel at Palmer, this role was emphasized.
3. Aid community mediators and magistrates who serve as special masters in informal disposition of juvenile offenders.

4. Supervise programs in recreation or other programs suitable to drain off tension among juveniles who reside in the villages.

If Native police officers are the principal need for rural villages, then lay correctional personnel will provide the entire system with a professional rapprochement to the complex problems of village Alaska.

Benefit to the courts: Not only can lay professionals provide independent information to judges who are confronted with bargained pleas, they can assure the court that the detail of sophisticated sentencing is followed. They can also report the impact of sentences on offenders and villagers.

Benefit to corrections: The sophisticated correctional programs will probably continue to be urban based. Their success in dealing with village offenders relates in part to their knowledge about the offender's life in the village. Information such as this is available but not in court records or in probation reports. A lay correctional aide could discover the detail of the offender's problem and develop clear lines of communication with the villagers in order to determine what the offender should be trained to do back in his village and what restraints on his conduct and his relationships will need to follow him back to his village. I believe that the employees of the Palmer facility are prepared to respond to this kind of information.

Returning to the village is not easy. Neither is living there when you are cast as a "no good." In the past year I have traced a Yupik young man who was the first person to be incarcerated in the new modular unit in Emmonak, had been involved in many village incidents, and finally, was sentenced to Palmer. I discussed his treatment there with an employee. When he returned to the village he ran a boat up against the bank and was drowned.

In another case a young man was convicted of murdering his brother. However, his work as the town electrician and generator operator figured in the village's acceptance of him on bail and prompted trips by the council to Nome to petition for his return to the village after conviction with a suspended sentence.

There are many basic skills needed in all villages. Training could occur in urban areas. The lay aides could match offenders to appropriate programs.

Finally, the nub of the problem in village Alaska is juvenile drinking. If the Alaska Federation of Natives succeeds in bringing more high school students back to their villages, this also will have an impact on law enforcement. Lay correctional aides can counsel and supervise programs which offer options to aimless boredom that sets off drinking and carousing among young people in villages as well as in other places.

Implementation of the Correctional Aide Program

Lay correctional aides should be trained to serve each cluster of villagers in the team approach outlined elsewhere. Training programs can be developed at the Criminal Justice Center. Their success may turn on the Division of Corrections' placement of professionals in larger villages to supervise their work. This will mean that an additional two or three officers will be located in the bush.

Charles Addams strikes me as innovative within his own domain. My impression has been that corrections' timidity is in part determined by its status within the Department of Health and Social Services. It makes little sense for

McGinnis to represent corrections at a policy level. Apart from his speeches --- on Menninger, etc., I see little to indicate an affirmative stance by him with respect to corrections and the bush.

I think the court should make explicit its needs with respect to corrections in the bush and trade its support for urban jail reform for specific action by corrections with respect to villages. This action should include continued construction of modular facilities but should not stop there.

Health and Social Services needs a kick in the pants. Corrections needs support. It trots out the same researchers and shopworn plans with regularity.

Jury Trials

At a larger cost, the court is in a position to deny motions for changes of venue as exceptions to the bush trial statute to encourage trials, including jury trials in the bush. The administrator of the court can be more flexible in determination of physical facilities. The Minto conference was an excellent example of how a village can be mobilized to feed and house jurors and professionals. State and BIA schools have the capacity to undertake this task in many villages if their help is solicited.

Jurors should be selected from villages other than the villages where the offense is committed or the defendant resides but in villages in the same region and of the same linguistic category if prior knowledge is not to color jury proceedings. Trials also can be held in other villages in the region. Trials should not be held exclusively in Bethel, Barrow, and Kotzebue.

Jurors on grand juries should not be deselected for reasons of language competency, especially in Bethel as they are now. Grand jury selection should encompass the entire geographic area outlined in the rule in Bethel and in Nome.

Prospective jurors should be given a brief introduction to the judicial process prior to their selection.

Jury instructions need to be comprehensible. My own opinion is that jury instructions are rarely comprehensible to any lay person. A committee of judges should set to work to put standard instructions in plain English for all juries. From that, instructions for significant felonies should be prepared in each major Native language.

Superior court judges should go into an area where they do not formally reside if a designated number of cases are filed by a designated date. This suggestion by Frank Flavin has merit since scheduling seems more responsive to criminal cases pending than to civil cases pending.

Village constables. Adequate village policing is more important than jails, courts, judges, or any other aspect of the system. Village constables need to be trained in Athabascan villages. Constables need dependable backup from troopers. This means that troopers have to be fairly allocated and supplied with charter aircraft whether or not the air taxis bridle at this.

I suggest that at least one constable in a service cluster be prepared to prosecute a case on behalf of the villages, especially when a lay advocate represents the defendant. The trooper, however, should not prosecute a case.

Crucial to this reform and to the employment of mediation panels as screening mechanisms would be the attitude of prosecutors--Chandler, Luffberry,

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and Lou Agi in Nome. To the extent they perceive these reforms as abridgments of prosecutorial discretion, they will fight them. I think they must be consulted and persuaded to leave a certain amount of control within the villages. They must be persuaded that detailed resolution in the village is often preferable to removal of the case for ultimate dismissal in a larger village or town.

Law Enforcement Assistance Money

Alaska was scheduled to receive \$1.9 million dollars in discretionary Indian desk money. This is but one category of discretionary money granted to applicant states over and above bloc grants and, in the case of Alaska, a supplemental grant to compensate for the small population base. Indian desk money is disbursed through the Seattle office of region X. Other discretionary money in other categories is disbursed through Washington. That \$1.9 million has been cut to \$400 thousand.

The Criminal Justice Planning Agency and others had already promised various villages small projects in anticipation of receiving a large sum. Although the state Criminal Justice Planning Agency was informed of the cut two months ago, it made no attempts to rearrange its programs according to budgetary restrictions or available money in other categories. It told nobody outside of their circle, including Jim Messick. Their attitude, as indicated by a hearing for "input" chaired by Larry Parker, Victor Carlson, and a third person, is that Native projects must compete for Indian desk money only, and for all practical purposes this money has been committed.

Walt Lawson of Region X suggested that such projects as dispute settlement through mediation boards be funded through multiple category funding. That is, they seek funds in any category to which the project relates and not just the Indian desk.

The hearing heard proposals for a paralegal program proposed by Legal Services with joint support by the public defender program and a request for support for the Bush Justice Monitoring Committee. The response was basically that the Indian money was already overspent.

More specifically, Judge Carlson pointed to projects already promised, mentioning several Southeastern projects. He said he had met with Hyatt and that the paralegal program at Anchorage Community College would be expanded to deal with bush paralegals. He and Parker told how hard it had been to recruit a bush planner. Parker said that half of the past year's money was spent in the bush but did not elaborate.

I personally like Victor Carlson and think that his philosophy is generally progressive. However, I detect a strong political bent in his representation of the court on the governor's commission.

To be specific, his concern for specific Southeastern Native projects, his own linkage of Native projects solely to Indian desk money belie his private expressions of liberalism. With respect to the paralegal project, to suggest as he did that it was going to be handled by the Law Center without considering the agencies which will need people trained to their needs if they are to be employed is foolhardy. Paralegals must be matched to careers which are real. Also, Legal Services has contact with useful training material developed by Statsky and others. When or if the college will develop innovative programs and locate them outside of Anchorage remains to be seen.