

**Testimony of John Bioff, Kawerak, Inc. Staff Attorney to the
Alaska Rural Justice and Law Enforcement Commission Hearing
Nome, Alaska-February 23, 2005**

Thank you for the opportunity to present testimony to the Commission today. My name is John Bioff. I am the staff attorney for Kawerak, Inc., the regional Native non-profit organization which provides services to the 20 tribal governments of the Bering Strait region here in Alaska. As the staff attorney at Kawerak, I provide legal support to the tribes in areas including tribal court development and development of tribal laws, elections and governance structures. I also provide assistance and represent tribes in Indian Child Welfare Act (ICWA) cases in state court, and provide general legal support associated with routine tribal business such as contracts and employment issues. I have been employed by Kawerak and working in these areas for about five years. Because much of what I do is to work one-on-one with tribal governments in the villages, I hope I can provide a view of what is happening on the ground in the villages in this region that the Commission may find useful.

I will not be able to adequately cover all the areas the Commission is charged with addressing in the short time I have for this testimony. Instead, I will focus on those areas where I have had the most experience and offer some key points in the time that I have. My testimony will fall loosely into a discussion of the current situation, including problems and what is working well, the model, or ideal situation, barriers to achieving that ideal situation that currently exist, and recommendations for changes that would enable us to achieve the ideal situation.

Current Situation:

Problems:

Alcohol and drug abuse are devastating in this region. The alcohol problem disrupts almost every other aspect of life in the region. Nome Superior Court Judge Esch has mentioned that almost all of his cases are alcohol-related. I believe that every ICWA child protection case I have been involved with has in some way involved substance abuse. The state judicial and law enforcement system is not equipped to adequately deal with the offenders who are caught up in the system due to their substance abuse problems. People in this region are caught in a cycle of substance abuse that leads to criminal behavior, incarceration or probation through the state system, and return to their community where they inevitably return to their substance abuse problem and re-offend. The state judicial system is not equipped to focus on the substance abuse that is the root of the criminal behavior. Our state judges are overwhelmed with their caseloads. At best, they require treatment and other services as parole and probation conditions, but they cannot adequately supervise or monitor progress. So what we see are many of the same people over and over again, in and out of the state criminal system, abusing and neglecting children, committing domestic violence against family members and continuing to abuse substances.

Lack of adequate law enforcement contributes to many of the problems in the villages. At the current time, only seven out of fifteen villages have VPSOs. Troopers cannot respond adequately. When they do respond, they are often delayed unless it is a more serious offense due to their need to pool resources and prioritize investigations. The end result, little or no law enforcement presence in the villages. Misdemeanors often go unreported, or uninvestigated, or unpunished.

Children in the region are being left behind. The Office of Children's Services in Nome that serves the region is grossly understaffed and has remained this way for months. The District Attorney's office in Nome that handles both CINA/ICWA cases and criminal matters has been staffed by one attorney for months following the retirement of one of the two attorneys in that office. The DA's office and the OCS office in Nome are responsible not only for the Bering Strait region, but also for the Kotzebue region. In my view, they cannot effectively manage caseloads and provide adequate protection to children in the region at their current staff levels, and I believe that even when fully staffed, they have not been able to adequately do so. OCS in this region is plagued with problems. Some OCS personnel have been very competent, but they have also employed personnel who have not been competent or have had serious credibility/integrity issues. This leads to sloppy investigations, and in some cases, no investigation at all for lower priority reports of harm, and generally bad results for everyone. I have been involved in ICWA cases where everyone, including the tribe, wants the state to take action to get a child out of a bad situation, and it does not happen. On the other hand, I have been involved in cases in which OCS takes extreme and unwarranted actions to remove children from placements where there was no real reason to do so, and does so in violation of state statutes. The troopers in our region do not have adequate resources as well, and end up prioritizing child sex abuse investigations, focusing primarily on sex assault situations.

My comments are supported by the information I receive in the villages. In the course of my employment, I work with the tribal councils, community members, and Elders discussing what they perceive to be the most severe, immediate problems in the villages that need to be addressed. When I ask them to identify what they feel are the top three problems, the answer is consistent from village to village-1) alcohol and drug abuse, 2) child abuse and neglect, and 3) minor crimes ignored/unpunished. That those living in the villages in our region would identify these areas as the top problems in their communities should come as no surprise given the inadequacy of the current state system to deal with these problems.

What is working well:

The most promising efforts are those that are being made to develop the local capacity of the villages to address these problems within their own communities.

Over the last five years, I have watched some tribal governments go from having no tribal court to speak of, to actively hearing child protection cases. Tribal courts have successfully worked with families to get them the services they need. They have also had

to make the hardest decisions regarding termination or other permanent placement at times. The tribal judges doing this work are doing this for the most part voluntarily, giving up what little free time they have, and with little or no resources. Around the region, several tribes are actively involved with tribal courts, mostly if not all in the area of child protection. My view is that tribal courts in the region are cautiously developing to the extent possible and within the constraints of their resources.

In addition to child protection cases initiated by tribal courts, there have been several successful transfers of jurisdiction of state ICWA cases to tribal courts. Most recently, we have been able to work out a system with the state OCS and DA office to refer state ICWA cases to the tribal court for purposes of the tribal court granting a tribal adoption in lieu of terminating parental rights in the state proceeding. This saves the state the time and resources necessary to terminate parental rights. It is also more culturally appropriate as tribes did not terminate parental rights traditionally.

Kawerak, along with the other non-profits around the state, received wellness appropriations through AFN a few years ago to address substance abuse issues in the region. The funding has created some grass roots efforts in the villages to take a look at what can be done locally to address these problems. In Gambell, a wellness committee facilitated community planning for wellness. The result is that the community is considering what they can do locally to implement a zero tolerance policy regarding alcohol and drug abuse. I spent some time in Gambell working with them on some of the legal issues that are involved with some of their efforts. They are very motivated, and seem to genuinely desire change that depends not on others but change within their own community.

With wellness appropriations, we developed a model for tribes in the region to use to plan for and implement tribal wellness courts. These courts take offenders through a treatment program designed to address their substance abuse, and closely monitor their progress through frequent court appearances, drug and alcohol testing, and restriction of activities. It was difficult developing a system that would work in the region. Village based counselors are the main source for local treatment in villages. VBCs have varying levels of ability to provide substance abuse treatment. Itinerant clinicians from NSHC hospital do travel to the villages, but are not there to provide on-going weekly treatment. However, even with those and other difficulties, Stebbins has finished developing their wellness court and is very recently looking at taking their first referrals. If they are successful, Stebbins will have developed an alternative to the state system that does address the substance abuse problem behind the criminal behavior. The Stebbins wellness court relies on traditional values, and incorporates traditional and subsistence activities into the program.

We have been working with the state adult probation officer in the region to develop a system for tribes to be more involved in probation and parole issues with tribal members who may return to their village.

Kawerak employs ICWA workers in the villages in the region. ICWA workers represent the tribes in state ICWA cases. They provide on the ground services that OCS, with its lack of resources and staff, cannot provide. ICWA workers provide a vital service in the villages working with families.

Tribal courts, wellness initiatives like Gambell, and the Stebbins wellness court, are all examples of efforts in villages in the region to address problems by building local capacity to deal with them. Despite significant impediments caused by lack of funding, resources, and other issues, they exist and they are cautiously moving forward. ICWA workers and tribal involvement in probation and parole, are examples of how Kawerak and the tribes can work collaboratively with the state in addressing the problems I have identified.

Ideal Situation:

Ideally, residents in the region would be adequately protected from crime. Substance abuse issues would be adequately addressed. Children would be protected. The ideal situation would be one in which we are most effectively tapping into the potential that exists in the villages to address these problems locally.

The ideal model would include adequate funding and resources to develop and sustain tribal courts. Tribal courts are best suited to enforce and adjudicate minor offenses, including alcohol enforcement, protect children in the village, and accomplish this in a way that is more culturally appropriate for everyone involved. In this ideal model, the state would recognize tribal authority and jurisdiction to handle these issues in tribal court, and would actively support tribal courts through law enforcement, state courts and the state corrections system.

The ideal model would be one in which the state and tribes have developed a streamlined system of collaboration and cooperation between non-profits, tribes, and state agencies.

The ideal model would be one in which grass roots efforts to address substance abuse, importation and other issues, such as that taking place in Gambell, would be adequately funded, sustained, and supported.

Barriers to Achieving the Ideal:

The two largest barriers to achieving the ideal situation, in my view, are the state's resistance to tribal authority and jurisdiction, and the lack of funding to support development of local capacity.

The state Attorney General under the current administration issued a legal opinion in October, 2004, which took the position that tribes only have jurisdiction over children's cases if they have successfully transferred the case from a state court under ICWA 1911, or if they have re-assumed jurisdiction under ICWA 1918. I believe this opinion is legally flawed and that tribes have inherent authority and jurisdiction over internal

domestic matters, as the Alaska Supreme Court found in its opinion in *John v. Baker*. The administration prior to this one found that tribes do have such authority and was working with tribes on how to partner on these issues. The current administration's attempts to turn back the clock and un-recognize tribal authority is certainly a barrier to achieving the ideal situation I have described.

Moreover, the approaches of the last administration and this one demonstrate another barrier, and that is the uncertainty created by this system in which the state can go back and forth on the issue of tribal authority and jurisdiction based on which way the political winds are blowing.

Even were the state to recognize and support development of local tribal capacity such as tribal courts, tribes would still face challenges in developing, implementing and sustaining programs due to lack of funding.

Recommendations:

- 1) The state and the tribes reach agreement, through this Commission if possible, regarding tribal jurisdiction and authority over matters such as alcohol enforcement, child protection, domestic violence, juvenile matters, and minor offenses.
- 2) The state and tribes build into this agreement some mechanism that forces continuity with all successive administrations.
- 3) Alternatively, if the state and tribes cannot reach agreement on tribal jurisdiction, this Commission propose federal legislation that would provide tribal jurisdiction and authority over matters such as alcohol enforcement, child protection, domestic violence, juvenile matters, and minor offenses.
- 4) Federal funding for tribal courts, local substance treatment programs, and local grassroots "wellness" efforts be obtained. In my view, such funding could be funneled either through the non-profits, or through the tribes directly, whichever the tribes choose.

Attachments:

- 1) Draft Bill "Tribal Enforcement of Alcohol and Drug Laws," draft language authorizing tribes to enact and enforce laws regulating alcohol within the villages, approved by the AFN Board of Directors in 2002.
- 2) Resolution 01-01, a joint resolution of the Kawerak, Inc. and Norton Sound Health Corporation Board of Directors, expressing full support for the Draft Bill. Approved September 12, 2001.

3/01/02

Tribal Enforcement of Alcohol and Drug Laws Draft Bill

(a) The federally recognized tribal governments of Alaska Native villages shall have authority to enact and enforce laws regulating transactions involving alcoholic beverages, prohibiting the sale, importation, or possession of alcoholic beverages, and prohibiting the sale, importation or possession of drugs which are otherwise illegal under state or federal law, within the exterior boundaries of the villages' core townships identified for village corporation land selections by section 12(a) of the Alaska Native Claims Settlement Act or within a five-mile radius of the village center, as defined by the tribal government; provided, that for Alaska Native villages within incorporated cities the authority provided by this section is limited to Alaska Natives and to transactions involving Alaska Natives, and shall apply to the extent the tribal law does not conflict with the city's alcohol beverage local option law, if any. Alaska Native villages shall submit laws adopted pursuant to this section to the Secretary of the Interior, and the Secretary shall certify and publish those laws within the Federal Register within 180 days, provided that the law is consistent with the Indian Civil Rights Act. Alaska Native villages are authorized to enter into agreements with the State of Alaska or subdivisions thereof respecting jurisdiction over and enforcement of alcoholic beverage and drug control laws.

Approved by the AFN Board of Directors

Resolution 01-01

- WHEREAS, Kawerak Incorporated is the regional tribally authorized non-profit consortium providing Education, Training, BIA Realty, Village Police Officers, Head Start, Economic Development, BIA Roads Construction, Social Services and other services throughout the Bering Straits Region;**
- WHEREAS, Norton Sound Health Corporation is the regional tribally authorized regional non-profit providing all health services throughout the Bering Straits Region;**
- WHEREAS, both Kawerak and Norton Sound Health Corporation are charged with improving the health and welfare of the Native people of the Bering Straits Region; and**
- WHEREAS, alcohol and drug abuse is a leading cause of morbidity & mortality among Alaska Natives;**
- WHEREAS, alcohol and drug abuse contributes to many of the devastating problems that Alaska Natives experience - including neglect and abuse of children and spouses, homicide, suicide, and wasted lives; and**
- WHEREAS, Alaska Natives have one of the highest documented rates of fetal alcohol syndrome in the United States; and**
- WHEREAS, far too many Native people, particularly young Native men, are in Alaska prisons for alcohol-related crimes and once released, are returned back to villages with continuing severe alcohol problems; and**
- WHEREAS, study after study, including a comprehensive project recently undertaken by the U.S. Justice Department, have proven that successful alcohol control programs are those which are designed and initiated at the local level;**
- WHEREAS, the State of Alaska has sought to enforce the local option law and curtail the importation of alcohol and illegal drugs into dry communities through initiatives based out of the regional centers; and**
- WHEREAS, village residents know who is importing, brewing and/or selling alcohol and drugs, but the Councils are unable to act on intervene in these situation because they lack authority to do so;**

WHEREAS, State local option laws are not enough and authority and resources are needed at the village level to help address this most serious of problems; and

WHEREAS, the Alaska Commission of Rural Governance and Empowerment, recommended that Congress should enact legislation authorizing local tribes to regulate and prohibit alcohol in the area surrounding Native Villages thereby allowing tribes to create and implement effective culturally appropriate local solutions; and

WHEREAS, proposals to tighten up laws preventing alcohol to be shipped via U.S. mail or through other means of transportation to Native villages will help, but will not help us control the alcohol that inevitably makes it into/and or is brewed in the village; and

WHEREAS, the Alaska Federation of Natives has drafted federal legislation implementing the Rural Governance recommendation for the federal law authorizing tribal control of alcohol in Native Villages; and

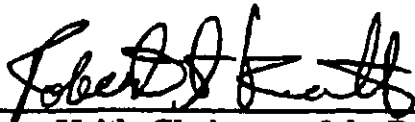
WHEREAS, the Alaska Congressional delegation has demonstrated great concern and commitment to addressing alcohol issues facing Alaska Natives;

NOW THEREFORE BE IT RESOLVED THAT the Kawerak Board and the Norton Sound Health Corporation Board of Directors, in joint session, express our full support for the AFN draft bill, which would restore limited authority to the IRA and Traditional Councils to regulate and control alcohol and illegal drugs in Native Villages;

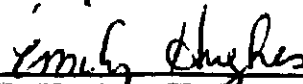
BE IT FURTHER RESOLVED THAT we call upon our Alaska Congressional delegation, in concert, to introduce and seek passage of the legislation proposed by AFN;

BE IN FURTHER RESOLVED, that Kawerak and the Norton Sound Health Corporation Boards express our sincere appreciation to:

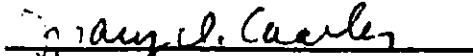
- Senator Murkowski for holding a Congressional hearing on alcohol control in Native villages and his work on inhalant abuse;**
- Senator Stevens for making funds available to AFN and the regional non-profits that can be used to help address this problem at the village level; and**
- Congressman Don Young for his commitment to introduce the AFN bill in the US House of Representatives.**



**Robert Keith, Chairman of the Board
Kawerak Incorporated**



**Emily Hughes, Chairperson of the
Board, Norton Sound Health Corporation**



Mary D. Charles, Board Secretary



Ruth Peterson, Board Secretary

**Passes this 12th day of September, 2001 at a duly convened meeting of the Kawerak
and Norton Sound Health Corporation Board of Directors.**