

TESTIMONY - BEN ESCH

Good day, my name is Ben Esch, I am the Superior Court Judge for the Nome region.

I was appointed to the bench in 1996 and have lived in Nome since then. I have visited every village in the Nome area except Diomedes. I have actually conducted court proceedings in six or seven of the region's villages. In addition to handling the cases from this area, I regularly sit in Barrow and Kotzebue, the other hub communities for the Second Judicial District. The district is approximately the size of Illinois, Indiana and Ohio combined. The distance from Gambell on the west to Kaktovik on east is almost the distance from Chicago to Denver.

Prior to being appointed to the bench, I lived in Anchorage and practiced law there for more than twenty-three years. During that time, I acted as public defender for the Bethel area and was employed as City Attorney for Bethel for about five years thereafter. As an attorney in private practice, I tried cases in Kotzebue and Barrow. I believe my experience in the rural areas of the state gives me insight in the issues of rural justice and law enforcement.

From my point of view, the great distances present in this district make it imperative that additional law enforcement resources be increased. In this area, there are fifteen villages outside Nome. Currently, only eight have a Village Public Safety Officer (VPSO). Three villages don't even have Village Police Officers (VPOs). These are individuals who are hired by the city or IRA to be available to respond to public safety needs. While VPSOs receive a regular course of training supervised by the Alaska State Troopers; VPOs have no mandated training. Neither VPSOs nor VPOs are authorized to carry weapons. I believe every village in our area and in the State should have a trained public safety officer. The limited resources of the Alaska State Troopers, the distances which must be traveled and the uncertainties of weather make timely response from certified law enforcement personnel to every report of a felony crime impossible.

I recognize that there exists a good-faith disagreement concerning the administrative costs associated with the VPSO program in this state. I also recognize that the current administration and legislature have acted to increase the number of authorized State Trooper positions. Nevertheless, it is very difficult to understand how a state with some thirty billion dollars in the bank can ask so many rural residents to accept compromised law enforcement in their communities.

Currently, I believe that our court has good relations with tribal entities with respect to Indian Child Welfare Act cases. The majority of child welfare cases which come before me involve situations to which the act is applicable. Tribal entities regularly intervene in such cases in the Nome court. Since the criteria for intervention is the Indian child is enrolled or eligible for enrollment, sometimes more than one tribe will intervene on behalf of one or more of a family's children. In more than nine years of handling these cases, I have never experienced a case in which there was significant disagreement between the tribal entities as to what action was in the best interest of the child at issue.

ICWA also allows some types of cases to be transferred to tribal courts. Once again, I have only seen the most responsible decisions on behalf of the local tribal entities. The federal act allows transfer to tribal courts on the request of any parent, the child's custodian or the child's tribe. On several occasions, even at the request of a parent, the tribal court has not agreed to such a transfer. On one other occasion, a tribal court had accepted transfer of a child's case. Thereafter, when it became clear that changing events made continued jurisdiction by the tribal court problematic, the tribal court worked with my court and the Office of Children's Services to return jurisdiction to the state court system. I have also experienced cases in other hub communities in which tribal courts acted with great appreciation for the interests of all the parties.

Another area in which tribal entities provide a great resource for my court is in the

area of tribal adoptions. When a child welfare case is instituted, OCS works with parents to develop a treatment plan to deal with the underlying problem that placed the child or children at risk of harm. Sometimes, these case plans are not complied with by the parents for various reasons. Under current state law, if a child has been in the custody of the state for fifteen out of the most recent twenty-two months, it is mandatory that the state institute an action to terminate parental rights. The typical plan after termination is adoption. There is sometimes a shortage of adoptive placements under state law. State law treats adoption as a zero sum process. That is, if a child had a parent or parents and those parental rights are terminated, then someone must be found to replace the parent or parents who no longer legally exist. Under tribal law and custom, adoption is typically not a zero sum concept. A child can be adopted by third-parties and it need not affect the parental rights of the biological parents. A child may have three or four parents.

This is an important distinction, because a large number of child welfare cases have their genesis in alcohol abuse. By the time a parent's alcohol dependence or alcoholism becomes so severe that its impact on the children is brought to the attention of OCS, the treatment needs of the parent are significant. These parents, even though making good faith efforts at treatment, sometimes cannot progress to an abstinent lifestyle in fifteen months. Tribal adoption is an important alternative to a shortage of adoptive placements or long stays in a limited number of foster-homes until adoption becomes a reality. A tribal adoption can allow the child or children to remain in the area and continue to maintain contact with parents who are progressing toward, but may not have achieved, full sobriety.

The problem of alcohol-impacted parents leads to another concern - the general subject of alcohol abuse. The state has enacted a local option process that allows communities to establish their own choice with respect the legal availability of beverage alcohol. The legislature has

strengthened the penalties for violations of these local option laws. I think this has had positive consequences for the rural areas.

Unfortunately, I recently noticed legislation introduced which would, I believe, make alcohol more available in rural areas. A new type of license would be created under the act for "outdoor recreational lodges." These businesses would primarily be sited in rural areas. The licenses themselves would not be located within a local option community but could be nearby. While the license is for sale of alcohol only to overnight guests or off-duty staff, the availability of alcohol in these businesses will inevitably mean availability to others. This would mirror what recently happened in a local community. The worst thing that has happened to Brevig Mission, is the decision of the residents of Teller to vote their community damp. That alcohol, which is legal in Teller, has had a big impacted the neighboring community.

Another idea that I have to reduce the alcohol-related problems I see in my court is the elimination of one category of local option. Currently, a community can be "dry" in two ways. One bans the sale, importation and possession of alcoholic beverages; the bans only the sale and importation of alcoholic beverages. Under the latter type of local option, if troopers find a person in possession of an alcoholic beverage, no crime is committed even though some violation of the law must have occurred in order for the bottle or bottles to have come into the possession of the resident. I therefore recommend elimination of the second type of local option.

Another idea which merits consideration is requiring all communities which allow importation to maintain a reception center for all alcohol ordered for delivery. Barrow has such an ordinance. Under their process, any alcoholic beverages delivered by common carrier to that community must be delivered to the reception center. There, the amount of alcohol is catalogued and limits are set on the amount which any person may receive in a given time period. This reduces

the likelihood of resale. Also, under Barrow's ordinance, each person who orders alcoholic beverages through the reception center must have a license to use the facility. This license may be lost if the holder is convicted of an alcohol-related crime. These provisions can reduce the availability of alcoholic beverages to those who cannot or do not use the substance responsibly.

Finally, I encourage any community which allows the sale of alcoholic beverages to seek as much responsibility and cooperation from the local liquor industry in its community as we have here in Nome. Typically, when an individual is convicted of an alcohol-related offense in Nome, a probation condition is imposed that prevents entry into bars or liquor stores. The local district attorney's office updates the weekly "bar list" and distributes it. I was very surprised when I arrived in Nome to hear about this list and the fact that local licensees enforce this list among their customers. This is a very commendable and responsible effort.

However, alcohol problems create the one circumstance that makes me uneasy about the subject of tribal courts. I am generally in favor of the idea of problem solving as close to the problem itself as possible. However, local option laws and the general unwillingness of local villages to use to power of community opprobrium concerns me. In my visits to the villages of my region, I repeatedly ask residents who complain about the fact that alcohol is imported into their villages, why they, alone or as a group of concerned citizens, don't go to the persons who have the alcohol in violation of the option their community has selected and demand they stop. To date, I have not gotten an adequate answer. When alcohol gets into the community, the identity of the possessor is generally known very quickly. I don't understand why people think that a local code with a court and consequences is more likely to address the problem than the commitment of twenty members of a village of perhaps one hundred to, as a group, confront the violator and demand compliance with local norms. In my opinion, if people are unwilling to confront the problem as it

is occurring, giving them the power to attach a consequence later is unlikely to change conduct, in my opinion.

Thank you for the opportunity to address you and I would be happy to answer any question..