

TESTIMONY OF SAMUEL J. FORTIER

**Before the
Alaska Rural Justice Commission**

January 26, 2005

Ladies and Gentlemen, I represent a number of tribes throughout the State of Alaska. I have represented Alaska Native tribes for over 20 years. In the course of my representation, I have also been a student, and my clients have taught me. They have taught me basic concepts of traditional Alaska Native law, which focuses on restorative justice.

Restorative justice teaches that tribal members possess an inherent human dignity. Restorative justice focuses on reintegrating an offender into a community. Reintegration involves respect. Thus, the absence of respect is the absence of law.

A case that gained some notoriety will illustrate this concept. In Native Village of Perryville against John Tague,¹ the small village of Perryville was faced with the dealing with a repeat violent offender. For your information, Perryville is an extremely isolated Alutiiq community. Its inhabitants, numbering about 120, are by and large descendants of the ancient village of Katmai. Their ancestors were transported south to Perryville after the great Nova Erupta/Katmai volcanic explosion of 1912. The people of Perryville retained their traditional values.

¹ Case No. 3AN-00-12245 Civil, Superior Court for the State of Alaska, Third Judicial District at Anchorage.

Mr. Tague, a Perryville tribal member, committed several acts of violence against tribal members in Perryville in the late 1990s. Perryville, then, as now, does not have a Village Public Safety Officer. The closest Alaska State Trooper post servicing Perryville is in King Salmon. Travel to Perryville is oftentimes hazardous, given the inclement Aleutian weather patterns. The troopers were unable to travel to Perryville for a few days, and when they did arrive, they arrested Mr. Tague and took him out of the village.

Mr. Tague left several children in the village. His significant other and her grandfather successfully petitioned the village council to permit Mr. Tague to return to Perryville following his incarceration. The Council required that Mr. Tague resolve his differences with tribal members peacefully. Mr. Tague, however, within a short time of his return, went on a one-man rampage. He attacked at least three members of the Native village by force and with instruments. The carnage following his one-man assault was so great that the health aide was required to call out untrained medics to assist her. The State Troopers were called following this crime spree, but were unable to make it to Perryville for several days. During this hiatus, Mr.

Tague reportedly assaulted his mother and her domestic partner at his mother's home in Perryville.

Mr. Tague was again arrested and removed from Perryville. The sentencing court in Dillingham found Mr. Tague to be a worst offender. In the meantime, the village council, acting as a court, ordered Mr. Tague not to return to the village, and provided a copy of that order to the Superior Court in Dillingham, which noted the banishment order.

As Mr. Tague's sentence was ending, his domestic partner obtained another restraining order through the state court prohibiting Mr. Tague from contacting her. The Perryville Village Council also learned that Mr. Tague might be returning to Perryville. The Village Council feared for the safety of its tribal members, and after a hearing determined that any effort to restore Mr. Tague into the community at that time would be futile. Fearing for the safety of tribal members, should he return, the Village Council petitioned the Alaska Superior Court for judicial enforcement of the order prohibiting Mr. Tague from returning to the village. A copy of the pleading was served, by publication on Mr. Tague, when the village was unable to locate and serve him with the pending action. The Superior Court for the State of Alaska at

Anchorage permitted notice by publication, and ultimately, entered an injunction in effect enforcing the Perryville banishment order.

Several years later, in early 2003, the village council was contacted by Peninsula Airway agents in King Salmon, who knew of Mr. Tague's dangerous propensities. The village council was informed that Mr. Tague was on an airplane headed for Perryville. On that same airplane was an Alaska State Trooper, Trooper John Holm.

The Village Council President met the plane when it landed in Perryville that day, and provided a copy of the Superior Court's injunction, which was certified, to Trooper Holm. The Village Council President requested that the injunction be enforced. Trooper Holm contacted his supervisors, and informed the Village Council President that he would not enforce the injunction, but needed something more recent. Thereafter, the Village Council petitioned the Superior Court and obtained a writ of assistance, and this was provided to Trooper Holm. Trooper Holm escorted Mr. Tague to the airfield, and Mr. Tague left the village.

Almost two months later, the State of Alaska wrote a letter to the superior court. In the letter, the Department of Law complained that the writ of assistance was improperly issued. The Department of Law also stated, in the same letter, “the Alaska State Troopers believe it is not appropriate for them to become instruments of tribal banishment throughout Alaska.” On the basis of the letter, the Alaska Superior Court issued an order for Perryville to show cause why the injunction should not be dissolved. Interestingly, the State had not intervened, it was not a party to the action, and it sought no further relief. The purpose of the letter, in short, appeared to be solely based upon the State’s misperception that it would not honor a court’s writ of assistance in the future with respect to enforcement of tribal banishment orders. Indeed, in its subsequently filed amicus brief, the State asserted that the Alaska State Troopers would not enforce state court injunctions or serve writs of assistance in support of tribal banishment.²

The Superior Court rejected the State’s position. The injunction continues in force. As does Perryville’s banishment of Mr. Tague. However, consistent with traditional concepts of restorative justice, Mr. Tague can request the Tribal Council to review its prohibition within two years.

² Memorandum of Amicus Curiae, State of Alaska in *Native Village v. Tague*, at 18.

The State's position in *Perryville v. Tague*, was unjustified and reflected a lack of respect for traditional Alaska Native law, the primacy of federal law, and the very concept of federalism. Federal Indian law has, for centuries, recognized the inherent power of tribes to punish members who violate tribal law, to regulate tribal membership and conduct internal tribal relations.³ Federal law also provides significant protection for individual and political rights of Indian tribes.⁴

Significant to both the concept of restorative justice as well as to the concept of protection of tribal members is the Violence against Women Act, and in particular, 18 U.S.C. § 2265. Under 18 U.S.C. § 2265(a):

Any protection order issued that is consistent with subsection (b) ... by the court of [an]... Indian tribe ... shall be accorded full faith and credit by the court of another state or Indian tribe (...) and enforced as if it were the order of the enforcing state or Indian tribe.

18 U.S.C. § 2265(b) requires only that a court must have jurisdiction over the parties and matter under the laws of the issuing Indian tribe and that reasonable notice and opportunity to be heard be provided. The Violence

³ *National Farmer's Union Insurance Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 849 (1985); *Escondido Mutual Water Co. v. LaJolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians*, 466 U.S. 765, 788, n.30 (1984); *Rice v. Rehner*, 463 U.S. 713, 719 (1983); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980); *United States v. Wheeler*, 435 U.S. 313, 323 (1978).

⁴ *National Farmer's Union Insurance Cos. v. Crow Tribe of Indians*, 471 U.S. at 849.

Against Women Act provisions are entirely consistent with the Alaska Supreme Court case, *John v. Baker*, 982 P.2d 738, 756 (Alaska 1999) (“*John I*”).

In November 2000, the Violence Against Women Act was amended by adding a new section, 18 U.S.C. § 2265(e), mandating that:

a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

In *Perryville*, the Alaska Superior Court properly held that the injunction had been properly issued. The village, should it so require, will request a writ of assistance. We trust that the state will comply with the rules of law, and through its Alaska State Troopers, serve the writ of assistance as required by law.

I also believe that the *Perryville* case teaches that the system of rural justice can be strengthened. However, in order to do so, the State of Alaska must recognize the co-equality of Alaska Native tribes in the federal system. For example, the Violence Against Women Act provides a complete legal framework in which to enforce tribal protective orders, and those orders,

according to the clear and unambiguous wording of 18 U.S.C. § 2265(e),
permit banishment. One key to correcting and improving the rural justice
system is respect -- respect by the state for traditional tribal systems and law
and willingness to work in partnership with tribes, and not as an antagonist.

THANK YOU.