

Rural Justice and Law Enforcement Commission

Bethel, Alaska

Testimony of Allen Joseph

Welcome to Bethel. Thank you very much for coming and including our town in your schedule of hearings.

My name is Allen Joseph. I live in Bethel, but I'm originally from Hooper Bay.

I am testifying mainly on the idea of judicial systems in rural villages, and whether there should be another layer of village governments in addition to what already exists.

Tribal Courts

I believe there should be more support from the state and federal governments for tribal courts in our villages. This support should be in funding, because we know village or tribal entities always have a hard time getting funds for doing the necessary work that needs to get done in villages.

This support should also be in the form of acknowledgement for tribal courts, and that they work for the betterment of our communities. Many times, I have heard testimony from people saying how tribal courts have helped them or other people they know. Most especially, tribal courts are helping our youth get out of trouble.

Tribal courts are not a new thing in our villages. In fact, it is a type of government that has kept the peace and order in our communities long before the arrival of western culture and its new systems of justice.

In the old days, whenever an issue arose that needed to be resolved, concerned people in a community – which sometimes were all of them – gathered in a qaygiq or qasgiq (a men's house), sitting on benches made against the walls of the building, in essence, forming a circle of sorts.

There they discussed the issue, taking turns at speaking going clockwise, each giving an opinion or recommendation for resolution to the issue at hand. Finally, after all said their minds, they decided or voted on the best solution and the majority decision ruled.

This old form of government was called Amellrutaq. This form of government, like I said, kept the peace and order in our villages. Decisions of the Amellrutaq were often the final word on matters and issues. To whom this form of justice was given, it was accepted with little or no argument.

Amellrutaq settled disagreements, disputes, wrongdoings, and even crime. It kept communities from falling into dysfunction, and the people from dishonesty or disloyalty to one another and their community. It helped maintain strong bonds within the community and kept individuals on the "straight and narrow" when they did something wrong or went against their way of living as a society.

It was important to have Amellrutaq in our ancestors' society. It guaranteed the survival of small communities which disorder, disorganization and dysfunction that in those days could have easily destroyed. Those communities were independent entities. Not because they wanted independence, but because there were no other sources of help for them. There were no planes and easy hops to other communities to get police, judges or attorneys in those days. They were without choice on their own, but as a community, they had to correct issues or people that endangered their safety or continued existence.

Amellrutaq, although it is rarely mentioned, is often the source of the elders' advice on proper living in the present generation. The elders' urgings for us to treat and respect one another came from these ancient governing sessions, which are based on lessons of maintaining the common good a long time ago.

Today, elders or those considered wise in judgment and leadership, mainly lead our tribal courts. They are chosen because they are knowledgeable about the right way of correcting, chastising and re-training those who are in need of it. Sadly, it is the young people who often face these tribal courts.

An example of a modern day Amellrutaq occurred in a coastal village not so long ago. A young man was known to be dealing drugs for a long time and was too smart to be caught in the act by police officers of the state. Tired of the drugs and complaints by community members, the people of the village finally forced a meeting with the young man. After discussing his illegal activity and why it was wrong for him to be selling drugs, they gave him an ultimatum: Give up selling drugs or be banished for the rest of his life from the village.

The young man said it was the most sobering moment he ever faced in his life. He also said he didn't realize there were so many people hurting because of his actions, that a whole community was *that* concerned about what he was doing. Of the prospect of banishment, he said it was worse than the thought of going to jail. After the meeting, the young man gave up selling drugs and decided never to do it again.

Another example is of yet another young man, who was what we might call a rotten, no good, son of a bum. He was a continual lawbreaker, not caring about what he did to others. He seemed incorrigible, and ran afoul of the law many times. The constant jailing and the court system processing seemed to have no effect.

A VPSO said, at the time, at each occasion he arrested him and brought him to higher authorities here in Bethel, he didn't have the look of remorse or concern on his face. He was one of those that had a smirk on his face despite being in cuffs.

Finally, the VPSO thought that the young man should face a tribal court of elders, just as an idea to see what would happen. The VPSO said he didn't think highly of tribal courts back then, but he did it anyway because he thought the young man was quickly running out of options. After the tribal court agreed, the young man was brought before the judges. He had the usual smirk on his face when he faced the elders – to him they were just another "authority."

Then they began to speak to him. They were strong words but they were not threatening; they were very serious but gentle. The VPSO said he had never heard a court speak the way they did – it was so different from the unfeeling and mechanical process of the state courts. After a while of being spoken to, the smirk on the young man’s face disappeared, and his head began to bow low.

After the tribal court session ended, the VPSO said he saw a slight but immediate change in the young man, a change the state courts and jails of iron bars couldn’t accomplish. His look of defiance and rough behavior was gone. Something inside the young man had been conquered. The young man was quiet and humbled, as he was led back to the village lock-up.

According to the surprised VPSO, the young man began to respect authority, his family and other community members. The young man became friendlier with him, a police officer, and even started to say “hi,” which he never did before. Although the tribal court had issued a punishment, the young man later served it willingly and with a purpose. That purpose was to become a better person. And although the young man made a small error or two later, he was no longer the problem individual that he once used to be.

I wish you had time to read the 4-part series on rural justice which the Tundra Drums, a Bethel newspaper, recently carried. It will tell you other examples of how tribal courts have helped our youth in the Y-K Delta. They are available for reading on www.kusko.net.

Tribal courts are very helpful in my opinion, and that’s why I am saying that the state and federal governments should support and/or work with them in helping to resolve the issues of our villages. The state courts can’t be in every village. The state can’t afford to build courthouses in every village.

The best option is to utilize what’s there already, and that’s the tribal courts. They work if you give them a chance. Amellrutaq worked a long time ago to help our people live structured and orderly lives, and there’s no reason why it can’t work today.

You can help us maintain order in our villages by recommending strongly that the state and federal governments should support tribal courts, and that that support should include an adequate funding stream.

Formation of new village governments

A secondary reason I am testifying today is about the idea of forming more village governments in our villages.

It would be a good idea only if there were no other forms of government in our villages. But there are governments already in our villages. We have tribal councils, whether they are traditional or IRA councils, and we have municipalities – first class, second class, and so on. Some have both tribal and municipal forms of government; some have even merged and agreed to work together as one unit.

In each of our villages, government leaders or councils are chosen to serve by our people – to add another layer of government would be a slap in their face. Another layer of government would only create soup or pizza and create a certain kind of chaos in our communities and our region.

Many rural communities have only one of either form of government. In those villages having only tribal governments, we need the state of Alaska to recognize, support and work with them. We also need the federal government to be more respectful of the tribal governments.

I am sure one of the reasons why the state is often unable to work with tribal governments has to do with sovereignty issues. Without admitting it bluntly, the state recognizes that tribes have sovereignty by way of certain contracts. In those contracts, the state asks tribes to waive sovereign immunity for lawsuits' sake, but we don't ask the state to waive their sovereign immunity.

I believe that sovereignty matters can be resolved by establishing a government-to-government relationship between the state and tribes and recognizing there are certain matters that should be in agreement. We are happy we have a state of Alaska. I wish the state were happy there are tribes in Alaska.

According to the National Conference of State Legislatures, Alaska is one of 37 states with two independent governments – state governments and tribal governments. NCSL is working, as some of you might be aware, with the National Congress of American Indians in studying the relationship of states and tribes in America.

I quote the front page of the NCSL website:

“Thirty-seven of the 50 states are home to two independent governments - state governments and Native American tribal governments - that strive to provide for and protect their respective constituencies and to coexist with each other.

“State governments are granted the right to govern themselves in the U.S. Constitution. American Indian and Alaska Native tribes maintain inherent self-governance authority that predates the existence of the United States and is affirmed by the U.S. Constitution.

“Historically, state governments had no role with respect to tribal lands, and tribes operated in a ‘government-to-government’ relationship with the federal government alone. Over time, however, state and tribal governments have been given powers that previously belonged only to the federal government, a practice called devolution.

“Under devolution, newly acquired authority and resources for specific programs have been passed from the federal level to states and tribes, making them responsible for implementation. With these shifting relationships and responsibilities, tension between state and tribal governments has risen in a range of issues, including service delivery, law enforcement jurisdiction, and taxation issues.

“These differences involve conflicting state and tribal jurisdictions, and they are resolved either through the court system, legislation or direct negotiations. During the past few decades, tribal

governments significantly strengthened their governmental capacity and have increasingly exercised authority over affairs in their own communities.

“In this increasingly complex landscape of service delivery and funding arrangements, intergovernmental coordination has become paramount to ensuring that the needs of state and tribal citizens are met. A major step to successful and effective government-to-government relations between states and tribes is the mutual recognition of each other’s sovereign governmental rights.

“On this foundation of respect, increased education, understanding and cooperation on both sides ultimately with help both states and tribes forge cooperative efforts that benefit all state and tribal citizens.”

End of quote. This quote speaks my mind, and I strongly encourage the state of Alaska to work with our tribes in this manner.

As to the idea of forming another layer of government in our villages, I strongly discourage it. It will be a total mess. There are some ideas that do not work, and this will be one of them.

Please work with the present system of governments we now have. We have existing municipal and tribal governments. We need to support and help make them work. If you want to create something, create a study group – if you’re not that group – and study the problems these governments are facing and develop mutually agreeable solutions.

Machines always need tune-ups, and entities which operated a long time – that’s 40 years or so for Alaska municipal governments and hundreds of years for tribal governments – tend to need tune-ups as well. People don’t throw out good machines when they all they need are tune-ups. Municipal and tribal governments are good machines, and you don’t want to throw them out just yet, not when things are beginning to look up, according to the National Conference of State Legislatures.

Thank you very much for allowing me to speak my mind. Please enjoy your visit to our community.