

DAVID S. CASE

TESTIMONY BEFORE THE HOUSE STATE AFFAIRS COMMITTEE  
ALASKA STATE LEGISLATURE  
MARCH 23, 2004

CHAIRMAN WEYRAUCH AND MEMBERS OF THE COMMITTEE: LET ME FIRST EXPRESS MY APPRECIATION TO THE COMMITTEE AND EDWARD THOMAS, PRESIDENT OF THE CENTRAL COUNCIL TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, FOR INVITING ME TO BE HERE TODAY TO DISCUSS THE BENEFITS AND CONTRIBUTIONS OF FEDERALLY RECOGNIZED INDIAN TRIBES TO ALASKA. PERMIT ME TO START WITH A STORY THAT SUMS UP MY EXPERIENCE WITH THESE ISSUES OVER THE LAST NEARLY 30 YEARS. I WAS HIRED IN ABOUT 1975 BY THE ALASKA FEDERATION OF NATIVES TO BE THE EXECUTIVE DIRECTOR OF THE AFN BUSH JUSTICE PROJECT. THIS WAS A PROJECT FUNDED BY THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF JUSTICE. THE PURPOSE OF THE PROJECT WAS TO INVESTIGATE, REPORT ON AND MAKE RECOMMENDATIONS FOR THE IMPROVEMENT OF THE DELIVERY OF JUSTICE SERVICES (AS WE CALLED THEM "COURTS, COPS AND CORRECTIONS") IN RURAL ALASKA. KWINHAGAK, A VILLAGE IN WESTERN ALASKA, WAS ONE OF THE FIRST VILLAGES OUR PROJECT VISITED. WE WERE PRIMARILY INTERESTED IN HOW THEY OBTAINED JUDICIAL SERVICES.

WE ASKED THE VILLAGE LEADERS HOW THEY HANDLED COURT CASES IN THEIR COMMUNITY. THEY SAID THAT THEY USED TO HAVE SOMETHING THEY CALLED "A THREE JUDGE COURT", COMPOSED OF THREE VILLAGE ELDERS SELECTED BY THE VILLAGE COUNCIL. PRIOR TO THAT TIME, KWINHAGAK HAD AN ANNUAL, SUMMER INFLUX OF FISHERMAN TO THE VILLAGE. OCCASIONALLY, AS YOU MIGHT IMAGINE, THEY WOULD GET OUT OF HAND AND CAUSE VARIOUS KINDS OF MINOR DISTURBANCES. THE THREE JUDGE COURT WOULD REQUIRE THE MISCREANTS TO DO VARIOUS FORMS OF COMMUNITY SERVICE, SUCH AS CUTTING WOOD AND DOING MINOR HOME REPAIRS.

THE VILLAGE COUNCIL THEN TOLD US THAT A FEW MONTHS BEFORE OUR VISIT A REPRESENTATIVE OF THE ALASKA COURT SYSTEM HAD ALSO BEEN IN THE VILLAGE. THEY TOLD HER ABOUT THE THREE JUDGE COURT AND WERE TOLD THAT THE COURT WAS ILLEGAL AND THAT THEY WOULD HAVE TO HAVE AN ALASKA STATE MAGISTRATE. WISHING TO COMPLY WITH WHAT THEY WERE THEN TOLD WAS THE LAW, THEY IMMEDIATELY ABANDONED THE THREE JUDGE COURT AND REQUESTED THAT THE STATE APPOINT A MAGISTRATE FOR KWINHAGAK.

I AM TOLD THAT IT TOOK ABOUT A DECADE FOR THEIR REQUEST TO BE PROCESSED THROUGH THE COURT SYSTEM AND THE FUNDING OBTAINED FROM THE LEGISLATURE, BUT ULTIMATELY A MAGISTRATE WAS APPOINTED FOR KWINHAGAK. ABOUT TEN YEARS AGO, I WAS GIVING A COURSE IN ANCHORAGE ON BASIC INDIAN LAW AND TRIBAL JURISDICTION. AS IT WAS A SMALL GROUP OF ABOUT 20 PEOPLE, I ASKED EVERYBODY TO INTRODUCE THEMSELVES AND DESCRIBE WHAT THEY HOPED TO GET OUT OF THE COURSE. AN OLDER LADY IN THE BACK OF THE ROOM INTRODUCED HERSELF AS THE LAST MAGISTRATE OF KWINHAGAK. AS SHE EXPLAINED IT, THE KWINHAGAK MAGISTRATE POSITION HAD BEEN ABOLISHED A FEW MONTHS BEFORE FOR LACK OF FUNDS. I ASKED HER WHAT KWINHAGAK NOW DID TO HANDLE THE DISPUTES THAT HAD BEEN

THE MAGISTRATE'S JOB. SHE SAID: "OH, WE HAVE A THREE JUDGE COURT." THE VILLAGE (THE TRIBE) HAD RE-ESTABLISHED THEIR TRADITIONAL METHOD OF ADJUDICATING DISPUTES.

SOME MIGHT HAVE TOLD THE GOOD PEOPLE OF KIWNHAGAK EVEN THEN THAT, SINCE THERE WERE NO "TRIBES" IN ALASKA, THEY STILL DIDN'T HAVE THE POWER OR "JURISDICTION" TO DO ANYTHING FOR THEMSELVES THROUGH THEIR TRIBAL COURT. BUT THAT WAS NOT THE REPEATED OPINION OF THE DEPARTMENT OF THE INTERIOR. FOUR TIMES, IN 1923, 1924 AND TWICE IN 1932, THE INTERIOR DEPARTMENT SOLICITOR ISSUED OPINIONS CONCLUDING THAT THE NATIVES OF ALASKA WERE "ENTITLED TO THE BENEFITS AND ARE SUBJECT TO THE GENERAL LAWS AND REGULATIONS GOVERNING THE INDIANS OF THE UNITED STATES." [*STATUS OF ALASKA NATIVES*, 55 L. D. 593, 605-606 (1932)] ONE OF THESE OPINIONS CONCLUDED THAT, LIKE TRIBES IN THE REST OF THE UNITED STATES, THE ALASKA NATIVES POSSESSED ATTRIBUTES OF SOVEREIGNTY SUFFICIENT TO REGULATE THEIR OWN INTERNAL AND SOCIAL RELATIONS WHEN IT CAME TO MARRIAGE AND DIVORCE. [*VALIDITY OF MARRIAGE BY CUSTOM AMONG THE NATIVES OR INDIANS OF ALASKA*, 54 I. D. 39, 42-45 (1932)]

REVIEWING THIS HISTORY TOWARD THE END OF THE 20<sup>TH</sup> CENTURY, THOMAS SANSONETTI, THE DEPARTMENT OF THE INTERIOR SOLICITOR IN THE FIRST BUSH ADMINISTRATION (NOW THE ASSISTANT ATTORNEY GENERAL FOR ENVIRONMENT AND NATURAL RESOURCES), CONCLUDED IN A 130 PAGE OPINION THAT: "[I]T IS CLEAR THAT FOR THE LAST HALF CENTURY, CONGRESS AND THE DEPARTMENT OF THE INTERIOR HAVE DEALT WITH ALASKA NATIVES AS THOUGH THERE WERE TRIBES IN ALASKA." ["GOVERNMENTAL JURISDICTION OF ALASKA NATIVE VILLAGES OVER LAND AND NONMEMBERS", Op. Sol M-36,975 (JANUARY 11, 1993)] TEN MONTHS LATER (ON OCTOBER 21, 1993), THIS OPINION PROVIDED THE RATIONAL BASIS, IF ANY WAS NEEDED, FOR THE INTERIOR DEPARTMENT'S DEFINITIVE PUBLICATION OF THE LIST OF FEDERALLY RECOGNIZED ALASKA NATIVE TRIBES. A YEAR LATER, CONGRESS RATIFIED AND REQUIRED CONTINUED PUBLICATION OF THE LIST IN THE FEDERALLY RECOGNIZED TRIBE LIST ACT OF 1994. IN COMPANION LEGISLATION, CONGRESS REQUIRED THAT THE TLINGIT AND HAIDA INDIAN TRIBES BE ADDED TO THE LIST.

IN THE MEANTIME, WHILE ALL THIS WAS UNFOLDING IN THE FEDERAL EXECUTIVE AND LEGISLATIVE BRANCHES, THE NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT WAS LITIGATING ITS TERRITORIAL JURISDICTION TO IMPOSE A BUSINESS TAX ON A CONSTRUCTION COMPANY (AND THE STATE) BASED ON THE VALUE OF A SCHOOL CONSTRUCTION PROJECT TAKING PLACE ON THE FORMER CHANDALAR INDIAN RESERVATION. ALTHOUGH ANCSA HAD ABOLISHED THE RESERVATION (OVER THE PROTESTS OF THE TWO TRIBAL VILLAGES OCCUPYING IT), THE TWO VILLAGE CORPORATIONS THEY WERE REQUIRED TO FORM UNDER ANCSA ELECTED TO SELECT THE 1.8 MILLION ACRES AS THEIR ANCSA ENTITLEMENT AND FOREGO THE OTHER BENEFITS OF THE CLAIMS SETTLEMENT. EVEN BEFORE THEY RECEIVED THE DEED TO THE LAND FROM THE UNITED STATES, THE SHAREHOLDERS OF THE TWO CORPORATIONS VOTED TO RECONVEY ALL THE LANDS OF THE FORMER RESERVE TO THEIR FEDERATED GOVERNMENT.

THIS SET THE STAGE FOR THE COURT CONTEST TO DETERMINE IF THE LANDS OF THE FORMER RESERVE (NOW OWNED IN FEE BY THE TRIBE) WERE STILL "INDIAN COUNTRY" FOR PURPOSES OF TRIBAL TAXING JURISDICTION. ALSO AT ISSUE, WAS THE QUESTION OF WHETHER THE NATIVE VILLAGE OF VENETIE WAS A TRIBAL GOVERNMENT THAT POSSESSED THE INHERENT, SOVEREIGN AUTHORITY TO ADOPT A TAX. WHILE THE CASE WAS PENDING, THE INTERIOR DEPARTMENT AND

CONGRESS RECOGNIZED THE ALASKA NATIVE TRIBES IN 1993 AND 1994. THE ALASKA FEDERAL DISTRICT COURT HELD THAT IT WAS BOUND BY THOSE ACTIONS, AND THE STATE DID NOT APPEAL THAT CONCLUSION.

IT DID APPEAL THE NINTH CIRCUIT FEDERAL COURT'S DECISION THAT THE LANDS NOW OWNED BY THE TRIBE CONSTITUTED "INDIAN COUNTRY", AS A "DEPENDENT INDIAN COMMUNITY" UNDER THE FEDERAL "INDIAN COUNTRY" STATUTE [18 U.S.C. 1151]. IN 1998, THE UNITED STATES SUPREME COURT HELD THAT ANCSA LANDS WERE NOT LANDS "SET ASIDE" FOR THE NATIVES NOR WERE THEY UNDER THE "SUPERINTENDENCE" OF THE FEDERAL GOVERNMENT. THEY WERE THEREFORE NOT "INDIAN COUNTRY" OVER WHICH A TRIBE COULD EXERCISE TERRITORIAL JURISDICTION TO TAX A NON-MEMBER. SOLICITOR SANSONETTI'S 1993 OPINION HAD REACHED A SIMILAR CONCLUSION AS HAD THE ALASKA FEDERAL DISTRICT COURT. HOWEVER, THE *VENETIE* DECISION DOES NOT SUGGEST THAT THERE ARE NO TRIBES IN ALASKA. IN FACT IT QUOTES (WITH APPARENT APPROVAL) THE CONCURRENCE OF ONE OF THE NINTH CIRCUIT JUDGES WHO NOTED THAT ANCSA WAS A DEPARTURE FROM TRADITIONAL INDIAN POLICY BECAUSE:

IT ATTEMPTED TO PRESERVE INDIAN TRIBES, BUT SIMULTANEOUSLY ATTEMPTED TO SEVER THEM FROM THE LAND; IT ATTEMPTED TO LEAVE THEM AS SOVEREIGN ENTITIES FOR SOME PURPOSES, BUT AS SOVEREIGNS WITHOUT TERRITORIAL REACH.

[*ALASKA V. NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT*, 522 U.S. 520, 526 (1998)]

AS YOU ARE ALSO PROBABLY AWARE, IN 1999, THE YEAR AFTER *ALASKA V. VENETIE* WAS DECIDED, THE ALASKA SUPREME COURT, IN *JOHN V. BAKER*, UPHELD THE JURISDICTION OF TRIBAL COURTS TO ADJUDICATE CHILD CUSTODY DISPUTES AMONG THEIR MEMBERS EVEN OUTSIDE INDIAN COUNTRY. FROM THE EXAMPLES DISCUSSED IN THE OPINION, THERE IS EVERY REASON TO THINK THAT TRIBAL COURT JURISDICTION EXTENDS TO OTHER MATTERS AS WELL, COVERING THE RANGE OF MINOR CRIMINAL AND ROUTINE CIVIL MATTERS LIKELY TO ARISE IN A VILLAGE. IT SUGGESTS WHAT IT MIGHT MEAN FOR ALASKA NATIVE TRIBES TO BE "SOVEREIGNS WITHOUT TERRITORIAL REACH."

THUS, AFTER 30 YEARS, WE HAVE COME NEARLY FULL CIRCLE. THIRTY YEARS AGO THE VILLAGE OF KWINHAGAK ASSUMED THAT ITS TRADITIONAL COURT HAD AUTHORITY TO DECIDE DISPUTES UNTIL TOLD BY THE COURT SYSTEM THAT IT DID NOT. NOW, THAT SAME JUDICIAL SYSTEM HAS RIGHTLY CONCLUDED THAT THE 231 SEPARATE GOVERNMENTS RECOGNIZED AS INDIAN TRIBES IN ALASKA DO HAVE JURISDICTION TO ADJUDICATE A WIDE RANGE OF DISPUTES.<sup>1</sup> THEY, OF COURSE, HAVE ALWAYS HAD THAT AUTHORITY. IT HAS JUST TAKEN 30 YEARS FOR THE ALASKA JUDICIARY TO ACKNOWLEDGE IT.

IN THAT SAME 30 YEARS, ALASKA HAS GONE FROM NEARLY 70 MAGISTRATES WHEN I FIRST WORKED AT THE BUSH JUSTICE PROJECT TO 43 TODAY. IN BOTH INSTANCES THOSE NUMBERS INCLUDE MAGISTRATES IN ALASKA'S LARGE URBAN CENTERS. ONE CAN ASSUME THAT WE HAVE NOT REDUCED THE NUMBER OF MAGISTRATES IN THOSE URBAN CENTERS, RATHER, AS IN KWINHAGAK, WE HAVE ELIMINATED THE MAGISTRATES IN RURAL VILLAGES.

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<sup>1</sup> There are 226 villages and three regional tribes. Four of the villages (Arctic Village/Venetie and St. Paul/St. George) are federated and listed also as two tribal governments in that capacity.

ALTHOUGH IT MAY SOUND LIKE IT, I DO NOT MEAN TO APPEAR UNDULY CRITICAL OF THE ALASKA JUDICIARY. THEY ARE TRYING TO MANAGE A CONSTITUTIONALLY REQUIRED JUDICIAL SYSTEM WITH EVER DECREASING RESOURCES. UNLIKE MOST STATES, ALASKA'S CONSTITUTION REQUIRES THAT THERE BE A UNIFIED JUDICIARY. IN OTHER WORDS, UNLIKE MOST STATES, CITIES AND BOROUGHS IN ALASKA ARE CONSTITUTIONALLY PROHIBITED FROM ESTABLISHING THEIR OWN COURTS.

UNDER THE STATE'S CONSTITUTION, ALL COURTS MUST BE ESTABLISHED AND OPERATED BY THE ALASKA COURT SYSTEM AND FUNDED BY THE STATE OF ALASKA. AMONG OTHER THINGS, THAT MEANS THE EMPLOYEES OF THIS SYSTEM MUST HAVE STATE SALARIES AND STATE HEALTH AND RETIREMENT BENEFITS. IF THE SYSTEM IS TO FUNCTION AT ALL EFFECTIVELY, THE MAGISTRATES AND OTHERS THAT OPERATE IT MUST BE CONTINUALLY TRAINED AND SUPERVISED BY A HIGHLY CENTRALIZED JUDICIAL BUREAUCRACY. INCREASINGLY, THE SYSTEM HAS GRAVITATED TOWARD A REQUIREMENT THAT THE MAGISTRATES MUST BE LAWYERS. SO THAT NOW, AT LEAST IN HUB COMMUNITIES LIKE BETHEL, KOTZEBUE, BARROW AND DILLINGHAM, NO MAGISTRATE HOLDS THOSE POSITIONS WHO ISN'T ALSO A LAWYER. IN OTHER WORDS, THE SYSTEM INEVITABLY HAS BECOME ONE THAT IS OPERATED BY AND FOR LAWYERS.

NOW DON'T GET ME WRONG. I DON'T HAVE ANY REAL CRITICISM OF LAWYERS EITHER. AFTER ALL, I AM ONE, AS ARE SOME OF THE MEMBERS OF THE LEGISLATURE AND THIS COMMITTEE. HOWEVER, WE LAWYERS ALSO HAVE OUR OWN "CULTURE." IT IS A CULTURE WE HAVE LEARNED IN LAW SCHOOL AND FROM EACH OTHER AFTER MANY YEARS OF PRACTICE. IT IS A CULTURE BUILT ON FAITH IN COMPLICATED PROCEDURES AND AN ADVERSARIAL VISION OF JUSTICE AND DUE PROCESS.

THESE VALUES ARE NOT PARTICULARLY WELL SUITED TO THE EFFICIENT AND FAIR RESOLUTION OF MOST DISPUTES THAT ARISE IN SMALL, REMOTE VILLAGES. SUCH DISPUTES WERE WELL HANDLED BY MAGISTRATES LIKE THE LEGENDARY SADIE BROWER NEAKOK OF BARROW, BETHEL'S NORA GUINN, KOTZEBUE'S ROSS SCHAEFER OR MIKE JACKSON OF KAKE. NONE OF THESE MAGISTRATES ARE LAWYERS, BUT THEY EXEMPLIFY THE KIND OF PRACTICAL APPROACH TO PROCEDURE AND PROCESS THAT CAN BE FOUND IN EVERY VILLAGE IN ALASKA.

IT IS THE TALENTS AND ABILITIES OF PEOPLE SUCH AS THESE IN THE ALASKA VILLAGES THAT ARE AMONG THE BENEFITS AND CONTRIBUTIONS OF FEDERALLY RECOGNIZED TRIBES IN ALASKA. IT IS FINANCIALLY IMPOSSIBLE TO EXTEND THE UNIFIED COURT SYSTEM TO ALL OR EVEN MANY OF THE 231 FEDERALLY RECOGNIZED TRIBAL COMMUNITIES IN ALASKA. THERE IS NOT ENOUGH MONEY AND THERE ARE NOT ENOUGH LAWYERS TO DO IT.

THAT IS THE GENIUS OF THE FEDERALLY RECOGNIZED TRIBES. THEY ARE, UNDER OUR SYSTEM OF LAW, ANOTHER ORDER OF GOVERNMENT. AS GOVERNMENTS, THEY CAN ALSO RELATE TO THE GOVERNMENTS (AND THE COURTS) OF ALASKA. THAT IS ALSO THE SIGNIFICANCE OF THE ALASKA SUPREME COURT'S 1999 DECISION IN *JOHN V. BAKER*. IN THE COURSE OF THAT DECISION, THE ALASKA SUPREME COURT ACCOMPLISHED WHAT NO OTHER COURT IN THE 200 YEARS OF UNITED STATES HISTORY HAS ACHIEVED.

IT ENUNCIATED THE PRINCIPLE OF "COMITY" OR RESPECT FOR TRIBAL JUDICIAL DECISIONS IN STATE COURTS BASED ON MEMBERSHIP ALONE. RESPECT, HOWEVER, IS ONLY ACCORDED TO TRIBAL COURT DECISIONS THAT ARE OBTAINED THROUGH FUNDAMENTAL PRINCIPLES OF DUE PROCESS INCLUDING NOTICE AND AN OPPORTUNITY TO BE HEARD BEFORE AN IMPARTIAL DECISION MAKER. IF A PERSON DOES NOT BELIEVE THEY WERE AFFORDED DUE PROCESS IN A TRIBAL COURT, THEY NOW, AS A PRACTICAL MATTER, HAVE THE ABILITY IN ALASKA TO HAVE THAT TRIBAL COURT DECISION "REVIEWED" BY A STATE COURT. THIS PROCESS DOES NOT EXIST ANY PLACE ELSE IN THE COUNTRY. IT IS A UNIQUE AND PRACTICAL INNOVATION THAT, IF ALLOWED TO PERFECT ITSELF, WILL GO FAR TO IMPROVE THE DELIVERY OF JUSTICE IN RURAL ALASKA.

RATHER THAN OPPOSE TRIBES, THE STATE LEGISLATURE AND THE EXECUTIVE BRANCH SHOULD SUPPORT THEM-- AS DOES THE JUDICIAL BRANCH. THEY SHOULD ENCOURAGE THE FEDERAL FUNDING OF JUSTICE PROGRAMS FOR ALASKA TRIBES TO ENABLE ALASKA TRIBAL COURT JUDGES TO BE TRAINED, TENURED AND TRULY RESPECTED IN THEIR POSITIONS.

LET ME ADD THAT I UNDERSTAND THE TRIBAL COURTS I HAVE DESCRIBED ARE HUMAN INSTITUTIONS. THEY WILL NOT ALWAYS SUCCEED. AS IS TRUE OF ALL COURTS, THEY WILL NOT ALWAYS DO THE RIGHT THING. BUT THESE COURTS HAVE BEEN OPERATING NOW FOR MANY YEARS IN MANY VILLAGES, AND THEY WILL CONTINUE TO OPERATE WHETHER YOU SUPPORT THEM OR NOT, BECAUSE LIKE KWINHAGAK'S THREE JUDGE COURT, THEY ARE THE ONLY SYSTEMS THAT ARE IN THOSE VILLAGES. IT IS FAR BETTER FOR ALL ALASKANS THAT THESE TRIBAL COURTS BE EMPOWERED AND TRAINED TO DELIVER IMPROVED JUSTICE TO THEIR VILLAGES.

CLEARLY, THE WITHDRAWAL OF THE STATE MAGISTRATES FROM ALASKA'S VILLAGES WILL NOT IMPROVE THE DELIVERY OF JUSTICE IN THOSE VILLAGES. THE ALASKA SUPREME COURT, HOWEVER, HAS ACKNOWLEDGED THAT THE FEDERALLY RECOGNIZED TRIBES IN THE VILLAGES ARE LEGITIMATE SOURCES OF JUDICIAL AUTHORITY WITH WHICH THE STATE COURT SYSTEM CAN COOPERATE TO ENSURE THE IMPROVED DELIVERY OF JUSTICE IN THESE MANY VILLAGES. IT IS IN FACT AND FUNCTION A "UNIFIED" COURT SYSTEM AND THE BEST OF ALL POSSIBLE WORLDS.

THE STATE COURTS RETAIN FULL JURISDICTION OVER ALL MATTERS, AND A PERSON CAN CHOOSE TO BRING A DISPUTE TO STATE COURT IF THEY SO DESIRE. ON THE OTHER HAND, A PERSON CAN LEGITIMATELY TAKE A DISPUTE TO A TRIBAL COURT CLOSER TO THEM AND LIKELY TO BE MORE FAMILIAR WITH THE PRINCIPLES THAT WILL ENSURE FAIR AND JUST DETERMINATIONS OF DISPUTES. IF THE TRIBAL COURT FUNDAMENTALLY ERRS, THE DECISION CAN BE REVIEWED BY A STATE COURT. IF HISTORY IS ANY GUIDE, IT IS LIKELY THAT IN MOST CASES THE TRIBAL COURT DECISIONS WILL NOT BE CHALLENGED, ESPECIALLY IF THEY ARE THE PRODUCT OF INCREASINGLY TRAINED AND COMPETENT TRIBAL DECISION MAKERS. I DO NOT SUGGEST THAT TRIBAL COURTS ARE A SOLUTION TO ALL OF ALASKA'S JUSTICE PROBLEMS, BUT I DO BELIEVE (AND HAVE FOR NEARLY 30 YEARS) THAT THEY ARE A SOLUTION TO MANY OF THEM.

FINALLY, LET ME CONCLUDE WITH AN IMPORTANT OBSERVATION. FEDERALLY RECOGNIZED TRIBAL STATUS CARRIES POSITIVE PUBLIC POLICY AND FISCAL IMPLICATIONS FOR ALASKA BEYOND THOSE RELATING TO TRIBAL COURTS AND THEIR JURISDICTION. IT IS PRIMARILY DUE TO THE FEDERALLY RECOGNIZED TRIBES THAT ALASKA NATIVES RECEIVE IN EXCESS OF \$800 MILLION ANNUALLY TO SUPPORT THE WIDE RANGE OF FEDERAL PROGRAMS YOU HAVE HEARD

DESCRIBED HERE TODAY. IT IS JUST A LITTLE IRONIC (BUT THIS FIELD OF LAW IS FILLED WITH IRONY) THAT, AS WE ARE MEETING HERE TODAY AMID QUESTIONS ABOUT THE LONG-ESTABLISHED FEDERAL RECOGNITION OF THE ALASKA TRIBES, THERE IS PENDING IN CONGRESS A BILL (S. 344), KNOWN AS THE AKAKA-STEVENS BILL, TO FEDERALLY RECOGNIZE THE SOVEREIGNTY OF THE HAWAIIAN NATIVES.

THIS LEGISLATION HAS BEEN ENDORSED BY THE PAST DEMOCRATIC GOVERNOR OF HAWAII AND HIS INCUMBENT, REPUBLICAN SUCCESSOR AS WELL AS UNANIMOUS VOTES OF BOTH HOUSES OF THE HAWAIIAN LEGISLATURE AND THE ENTIRE HAWAIIAN CONGRESSIONAL DELEGATION. THAT IS PERHAPS BECAUSE THE UNIQUE STATE CONSTITUTIONAL STRUCTURE AND THE FEDERAL LAWS THAT PROVIDE SOCIAL AND OTHER BENEFITS TO THE NATIVE HAWAIIANS HAVE BEEN THREATENED BY THE U. S. SUPREME COURT'S 2000 DECISION IN *RICE V. CAYETANO*. THIS DECISION INVALIDATED THE HAWAIIAN CONSTITUTIONAL PROVISION THAT PERMITTED ONLY DESCENDANTS OF THE ORIGINAL HAWAIIAN NATIVES TO VOTE FOR THE TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS (OHA.) THE VOTING LIMITATION WAS EASILY INVALIDATED BECAUSE, AS THE MAJORITY NOTED, CASE LAW HAD NOT YET ESTABLISHED "THAT NATIVE HAWAIIANS HAVE A STATUS LIKE THAT OF INDIANS IN ORGANIZED TRIBES." [*RICE V. CAYETANO*, 528 U.S 495, 518 (2000)]

ALTHOUGH *RICE V. CAYETANO* DID NOT INVALIDATE THE PROGRAMS THAT THE OHA TRUSTEES ARE ELECTED TO ADMINISTER, THEY HAVE BEEN UNDER CONSTANT ATTACK SINCE. IN THE ABSENCE OF FEDERAL RECOGNITION, THE 200,000 NATIVE HAWAIIANS RESIDENT ON THE ISLANDS RECEIVE ABOUT \$70 MILLION IN SERVICES EACH YEAR UNDER THESE PROGRAMS. THESE PROGRAMS ARE NOW THREATENED. FAR MORE IS AT STAKE FOR THE 100,000 ALASKA NATIVES RESIDENT IN ALASKA IF THEIR TRIBAL STATUS WERE TERMINATED OR COMPROMISED, BECAUSE THIS NARROWING U.S. SUPREME COURT PRECEDENT SUGGESTS THAT THE SO-CALLED "PLENARY" POWER OF CONGRESS MAY BE LIMITED ONLY TO FEDERALLY RECOGNIZED TRIBES. GIVEN WHAT IS HAPPENING IN HAWAII, ALASKA WOULD BE WELL-ADVISED TO LOOK CAREFULLY BEFORE LEAPING OVER THE PRECIPICE TO ELIMINATE OR COMPROMISE FEDERAL TRIBAL RECOGNITION.

IN CLOSING, MR. CHAIRMAN, I HOPE YOU WILL ACCEPT A COPY OF THE 2002 EDITION OF OUR BOOK, *ALASKA NATIVES AND AMERICAN LAWS*, WHICH EXPLORES THESE ISSUES FURTHER. AS THE BOOK NOTES IN ITS SEVERAL "ACKNOWLEDGEMENTS", IT IS THE PRODUCT OF A RESEARCH PROJECT BEGAN BY SEVERAL VISIONARY ALASKA NATIVE LEADERS AT THE ALASKA FEDERATION OF NATIVES, THE ALASKA NATIVE FOUNDATION AND THE BUREAU OF INDIAN AFFAIRS NEARLY 25 YEARS AGO. THEN, AS IS SOMETIMES THE CASE EVEN NOW, IT WAS COMMONLY THOUGHT THAT THE ALASKA NATIVE CLAIMS SETTLEMENT ACT HAD EXTINGUISHED THE SPECIAL RELATIONSHIP OF THE ALASKA NATIVES TO THE FEDERAL GOVERNMENT. ONE OF THE PRINCIPAL CONCLUSIONS OF THAT PROJECT WAS THAT THE RELATIONSHIP STILL EXISTED, BECAUSE THE ALASKA NATIVE VILLAGES HAD LONG BEEN TREATED AS TRIBAL GOVERNMENTS ENTITLED TO FEDERAL PROGRAMS AND SERVICES. WE ALSO CONCLUDED THAT THE CLAIMS ACT DID NOT EXTINGUISH THOSE TRIBES OR THEIR ENTITLEMENT TO THOSE SERVICES. THE FEDERAL EXECUTIVE BRANCH, CONGRESS AND THE FEDERAL COURTS AS WELL AS THE ALASKA EXECUTIVE BRANCH AND THE ALASKA SUPREME COURT HAVE NOW CONFIRMED THOSE CONCLUSIONS.

THANK YOU. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.