

**DONNA J. GOLDSMITH, EXECUTIVE DIRECTOR
ALASKA INTER-TRIBAL COUNCIL**

**TESTIMONY
BEFORE THE HOUSE STATE AFFAIRS COMMITTEE
ALASKA STATE LEGISLATURE
MARCH 25, 2004**

Before I begin, I want to express my appreciation to Chairman Weyrauch and the members of this Committee, and to Edward K. Thomas, President of the Central Council Tlingit and Haida Indian Tribes of Alaska, for inviting me here today to offer my thoughts regarding the contributions of federally recognized tribes to the State of Alaska.

At the outset, I would like to underscore that it is a well-settled, indisputable matter of federal law that there are 229 federally recognized tribal governments in Alaska. The Alaska Supreme Court, this state's highest judicial body, unequivocally recognizes that Congress, alone, has plenary power over the tribes. In two landmark cases, the Supreme Court affirmed that the tribes exist in Alaska, and that they have inherent sovereign powers over their members. The only question that remains, really, is the extent of those tribal powers. One aspect of tribal powers is not in question: the Alaska Supreme Court firmly held in two landmark cases (*John v. Baker*, and *In the Matter of C.R.H.*) that tribal courts have authority to adjudicate child protection and other domestic relations matters concerning their members.

For some, the existence of tribal governments and their attendant powers presents un-navigable terrain. For others of us, the existence of tribal government presents an exciting opportunity that is not yet fully realized. As a result of these opposing views, we engage in battle, wasting precious resources fighting over who is right, and who is wrong. It is my deepest fear that while we engage in battle, we are missing fundamental opportunities and losing yet another generation of Alaskans.

Some startling statistics give shape to my fears. Alaska occupies a vast territory, with a population of approximately 620,000 scattered across 586,000 square miles. Harsh weather couples with the difficulties posed by the size of the state to present extreme challenges for delivery of "justice" in the bush. Roughly 29% of the population lives

outside of what we refer to as Alaska's "hub" communities. While our urban and hub communities enjoy a multitude of services that are available to them in their locale – including judges, local and state law enforcement officers, social service agency offices, district attorneys and public defenders, to name a few – most rural communities are completely lacking in these basic services that so many Alaskans take for granted. As a result, in the vast majority of remote tribal communities -- which are not connected to urban or hub communities by any road system -- many problems simply go unaddressed. *See A Directory of Dispute Resolution in Alaska Outside Federal and State Courts*, published by the Alaska Judicial Council in 1999, at p. 20.

Lack of local access to the array of basic justice services often has serious ramifications for the community. For example, "minor criminal offenders receive little attention until they cause major problems in a village; prosecutors dismiss cases under travel budget constraints; probation officers cannot supervise offenders who return to their villages, forcing offenders to remain in cities where they have no support; civil matters like child support, adoption, probate, and small claims go unattended; telephonic hearings work poorly when the witness has limited English skills or poor understanding of the concepts involved; and villagers remain ignorant of the law because they never see it in action." Alaska Court System, Report of the Alaska Supreme Court Advisory Committee on Fairness and Access, 14, 105 (1997). It is noteworthy that the Alaska Court System published these conclusions **seven years ago**. Yet, nothing much has changed for those citizens of the state who live in remote tribal communities – if anything, a multitude of essential state services have decreased even further.

At a time when our state faces serious budget constraints and is cutting much-needed services on a daily basis, we can hardly afford to continue bickering over who does or does not have the power to provide for the most basic needs of our citizens. By way of example, approximately 62% of the children in the custody of the state's Office of Children's Services are Alaska Natives. Statistics kept by that office indicate that more than one third of those Alaska Native children in state custody are placed in non-Native foster homes that do not comply with the placement requirements of the Indian Child Welfare Act. Between 2000-2003, 463 Alaska Native children were adopted, only 245 of whom were placed in Alaska Native homes. That means that almost **half** of the Alaska Native children placed for adoption during those years will grow up outside of their

cultures, not knowing their extended families, not learning their traditional language and customs, and unable to enjoy the rich heritage that is their birthright. Juvenile Justice statistics in this state for Alaska Native children are equally staggering, and equally devastating, to the families and communities whose children are at risk.

Tribal communities have grown very tired of losing their children. They are equally tired of being told that they cannot provide basic services for their members, while the state simultaneously fails to provide for them. I hope that the story of the evolution of the justice system in Kwinhagak that Mr. Case told in the first hearing was not lost on this committee. Tribal courts have begun increasingly to exercise their powers and decide the futures of their children. Statistics demonstrate clearly that in Interior, alone, **tribal court activity on behalf of tribal children has reduced the OCS caseload over the last 10 years by 50%. Fifty percent.** That means that if tribal courts were to disappear tomorrow, the state would, at a minimum, have to double the allocation of personnel in the following divisions and agencies: Alaska State Troopers; Office of Children's Services; Department of Law (district attorneys and assistant attorneys general); Alaska Court System; Division of Juvenile Justice.

Tribal courts are, by necessity and design, beginning to flourish. It is my firm belief that the state continues to blind itself to this amazing opportunity that is sitting right in front of us. Without doubt tribal courts offer a vital resource for the State of Alaska. Tribal courts:

- are **local, available and immediately accessible**
- are culturally relevant to the communities that they serve
- are designed by, and therefore accepted by, the communities they serve
- are capable of intervening before a family dynamic rises to the level of an emergency and disrupts an entire community
- help keep order –“All societies have to have order. And that is what local tribal governments do. They keep order on the local level.” Marlene Johnson, Final Report to the Governor, Alaska Commission on Rural Governance and Empowerment, 29 (June 1999)..

At a time of ever more dwindling resources, tribal courts fill the void left by a state government that lacks sufficient resources.

There is a pervasive fear held by those who can't figure out how to navigate this new terrain that tribal courts won't, or don't know how to be, fair, that individuals who appear before a tribal judge or panel of judges won't be accorded "due process of law," as that concept is firmly embedded in our state and federal systems of justice. The concept of due process, however, is really not all that complicated: it simply requires that the judicial system be conducted in a manner that is fundamentally fair. Tribal judges grasp that concept easily and readily.

In fact, the Alaska Inter-Tribal Council, along with numerous other organizations throughout this state, is working closely with tribal judges, offering them exceptional training opportunities to ensure that their judicial decision-making will withstand the harshest scrutiny. Tribal judges throughout the state have been conscientious, pursuing ongoing judicial education opportunities at every turn. This past fall, for example, the Alaska Inter-Tribal Council offered our second three-day judicial training session. Sixty five tribal judges attended that training. Because we designed the program to maximize individual, hands-on participation, we were forced to turn away 45 tribal judges. Next month, we will be offering a third judicial training forum at the same time as the Alaska Bar Convention, bringing in local, national, and international faculty to offer tribal judges information about how to work effectively with community members challenged by domestic violence, child protection, and FAS issues.

Our upcoming training program will also offer a session in collaboration with the Alaska Court System, wherein state and tribal judges will spend several hours together getting to know one another and educating one another about how they each meet their judicial responsibilities. The Alaska State Court System has been supportive of cross-educational state-tribal judicial training efforts in the past, including tribal judges in state judicial training programs, and joining tribal judges in tribally-oriented training programs. There is a pervasive belief "that strong local governments are important to the social order of the villages." Alaska Judicial Council Directory of Dispute Resolution in Alaska Outside Federal and State Courts, 1999, at p. 142. These cross-jurisdictional training efforts are essential because, as United States Supreme Court Justice Sandra Day O'Connor aptly noted:

“The judicial systems of the three sovereigns – the Indian tribes, the federal government, and the States – have much to teach one another. While each system will develop along different lines, each can take the best from the others. Just as a ‘single courageous State may, if its citizens choose, serve as a laboratory’ for the development of laws, the experiments and examples provided by the various Indian tribes and their courts may offer models for the entire nation to follow. . . . Whether tribal court, state court, or federal court, we must all strive to make the dispensation of justice in this country as fair, efficient, and principled as we can.”

Tribal judges are, as I have said, increasingly and successfully addressing child protection, domestic violence, and juvenile justice in their communities. Rather than being disadvantaged, as some might assume, they have an advantage over their state counterparts. They know the individuals who come before them. In most small villages, there are no secrets - it is virtually impossible for anyone to deceive the local tribal judge. Tribal judges have the added benefit of understanding the prevailing culture, language, and local dynamics – which enables them to craft a judicial response that will have a greater chance of success.

Will tribal judges make mistakes? Of course they will – there isn’t a judge in this country who doesn’t. I have had the privilege of co-chairing several committees for the National Council of Juvenile and Family Court Judges – one of the most influential judicial bodies in this country. The state judges with whom I work on those committees tell me that they make mistakes daily – that’s how they improve. The Alaska Court System, along with other state judicial systems, has received federal money for nine years – to encourage improvement of the state’s judicial system regarding children in need of aid. Why would we hold tribal judges to a standard that we do not hold our own state judges?

We have a problem in Alaska right now: there are simply not enough state resources to provide meaningful, accessible, and adequate basic human services in rural, tribal Alaska. We also have an opportunity for a solution – one that may not be easily digested by some, but one that has remarkable promise. There is a tremendous cost to the state if we do not stop the bickering and accommodate change. We will lose yet another generation, and have only ourselves to blame.

Former Governor Knowles recognized the opportunities presented by tribal government, and joined 83 tribal leaders to take a leap of faith and make a commitment to begin working collaboratively **for the good of the state**. Those who signed the historic Millennium Agreement began to work together, negotiating their way through new territory. I was privileged to have been a part of that team, and had the good fortune of forging some of the closest friendships of my life. Speaking only for myself, I know deep in my heart that we accomplished something big, something that will not be forgotten. We took a leap of faith, demonstrated our trust in one another, and began to navigate new terrain. Tribal and state officials, working together **will better serve the needs of all Alaskans**.

Will Mayo, former President of the Tanana Chiefs Conference, so poignantly summed up the impasse that Alaska now faces: "If a young couple were courting and brought up all of the "what ifs" about their possible life together, nobody would ever get married. If we keep dwelling on all of the problems...we will [never] get to where we can build on successes." Final Report to the Governor, Alaska Commission on Rural Governance and Empowerment, 25 (June 1999).