

Kitchen Courthouses and Flying Judges:

Bush Justice in Alaska, 1959 - 1980

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Map of Alaska Court Locations (2018)¹



¹ Alaska Court System, *Alaska Court System Annual Report FY 2018, July 1, 2017 - June 30, 2018*, report, Alaska Court System (Anchorage, AK: Northern Printing, 2018).

Introduction

Three hundred fifty miles north of the Arctic Circle, Utqiagvik sits on top of the world. Northern winds nip around colorful framed houses in negative forty degree temperatures. Frozen tundra surrounds the town in almost every direction, a vast desert crusted with ice. A few paces away lies the ocean, a glassy expanse that eventually transforms into the Beaufort Sea, and after that, the North Pole. There are no roads connecting communities in the northernmost region of Alaska. Outside of Utqiagvik, the nearest village is Atkasuk, which lies five to six hours away by dog team in clear weather.

To Sadie Neakok, a petite Iñupiaq woman and one of the first Alaska Native magistrates, Utqiagvik (formerly known as Barrow) was home.² Family photos covered the walls of her house above large plush sofas.³ In 1960, the year after Alaska became a state, Sadie Neakok's kitchen table sat at the center of Utqiagvik's judicial system. "My kitchen was my first courthouse," she later recalled. "There would be a state trooper in here, or an arresting officer, sitting on this side of the prisoner and me on the other side..."⁴ Her kitchen filing cabinets overflowed with dockets. As a magistrate, Sadie Neakok worked as a translator, social worker, secretary, coroner, and jailer.⁵ For many years, home and work life were one and the same.

Sadie Neakok represented a generation of Native and non-Native court officials who grappled with competing responsibilities in the decades after Alaska statehood. Provided only with a handbook and two weeks of training, magistrates served as the face of the court system in

² Utqiagvik was known as Barrow prior to 2016 before officially being renamed. For the purpose of this paper, the town will be referred to as Utqiagvik except in direct quotes.

³ *Sadie Neakok, Iñupiaq Elder from Barrow*. Photograph. ANKN/IARC Teachers' Resources. <http://ankn.uaf.edu/IARC/course/view.php?id=5>.

⁴ Margaret B. Blackman. *Sadie Brower Neakok: An Iñupiaq Woman*. Seattle: University of Washington Press, 1989. [Page 162].

⁵ Lisa Rieger, "Rural Courts in Alaska: Keeping Peace - The Melding of Western and Native Values and Procedures," *Journal of Contemporary Criminal Justice* 10, no. 2 (May 1994): [Page 125].

remote communities. In these environments, standard Euro-American precepts of justice such as individual rights, punitive sentencing, and equal application of the law frequently clashed with traditional customs. Village practice called for admittance of guilt, conversation, and reconciliation with the community whenever possible. “Bush justice,” a widely used, non-pejorative term that refers to the historical interplay between state and village law in rural Alaska, brought these judicial frameworks into conflict.⁶ Judges and magistrates like Sadie Neakok in the Second and Fourth Judicial Districts found themselves thrust into positions as “legal culture brokers,” compelled to somehow make a Euro-American system work within Native villages.⁷ This essay explains how despite the sincere efforts of Native and non-Native court officials to reconcile these two systems in the 1960s and 1970s, state justice gradually supplanted Native justice even as village conditions exposed the limits of the Euro-American judicial system.

Early magistrates and judges operated in a landscape unparalleled by any other American state. Alaska constitutes 663,300 square miles, the same area as roughly one-quarter of the contiguous United States. In 1960, it was home to 226,000 people, or a mere 20 percent of today’s population in Rhode Island.⁸ Dramatic geographic distances deeply affected state services in rural areas. Where they existed, they were often weak. In other places, they barely

⁶ Stephen Conn, “Bush Justice Unplugged: The Road Taken and the Research Trail Left Behind” (paper presented at First Alaska Native Studies Conference, University of Alaska Anchorage, Anchorage, AK, April 2013), [Page 1], http://stephenconn-ak.com/conn.2013.bush_justice_unplugged.pdf.

⁷ Stephen Conn, “Alaskan Bush Justice: Legal Centralism Confronts Social Science Research and Village Alaska [original paper]” (paper presented at First Conference of the Commission on Folk Law and Legal Pluralism of the International Union of Anthropological and Ethnological Sciences, Bellagio, Lake Como, Italy, September 1981), [Page 1], <http://hdl.handle.net/11122/9750>.

⁸ U.S. Department of Commerce U.S. Bureau of the Census. *1970 Census of Population, Characteristics of the Population, Alaska*. January 1973. <http://live.laborstats.alaska.gov/cen/histpdfs/1970char.pdf>.

existed at all.



Court officials worked in a landscape in which the legal status of Alaska Native tribes differed from that of tribes in the Lower Forty-eight.¹⁰ Alaska became a U.S. territory in 1867. Because the federal government stopped making treaties with indigenous tribes in 1871, this meant that Alaska Natives did not obtain reservations.¹¹ Although reservations are typically associated with manipulative land grabs, the legal status of a reservation granted tribes in the Lower Forty-eight some level of protection and sovereignty over territory.¹² Without

⁹ US Coast Guard. *United States Coast Guard Arctic Strategy*. May 2013.

https://www.uscg.mil/Portals/0/Strategy/cg_arctic_strategy.pdf.

¹⁰ A common Alaska term referring to the contiguous United States.

¹¹ With the exception of one tribe in the southeast, the Annette Island Reserve in Southeast Alaska. Metlakatla Indian Community, "The Only Indian Reserve in the State of Alaska," Metlakatla Indian Community - Annette Islands Reserve, <http://www.metlakatla.com/>.

¹² The U.S. government did not grant tribes in the Lower Forty-eight full sovereignty over territory either. The Dawes Severalty Act in 1887 provided for the distribution of Indian reservation land among tribal members. The act also provided that any surplus land be made available to whites, who by 1932 had acquired two-thirds of the 138,000,000 acres the Indians had held in 1887. The act severely weakened the social structures of tribes, and spurred reform in the form of the Indian Reorganization Act (IRA) in 1934. The IRA decreased federal control of

reservations, Alaska Natives were federally recognized as members of tribes, yet granted no special privileges or recognizable power over village affairs.

After Alaska became the 49th state on January 3rd, 1959, indigenous groups and the state of Alaska clashed over land access and the rights of Native tribes. As the federal government transferred land holdings to state possession, state officials took steps to sell access to natural resources. Alaska's financial future, to a large extent, would depend on the state's selection, classification, and disposition of its vast, potentially oil-rich area.¹³ Prioritizing state control over land, however, ran directly against Alaska Native interests. The failure of Project Chariot (1959 - 1962), a plan to create an artificial harbor at Cape Thompson in the North Slope Borough by burying and detonating nuclear devices, made this clear. The project threatened to ruin large tracts of northwest Alaska for human occupation. Natives successfully mobilized against it. The Rampart Dam Project in the late 1950s underscored the same tension. The project would have flooded several million acres of prime hunting territory for the creation of a hydroelectric energy source, and pitted Alaska Natives against the federal government.¹⁴ The creation of the Alaska Federation of Natives in 1966 demonstrated Native resolve to challenge state land claims.

After a decade of legal battles and a federally mandated land freeze, President Richard Nixon signed the Alaska Native Claims Settlement Act (ANCSA) into law in 1971.¹⁵ The controversial settlement provided that 44 million acres of land would be available for selection

American Indian affairs, curtailed the future allotment of tribal communal lands to individuals, and provided for the return of surplus lands to tribes rather than to homesteaders. The Editors of Encyclopædia Britannica, "Dawes General Allotment Act," in *Britannica* (Encyclopædia Britannica, inc., 2016), <https://www.britannica.com/topic/Dawes-General-Allotment-Act>, The Editors of Encyclopædia Britannica, "Indian Reorganization Act," in *Britannica* (Encyclopædia Britannica, inc., 2016), <https://www.britannica.com/topic/Indian-Reorganization-Act>.

¹³ Claus M. Naske and Herman E. Slotnick, *Alaska: A History*, 3rd ed. (n.p.: University of Oklahoma Press, 2011), [Page 249].

¹⁴ Ernest S. Burch, Jr., "Native Claims in Alaska: An Overview," *Études/Inuit/Studies* 3, no. 1 (1979): [Page 9], <http://www.jstor.org/stable/42869299>.

¹⁵ Burch, "Native Claims."

by newly created Native-controlled corporations, along with a \$962.5 million cash settlement. Alaska Natives would be independent shareholders of indigenous corporations while becoming Alaska state residents. In exchange, all Native land claims based on aboriginality would be void.

While ANCSA provided a solution to the question of land ownership, questions about Native sovereignty, legal jurisdiction, law enforcement and public safety remained unresolved. Although ideally the state might have wanted full control over the court system governing Native communities, Alaska's geographic landscape made this impossible. By necessity, Alaska State Troopers and judges depended on local Native leaders to handle petty crimes and disputes. Village councils, court officials, and troopers collaborated and advised one another regularly.

A 2006 - 2012 collection of oral histories sheds light on the experiences of early court officials from the 1960s and 1970s. Supplemented by interviews, court memos, newspaper clippings, meeting minutes, and research reports from Alaska archives, these sources paint a picture of Alaska bush justice as highly decentralized and improvised, where justice in the villages was "built upon one-to-one relationships."¹⁶ A significant body of historical literature addresses law among indigenous groups in Canada and the Lower Forty-eight, but Alaska has been overlooked.¹⁷ Although some legal scholars and anthropologists have examined and criticized Alaska bush justice from contemporary perspectives, no history has yet been written on the experiences of judges and magistrates in the early years of statehood.

¹⁶ Stephen Conn, "A Perspective on Small Village Justice Systems," June 1975, Stephen Conn Papers, University of Alaska Anchorage Justice Center, Anchorage, AK. [Pg 18].

¹⁷ David L. Ghere and Alvin H. Morrison, "Searching for Justice on the Maine Frontier: Legal Concepts, Treaties, and the 1749 Wiscasset Incident," *American Indian Quarterly* 25, no. 3 (Summer 2001): doi.org/10.1353/aiq.2001.0044. , K.S. Coates and W.R. Morrison, "A drunken impulse: Aboriginal justice confronts Canadian law," *Western Historical Quarterly* 27, no. 4 (Winter 1996): [doi:10.2307/970533](https://doi.org/10.2307/970533). , Marc James Carpenter, "'Justice and Fair Play for the American Indian': Harry Lane, Robert Hamilton, and a Vision of Native American Modernity," *Pacific Historical Review* 87, no. 2 (May 2018): doi.org/10.1525/phr.2018.87.2.305. ,

During the 1960s and 1970s, the justice system became a vehicle through which Alaska Native sovereignty was contested. For Natives living in rural communities, these years marked an era where increasing crime rates, expanding state involvement in village affairs, and advancements in travel and communication changed rural life. Many Natives, like Sadie Neakok, actively participated in the court system and tried to reconcile state justice with village customs. Native and non-Native officials alike traversed hundreds of miles, slept on the floors of public buildings, and conducted hearings in whatever facilities they could find. As the Alaska court system transformed village justice, certain judges and magistrates defended village autonomy and boldly challenged fundamental assumptions about law -- flying in the face of conventional court practice, and shaping a state along the way.

Chapter One: Native Involvement in the Court System

Perhaps the best way to appreciate the dramatic size of Alaska is from the sky. Mountains erupt from river banks, and lakes strew the land like puzzle pieces. Resource rich wilderness expands in every direction. The sparse pockets of human society appear to cling to its soil, fragile constructions in a place that defies comprehension.¹⁸

Judge Roy Madsen would have been quite familiar with this view. Originally from the Alutiiq village of Kanatak on the Alaska Peninsula, Madsen served as the first Native Superior Court judge.¹⁹ During the late 1970s, he regularly traveled to the Aleutian islands by small plane. Using Kodiak as his base, Madsen met with local residents and magistrates in communities of 25 to 3,000 people.²⁰ “I did probably as much or more traveling than any judge,” Madsen later recalled.²¹ Judge Madsen not only covered the Kodiak area, but also made trips to Dillingham, Naknek, Sand Point, Cold Bay, Unalaska, and St. Paul (in the middle of the Bering sea).²² The distances between these communities stretched the limits of small plane travel: 656 miles separated Kodiak from St. Paul, about the same distance between Seattle and Sacramento.²³ “I’d stay and I would talk to the people and I got acquainted,” Madsen remembered fondly. “I made

¹⁸ Many villages in Alaska are not accessible except by plane or boat.

¹⁹ State of Alaska, "Kanatak, Alaska," Alaska Community Database Online, <https://dced.maps.arcgis.com/apps/MapJournal/index.html?appid=968b7060f7df46e9a2579534ba9d55a8#>, Roy Madsen, "Judge Roy Madsen," interview by Arthur Snowden, Judges of Alaska, Project Jukebox, last modified October 25, 2006, <http://jukebox.uaf.edu/site7/p/383>.

²⁰ Stephen Conn, "Bush Justice and Development in Alaska: Why Legal Process in Village Alaska Has Not Kept up with Changing Social Needs," February 1984, Stephen Conn Papers, Scholarworks@UA - UAA Justice Center, Anchorage, AK. [Page 43].

²¹ Roy Madsen, "Judge Roy Madsen," interview by Arthur Snowden, Judges of Alaska, Project Jukebox, last modified October 25, 2006, <http://jukebox.uaf.edu/site7/p/383>.

²² Ibid.

²³ Google, Measure distance between Kodiak and St. Paul Island, Google Maps.

[connections] with people out there and it kind of -- they began to look at me as their judge and it really made me feel that way.”²⁴

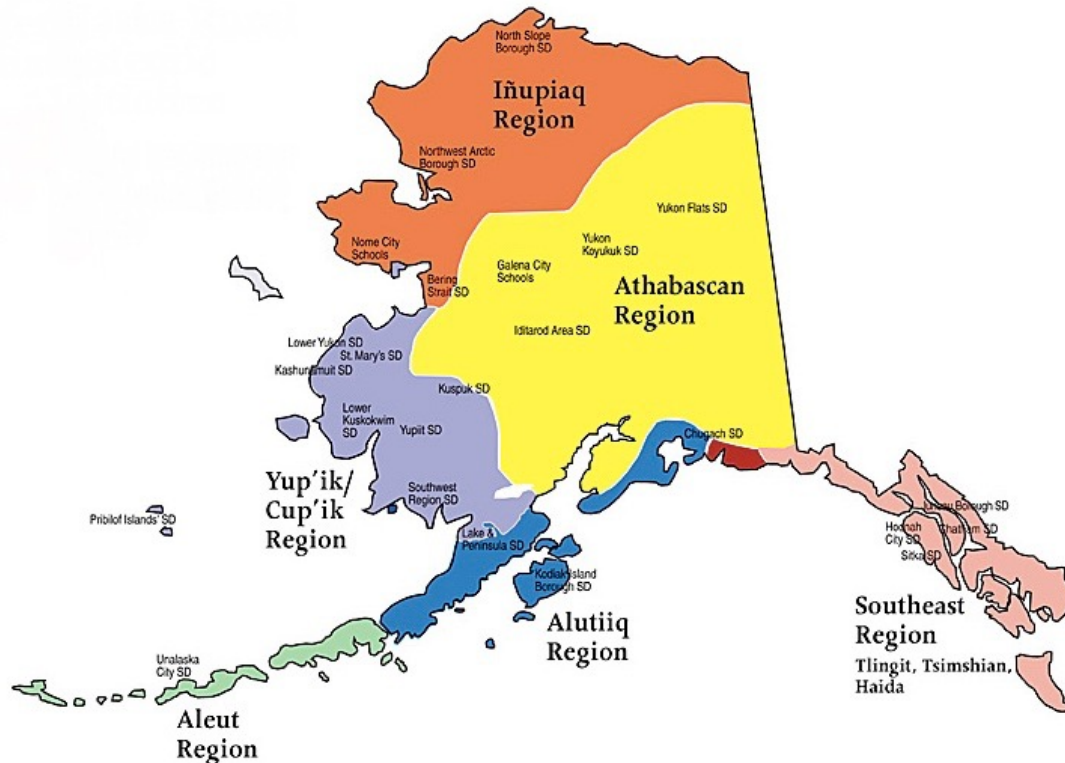
Although Madsen’s position as the first Native Superior Court judge distinguished him from most other judicial officers, he was far from the only Native employed by the state court system. The remote locations of many Native communities gave the state government incentives to employ Native residents as magistrates, or low-level court officials who handled basic civil and criminal matters. They operated with almost no state support, typically working out of their private living quarters. This chapter outlines traditional village justice systems, how they changed with the introduction of state appointed judges and magistrates, and the conditions that cultivated early state government and village collaboration.

Early Justice

Alaska was and remains inhabited by diverse groups of people. There are 229 tribes registered in Alaska, roughly 40 percent of the 573 federally recognized tribes in the United States.²⁵ At least twenty Alaska Native languages are spoken, falling into six main groupings: Iñupiaq, Yup’ik, Athabascan, Aleut, Alutiq, and Tlingit/Tsimshian/Haida. Each of these regions consists of numerous unique tribes that share some common attributes. For instance, while interior tribes tended to be nomadic and depended on subsistence hunting, tribes along the southern coast tended to establish more permanent residences and relied on fishing and trade.

²⁴ Roy Madsen, "Judge Roy Madsen," interview by Arthur Snowden, Judges of Alaska, Project Jukebox, last modified October 25, 2006, <http://jukebox.uaf.edu/site7/p/383>.

²⁵ National Conference of State Legislatures. *Federal and State Recognized Tribes*. November 2018. <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx>.



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Long before contact with non-Native people, traditional systems of justice maintained social order in Alaska Native communities.²⁷ Within the Iñupiaq, Athabaskan, and Yup'ik regions, Alaska Natives lived under a wide range of self-governing systems but organized themselves around one fundamental social unit: the family.²⁸ Although it is difficult to make generalizations about the various Alaska Native tribes, academics suggest that Native societies consistently organized into clans that cooperatively hunted for food. In these subsistence based cultures, the needs of the community took priority.²⁹ An early anthropologist, Norman Chance,

²⁶ "Alaska Geographical / Cultural Regions." Map. Alaskan Geographical Regions.
<http://www.alaskan-Natives.com/alaskan-Native-regions/>.

²⁷ Lisa Jaeger, *Tribal Courts A Historical Perspective for Bush Justice in Alaska* (n.p.: Tanana Chiefs Conference, 2009), [Page 3].

²⁸ Claus M. Naske and Herman E. Slotnick, *Alaska: A History*, 3rd ed. (n.p.: University of Oklahoma Press, 2011), [Page 26].

²⁹ Ibid, 29.

suggested that “the individual had great freedom of choice in his actions, but his security lay in cooperating and sharing with others.”³⁰

Social order rested on customs that prioritized reconciling an offender with the group. Tribal leaders, including chiefs, spiritual leaders, whaling captains, family members and elders, applied justice within communities.³¹ In some cases, family members addressed offenses with the goal of expediently mending relationships within the community.³² In other cases, leaders formed decision-making bodies or advisory assemblies. “The tribal court came in long before white people,” Chief Peter John from Minto, Alaska, recalled. “The court brought everything out in the open, before the people. They talked to the person making trouble right in front of him. They just talk. As peaceful as they can. The Indian way is to have respect for one another.”³³ Only in extreme cases would an individual be punished with death or banishment.

Personal relationships underpinned traditional village justice. Within small communities, ideas such as objectivity held little value. According to anthropology professor Arthur Hippler and preeminent bush justice researcher Stephen Conn, “Justice was not expected to be blind.”³⁴ Given that community members would already know one another, discussion and reconciliation served as crucial components of the decision-making process. As Conn and Hippler elaborated, “The importance of deliberation and flexibility cannot be overstated... Discussion, consultation,

³⁰ Norman A. Chance, *The Eskimo of North Alaska*, ed. George Spindler and Louise Spindler (n.p.: Holt, Rinehart and Winston Inc, 1966), [Page 63 - 69].

³¹ Lisa Jaeger, *Tribal Courts A Historical Perspective for bush justice in Alaska* (n.p.: Tanana Chiefs Conference, 2009), [Page 3].

³² Ibid, 3-4.

³³ Ibid, 1.

³⁴ Arthur Hippler and Stephen Conn, *Traditional Athabascan Law Ways and Their Relationship to Contemporary Problems of "Bush Justice"*, research report no. 7, Institute of Social, Economic, and Government Research (Fairbanks, AK: University of Alaska, 1972), [Page 7]. Stephen Conn served as a lawyer and legal anthropologist with the Institute of Social, Economic, and Government Research (ISEGR) at the University of Alaska Fairbanks from 1972 to 1975, and with the Justice Center at the University of Alaska Anchorage from 1975 to around 1990, specializing in bush justice.

and slow action prevented fragmentation of the small bands, which could have endangered everyone's survival, not to mention the possibility of precipitating warfare."³⁵

Dramatic changes of the late nineteenth and early twentieth centuries severely weakened Native societies and make it difficult to know more about Native forms of justice preceding western contact. The arrival of the Russians in the late 1700s, and a large number of goldseekers in the 1890s, introduced diseases to Alaska Native populations.³⁶ By 1910, the Native population of 25,331 was only one-third of its estimated size prior to western contact.³⁷ Environmental changes also threatened indigenous life: By the turn of the twentieth century, whaling ships had killed significant portions of the whale and walrus populations.³⁸ Alcohol made its first inroads into Native communities, and aggressive drinking and violence became an increasing problem.³⁹ These changes severely weakened traditional methods of self governance and traditional justice systems.⁴⁰

The arrival of Protestant missionaries at this vulnerable moment deeply affected the history of Native social control. In addition to establishing schools and churches, missionaries supported the formalization of village councils in order to control alcohol use. The village councils consisted of Native women and men and commonly acted by consensus. Although missionaries introduced these institutions with the intention that the councils would advance the missionary agenda of suppressing alcohol and punishing sinners, village councils gradually cut

³⁵ Arthur Hippler and Stephen Conn, *Traditional Athabascan Law Ways and Their Relationship to Contemporary Problems of "Bush Justice"*, research report no. 7, Institute of Social, Economic, and Government Research (Fairbanks, AK: University of Alaska, 1972), [Page 12].

³⁶ Ernest Gruening, *The State of Alaska* (New York, NY: Random House, 1968), [Pages 17 - 19]., National Park Service, "What Was the Klondike Gold Rush?," Klondike Gold Rush, <https://www.nps.gov/klgo/learn/goldrush.htm>.

³⁷ Alaska Native Curriculum and Teacher Development Project (ANCTD), "Alaska Natives Commission Final Report, Volume I," Alaska Native Curriculum Project, <http://www.alaskool.org/resources/anc/anc01.htm>.

³⁸ Jaeger, *Tribal Courts*, [Page 7].

³⁹ Stephen Conn, *No Need of Gold - Alcohol Control Laws and the Alaska Native Population: From the Russians Through the Early Years of Statehood*, ed. Antonia Moras, Alaska Historical Commission Studies in History 226 (n.p.: School of Justice, University of Alaska Anchorage, 1986), [Page 4].

⁴⁰ Jaeger, *Tribal Courts*, [Page 7].

loose from the missionaries and found a place within a larger web of community relations.⁴¹ They adhered to Native customs by avoiding the confrontational posture of trials and favored solutions that promoted correction and deterrence.⁴² Village councils built off traditional methods of social control, melding missionaries' vision of what a court should look like with Native peace-keeping methods.⁴³

Changes Under U.S. Jurisdiction

As white Americans moved to Alaska seeking commercial success, the federal government passed a series of resolutions to organize the land that it had purchased from Russia in 1867. For its first decade as a U.S. possession, Alaska didn't have any legal system to speak of. Communities depended on informal or extrajudicial means like "miner's code" to settle disputes.⁴⁴ The First Organic Act of 1884 created the District of Alaska that established a district court and applied the state laws of Oregon to the new district. The Act provided for a judge, clerk, several commissioners, and a marshal with four deputies.⁴⁵ Twenty-eight years later, the Second Organic Act of 1912 turned the District of Alaska into a U.S. Territory and split the area into four divisions governed by fifty-two federal agencies.⁴⁶ Although the boundaries of these four districts changed slightly over the subsequent decades, for the most part, they remained

⁴¹ Conn, Stephen. "Inuit Village Councils in Alaska—An Historical Model for Effectuation of Aboriginal Rights?" *Études/Inuit/Studies* 9, no. 2 (1985): 48. <http://www.jstor.org/stable/42869522>.

⁴² Jaeger, *Tribal Courts*, [Page 9].

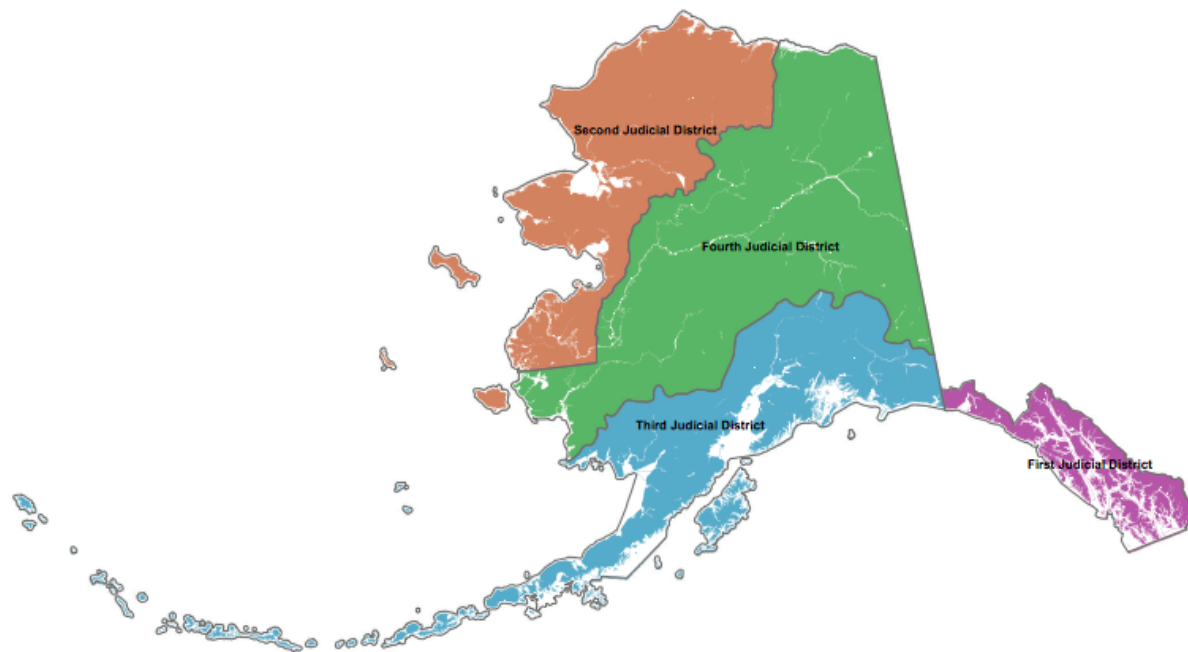
⁴³ Trostle and Angell, "Policing the Arctic," [Page 97].

⁴⁴ Naske and Slotnick, *Alaska: A History*, [Page 115].

⁴⁵ Jaeger, *Tribal Courts*, [Page 6].

⁴⁶ State of Alaska, "Alaska Judicial Districts – 1950," Map. Department of Labor and Workforce Development, Research and Analysis, <http://live.laborstats.alaska.gov/cen/maps.cfm>.

constant.



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During the first half of the twentieth century, the federal government administered justice in rural Alaska through a traveling court. In *The Biggest Damned Hat: Tales of Territorial Alaska Lawyers and Judges*, Pam Cravez documents the experiences of territorial judges and lawyers who traveled throughout the Bush, predominantly handling mining and fishing cases among white settlers.⁴⁸ Judge James Wickersham, one of the two federal judges residing in Alaska in 1900, gained a reputation for fearlessly crossing wilderness to resolve disputes. Cravez

⁴⁷ State of Alaska, "Alaska Judicial Districts – 1950," Department of Labor and Workforce Development, Research and Analysis, <http://live.laborstats.alaska.gov/cen/maps.cfm>.

⁴⁸ "The Bush" is a common non-pejorative Alaska expression referring to rural Alaska. Pamela Cravez, *Tales from Territorial Alaska Lawyers and Judges: the Biggest Damned Hat* (Fairbanks, AK: University of Alaska Press, 2017), [Page 19].

describes one instance when the judge hitched up his dog team and traveled five hundred miles down the Yukon in fifty below temperatures to settle a claim jumping case.⁴⁹

In southern Alaska, Judge James Wickersham or Judge Charles Sumner Johnson accompanied the “floating court” that traveled annually by Coast Guard cutter to remote communities. The court stopped at every village on the Aleutian chain and in the Bristol Bay area. The federal district judge convened court in a local venue, often in a warehouse, cannery, dining room, schoolhouse or attic.⁵⁰ Local and predominantly white authorities brought those in need of justice before the judge. The *Anchorage Daily Times* described the floating court as “simple justice, with delivery once a year. Anyone who missed the boat simply waited until next year for justice.”⁵¹

For most of the twentieth century, a traveling court was the only feasible option. To the predominantly white outsiders moving north, Alaska appeared a wild frontier. Supposedly urban centers in Alaska hardly constituted cities by Lower Forty-eight standards. When Buell Nesbett, a magistrate from 1946 - 1947 and Alaska’s first Chief Justice, was asked to physically describe Anchorage from the 1940s, he replied, “Well, Fourth Avenue was paved.”⁵² In the 1940s, eight lawyers resided in Anchorage.⁵³ Only with the economic development spurred by mining, military bases, and fishing did towns like Anchorage, Fairbanks, and Juneau become urban centers. By comparison, the only court presence in the Bush consisted of commissioners and the

⁴⁹ Pamela Cravez, *Tales from Territorial Alaska Lawyers and Judges: the Biggest Damned Hat* (Fairbanks, AK: University of Alaska Press, 2017), [Page 19].

⁵⁰ Robert B. Atwood, "Between Us," September 10, 1978, Magistrate Newsletter, ACSA 2013.49 Issue nos. 5-6 (Oct./Nov. 1978), Magistrate Newsletters, Boney State Law Library, Anchorage, AK.

⁵¹ Robert B. Atwood, "Between Us," September 10, 1978, Magistrate Newsletter, ACSA 2013.49 Issue nos. 5-6 (Oct./Nov. 1978), Magistrate Newsletters, Boney State Law Library, Anchorage, AK.

⁵² Buell Nesbett, "Justice Buell Nesbett, Part 1" interview by Claus Naske, Judges of Alaska Project Jukebox, last modified July 26, 1982, <http://jukebox.uaf.edu/site7/p/367>.

⁵³ Nesbett, "Justice Buell, Part 1" interview, Judges of Alaska Project Jukebox.

occasional visiting judge. As late as the 1940s, territorial marshals traveled to villages in the Fourth Judicial District by dog team for their investigations and arrests.⁵⁴

Because the federal court system could not effectively reach rural Alaska, federal marshals and commissioners generally supported village council authority.⁵⁵ “I reinforced the council’s position,” Bill Nix, a territorial marshal, said in an interview.⁵⁶ They did this largely by necessity and intervened only in extremely serious cases that the village council could not handle. “There was no way in the world you could have prosecuted every violation you came in contact with and my standard was that when a person was disrupting the balance of the community by his actions and the village council would no longer deal with the person effectively, then I would attempt to do something,” Nix explained.⁵⁷

Deferring to Native authorities also proved logistically easier. Travel was costly, both in terms of money and time. Weather posed its own challenges, as Alaska’s winter climate could make air travel risky. As one public defender, Bryan Timbers, recounted, “In the winter time you get the problem of going into a village and maybe getting stuck there for two weeks.... More than once I have been in a village where the runway has gotten blown over, and nobody is going to clear that off until there are enough people that want to get out to justify it.”⁵⁸ These factors gave court officials incentives to defer to Native bodies of authority.

⁵⁴ Debbie Miller, “Flying judge!,” *Alaska Ruralite* (AK), May 16, 1982, [Page 16-17], http://jukebox.uaf.edu/site7/sites/default/files/documents/vanh_ruralite_combined.pdf.

⁵⁵ Jaeger, *Tribal Courts*, [Page 9].

⁵⁶ William Nix. Interview by Stephen Conn. Fairbanks, AK. 1973.

⁵⁷ Ibid.

⁵⁸ Bryan Timbers. Interview by Stephen Conn. Nome, AK. 1973.

Magistrates and Judges

In 1959, the Alaska state constitution created a unified, centrally-administered court system funded by the state of Alaska.⁵⁹ Unlike judicial systems in the Lower Forty-eight, municipal governments did not maintain separate courts.⁶⁰ Consequently, state courts could lie hundreds of miles from certain populations. 55,000 Indians, Eskimos and Aleuts resided in about 140 villages with populations from 25 to 700 persons and 300 persons on average.⁶¹ Given that many of these communities lay off-road and could only be accessed by boat or plane, delivering judicial services in the Bush posed a serious challenge to the new Alaska government.

Rather than reinvent the wheel, early state officials used magistrates to fill this gap. Built off of the early commissioner system, the magistrate position included a wide array of civil and criminal responsibilities.⁶² Most magistrates had no formal training as lawyers, yet performed services including issuing warrants, conducting preliminary examinations in criminal cases, ordering temporary detention of children, issuing writs of habeas corpus, and conducting small claims cases involving values under \$1,000.00.⁶³ They worked as coroners, and they held trials and issued judgements if the defendant agreed in writing to be tried by the magistrate. They also entered judgments of convictions if the defendant pled guilty or no contest to a state misdemeanor.⁶⁴

⁵⁹ *Alaska Court System Annual Report FY 2018, July 1, 2017 - June 30, 2018*, report, Alaska Court System (Anchorage, AK: Northern Printing, 2018).

⁶⁰ N.E. Schafer and Antonia Moras, "Delivering Justice in Rural Alaska: The Last Frontier," *Journal of Contemporary Criminal Justice*, May 1994, [Page 116], <https://doi.org/10.1177/104398629401000204>.

⁶¹ Stephen Conn, "Bush Justice and Development in Alaska: Why Legal Process in Village Alaska Has Not Kept up with Changing Social Needs," February 1984, Stephen Conn Papers, Scholarworks@UA - UAA Justice Center, Anchorage, AK. [Page 43].

⁶² Alaska Judicial Council, 'First Annual Report 1960,' January 1961.

⁶³ Robert Boochever, "The State of the Judiciary: An Address by Chief Justice Robert Boochever Before the Joint Session of the Alaska Legislature," April 5, 1977.

⁶⁴ N.E. Schafer and Antonia Moras, "Delivering Justice in Rural Alaska: The Last Frontier," *Journal of Contemporary Criminal Justice*, May 1994, [Page 117], <https://doi.org/10.1177/104398629401000204>.

The number of magistrates quickly expanded along with the state. In 1960, Jay Rabinowitz estimated that there were about 150 lawyers in the entire state.⁶⁵ The Alaska Judicial Council, an independent commission with a constitutionally mandated role in the selection of Alaska judges, documented a dozen judges in the same year.⁶⁶ By the year 1970, fifty magistrates operated in Alaska.⁶⁷ The only requirements were that the magistrate be at least twenty-one years old, a U.S. citizen, and a resident of Alaska for at least six months.⁶⁸ A training program application indicated that selection for magistrates was usually made from among local residents who had “minimal education mostly due to the minimum educational standards which prevail in remote rural communities, particularly those with a predominantly Native or Eskimo population.”⁶⁹ Villages received magistrates if they could demonstrate high need.

Technological advancements facilitated this expansion. By 1959, planes had largely replaced dog teams, making the Bush more accessible than ever before. Despite improvements in transportation, a project application from the late 1960s for a magistrate training program highlighted the continued need for the appointment of local judicial officers. The report observed that many of the communities in which these officers functioned were hundreds of miles from populated centers with legally trained professionals.⁷⁰ Some lacked modern means of radio and telephone communication, as well as commercial aircraft service. During winter, certain communities were inaccessible by any means, including small air taxi services.⁷¹ Magistrates

⁶⁵ Jay Rabinowitz, "Justice Jay Rabinowitz," interview by Ronald Inouye, Judges of Alaska Project Jukebox, last modified April 2000, <http://jukebox.uaf.edu/site7/p/369>.

⁶⁶ State of Alaska, "Former Judges," Alaska Judicial Council, <http://www.ajc.state.ak.us/judges/former>.

⁶⁷ Memorandum by Susan Miller, "Program: The Alaska Court System in cooperation with the University of Alaska Cooperative Extension Service presents the Alaska Magistrate Seminar: Roster of Alaskan Magistrates," April 1, 1970, Record Group 1, ACSA 2003.23.7, Susan Miller Files, Boney State Law Library, Anchorage, AK.

⁶⁸ N.E. Schafer and Antonia Moras, "Delivering Justice in Rural Alaska: The Last Frontier," *Journal of Contemporary Criminal Justice*, May 1994, [Page 117], <https://doi.org/10.1177/104398629401000204>.

⁶⁹ Alaska Court System, "Project Application Alaska State Magistrate Training Program," Record Group 1, ACSA 2003.23.16, Susan Miller Files, Boney State Law Library, Anchorage, AK.

⁷⁰ Ibid.

⁷¹ Ibid.

often served as the sole face of the court system in these locations, despite the fact that the vast majority had no legal training.⁷² As Arlene Clay, a magistrate in Aniak, explained, “Okay, the Bush people, the only contact they had with the Alaska Court System was the magistrate’s office. So I kept a tight court.”⁷³

Records indicate that most magistrates in the Alaska Interior were Native people. Reports on magistrates in the 1960s are hard to come by, but a report on the magistrate system in 1978 indicated that 90 percent of magistrates in the Second Judicial District and 40 percent of magistrates in the Fourth Judicial District (including the Bethel Service Area) were Native.⁷⁴ Given that rural Alaska only slowly became accessible, it is reasonable to assume that the proportion of Native magistrates before 1978 was even higher. About half of the magistrates in the Second and Fourth Judicial Districts were women. Troopers still frequently deferred to village councils in the absence of other forms of state presence, but the widespread appointment of magistrates created state-recognized positions of judicial authority frequently held by Native people.

⁷² Ibid.

⁷³ Arlene Clay, "Magistrate Arlene Clay, Part 1" interview by Karen Brewster and Barbara Hood, Judges of Alaska Project Jukebox, last modified January 25, 2012, <http://jukebox.uaf.edu/site7/p/378>.

⁷⁴ Many of the cities included in the Bethel Service Area were classified within the Second or Fourth Judicial Districts at different points in history. Susan Miller, "Alaska Magistrate and Population Information - June 2004." (unpublished typescript, June 30, 2004).



One of the earliest known statewide Magistrate's Conferences in Anchorage, AK, 1961⁷⁵

Non-Native judges and magistrates generally came to Alaska from the Lower Forty-eight seeking adventure or simply a fresh direction in their lives. Judge Beverly Cutler grew up in a Washington D.C. suburb. "I was a young 20's female just sort of floating waiting for something to put definition or direction on your [sic] life I guess," she recalled.⁷⁶ Magistrate Arlene Clay moved to Alaska with her husband when World War II disrupted their New England careers as musicians.⁷⁷ After accepting and then quitting their jobs as air traffic controllers, they built a cabin three miles north of Aniak, a mostly Yup'ik & Tanaina Athabascan village on the Kuskokwim River in western Alaska, and picked up subsistence hunting.⁷⁸

⁷⁵ *Statewide Magistrate's Conference*, 1961, photograph, <http://jukebox.uaf.edu/site7/media-gallery/detail/439/5253>.

⁷⁶ Beverly Cutler, "Judge Beverly Cutler, Part 1" interview by Karen Brewster and Margaret Russell, Judges of Alaska Project Jukebox, last modified January 25, 2012, <http://jukebox.uaf.edu/site7/p/374>.

⁷⁷ Arlene Clay, "Magistrate Arlene Clay, Part 1" interview by Karen Brewster and Barbara Hood, Judges of Alaska Project Jukebox, last modified January 25, 2012, <http://jukebox.uaf.edu/site7/p/378>.

⁷⁸ State of Alaska, "Aniak, Alaska," Alaska Community Database Online, <http://dced.maps.arcgis.com/apps/MapJournal/index.html?appid=4722232513444b42ae1122f7a1b225cf#>.

Whether they had lived in Alaska their whole lives or recently relocated, magistrates operated with minimal state support. They covered several neighboring villages, yet did not receive travel request books to receive reimbursement for traveling expenses. As a result, they “hitchhiked” with troopers to communities in the surrounding area.⁷⁹ The traveling court and tremendous expectations placed on state personnel took a toll on court employees. Judges drowned in cases, and state troopers policed territories large enough to be states in their own right. Given that it might take state troopers days to reach a village, they could not adequately support magistrates. Arlene Clay described how the isolation of magistrates required that they perform duties well outside of their job description. In her oral history interview, she recalled:

And the magistrates at that time -- there was just one trooper stationed in Bethel and he had an area from Barrow to Kwigillingok on the south coast... and that was his. All that territory he had to carry -- to service. Many times if we needed a trooper, he wasn't available, so we ended up doing some of the enforcement work... On two occasions during the 18 years I was called out in the middle of the night because a husband was beating up on the wife and the kids were all scared and crying. So I had to go down and the husband would always be standing in the doorway with a rifle saying anybody that comes to interfere they'd shoot. So I had to disarm him. So I just kept walking towards him and praying all the way, and finally got up to him where I could take their rifle from him. And I had the wife and children taken over to the mission. And I'd walk him over to the roadhouse and sit with him until he sobered up drinking coffee.⁸⁰

The scenario Clay describes represents an extreme case, but stories of magistrates working as jailors, welfare workers, police officers, clerks, and peacekeepers were more the norm than the exception. In 1970, District Judge Maurice Kelliher reported to the Chief Justice that “magistrates in the villages understand their positions fairly well, but in many cases have

⁷⁹ James E. Fisher to Jay A. Rabinowitz, "Re: Responses to request to magistrates," November 13, 1973, Magistrate Court, Magistrate Program, Record Group 1, ACSA 2003.23.16, Susan Miller Files, Boney State Law Library, Anchorage, AK.

⁸⁰ Arlene Clay, "Magistrate Arlene Clay, Part 1" interview by Karen Brewster and Barbara Hood, Judges of Alaska Project Jukebox, last modified January 25, 2012, <http://jukebox.uaf.edu/site7/p/378>.

been called upon to settle fights and drunken brawls.”⁸¹ On top of their isolation, magistrate newsletters indicate that the caseloads of magistrates increased substantially during the 1960s and 1970s.⁸² In 1978, the state legislature ruled that small claims jurisdiction would increase from \$1,000 to \$2,000, expanding the magistrate’s and district judge’s jurisdiction and workload. On a statewide basis, caseload increased by 64 percent between 1972 and 1979. This broke down to a 55 percent increase in misdemeanors and a 122 percent increase in civil cases.⁸³

Unsurprisingly, the court system struggled to fill magistrate positions. Impossibly low pay, demanding work, and the lack of state support contributed to low interest in the position. High turnover plagued the magistrate system.⁸⁴ As the Alaska Judicial Council’s Fourth Report on 1964 - 66 stated, “There are substantial problems of finding qualified individuals to serve as village magistrates.”⁸⁵ Serving as a magistrate in a small community did not necessarily make one popular either, considering that neighbors and family might not see much difference between when the individual was on or off duty. As Justice Alex Bryner described, “It’s much harder to have just a regular life if you’re a member of the judiciary in any of the communities.”⁸⁶ Due to these challenges, many qualified residents lacked the desire to become a magistrate.

This lack of interest contrasted sharply with the high demand for magistrates. One correspondence described receiving more requests for magistrates than could be met, and needing to make tough decisions to determine which villages would get a magistrate, and which

⁸¹ Maurice Kelliher to George F. Boney, October 28, 1970, Alaska Bush Paralegal Program II, Record Group 1 ACSA 2003.23.14, Susan Miller Files, Boney State Law Library, Anchorage, AK.

⁸² Alaska Court System, "Alaska Court System News Letter," October 1960, Vol. 1, No. 5, Magistrate Newsletters, Boney State Law Library, Anchorage, AK., Unknown, "Alaska Judicial Council: 'Fourth Report 1964 - 1966,'" January 1967, Rasmuson Library, University of Alaska, Fairbanks, AK. [Page 13].

⁸³ Joseph J. Brewer, "A Glance at District Court During the '70s Decade," ACSA 2012.79.01-11, Joseph J. Brewer File, Boney State Law Library, Anchorage, AK.

⁸⁴ Alaska Judicial Council, "Alaska Judicial Council: 'Fourth Report 1964 - 1966,'" January 1967, [Page 13].

⁸⁵ Ibid, 34.

⁸⁶ Alex Bryner, "Justice Alex Bryner, Part 2" interview by Karen Brewster, William Oberly, and Kelly Taylor, Judges of Alaska Project Jukebox, last modified January 24, 2012, <http://jukebox.uaf.edu/site7/p/32>.

ones wouldn't.⁸⁷ Once appointed, a magistrate was usually overwhelmed with issues. In 1970, District Court Judge Maurice Kelliher wrote that it happened in nearly every place that as soon as the person was confirmed as magistrate, "all of the neighbors lay siege to the poor appointee with all of their difficulties and problems."⁸⁸

Opinion on state involvement in village life must have varied, but reports and court officials' memories indicate that, for the most part, Native villages welcomed judges and magistrates who listened to and addressed their issues. Judges like Roy Madsen stayed in communities for several days, answering questions and meeting with community leaders. He remembered, "The first time I went to Cold Bay, they told me they hadn't had a judge out there for seven years."⁸⁹ On these visits, Judge Madsen would meet and provide informal training to magistrates, hold hearings, and put things in order. He continued, "I had to make the circuits and see how things were doing. And so I'd stay there for two or three days and the people actually for the first time felt like they were actually part of the system."⁹⁰ Judge Gerald Van Hoomissen also gained a reputation for traveling extensively. Known as "the Flying Judge," Judge Van Hoomissen held more than one hundred trials and hearings in rural villages, loading up his personal Cessna 180 with attorneys, clerks, and survival gear in case of a crash.⁹¹ During these trips, the court moved into the villages. Judges and attorneys slept on the floors of private homes and public buildings, and court operated in a variety of local facilities. School frequently closed as residents gathered to watch the proceedings.

⁸⁷ William R. Nix to John C. Sackett, April 27, 1973, 1973 Miscellaneous File Magistrates, Record Group 1, ACSA 2003, Susan Miller Files, Boney State Law Library, Anchorage, AK.

⁸⁸ Kelliher to Boney.

⁸⁹ Roy Madsen, "Judge Roy Madsen," interview by Arthur Snowden, Judges of Alaska, Project Jukebox, last modified October 25, 2006, <http://jukebox.uaf.edu/site7/p/383>.

⁹⁰ Ibid.

⁹¹ Debbie Miller, "Flying judge!," *Alaska Ruralite* (AK), May 16, 1982, http://jukebox.uaf.edu/site7/sites/default/files/documents/vanh_ruralite_combined.pdf.

While flying judges would only visit villages in felony cases, magistrates handled everyday misdemeanors and civil cases under trying conditions. A report in 1969 sheds light on the criminal justice landscape of Alaska. Nearly one-fourth of all arrests occurred in rural villages.⁹² The vast majority of arrests were for alcohol-related charges, such as drunk in public, drunk in private, driving under the influence, and also disorderly conduct, assault, and battery.⁹³ Magistrates themselves recalled dealing with a significant amount of alcohol-related crime and domestic violence disputes, settling neighborhood squabbles, and performing civil duties, including marriages, deaths, property management, and much more.

Magistrates and other resident bush justice officials additionally struggled with inadequate facilities. Local magistrates typically worked out of their homes. In 1960, the Alaska Court System News Letter quoted Magistrate Crosby (first name unspecified) who discussed how she used her living room as the “judge’s chambers.”⁹⁴ This was more the norm than the exception. As District Court Judge Kelliher wrote in 1970, “None of the magistrates have any real office.” Court would be held in any range of facilities, from classrooms to public taverns. Chief Justice George Boney remarked in 1972, “At the present time in rural Alaska, there are virtually no justice facilities. Magistrates and village policemen have no offices. There are no courtrooms. There are no jails. Today, court and land records are not secure and magistrates are required to hold court in their living room, in a store, or in a school room...”⁹⁵ In one of the most

⁹² Statewide Planning Project for Vocational Rehabilitation Services. "The Public Offender in Alaska: A survey of Inmates Incarcerated Under Alaskan Statutes," December 1969, Bush Justice Conference, Record Group 1, ACSA 2003.23.2, Susan Miller Files, Boney State Law Library, Anchorage, AK.

⁹³ Ibid.

⁹⁴ "Alaska Court System News Letter," October 1960, Vol. 1, No. 5, Magistrate Newsletters, Boney State Law Library, Anchorage, AK.

⁹⁵ George Boney, "The State of the Judiciary: An Address Before the Joint Session of the Alaska Legislature," in *Alaskan Rural Justice: A Selected Annotated Bibliography*, ed. William Cotton, et al. (Anchorage, AK: Alaska Judicial Council, 1991), [Page 79].

extreme scenarios, Magistrate Elmer Smith reported turning a boat upside down and conducting proceedings on the beach, using the boat as a desk.⁹⁶

And yet, reports indicate that early court officials improvised to make the best of the resources available to them. When Michael Jeffery, a Los Angeles resident and Yale Law graduate, moved to Utqiagvik in 1977, the lack of infrastructure struck him. “I won’t say it’s a shed, but it was pretty basic,” Jeffery recalled, describing the Utqiagvik air terminal.⁹⁷ The new Utqiagvik courthouse resided in a one story building owned by the same family that operated the Tundra Taxi service. It consisted of a tiny wooden structure with barely enough room for a clerk’s office and a makeshift courtroom. For the first few weeks after arriving, Jeffery slept on the courthouse floor. In late February, he received a tip that a residence would be available. When the house opened up, he moved in and Utqiagvik gained a legal services office. “The living room had the secretary’s desk, the couch and stuff,” Jeffery recalled. “The bedroom was my desk, a bookcase and behind the bookcase hidden away was a kind of wooden cot that I was sleeping on. And then the kitchen had brown rice, etc. and then legal pads and pens and stuff like that.”⁹⁸ As he settled into his position, he also recalled how Sadie Neakok, Utqiagvik’s long-term magistrate, provided him with crucial information about the community and helped him acclimate to his new role, and eventual position as judge.⁹⁹

Under these circumstances, state employees, particularly judges and magistrates from the Second and Fourth Judicial Districts, operated closely with village leaders and members of the

⁹⁶ Evan C. McKenzie, "Bush Justice Project Dillingham Area Trip Report: Dillingham, Togiak, Manokotak.," November 21, 1975, Bush Justice Implementation Committee, UAA Justice Center, Anchorage, AK, [Page 4].

⁹⁷ Michael Jeffery, "Judge Michael Jeffery, Part 1" interview by Karen Brewster, Judges of Alaska Project Jukebox, last modified February 6, 2012, <http://jukebox.uaf.edu/site7/p/379>.

⁹⁸ Ibid.

⁹⁹ Ibid.

communities they visited. They participated in the state justice apparatus, but frequently adapted their courts and sentences to fit the mold of the village they operated in. These methods, and the ways in which magistrates and judges crafted unique judicial frameworks, are addressed in the next chapter.

Chapter Two: Village Authority in a Growing State

It is well known in northern Alaska that March through September is duck hunting season. Each spring and summer, waterfowl flock to the Arctic region in the thousands, their small dark bodies dotting the northern sky. Since time immemorial, these ducks have been a vital food source to Iñupiaq communities. Although a 1915 treaty among the United States, Canada, and Mexico technically barred hunting migratory waterfowl from March to September, it had never been enforced by U.S. federal authorities in the Arctic. Iñupiaq hunters were left undisturbed.

This changed with statehood. The new state of Alaska adopted federal laws as state regulations, and in 1961 announced that it would enforce the treaty. Sadie Neakok, the Utqiagvik magistrate, received this news with dismay. “We only saw waterfowl from the latter part of May until the latter part of September...” she recalled. “I knew every man, woman, and child who was able to hold a shotgun was guilty of hunting ducks that spring.”¹⁰⁰

The game warden, Harry Pinkham, shared similar concerns. Knowing that this sort of regulation would create an uproar, he visited Sadie Neakok’s house to make a proposal. He asked her to communicate to villagers that they should only hunt ducks when he was not around, and that when he gave notice of an upcoming visit, they should conceal their activities. Neakok found both the state’s regulation and the game warden’s proposal unacceptable. “When Alaska became a state, they adopted these many rules that the federal government had, and applied them as they saw fit,” she later explained. “And this is where we had a hard time. They made criminals of all our people breaking the law.”¹⁰¹

¹⁰⁰ Margaret B. Blackman, comp., *Sadie Brower Neakok: An Iñupiaq Woman* (Seattle, WA: University of Washington Press, 1989), [Page 181].

¹⁰¹ Ibid, 181.

As a solution, Sadie Neakok and Iñupiaq state senator Eben Hobsen held a general meeting with all the people of Utqiagvik. They urged every man, woman, and child to turn themselves in to Pinkham (the game warden) when he made an arrest. They didn't have to wait long. On May 20, 1961, Tom Pikok was arrested for shooting three waterfowl out of season. Shortly afterwards, the game warden apprehended resident John Nusunginya for having a duck in his possession to feed his children. Two days later, around 140 people turned themselves in, each holding a duck.¹⁰² Pinkham stormed towards Neakok's house. She recalled:

*I'm drinking tea at my table and looking out the window to see when that game warden would be coming in after I had called Eben. Sure enough, here comes the game warden. Just about knocked my door down when he was knocking. I'm trying to stay calm. I say, "Come in. Tell me all about it. What's going on?" "What's the meaning of that crowd in front of my office down there?" "Well come in and tell me all about it" -- as if I didn't know.... "Every man, woman, and child standing in front of my door with a duck in his hand." "Oh, you mean you don't know, as an officer, what to do about a person in possession of a waterfowl?" "Oh, yes, I do. But I can't handle that much paperwork."*¹⁰³

Sadie Neakok and Eben Hobsen's strategy worked. The game warden quickly ran out of arrest forms, and ended up taking names down on a piece of paper. Citing a cultural conflict of interest, Neakok recused herself from the case and refused to store the evidence that consisted of ten sacks of ducks. As a result, the game warden was forced to make two trips to Fairbanks in order to put the ducks into storage. Neakok recalled, "The two trips he made with those ducks were enough. The governor's office called in a special meeting, and they decided our hunting of waterfowl would be made neutral to where our people could hunt ducks for food anytime they

¹⁰² *The Duck In*, directed by Rachel Naninaaq Edwardson, Naninaaq Productions, Uncivilized Films, 2011, <http://www.isuma.tv/uncivilized-films/the-duck-in>.

¹⁰³ Ibid.

wanted.”¹⁰⁴ The U.S. Fish and Wildlife Service (U.S. FWS) adopted an informal policy of ignoring out of season duck hunting by villagers.¹⁰⁵

The incident in Utqiagvik, eventually known as the “Duck-In,” revealed a key tension between Natives and the state that persisted through the 1980s: Alaska did not want to recognize Natives as members of tribes with the rights possessed by tribes in the Lower Forty-eight. The terms of the Alaska Native Claims Settlement Act (ANCSA) made this abundantly clear. After the land disbursement and cash settlement, no additional claims based on Native tradition or customs would be legally recognized.¹⁰⁶ This permitted the government to prosecute Natives for traditional activities such as subsistence hunting out of season. After ANCSA passed, the Fish and Wildlife Service clarified its official policy, stating that the U.S. Attorney would decide whether or not to prosecute out of season hunting, but that consideration would only be given to violations due to economic necessity. “Violations should be for life-sustaining purposes, not for culture-sustaining purposes,” Bob Stevens, the FWS Public Affairs Officer, stated in 1975.¹⁰⁷ Even fourteen years after the Duck-In, official state policy avoided recognizing Native claims based on cultural traditions and tribal autonomy.

Sadie Neakok’s actions, however, challenged state authority over Native affairs. As a magistrate, she used her knowledge of the system to undermine state attempts to regulate traditional customs. Her actions represented a broader trend among magistrates, judges, and other state officials in the Bush. Despite state efforts to incorporate Native villages into the justice system, many state officials ignored, circumvented, or subverted state policy in order to

¹⁰⁴ Margaret B. Blackman, comp., *Sadie Brower Neakok: An Iñupiaq Woman* (Seattle, WA: University of Washington Press, 1989), [Page 183].

¹⁰⁵ Andrew Jensen, “ANCSA paved way for Alaska Natives, state to prosper together,” *Alaska Journal of Commerce*, October 13, 2011. <http://www.alaskajournal.com/computers-internet/2011-10-13/ancsa-paved-way-alaska-Natives-state-prosper-together#.XI1iGVNKg0p>.

¹⁰⁶ Burch, “Native Claims.”

¹⁰⁷ Tundra Times, “Duck hunting controversy revives,” May 31, 1978, Issue No. 2, June 21, 1978, Magistrate Newsletters, Boney State Law Library, Anchorage, AK.

keep power within Native villages. Given that most magistrates in the Second and Fourth Judicial Districts were Native themselves, they often filtered the state court system through a Native lens, consulted with village councils, and resolved disputes through traditional means. They moderated sentences based on the defendant's personal situation and performed extralegal services. Even when the magistrate or village leaders requested outside help, troopers and judges frequently attempted to learn the village's attitude toward a defendant before taking action. For better and for worse, these efforts created a highly personal system of justice that adhered more closely to village customs than western judicial practices.



Sadie Neakok and state trooper Parker in her kitchen courthouse, 1960s.¹⁰⁸

Creating a Court for All

Nora Guinn was born in Akiak, Alaska, a small Yup'ik village upriver of Bethel. Like most of her peers, she received her education at a state-run boarding school in Portland, Oregon.

¹⁰⁸ Left: Sadie and state trooper Parker in her kitchen courthouse, 1960s, in *Sadie Brower Neakok: An Iñupiaq Woman*, comp. Margaret B. Blackman (Seattle, WA: University of Washington Press, 1989).

Upon returning home to Alaska, she worked as a Bureau of Indian Affairs teacher in Tununak. She also worked as a United States commissioner during territorial days, and as a magistrate in Bethel after statehood. In 1968, she became the first judge of the new District Court in Bethel despite never receiving a law degree. She was the first woman and first Alaska Native to hold such a position.

As a fluent Yup'ik speaker, Nora Guinn championed providing basic interpretive services in her courtroom at a time when the state did not provide translators.¹⁰⁹ Guinn strongly believed that the court should be accessible to Native defendants who struggled to speak English. "If the attorneys will let me, I will try to explain the process in Eskimo first what we're going to do in court," Guinn later explained. "A lot of the words are foreign. What's a judgment for instance? They know you are going to pass out a sentence, but that word judgement is foreign, you know."¹¹⁰

Significant linguistic differences often made it difficult for Native people to understand the western court system. Nora Guinn was acutely aware of this fact. Natives were overrepresented in the correctional system. In 1969, people of Native ethnic origin comprised 22 percent of the state population, yet represented 48.9 percent of the inmate population.¹¹¹ Most attributed this to Native defendants' readiness to plead guilty, as they would be encouraged to do in front of a village council. As Phyllis Morrow, an associate professor of anthropology at University of Alaska Fairbanks, detailed in an article "A Sociological Mismatch: Central Alaskan Yup'iks and the Legal System," Yup'ik culture encouraged perpetrators to confess to

¹⁰⁹Margaret B. Blackman, comp., *Sadie Brower Neakok: An Iñupiaq Woman* (Seattle, WA: University of Washington Press, 1989), [Page 189].

¹¹⁰Nora Guinn, "Judge Nora Guinn," interview by Evan McKenzie, Judges of Alaska Project Jukebox, last modified 1976, <http://jukebox.uaf.edu/site7/p/382>.

¹¹¹"The Public Offender in Alaska: A survey of Inmates Incarcerated Under Alaskan Statutes," December 1969, Bush Justice Conference, Record Group 1, ACSA 2003.23.2, Susan Miller Files, Boney State Law Library, Anchorage, AK.

their crimes.¹¹² Guinn attempted to compensate for this tendency by explaining the different cultural expectations to defendants. “I think I have been a lot stricter with taking a guilty plea by asking and rephrasing the question over and over until I am positive in my own mind that that’s what they want to say,” she recalled.¹¹³

Sadie Neakok faced similar challenges, and claimed that she changed the court’s attitude regarding the use of Native languages in court. She recalled one specific case when she needed to conduct the entire hearing in Iñupiaq because the defendant didn’t speak a word of English. When a complication with the federal court resulted in the defendant’s transportation to Anchorage, Neakok came to testify. She explained that she had accepted his guilty plea in their Native language because she had no choice. Speaking in Iñupiaq before the bench, Neakok walked the defendant through the same questions she had asked him in Utqiagvik. When it was all over, she learned that the Chief Justice Buell Nesbett wanted to see her in his chambers. Thinking she would be reprimanded for speaking Iñupiaq, she nervously went to see him. Instead she found him reclining in a white shirt, smoking his pipe in his chamber. “Hi Sadie,” he greeted her in a warm voice. “That was the most wonderful demonstration you performed. From now on, it will be rule of the court to use the language of the people.”¹¹⁴ From 1964 onward, translators became increasingly common in urban court locations.

Using Native language in the courtroom fit within a broader conversation regarding making the court accessible to Native people. Utqiagvik Superior Court Judge Michael Jeffery, the same young attorney who slept on the Utqiagvik courthouse floor, explained that he felt he had a personal responsibility to make sure that everyone in his courtroom understood what was

¹¹² Phyllis Morrow, "A Sociolinguistic Mismatch: Central Alaskan Yup'iks and the Legal System," *Alaska Justice Forum* 10, no. 2 (Summer 1993): [Page 8], <https://scholarworks.alaska.edu/handle/11122/3277>.

¹¹³ Nora Guinn, "Judge Nora Guinn," interview by Evan McKenzie, Judges of Alaska Project Jukebox, last modified 1976, <http://jukebox.uaf.edu/site7/p/382>.

¹¹⁴ Margaret B. Blackman, comp., *Sadie Brower Neakok: An Iñupiaq Woman* (Seattle, WA: University of Washington Press, 1989), [Page 191].

going on. “There’s language issues, there’s cross-cultural issues, I mean there’s all kinds of things and I need to honor that,” he said. “And since I’m blessed with a situation where I can make adjustments I feel I have -- I would even say a moral duty to do that.”¹¹⁵ To Jeffery, these adjustments came in the form of slowing down the court hearings, avoiding using legal jargon, and speaking in positive terms. For example, if a group of kids played in front of the house, rather than saying “don’t go out in the street,” Jeffrey explained that he would instead say “stay in the yard,” because they would hear “yard” instead of “street.”

Magistrates, along with many judges and troopers, often attempted to explain the western court system in culturally appropriate language, but also labored to adapt court procedures to align more closely with Native customs. This took the form of consulting village councils where they existed, utilizing traditional conflict resolution methods, and keeping the court in the village whenever possible. Through these methods, court officials aimed to improve the state system by aligning it more closely with village traditions.

Keeping Justice in the Village

Many magistrates and judges went out of their way to consult village councils and incorporate more traditional methods of peacekeeping in their work. Nora Guinn created an “advisory sentencing court,” where she would ask community members for their input. She sought opinions, inquired into the existence of extenuating circumstances for the defendant, and attempted to gauge whether or not the person was a chronic problem for the village. This effort extended to juvenile cases as well. On Monday nights, Judge Guinn met with her juvenile jury panel -- a group of 10th, 11th, and 12th graders. In meetings entirely off the record, she would

¹¹⁵ Michael Jeffery, "Judge Michael Jeffery, Part 1" interview by Karen Brewster, Judges of Alaska Project Jukebox, last modified February 6, 2012, <http://jukebox.uaf.edu/site7/p/379>.

ask them to offer sentencing recommendations for kids that were brought in drunk. Although Guinn asserted that the final decision rested with her, she believed the court system could not operate independently of the villages. “I’ve driven people back to their villages,” Guinn recalled. “I stress this person is from your village ... He’s your relative. He’s your friend. If you aren’t going to help him, nobody else is going to really try to help him because we don’t know how to help him. That’s involvement and involving people and making them responsible.”¹¹⁶

Judge Gerald Van Hoomissen felt the same way. Although he worked for the state court, he believed that state officials must consult with village elders in order to deliver effective bush justice. One lawyer wrote about a time he joined Judge Van Hoomissen on a trip to Venetie, a small community northeast of Fairbanks. Judge Van Hoomissen set up court in a community building and conducted a circle sentencing. The intention was for the minor to hear, see, and feel the impact of what he had done to his community, while the community could see that the court system listened to and acted on their concerns.¹¹⁷ The impromptu nature of judges’ and magistrates’ courts permitted these sorts of arrangements to occur. Judge Van Hoomissen recalled holding trial in a schoolroom, and the teacher letting the government class sit through the proceedings. After the trial, the judge and attorneys talked to the class and answered students’ questions.¹¹⁸ Judge Jeffery could recall similar situations, including when he supported a mock trial program for elementary school students.¹¹⁹

Magistrate Arlene Clay made similar efforts to defer to traditional village leaders. When the troopers got a call from one of the nine villages on the Kuskokwim River, they usually picked her up on their way out so she could hold court in the village. “Before I did any

¹¹⁶ Guinn, "Judge Nora," interview, Judges of Alaska Project Jukebox.

¹¹⁷ Gerald Van Hoomissen, "Judge Gerald Van Hoomissen, Part 3" interview by Karen Brewster and Niesje Steinkruger, Judges of Alaska Project Jukebox, last modified May 5, 2012, <http://jukebox.uaf.edu/site7/p/389>.

¹¹⁸ Ibid.

¹¹⁹ Michael Jeffery, "Judge Michael Jeffery" interview by Karen Brewster, Judges of Alaska Project Jukebox, last modified February 6, 2012, <http://jukebox.uaf.edu/site7/p/379>.

sentencing, either I or the trooper would make an investigation or talk to the Elders or if they had a village council talk to them to find out what kind of behavior this defendant had.”¹²⁰

Sometimes they wanted the defendant to stay in the villages, other times they wanted him gone.

Clay would consider the village’s desires when she issued a sentence.

Over and over, state officials recognized the inherent cultural differences between village and state justice, and the importance of adjusting the state system to fit village needs.¹²¹ “The village likes to resolve things in a cooperative manner, but our whole legal system is geared [sic] adversaries,” Vic Krumm, a Bethel district attorney, told Stephen Conn in an interview in 1978. “It’s terrible competing interests.”¹²² Dr. Lindbergh Sata, a researcher from the St. Louis University Medical Center, observed in 1979 that many Natives experienced conceptual problems in understanding the court system and what charges may be levied against them. “Laws that bring Alaska Natives to court seem tied to disenfranchisement,” he stated. “The tension between cultures is significant. Whites and Alaska Natives do not seem to interact on a brotherhood basis, but rather on a parallel.”¹²³

Most state officials familiar with rural justice believed that when village councils or village leaders participated in the sentencing process, the outcome tended to favor reintegration over incarceration. Bryan Timbers, an assistant public defender in Nome, recalled that when village councils delivered informal sentences (backed by the magistrate), sentences tended to involve community service or financial compensation rather than incarceration. “It doesn’t bother me that the formal procedural rights are not followed are not served,” Bryan Timbers

¹²⁰ Arlene Clay, "Magistrate Arlene Clay, Part 1" interview by Karen Brewster and Barbara Hood, Judges of Alaska Project Jukebox, last modified January 25, 2012, <http://jukebox.uaf.edu/site7/p/378>.

¹²¹ Stephen Conn and Institute of Social, Economic, and Government Research, "Project Plan," November 24, 1972, Magistrate Court, Magistrate Program, Record Group 1, ACSA 2003.23.16, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹²² Victor Krumm, Interview by Stephen Conn. Anchorage, AK, 1978.

¹²³ Laury Roberts, "Judges are asked to examine biases," June 20, 1979, ABAA 2009.138, Nora Guinn, *Tundra Times*, Boney State Law Library, Anchorage, AK.

explained. "Because the result is more likely to reconcile the wrongdoers to the village as a whole."¹²⁴

For these reasons, many state judges and magistrates attempted to adhere to traditional practices and keep decision-making power in the village. One report briefly mentioned Judge William Sanders' extensive correspondence with the village councils of St. Mary's, Emmonak and Hooper Bay, a correspondence that indicates communication and possibly collaboration between a state judicial figure and village leaders.¹²⁵ When prompted to speak about village arbitration and involvement, Nora Guinn remarked, "I see Sadie Neakok doing it. I see our magistrates doing it. I'm not the only person that's doing this." Guinn described one particular case when a juvenile came before her court in Bethel for selling alcohol in his local village. She recalled:

He plead guilty, finally plead guilty and I sentenced him and then I thought about it. What in the world am I sentencing him here for? He did it in his village. So I -- I retracted my sentence and we took him out to the village and I called the whole village in the council room. And I said okay here -- here's this boy and he has bought booze and he has sold it like for forty or fifty dollars a bottle to you people here. Now what shall I do with this boy? Okay, Bethel would say give him jail time. Now what do you want him to do? What do you want me to do? And they were really reasonable about it. They talked it all over and we talked it back and forth and the kid talked with the council people. He'd never been in trouble before. The city asked me to sentence him to work for the city for give -- for the sum of - until he reached the sum of \$500. He's an expert bookkeeper. He'd been, you know, to two years of college or so. He agreed to it. Fine. They were happy. I was happy. He was happy... I think we have to go back into the villages to do the sentencing in the village where the crime was committed.¹²⁶

While villages tended to seek support from the state in serious cases, overwhelmingly elders, village council leaders, and researchers favored keeping juvenile and misdemeanor cases

¹²⁴ Bryan Timbers, Interview by Stephen Conn, <http://TBA>.

¹²⁵ Kelliher to Boney.

¹²⁶ Nora Guinn, "Judge Nora Guinn," interview by Evan McKenzie, Judges of Alaska Project Jukebox, last modified 1976, <http://jukebox.uaf.edu/site7/p/382>.

within their communities. “I think most of us agree that dealing with major crimes, major felonies are best handled by the state system,” John Schaeffer, a member of the NANA Regional Elders Council stated.¹²⁷ “But you can’t prevent [crime] from a regional hub or from Anchorage or Fairbanks. The people themselves have to be involved.”¹²⁸

Sometimes, state officials would subvert the state system to keep cases in the village. Troopers underreported felonies to make sure the defendant did not get swept off into the court system. Bill Nix, a former state trooper and magistrate coordinator, recalled that the trooper would frequently charge an aggravated assault as disorderly conduct. As a result, the defendant would be handled by a local magistrate rather than by an urban judge. Village councils tended to support these actions. “The local council is the one that is very progressive - aggressive - wanting to have great control over their own people in their own village who will do exactly the same thing,” Nix explained. “You will see statistics that report disorderly conducts, assault and battery, so on and so on, but if you read the narrative of the case report there are many of them that are rape, aggravated assault, or mayhem.”¹²⁹ This practice compounded issues such as sexual assault in rural Alaska, but successfully involved the local community in how justice was implemented.

Other times, magistrates directly flaunted the rules of the court in order to produce the outcome they believed was fair. Linn Asper, an Alaskan attorney, wrote about his experience serving as a defense attorney before Magistrate Carl Heinmiller (1968 - 1988) in the town of

¹²⁷ NANA is one of the thirteen Alaska Native regional corporations created under ANCSA, headquartered in Kotzebue, which is in Inupiaq country.

¹²⁸ Alaska Rural Justice and Law Enforcement Commission, "Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission," 2006, Alaska Native Justice Center, Anchorage, AK. [Page 13].

¹²⁹ William Nix, Interview by Stephen Conn. Fairbanks, AK. 1973.

Haines, not far from Juneau.¹³⁰ He recalled one time when he defended Willie Lee, an elderly Klukwan fisherman whose boat remained taxed despite the fact that it was beached. Although for all intents and purposes the boat had been abandoned, Willie Lee insisted that he “was not sure that he could refloat it, but that he really loved the old boat and wanted to fish it again.”¹³¹ This did not show the required intent to abandon that was necessary to relieve Lee of the taxes on a boat he could not use. When they appeared before Magistrate Carl Heinmiller, Willie Lee gave the same testimony as far as Asper could observe, but the translator, after pausing, turned to Magistrate Heinmiller and said that Willie Lee claimed he abandoned the boat. Everyone in the room knew this was false, but Magistrate Heinmiller acted quickly. “Before the shocked city attorney could get to his feet to protest the translation, or cross-examine Willie Lee, or even argue his case, Carl smashed down the gavel, breaking it in the process, and shouted, ‘Case dismissed!’” Asper recalled. “He knew that Willie Lee would never be able to refloat that boat and that it was not fair for the city to tax him on it and so he dismissed the case, regardless of the procedural requirements of the trial.”¹³²

In other cases, state officials adopted roles well outside of their job descriptions in an attempt to uphold justice in rural communities. Troopers routinely served as prosecutors, and in some cases would even offer legal services to a defendant, which strictly speaking qualified as practicing law without a license.¹³³ One trooper, John Murphy, recalled a jury trial with Magistrate Arlene Clay where the defendant had no legal representation. “I was picking the jury and everybody was related and the defendant had a legal question,” Murphy recalled. “He asked

¹³⁰ Linn Asper, "The Right Decision for the Wrong Reason, 'Alaskan Justice,'" ACSA 2010.45, Carl W. Heinmiller File, Boney State Law Library, Anchorage, AK.

¹³¹ Ibid.

¹³² Ibid.

¹³³ William Nix, Interview by Stephen Conn. Fairbanks, AK. 1973.

[Magistrate Clay] and she called me over and she said, ‘Put your hat down on the table and go over there and give that man some legal advice. You’re not a trooper now.’”¹³⁴

Troopers and judges regularly advised village councils on how to exercise power over a defendant without violating state law and opening themselves up to potential lawsuits.¹³⁵ “Where the trooper was able to develop, build a degree of confidence within the village he was asked about everything,” Bill Nix explained.¹³⁶ District Judge Kelliher agreed, remarking that “State troopers, who have good understanding of the people and the law, travel around and give help at public meetings and at meetings with the Village Councils.”¹³⁷ Accounts of magistrates, troopers, and attorneys advising village councils on their rights are prolific. Former Kotzebue Commissioner Alfred Francis recalled village council members seeking him out for legal advice.¹³⁸ Judge Michael Jeffery counseled the North Slope Borough regional council when plans for an oil pipeline leaked that he knew would upset local leaders. Although these individuals worked as state employees, their relationships within the communities frequently overshadowed their roles as state officials.

As these stories demonstrate, the court system in rural Alaska was highly personal. Magistrates, judges, and troopers represented the state court, yet frequently attempted to respect village authority and Native customs, often disregarding official state policy in the process. To some, however, the highly subjective nature of bush justice constituted a serious problem. The issue of underreported or miscategorized rape alone demanded a critical appraisal of judicial practices in remote communities. The personal quality of the court reflected traditional forms of social control and peacekeeping, but made it far from objective. These concerns begged a

¹³⁴ Arlene Clay, "Magistrate Arlene Clay, Part 2" interview by Karen Brewster and Barbara Hood, Judges of Alaska Project Jukebox, last modified January 25, 2012, <http://jukebox.uaf.edu/site7/p/378>.

¹³⁵ William Nix, Interview by Stephen Conn. Fairbanks, AK. 1973.

¹³⁶ Ibid.

¹³⁷ Kelliher to Boney.

¹³⁸ Alfred Francis, Interview by Stephen Conn. Kotzebue, AK. 1973.

reevaluation of whether or not village councils or magistrates should play a role in the modern judiciary over the years to come.

Chapter Three: Competing Systems and Solutions

On June 1st, 1967, the Alaska Judicial Council convened at the Federal Building in Nome. Chief Justice Buell Nesbett, Chairman Michael Stepovich, and seven other lawyers and lay members attended. The agenda consisted of announcing plans to appoint magistrates in twelve Arctic villages, and nominating candidates to fill two new superior court judgeships.

After Nesbett officially opened the meeting, attendees listened to two Native speakers: Willie Hensley, a legislator in the Alaska House of Representatives and lobbyist for ANCSA, and Jerome Trigg, President of the Arctic Native Brotherhood. According to meeting minutes, William Hensley “commended the new magistrate program as a step forward in assimilating the Natives in a society governed by law as distinguished from one based solely on custom.”¹³⁹ To Hensley, the magistrate program effectively integrated Native villages into what he perceived to be a superior western court system. The appointment of twelve new magistrates marked an exciting step in the improvement of the state judiciary and the assimilation of Natives into that system.

Jerome Trigg also commended the magistrate program, but for the exact opposite reason. Although magistrates served as court employees, Trigg perceived the magistrate position as a means through which Native villages could exercise autonomy over Native affairs -- keeping power within the village while still collaborating with the state court. He “expressed appreciation for the magistrate program, commenting that it provided an excellent opportunity for Native people to assume more responsibility in self government.”¹⁴⁰ This observation sharply contrasted with Hensley’s statement moments earlier. Given the changing state landscape, Trigg saw magistrates as important advocates for Native village needs. According to meeting minutes, he

¹³⁹ "Minutes of the Meeting of June 1-2, 1967 Held at Nome, Alaska," June 2, 1967, Alaska Judicial Council, Anchorage, AK.

¹⁴⁰ Ibid.

observed that “traditional methods of handling problems had served well in the past but were no longer practical.”¹⁴¹ Magistrates offered a viable path for advancing Native village autonomy.

By the late 1960s -- early 1970s, conversations about the future of Alaska bush justice gained increasing traction. Native and non-Native court employees and rural leaders universally agreed that the bush justice system in Alaska demanded reform. However, no consensus existed on the problems within present state policy, or the solutions needed to improve services. Like Hensley and Trigg, opinion varied widely on how the present justice system affected the relationship between Native villages and the state government. To some, the main issue lay in the court’s inefficiency and lack of funding. To others, the problem lay in the notion that Native traditions and village conditions were incompatible with the state court system. Indeed, court officials contested the very framing of bush justice problems as rural problems versus Native problems, which held enormous implications for how solutions would be developed. Overwhelmingly, however, concerns about subjective and inconsistent justice in rural villages overshadowed concerns about inherent systemic incompatibility, and set the stage for embracing Euro-American values of objectivity and individual rights over traditional village methods and norms of social control.

Framing Problems in Terms of “Rural Justice”

A series of developments in the late 1960s drew Alaska’s bush justice inadequacies into the spotlight. In 1968, *Anchorage Daily News* reporter C. Robert Zelnick, a lawyer turned journalist, traveled around rural Alaska talking with judges, magistrates, district attorneys,

¹⁴¹ Ibid.

councilmen, lawyers, prisoners and townspeople (Native and white).¹⁴² He conducted research amidst the high-profile land disputes that eventually resulted in ANCSA, and published seven articles -- each tackling a different bush justice issue.¹⁴³ In 1969, a study prepared by the Statewide Planning Project for Vocational Rehabilitation Services found that Alaska Natives only represented 20 percent of the state population, but they constituted 49 percent of those incarcerated.¹⁴⁴ Vic Carlson oversaw the creation of Alaska's first Public Defender Agency in 1969, and the Rural Alaska's Magistrate Seminar also launched in the same year.¹⁴⁵ These developments, along with the high profile ANCSA debates, directed attention towards the challenges of bush justice.

During these years, questions emerged over how to even frame problems in the rural court system. Andrew Kleinfeld, a law clerk to Justice Jay Rabinowitz, astutely wrote that the court system faced a choice on "whether to focus on rural justice or on Native Justice." He noted, "The problems overlap considerably, since the rural people of Alaska are predominantly Indian, Eskimo or Aleut, and both problems involve questions of Native cultural attributes. The problems differ greatly, however, in their administrative aspects and in the degree to which they are administrative rather than cultural."¹⁴⁶

Identifying the roots of these problems proved no easy task. By the late 1960s, many officials highlighted that village conditions revealed the limits of the state court system. Travel to

¹⁴² Robert Zelnick and *Anchorage Daily News*, "An 8-Point Program To Bring Enlightened Justice to the Bush," December 23, 1968, Bush Justice, Record Group 1, ACSA 2003.23.18, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹⁴³ ANCSA referring to the Alaska Natives Claims Settlement Act, 1971

¹⁴⁴ Statewide Planning Project for Vocational Rehabilitation Services, "The Public Offender in Alaska: A survey of Inmates Incarcerated Under Alaskan Statutes," December 1969, Bush Justice Conference, Record Group 1, ACSA 2003.23.2, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹⁴⁵ J. Earl Langner and Robert H. Reynolds to James W. Matthews, memorandum, "Program Draft: Rural Alaska Magistrate Seminar," March 3, 1970, Magistrates Seminar 1970, Record Group 1, ACSA 2003.23.19, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹⁴⁶ Andrew J. Kleinfeld to Victor Fischer, "Subject: Justice in the Bush," October 7, 1970, Bush Justice Conference, Record Group 1, ACSA 2003.23.2, Susan Miller Files, Boney State Law Library, Anchorage.

the Bush was costly, both in time and energy. Over time, attorneys and judges grew resistant to traveling and hearing cases in the Bush. The lack of due process, rough accommodations, and significant time commitment made the prospect unappealing to many urban judges and attorneys. “The DA’s office did not want to send people out. The AG’s office didn’t want to send. Nobody wanted to go out,” Judge Van Hoomissen recalled.¹⁴⁷ Administrative Director Art Snowden said the same thing, remembering “a lot of judges didn’t like to go out and travel in rural Alaska.”¹⁴⁸ In most cases, getting urban judges and attorneys to travel to the Bush and sleep on floors was like pulling teeth. Recalling a trip through southeastern Alaska, Judge Roy Madsen remembered, “The people down there said well, you know the judges from Anchorage, they, all they worry about is getting out of here and they come in, they want to get out and that’s the same experience I had in Kodiak. When the judges were there, they had to get back out as fast as they could.”¹⁴⁹

The unwillingness of many attorneys and judges to travel to rural Alaska weakened the court’s presence in rural areas. Stephen Conn believed that attorneys’ resistance to sitting before magistrate courts in the village deeply hurt the state’s ability to effectively administer bush justice in remote communities. “I feel that attorneys who are wedded to our system have the ultimate responsibility for its failure in the Bush,” Conn wrote. “If no attorney desires to practice before a magistrate, the issue appears to be how can the magistrate court function as a judicial process which is dependent on advocacy?”¹⁵⁰

Even when people were willing to travel, enormous caseloads and a lack of resources hindered the delivery of state justice in rural villages. Court employees from urban centers found themselves overextended already. Justice Alex Bryner recalled that when the public defender

¹⁴⁷ Van Hoomissen, "Judge Gerald, Part 1" interview, Judges of Alaska Project Jukebox.

¹⁴⁸ Madsen, "Judge Roy Madsen," interview, Judges of Alaska Project Jukebox.

¹⁴⁹ Ibid.

¹⁵⁰ Stephen Conn, "Report to Chief Justice [Recommendation for Reform of the Court System in Rural Alaska]," August 22, 1974, Stephen Conn Papers, UAA Justice Center, Anchorage, AK, [Page ii].

agency was first created in 1969, everyone was overworked. “You worked there until you kind of burned out, and that was sort of it,” he said. “The offices weren’t particularly organized and it was sort of get there, take files in your hand, and sort of survive.”¹⁵¹ Even Bill Nix, the magistrate supervisor, opposed traveling to the Bush, explaining that his schedule would not allow him to travel to twenty-five villages per month to confer with the very people he was assigned to supervise.¹⁵² Money posed its own challenge, and restricted extensive travel to and from rural areas. Court budgets were tight during the 1970s, as the Trans-Alaska oil pipeline only finished in 1978. As a result, agencies competed for funding. Powerful white communities such as Anchorage, Fairbanks and Juneau received a larger share of the available resources, while village Alaska had no strong advocate.¹⁵³

A growing number of officials argued that the lack of basic resources compromised the court’s ability to deliver justice in rural areas. Judge Maurice Kelliher, a Nome District Court Judge (1968-1973), believed that one of the court’s most immediate needs was obtaining a filing cabinet for each magistrate. The lack of courtroom spaces meant that court documents were stored in haphazard locations. “At present, our Statutes, Code and instructions are in most cases not kept together but on a shelf or drawer here and there throughout the living quarters,” Kelliher observed.¹⁵⁴ He felt that if a delay in obtaining file cabinets persisted, court records and statutes would be irrevocably damaged.¹⁵⁵ Judge Kelliher was not alone. On behalf of the Magistrates Association, Magistrate Jess Nicholas wrote to Justice Rabinowitz reporting that the association

¹⁵¹ Bryner, "Justice Alex, Part 1" interview, Judges of Alaska Project Jukebox.

¹⁵² William R. Nix to Jay Rabinowitz, "Village Police/Magistrate Training Programs," May 18, 1973, 1973 Miscellaneous File Magistrates, Record Group 1, ACSA 2003.23.13, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹⁵³ Stephen Conn, *Alaskan Bush Justice: Legal Centralism Confronts Social Science Research and Village Alaska* (Anchorage, AK: UAA Justice Center, 1981), [Page 6], <https://scholarworks.alaska.edu/handle/11122/9750>.

¹⁵⁴ Maurice Kelliher to George F. Boney, October 28, 1970, Alaska Bush Paralegal Program II, Record Group 1 ACSA 2003.23.14, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹⁵⁵ Ibid.

had polled magistrates throughout the state what they saw as the most important change the court system could make to improve the quality of justice in their area. Facilities was rated the highest need.¹⁵⁶

While magistrates and judges might be able to work with makeshift facilities, makeshift jails posed serious civil rights concerns. Judge Van Hoomissen recalled one time when a defendant was housed in the village's dog food closet for days until a trooper could get to him.¹⁵⁷ "The lack of secure jails in the villages sometimes leads to cruel methods of detention of dangerous persons,"¹⁵⁸ Andrew Kleinfeld wrote. The passage of the Indian Civil Rights Act in 1968 guaranteed Natives the same rights as all other American citizens, and keeping Native defendants in makeshift and unsafe jails until a trooper arrived violated defendants' civil liberties. The lack of basic village facilities, however, limited the number of alternatives and supported the notion that the state justice system in the Bush was hindered by a lack of resources.

State jails did not necessarily improve upon village detention facilities, however, and highlighted just how underfunded the state system was. Jail guards worked twelve hour shifts. Cases languished, and defendants could be stuck in jail for months, missing critical hunting seasons and fish camps where they might otherwise provide for their families. "In the jails I visited, I encountered several prisoners awaiting trial who did not know who their attorneys were, what their defense, if any, would be, or how they were going to secure witnesses favorable to their case," Zelnick reported for the *Anchorage Daily News*. "[The] superintendent of the

¹⁵⁶ Jess H. Nicholas to Jay A. Rabinowitz, November 14, 1972, 1973 Miscellaneous File Magistrates, Record Group 1, ACSA 2003.23.13, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹⁵⁷ Gerald Van Hoomissen, "Judge Gerald Van Hoomissen," interview by Karen Brewster and Niesje Steinkruger, Judges of Alaska Project Jukebox, last modified May 5, 2012, <http://jukebox.uaf.edu/site7/p/389>.

¹⁵⁸ Kleinfeld to Fischer, "Subject: Justice." [Page 8].

Nome jail said that many defendants were imprisoned for as long as six months prior to their indictment in felony matters.”¹⁵⁹

This experience could be traumatic for juveniles. The state did not have any separate facilities for detaining youth, so in some cases juveniles would be yanked from their villages and sent to adult detention centers. When juveniles arrived at urban jails, troopers often had a difficult time contacting parents to inform them of their child’s whereabouts. Corrections officer Lou Reese described trying to get in touch with a child’s parents by making a radio broadcast.¹⁶⁰

Even when funds were available to transport defendants to and from villages and urban centers, limited communication technology could lead to the perception of ineffective justice. Residents frequently wanted chronically violent defendants removed from the village entirely. In these cases, communication between the court system and community leaders was crucial, but often lacking. It was not unusual for a defendant to be brought to Anchorage or Fairbanks, and then returned to the village on bail. To villagers, it might seem that the defendant had not received any kind of punishment, and that if justice were to be delivered, they might have to take it into their own hands. Some cases resulted in vigilante killings. Although there is no data on how widespread of a problem this was, court officials remember the threat being real. “The spectre of village retribution upon an offender returned ‘too quickly’ to his home village has some historical and cultural basis,” Stephen Conn wrote.¹⁶¹ “The magistrate may be concerned about the continued presence of a serious offender in the village where family ties are close,

¹⁵⁹ Robert Zelnick and Anchorage Daily News, "An 8-Point Program To Bring Enlightened Justice to the Bush," December 23, 1968, Bush Justice, Record Group 1, ACSA 2003.23.18, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹⁶⁰ Lou Reese. Interview by Stephen Conn. Fairbanks, AK. 1973.

¹⁶¹ Stephen Conn, "Task Force on Courts: Standards and Goals Problem Statement in Relationship to Alaska bush justice Problems," July 1975, Stephen Conn Papers, UAA Justice Center, Anchorage, AK, [Page, 13].

firearms are omnipresent, and traditional approaches including retribution and counter-retribution by the family of the victim and the family of the offender are potential threats.”¹⁶²

When defendants *were* removed from the village and held for months in an urban center, however, resentment could also brew to dangerous levels towards villagers back home. One defendant claimed that he and other defendants had been imprisoned based on the false testimony of one particular woman from the village. “The woman is making up these charges and others on other inmates here... There’s been talk of killing by the inmates here,” he wrote.¹⁶³ Although it is unclear exactly who the inmates were talking about killing, it is reasonable to assume that the inmates felt that the state could not effectively deliver justice, and therefore vigilante justice was the only recourse left available to them. The lack of public defenders or timely state services left certain individuals feeling that state justice would not be delivered.

These problems ultimately led to the sense that a lack of resources prevented the state from delivering services effectively in rural areas. This belief did not question the inherent values underpinning state justice. Instead, it pointed to logistical challenges, tight budgets, and communication limitations as the central problems to be resolved. Not everyone felt this way. A separate yet related conversation highlighted bias and inconsistency as the main issues, along with a significant cultural divide.

Framing Problems in Terms of “Native Justice”

Tucked within the loose papers of Senator Mike Gravel’s archival files lies a letter that John Steik wrote to the senator on June 13th, 1970, asking for legal assistance. Steik was a Native from the predominantly white town of Soldotna and worked in construction. In his letter,

¹⁶² Ibid, 11.

¹⁶³ Gordon Joseph Gravel to Mike Gravel, December 15, 1970, 149, Mike Gravel Papers, 1957 - 1980, General Correspondence, 1970 Correspondence, Rasmuson Library, University of Alaska, Fairbanks, AK.

Steik shared that he had only been employed for three weeks in the past eight months. He was arrested for subsistence fishing to feed his family. The local magistrate slapped him with a \$500 fine, one that Steik could not pay. “Why is it the Natives up north in Tyonic [Tyonek], etc. can fish and hunt at any time for their own use and yet a Native on the Kenai peninsula cannot do so?” he asked Senator Gravel.¹⁶⁴

The answer was that enforcement and penalty was largely up to the local magistrate. Distressed by Steik’s predicament, Senator Gravel followed up with Tom Wardell, the Deputy Attorney General, who “was of the opinion that the local magistrate had no business to levy such a large fine if he was convinced that there were mitigating circumstances.”¹⁶⁵ The magistrate, however, acted completely within the bounds of the law and his jurisdiction. After checking up on the matter, Attorney Vic Carlson wrote in dismay that “the fine is not out of line with fines imposed in similar instances.”¹⁶⁶

John Steik’s case demonstrated the damage that biased (and untrained) magistrates could inflict from their positions, and supported the notion that village conditions bred compromised justice. While magistrates like Sadie Neakok, Arlene Clay, and Nora Guinn effectively served and earned the respect of their communities, not all magistrates performed as admirably. “I really felt that many of the magistrates who were still working off their kitchen tables were probably unprepared for the job they had,” Art Snowden, the Administrative Director for the Alaska Court

¹⁶⁴ John T. Steik to Mike Gravel, August 1970, 149, Mike Gravel Papers, 1957 - 1980, General Correspondence, 1970 Correspondence, Rasmuson Library University of Alaska, Fairbanks, AK.

¹⁶⁵ Memorandum by Senator Gravel's Office, "Called Tom Wardell, Deputy Attorney General (907-586-5391)," September 1, 1970, 149, Mike Gravel Papers, 1957 - 1980, General Correspondence, 1970 Correspondence, Rasmuson Library University of Alaska, Fairbanks, AK.

¹⁶⁶ Victor D. Carlson to Mike Gravel, "John F. Steik of Soldotna," September 23, 1970, 149, Mike Gravel Papers, 1957 - 1980, Rasmuson Library University of Alaska, Fairbanks, AK.

System, recalled.¹⁶⁷ His opinion was widely shared. On November 3rd, 1970, Anchorage lawyer Robert Wagstaff wrote to Chief Justice George Boney, saying:

*During the course of a trial before a magistrate I am invariably negatively impressed with the fact that these persons have the power to place someone in jail, in many cases up to one year. A person simply should not have this much power over a fellow human being solely because he is endowed with a cursory 'training' course and a black robe. Most of the magistrates seem to have absolute power within their separate communities and, as we know, absolute power corrupts absolutely. It is an unsatisfactory system at best that relies simply upon the good faith of human beings to arrive at justice.*¹⁶⁸

This “good faith” justice system varied widely depending on the people in the positions, as demonstrated by haphazard and unequal sentencing. Law clerk Andrew Kleinfeld reported, “Natives suffer from gross sentence disparity: one Native may be serving a sentence by the local magistrate of six months in jail for being drunk in public, while another from the same village is free on a suspended sentence from the Superior Court for a burglary committed at the same time.”¹⁶⁹ A study conducted by the Alaska Judicial Council from 1974 - 1976 demonstrated that, excluding rape cases and the factor of alcohol dependence, the relative “strictness” of a superior court judge was the single most important factor related to sentence length -- more important than a defendant’s prior record, ethnicity, or any other variable.¹⁷⁰ “Ironically, the least reviewed and least supervised judges are those who lack professional training,” Stephen Conn wrote. “At present there is review of excessive sentences (180 days or more). Some magistrates are known to sentence for 179 days to escape this review.”¹⁷¹

¹⁶⁷ Arthur Snowden, Interview by Alex Bryner, AK, October 27, 2006.

¹⁶⁸ Robert H. Wagstaff to George F. Boney, November 3, 1970, bush justice Conference, Record Group 1 ACSA 2003.23.2, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹⁶⁹ Kleinfeld to Fischer, "Subject: Justice."

¹⁷⁰ Stevens H. Clarke and Gary G. Koch, *Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis (1974 -1976)*(Anchorage, AK: Alaska Judicial Council, 1977), [Page 41]. All of the sentences in the Clarke-Koch study were felony sentences imposed by state superior court judges; none were imposed by magistrates. Disparate sentencing was a problem for the whole Alaska justice system, not just the magistrates.

¹⁷¹ Stephen Conn, "Task Force on Courts: Standards and Goals Problem Statement in Relationship to Alaska Bush Justice Problems," July 1975, Stephen Conn Papers, UAA Justice Center, Anchorage, AK, [Page 29-30].

The bias that existed among magistrates and judges was prevalent in village councils as well. “You find a village council or village council president helpful. And sometimes you find it too helpful if he has a point of view he wants to prove,” Lou Reese, a Probation District Supervisor from Southwest Alaska, said.¹⁷² In one case, Reese recalled a defendant who swore the only reason the village council kicked him out was that he had gotten into a fight with his girlfriend, who also happened to be a village council member’s daughter. Regardless of whether or not this was true, it was common knowledge that village councils could be highly biased. “Let’s face it, the village councils don’t apply equal justice. They pick their targets,” Stephen Conn stated.¹⁷³ Herb Soll, a district attorney from the Bethel region, recalled a village council asking him for feedback on ordinances they wanted to pass. Soll remembered many of them being wildly unconstitutional. “One example of the many questionable rules would be... anyone who says bad things about people is fined \$25.00,” he explained. “If it is about someone on the council, then it is \$50.00. Really, that was one of the rules. So I explained about freedom of speech. We even took out the constitution.”¹⁷⁴

From the viewpoint of an ideal western judiciary, cooperation between magistrates and village councils posed a serious concern. Consulting a village council indicated that village public opinion influenced the supposedly objective process of the state court. As Magistrate Carl Heinmiller wrote, “There would be a danger that if the Village Council made recommendations and the advice were NOT followed, that problems could arise. Also, if the advice were followed, the Council could feel that the Magistrate was ‘their Man’ or employee.”¹⁷⁵ The concern was that

¹⁷² Lou Reese. Interview by Stephen Conn. Fairbanks, AK. 1973.

¹⁷³ Victor Krumm. Interview by Stephen Conn. Anchorage, AK. 1978.

¹⁷⁴ Herb Soll, Interview by Stephen Conn, Fairbanks, AK, 1973.

¹⁷⁵ Memorandum by Carl W. Heinmiller, April 17, 1974, Magistrate Court, Magistrate Program, Record Group 1, ACSA 2003.23.16, Susan Miller Files, Boney State Law Library, Anchorage, AK.

magistrate justice needed to be separate from village council opinion in order to have any hope of being objective and fair.

The logistical challenges associated with bush justice, however, meant that court officials became more familiar with one another than some officials would have liked. There were few hotels, so judges, attorneys, and defendants frequently shared accommodations and socialized.¹⁷⁶ Judge Van Hoomissen recalled playing cards with the attorneys before somebody made a complaint about the frivolity, citing a possible conflict of interest.¹⁷⁷ Magistrates also traveled frequently with troopers and, in many cases, developed close relationships with them. James Fisher, President of the Kenai Peninsula Bar Association, said that this practice “could compromise, either subtly or unconsciously, the independence of the bush judiciary.”¹⁷⁸ In loose and unregulated environments, concerns mounted that the court system could not deliver the unbiased and consistent justice it needed to provide.

Although biased justice proved a grave concern from the standpoint of a western judiciary, justice in accordance with village customs was not expected to be blind. Indeed, fundamental state judicial practices that stressed objectivity often seemed absurd in village environments. Jury trials served as a prime example. Most people in villages were related, and even if they weren’t related, everyone knew everyone else. News or rumors about the crime would already have circulated long before judges arrived. Rather than actually aim to have an unbiased jury, local judicial officers tended to perceive jury trials as valuable through their educational purpose. When asked how he would get an unbiased jury, for instance, Judge Van

¹⁷⁶ Gerald Van Hoomissen, "Judge Gerald Van Hoomissen, Part 2" interview by Karen Brewster and Niesje Steinkruger, Judges of Alaska Project Jukebox, last modified May 5, 2012, <http://jukebox.uaf.edu/site7/p/389>.

¹⁷⁷ Ibid.

¹⁷⁸ James E. Fisher to Jay A. Rabinowitz, "Re: Responses to request to magistrates," November 13, 1973, Magistrate Court, Magistrate Program, Record Group 1, ACSA 2003.23.16, Susan Miller Files, Boney State Law Library, Anchorage, AK.

Hoomissen simply replied, “You ask them and rely on what they tell you.”¹⁷⁹ Native leaders tended not to perceive bias as a problem. Nora Guinn perceived jury trials in the Bush to mainly function as a way of demonstrating how the court system worked. “It’s really hard to have a jury trial in a village because everybody knows what everybody does,” she explained. So a “court trial [is] just for the purpose of education.”¹⁸⁰

To some, these inherently contrasting viewpoints pointed to substantial underlying cultural differences that cast doubt on the compatibility of the state court system with village customs. “Among the considerations are the substantial ethnic and cultural differences between Eskimo villages and the Anglo Saxon culture in which our modern judicial and legal systems have their roots,” the Alaska Judicial Council observed in its Fourth Report 1964 - 1966.¹⁸¹ Report after report pushed for cross-cultural education for court employees in order to reconcile these two systems. Stephen Conn wrote, “It is crucial that the role of authority and the process of the adversary system be related by those who are responsible for administration of criminal justice in the village, since the basis of that authority and process of the adversary system is inherently different from traditional roles and from the procedure followed informally by village councils in many areas.”¹⁸²

Others felt that the court had no business in Native villages to begin with. One letter written in response to the First Bush Justice Conference bluntly communicated this position. “According to this evening’s edition of the Times, the Alaska Court System will now reach out its benevolent arms to embrace the Native population of our remote areas and thus extend to

¹⁷⁹ Gerald Van Hoomissen, "Judge Gerald Van Hoomissen," interview by Karen Brewster and Niesje Steinkruger, Judges of Alaska Project Jukebox, last modified May 5, 2012, <http://jukebox.uaf.edu/site7/p/389>.

¹⁸⁰ Guinn, "Judge Nora," interview, Judges of Alaska Project Jukebox.

¹⁸¹ "Alaska Judicial Council: 'Fourth Report 1964 - 1966,'" January 1967, Anchorage, AK.

¹⁸² Stephen Conn and Institute of Social, Economic, and Government Research, "Project Plan," November 24, 1972, Magistrate Court, Magistrate Program, Record Group 1, ACSA 2003.23.16, Susan Miller Files, Boney State Law Library, Anchorage, AK.

those poor unfortunates the blessings of modern jurisprudence,” Thomas Tyler, an unknown figure, sarcastically wrote to the Chief Justice in 1970. “This will surely rank right along with other manifestations of generosity to our aborigine brethren -- summary deprivation of property rights, subjugation to inferior citizenship status, smallpox and syphilis [sic].”¹⁸³

We do not know who Thomas Tyler was, but the position he reflected in this letter underscored the viewpoint that the state court system and village justice inherently clashed. An independent report in 1977 observed that Alaska “presents an environment that may require two sets of institutional arrangements to provide justice -- one adapted to an urban American model and one adapted to the severe conditions of the Alaskan bush. The two systems must be interconnected and not in conflict, with many interrelations; but they must be adapted to two settings which are markedly dissimilar.”¹⁸⁴

But nobody had a simple solution to the possibility that Native traditions and village conditions were incompatible with state justice. Countless reports recongized that two different systems were at work in rural Alaska, yet court officials tended to seek improvement by strengthening the state system over local village authority, either by investing in resources and facilities, or by educating Natives and integrating Native voices into the state court aparatus. As Clerk Andrew Kleinfeld wrote:

Most rural Alaskan Indians and Eskimos do not know their rights. Their ignorance of their rights make them difficult clients, in that they do not know when to seek out a lawyer or how to work with him. Ignorance may produce an emotionally damaging false sense of powerlessness, a feeling that wrongs cannot be remedied because of malevolence or callousness of distant government officials or of the perpetrator of the wrong, when in fact a lawyer could right the wrong with a telephone call or an easily won suit. Research by educators needs to be done on the question of how rural Alaskans can best be taught enough

¹⁸³ Thomas Tyler to George Boney, "Bush Justice Conference," December 2, 1970, bush justice Conference, Record Group 1, ACSA 2003.23.2, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹⁸⁴ Roger Cramton et al., "Planning for Justice in Alaska: A Report to the Law Enforcement Assistance Administration," May 1977, Washington, D.C. : Criminal Courts Technical Assistance Project, American University Law Institute. [Page 13].

*fundamental principles of law, so that they will have sufficient understanding of their rights to make efficient use of legal services.*¹⁸⁵

As Kleinfeld construed the problem, it primarily involved a failure to educate and integrate Natives into the state system. Proposals for reforms echoed Kleinfeld's assessment. Public Defender Victor Carlson urged Chief Justice Boney to place greater "emphasis on encouraging the public to become involved in the administration of justice, to visit the court while it is sitting, to ask questions, to propose reforms to the Judicial Council, judges, legislators, bar association, attorney general, and public defender."¹⁸⁶

The rapidly changing economic landscape of the 1960s and 1970s placed Native methods of social control under pressure and made significant change inevitable. Seasonal wage labor left men without work for months. Environmental shifts rendered subsistence hunting less viable at the same time that advancements in travel allowed alcohol to reach remote communities. "There are a disproportionate number of young Native men interacting with the criminal justice system. And in our community, by far, most arrests and convictions are alcohol related," Deborah Lyn, Special Assistant from Barrow, reported in 2006. "The unemployment and underemployment in this age range runs around 90 percent in our communities... there's a lack of meaningful work and so people are frustrated, depressed, they don't have anything to do and so I think this causes an opportunity to run afoul of the justice system."¹⁸⁷ Economic and social changes in the 1960s and 1970s contributed to an escalating crisis of violence that village councils had little experience correcting, and pushed many Native leaders to desire and expect state support.

¹⁸⁵ Andrew J. Kleinfeld to Victor Fischer, "Subject: Justice in the Bush," October 7, 1970, bush justice Conference, Record Group 1, ACSA 2003.23.2, Susan Miller Files, Boney State Law Library, Anchorage.

¹⁸⁶ Victor D. Carlson to George Boney, October 29, 1970, Bush Justice Conference, Susan Miller Files, Boney State Law Library, Anchorage.

¹⁸⁷ Alaska Rural Justice and Law Enforcement Commission, "Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission" Alaska Native Justice Center, Anchorage, AK, 2006.

In many ways, court officials stepped up to the challenge. The following chapter addresses a series of court initiatives that aimed to correct biased and inconsistent sentencing, incorporate village leadership, and protect Native people's civil liberties. The backbreaking work performed by individuals like Vic Carlson, who started Alaska's Public Defender Agency in 1969, exemplified the ways numerous court officials strived to expand the reach of the state justice system in order to provide Native residents with a professional level of service.¹⁸⁸

Focusing on improving state justice for rural Native residents, however, implicitly corroded traditional village systems. "The implications of challenging the village justice system by asserting learned individual rights are serious for the challenger and for the village," Conn wrote. "One does not merely challenge the particular norm and its application to his conduct. Instead he challenges the shape of the consensus which governs village conduct..."¹⁸⁹

By asserting the importance of individual rights and western values, Stephen Conn contended, the court challenged the very "shape" of government authority in villages. As the next chapter discusses, court officials pursued judicial reform through developing judicial infrastructure and incorporating Natives into the western system, and measured progress against Euro-American legal precepts. While these programs addressed concerns regarding civil rights violations and biased courts in rural Alaska, they nevertheless failed to fully grapple with the increasingly obvious problem that Euro-American judicial norms such as individual rights and objectivity were just that: western norms.

¹⁸⁸ Victor Carlson, "Judge Victor Carlson," interview by Karen Brewster and Michael Schwaiger, Judges of Alaska Project Jukebox, last modified January 24, 2012, <http://jukebox.uaf.edu/site7/p/373>.

¹⁸⁹ Stephen Conn, "A Perspective on Small Village Justice Systems," June 1975, Stephen Conn Papers, UAA Justice Center, Anchorage, AK, [Page 5].

Chapter Four: Research and Action

Mt. Alyeska is only a fifty minute drive from Anchorage, but lies deep in the Chugach Mountains. The distinctive octagonal Roundhouse sits on an exposed ridge, 2,280 feet above sea level. Since its construction in 1959, it has served as a warming hut and mountain gathering place. A ski lodge rests below it -- a popular destination for adventurers and mountaineers.¹⁹⁰



Early photos of the Mt. Alyeska Roundhouse (left) and the Main Lodge (right) from the Roundhouse at Alyeska Museum¹⁹¹

From December 8 - 11, 1970, Mt. Alyeska hosted the first and much anticipated Bush Justice Conference. Speakers included Nora Guinn (Bethel District Court judge), Arthur Hippler (University of Alaska anthropologist), Bill Nix (then of the Alaska State Troopers), Sadie Neakok (Utqiagvik magistrate), Elias Joseph (Alakanuk Village Council), and John Borbridge (President of the Tlingit-Haida Central Council).¹⁹²

¹⁹⁰ Roundhouse at Alyeska Museum, "History," Roundhouse at Alyeska Museum: Alaska's Only Mountaintop Museum and Interpretive Center, <https://roundhouseatalyeska.org/history/>.

¹⁹¹ Exterior photo and interior photo of Mt. Alyeska Roundhouse, photograph, Roundhouse at Alyeska Museum, <https://roundhouseatalyeska.org/photos/warming-hut-turned-museum/>.

¹⁹² Evan McKenzie, "Report on the Third bush justice Conference" (unpublished manuscript, October 9, 1976), [Page 6].

Officials later described the conference as a “low key professional affair” that nevertheless resulted in an impressive list of resolutions included in the appendix of this paper.¹⁹³ Many of the resolutions emphasized the importance of village control over its own affairs. The first resolution made this clear, declaring that “the locus of decision-making in the administration of justice in village Alaska must move closer to the village.”¹⁹⁴ Not only did the resolution emphasize the importance of handling village crime locally, but it also highlighted the importance of *Native* participation in the state system. As the second resolution clarified, “To achieve this result there must be greater Native participation at all levels in the administration of justice.”¹⁹⁵ Earlier drafts of the resolutions even asserted the importance of including village councils in the judicial process. While the final version of the resolutions only alluded to village council involvement, these resolutions established expectations regarding Native participation in the justice system. It called for a second conference to take place in a few years.

The follow-up conference occurred four years later. Known as the Second Bush Justice Conference, it took place in June, 1974, in Minto, Alaska, forty miles outside of Fairbanks. Like the first conference, it produced a list of resolutions that emphasized village authority and underscored the disconnect between state justice and village life. The conference established a Bush Justice Implementation Committee, which obtained funds for a two-year Bush Justice Project to conduct additional research. In 1975, the Legislature created the University of Alaska Criminal Justice Center, later renamed the Justice Center.¹⁹⁶ Reports indicated that after the

¹⁹³ Evan McKenzie, “Thee Report of the Third Bush Justice Conference,” Alaska Federation of Natives, Anchorage, AK. October 7-9, 1976. [Page 6].

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ University of Alaska Anchorage, “Our mission,” UAA Justice Center, <https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/>.

Minto Conference, “Bush justice became a catch phrase and an area of concern and special effort for almost every public and private agency in Alaska concerned with justice delivery.”¹⁹⁷

Both of these conferences consisted of speakers, workshops, discussions, and lists of resolutions calling for more research. As a result of the conversations these conferences inspired, the 1970s witnessed a series of initiatives attempting to improve bush justice. The reforms can be crudely grouped into two types: 1) Improving the state justice apparatus and 2) Integrating Native traditions into the state justice system.

This chapter will not adequately cover the intricacies of these programs, but will instead outline the most significant projects’ aims and legacies. It will explore these programs with the goal of understanding which problems officials within the state court system chose to address, and how they attempted to solve them. The subsequent programs met varying degrees of success, but contributed to a movement that relocated the seat of decision-making power on bush justice matters away from rural (and Native) communities and into more urban hubs. Despite agreement on the importance of keeping decision-making power in the village in the early Bush Justice Conferences, the 1970s marked a time when the exact opposite occurred.

Developing the State System

Complaints about the magistrate program led judges to gradually professionalize the magistrate position. Prior to 1969, magistrates only received a handbook and attended a magistrate seminar that lasted four to five days. These “one week fly in - fly out” sessions rapidly covered a vast number of topics and, in Judge Nora Guinn’s words, “just [weren’t]

¹⁹⁷ Evan McKenzie, "Thee Report of the Third Bush Justice Conference," Alaska Federation of Natives, Anchorage, AK. October 7-9, 1976. [Page 8].

working out.”¹⁹⁸ A schedule from the magistrate seminar in April, 1970, indicated that attendees rotated between hour-long sessions ranging from “Fish and Game Violations” to “Setting Bail in Misdemeanor Cases.” A brief examination at the end of the four days determined whether or not the magistrate would serve.¹⁹⁹

After years of complaints, newly hired magistrate coordinator Susan Miller launched the Magistrate Training Conference in 1974.²⁰⁰ At the conference, attendees reviewed much of the same material, but over two weeks instead of four days. Documents indicate that attendees felt it was a smashing success. “After this conference I feel that I am part of the court system and not all alone trying to perform the duties that a magistrate is called on to do,” Wilma Jones, the magistrate from Homer, wrote.²⁰¹ To some, it was the first such thorough training they had ever received.

Over time, however, state district judges moved towards hiring individuals with a legal background to serve in magistrate positions. This marked an attempt to correct for bias. As a result of these decisions, the number of magistrates dropped, and the position became prohibitive to most Native people.²⁰² Some court officials perceived this to be counterproductive. “It just creates problems when you have somebody who has that kind of background and training. They are always looking to the legal approach and what would be passed for legal standards...”²⁰³

¹⁹⁸ Nora Guinn to Arthur Snowden, December 27, 1973, Magistrate Court, Magistrate Program, Record Group 1, ACSA 2003.23.16, Susan Miller Files, Boney State Law Library, Anchorage, AK.

¹⁹⁹ Memorandum by J. Earl Langnor, "Program Draft Rural Alaska Magistrate Seminar," March 13, 1970, Magistrates Seminar, 1970, Record Group 1, ACSA 2003.23.19, Susan Miller Files, Boney State Law Library, Anchorage, AK.

²⁰⁰ Nora Guinn to Arthur Snowden, December 27, 1973, Magistrate Court, Magistrate Program, Record Group 1, ACSA 2003.23.16, Susan Miller Files, Boney State Law Library, Anchorage, AK. AND Arthur Snowden to Jay Rabinowitz, memorandum, "Magistrate's Training," December 16, 1974, Magistrate Court, Miscellaneous - 1974, Record Group 1, ACSA 2003.23.17, Susan Miller Files, Boney State Law Library, Anchorage, AK.

²⁰¹ Wilma K. Jones to Jay Rabinowitz, November 13, 1974, Magistrate Court, Miscellaneous - 1974, Record Group 1, ACSA 2003.23.17, Susan Miller Files, Boney State Law Library, Anchorage, AK.

²⁰² Miller, Susan. "Magistrate Locations: Changes from 1978 - 2004." Unpublished typescript, June 30, 2004.

²⁰³ Madsen, "Judge Roy Madsen," interview, Judges of Alaska, Project Jukebox.

Judge Roy Madsen observed. By elevating the educational background required for the position, however, judges aimed to reduce the number of unqualified magistrates in the Bush.

The development of rural facilities also became a priority. In 1970, the Court system only operated out of twenty-six locations statewide.²⁰⁴ Between 1973 and 1975, the court constructed thirteen modular structures to house various justice agencies. They were primarily used by local law enforcement officials and the local court. The villages of St. Mary's, Emmonak, Selawik, Kiana, Aniak, Gambell, Pt. Hope, Noorvik, Angoon, Galena, Hooper Bay, Makoryuk and Savoonga each gained one of these new facilities.²⁰⁵ By 1977, Chief Justice Robert Boochever reported a huge expansion in the number of facilities used by the court. "The new court building at Bethel was dedicated in January, 1977. We now have a vastly-improved court facility being leased in Barrow. Substantial improvements were made in the Fairbanks court building. There are court facilities in 60 locations in the state, and many received improvements."²⁰⁶

Court administrators also focused on developing infrastructure in regional transportation hubs. In early 1970, superior courts with resident judges only resided in Anchorage, Juneau, Fairbanks, Ketchikan and Nome. Over the following decade, superior courts formed in Sitka, Kenai, Kodiak, Bethel and Kotzebue. Bethel and Utqiagvik became "service areas" in 1973 and 1974 respectively, meaning that air transportation patterns shifted to regularly service these cities and allow judges to access more of the Bush.²⁰⁷

These hubs permitted jury trials of defendants' "peers" without transporting defendants to the three largest cities: Anchorage, Fairbanks, and Juneau. Before 1971, some defendants faced

²⁰⁴ Joseph J. Brewer, "A Glance at District Court During the '70s Decade," ACSA 2012.79.01-11, Joseph J. Brewer File, Boney State Law Library, Anchorage, AK.

²⁰⁵ Joseph J. Brewer, "History of Court System Facilities 1970 - 1980," ACSA 2012.79.01-11, Joseph J. Brewer File, Boney State Law Library, Anchorage, AK.

²⁰⁶ Robert Boochever, "The State of the Judiciary," April 11, 1978, Rasmuson Library, Fairbanks, AK.

²⁰⁷ Joseph J. Brewer, "A Glance at District Court During the '70s Decade," ACSA 2012.79.01-11, Joseph J. Brewer File, Boney State Law Library, Anchorage, AK.

juries in these urban centers. While trials in cities greatly reduced the likelihood of a jury member knowing the defendant, juries consisted of individuals who might have never been to the village in which a crime took place.²⁰⁸ In the 1971 case of *Alvarado v. State*, the Supreme Court mandated that jurors be selected from the area in which a crime occurred.²⁰⁹ This decision spurred changes to jury selection procedures in an effort to ensure defendants from remote villages faced juries representative of those rural areas.²¹⁰ “It had tremendous influence in prompting legislatures after that to establish courts in rural communities, and to really staff the courts with -- with presiding judges who lived and were residents of the community,” Justice Alex Bryner remarked.²¹¹ Given the remoteness of communities in Alaska, however, “rural” and “residents of the community” could be interpreted loosely. Regional hubs became crucial ways for the judicial system to serve rural communities with local juries while keeping traveling expenses as low as possible.

Although the rapid construction of facilities produced tangible results, certain voices questioned whether these advancements actually improved services in the Bush. “While it would be desirable, there appears to be all too much emphasis placed on the trappings of the judicial system and too little placed on the substance,” Anchorage lawyer William H. Timme wrote on March 12, 1974. “A magistrate should not need an office or court room in order to hear and decide cases. All villages have schools and other community buildings.”²¹²

²⁰⁸ Jeffery, "Judge Michael, Part 1" interview, Judges of Alaska Project Jukebox.

²⁰⁹ Cloyd Alvarado v. State of Alaska, 486 P.2d 891 Justia US Law (Supreme Court July 6, 1971). <https://law.justia.com/cases/alaska/supreme-court/1971/1230-1.html>.

²¹⁰ Jeff D. May, "Alvarado Revisited: A Missing Element in Alaska's Quest to Provide Impartial Juries for Rural Alaskans," *Alaska Law Review*, 2011, [Abstract], <https://scholarship.law.duke.edu/alr/vol28/iss2/2>.

²¹¹ Bryner, "Justice Alex, Part 1" interview, Judges of Alaska Project Jukebox.

²¹² William H. Timme to Jay A. Rabinowitz, "Comments on Recommendations of Magistrate Advisory Committee," n.d., Magistrate Court, Magistrate Advisory Comm., Record Group 1, ACSA 2003.23.15, Susan Miller Files, Boney State Law Library, Anchorage, AK.

Hubs marked an expansion of the court system outside of the three largest cities, Anchorage, Fairbanks and Juneau, but they also moved the centers of justice away from villages. Instead of holding magistrate trials in isolated communities, state troopers relocated defendants to holding cells in medium-sized urban centers like Nome or Kotzebue. Control over criminal affairs shifted increasingly out of the villages as the number of magistrate positions dropped and became filled by legally trained professionals, and translators and courts operated in centralized hubs. These developments meant that the justice system became more standardized, but that power moved away from Native communities and into environments dominated by non-Natives.

Integrating Village Leadership

At the same time, a number of initiatives attempted to incorporate tribal members into the judicial apparatus. The Problem Board Project (also known as “conciliation” boards) was a federally funded experiment involving six western Alaska villages that ran from 1975 to 1977. The six conciliation boards consisted of five to seven local citizens selected by either the village council or by the general population of the village. If all parties consented, conciliation boards would have the power to settle minor criminal disputes. The basic goal was to “encourage Eskimo villages to deal with minor legal problems of villagers in a local way.”²¹³

Official adoption of the project was supposedly first advocated for by Nora Guinn. During an interview on October 24, 1976, she explained that the “notion of a conciliation board or ‘problem board’ was not a new concept; minor civil and criminal matters involving Native parties had previously been referred to Eskimo villages for resolutions and handling with tacit

²¹³ Judith E. Marquez and Douglas J. Serdahely, "An Evaluation of the Alaska Court System's Village Conciliation Board Project: A Report to the Alaska Court System on the Status and Viability of Informal Problem-Solving Institutions in Six Eskimo Villages in Rural Alaska" (working paper, Law Offices of Libbey and Serdahely, Anchorage, AK, June 30, 1977), [Page 14].

approval of legal and judicial officials.”²¹⁴ One essential aim of the conciliation boards was to formalize a practice that legal and judicial officials had followed for decades. As one report noted, “Dispute settlement has been accomplished by village councils, by magistrates, and by constables and by troopers.... The thrust of the process is directed toward legal education and to compromise within a process that is as personalized as the village but through a process that is more formal than screening by police or prosecutors.”²¹⁵

The conciliation board experiment built upon the results of the Emmonak Conciliation Board that Professor Arthur Hippler and Stephen Conn helped set up in 1973 - 1974. The initial Emmonak Conciliation Board processed about sixteen cases during the first half-year of its existence. The experimental project concluded in June, 1974 and the Supreme Court subsequently endorsed experimentation with conciliation boards in other Native villages. Convention Resolution 76-12 from the Third Bush Justice Conference in 1976 officially endorsed the experiment.²¹⁶

A 1977 report on the project communicated mixed results. While it acknowledged that the village conciliation boards resolved villagers’ problems more sensitively than external legal personnel, the boards heard a disappointingly low number of cases. The report observed that the operation of the conciliation boards also “raised certain constitutional and legal considerations” due to privacy and due process issues.²¹⁷ At its core, village justice did not fit neatly within western notions of individual rights and what a court should look like.

They also observed that the villages still wanted magistrates. The authors wrote, “The six villages participating in the conciliation board project did not perceive the problem boards as

²¹⁴ Marquez and Serdahely, "An Evaluation," [Page 14].

²¹⁵ Stephen Conn, "Task Force on Courts: Standards and Goals Problem Statement in Relationship to Alaska Bush Justice Problems," July 1975, Stephen Conn Papers, UAA Justice Center, Anchorage, AK. [Page 3-4]

²¹⁶ Marquez and Serdahely, "An Evaluation."

²¹⁷ Marquez and Serdahely, "An Evaluation," [Page 13].

substitutes for local magistrates, and indeed, expressed hope that the presence of the boards would not diminish their chances of having magistrates appointed to their villages.”²¹⁸ Other sources indicate that villages might have favored magistrates because they felt that magistrates were the only figures with actual power to enforce ordinances. A Bush Justice Implementation Committee reported in 1975 that people in numerous villages they visited very much “seemed to want someone to administer city ordinances, and this would require a magistrate or another judicial alternative.”²¹⁹

Ultimately, the report concluded that conciliation boards might work adjunct to the state system, but could ultimately only offer “a limited, minor problem-solving capacity for at least some Eskimo villages.”²²⁰ The report’s claim infuriated Stephen Conn, one of the original researchers who supported the pilot program in Emmonak. He claimed that the experiment ignored central components of the Emmonak project and judged the program’s success based on western rather than traditional standards. In his article “Bush Justice Unplugged,” he critiqued the experiment and report as follows:

*Important links to local police and magistrates were not developed. The critical local context of each board within a larger village-state system was ignored... An official evaluation by a prominent lawyer and legal anthropologist said the process failed to replace courts (!), and had privacy and due process issues (Marquez & Sedately, 1977). In other words, the evaluators measured it against the wrong standards — its own, and not those of the traditional process.*²²¹

²¹⁸ Marquez and Serdahely, "An Evaluation," [Page 7].

²¹⁹ Evan C. McKenzie, "Bush Justice Project Dillingham Area Trip Report: Dillingham, Togiak, Manokotak.," November 21, 1975, Bush Justice Implementation Committee, UAA Justice Center, Anchorage, AK.

²²⁰ Marquez and Serdahely, "An Evaluation," [Page 13].

²²¹ Stephen Conn, "Bush Justice Unplugged: The Road Taken and the Research Trail Left Behind" (paper presented at First Alaska Native Studies Conference, University of Alaska Anchorage, Anchorage, AK, April 2013), [Page 7], http://stephenconn-ak.com/conn.2013.bush_justice_unplugged.pdf.

Stephen Conn's remarks represent only one opinion on why the program failed. Other possible reasons include a lack of funding (participants complained that board members needed to be paid). Further analysis of this project is needed.

By the Third Bush Justice Conference in 1976, conversations surrounding the justice system in rural Alaska had grown contentious. The introduction to the conference's summary report addressed critics who complained of endless "table thumping" sessions, indicating that there must have been mounting criticism of the endless talk and little substantive improvement. The Third Bush Justice Conference failed to satisfy many participants. Seventeen out of thirty-six, or almost half of the participants' comments included in the appendix of the report, specifically complained about a lack of Native representation at the conference. With rising crime rates, these participants resented the apparent stagnation, bureaucratization, and urbanization of an inherently rural problem.²²²

Despite the resolutions agreed upon at the first two Bush Justice Conferences, the developments of the state court system in the 1970s did not focus on Native leadership or control. Village experiments, like the conciliation board project, lacked funding and were measured against Euro-American standards. Moving trials into hubs and introducing legal professionals to magistrate positions reduced the amount of personal discretion that characterized early bush justice. However, despite basic assumptions that "objective justice" meant "improved justice," this did not necessarily demonstrate itself to be true.

²²² Evan McKenzie, "Thee Report of the Third Bush Justice Conference," Alaska Federation of Natives, Anchorage, AK. October 7-9, 1976.

Corroding Council Authority

The Association of Village Council Presidents convened in Bethel in late September, 1967, as the sun slipped toward the horizon. The meeting was the fifth of its kind, and assembled regional Native leaders to discuss pressing issues affecting their communities before winter weather set in.

At this particular meeting, Herman Neck from the village of Nunapitchuk spoke up. He discussed a change in the social fabric of his village. Although in prior times the village council had commanded respect, in recent years youth had challenged its authority. “Whenever a young person is caught drunk they ask for a cop to come out to the village but he does not come,” he complained. “These young people do not respect their councilmen anymore.”²²³

Others echoed Neck’s observation over the ensuing decade. In 1978, eleven years later, Bethel District Attorney Victor Krumm made nearly the same statement:

*Villages have been relying on the fiction that they have authority, but they recognise that the first time you try to enforce it, there’s nothing to enforce. That kids say ‘Screw you’ and they ask me, ‘What can you do when a kid says ‘Screw you’? Of course, I haven’t an answer for them. They can either bring it to Bethel or else they just have to let it go... unless they just want to take the kids to the council and yell at him for awhile. That’s basically all they can do.’*²²⁴

By the late 1970s, the expansion of the court had created a power vacuum in rural Alaska. State authority had rendered village council power weak, yet troopers could not adequately service small communities in the Bush. Native leaders wanted control over village affairs, and perceived state-appointed magistrates (rather than village councils) as the most effective way to make that happen.²²⁵ Villages were aware that state power was increasing, and hoped that a

²²³ Stephen Conn, *No Need of Gold - Alcohol Control Laws and the Alaska Native Population: From the Russians Through the Early Years of Statehood*, ed. Antonia Moras, Alaska Historical Commission Studies in History 226 (n.p.: School of Justice, University of Alaska Anchorage, 1986), [Page 67].

²²⁴ Krumm, interview.

²²⁵ Roy Peratrovich, interview by Stephen Conn, Fairbanks, AK, 1973.

magistrate who was state trained might be able to serve as an access point -- helping that village navigate a foreign and highly centralized court system. But the adoption of magistrates meant that village councils were consulted rather than deferred to.

How did this transition happen? Extensive research and creative efforts by court officials failed to keep power in the villages. Instead, these decades witnessed a gradual transfer of authority away from traditional village structures and toward a state system. Stephen Conn observed that over the years, "Councils reluctantly broadened their historical role to accommodate and facilitate a working relationship with the state even as it put at risk the credibility of their governments, especially in the eyes of the younger population."²²⁶ Native youth recognized that state officials, not councilmen, held real power. Without the authority to pass laws or enforce them, village councils slipped into positions of power that were only nominal.

²²⁶ Conn, Stephen. "Inuit Village Councils in Alaska—An Historical Model for Effectuation of Aboriginal Rights?" *Études/Inuit/Studies* 9, no. 2 (1985): 54. <http://www.jstor.org/stable/42869522>.

Conclusion

Despite the efforts of many local court officials to keep decision-making power in rural communities, the 1960s and 1970s witnessed a gradual transfer of authority away from villages and to the state. Traditional forms of justice sufficiently worked in the first half of the twentieth century, but rising rates of alcohol-related violence and the introduction of civil rights requirements (such as due process) with statehood demanded different public safety solutions. Native communities generally embraced state magistrates and judges with the hope that they would resolve village problems and provide a familiar access point to a foreign system. These state officials, however, supplanted traditional methods of social control. Magistrates, judges, and troopers who dedicated their lives to supporting village authority ironically smoothed this transition by accustoming Native communities to the new state system.

This transition toward a Euro-American judicial system proved insufficient in resolving bush justice challenges. Today, violence in Alaska Native communities is a part of everyday life. Alaska has the highest rate of rape in the nation -- three times the national average.²²⁷ Alaska Native women are almost ten times more likely than other Alaskans to be victims of sexual violence, making them the demographic at highest risk of sexual violence in the country.²²⁸ Current efforts by the Alaska Court System to cooperate with tribal courts may mark a new era in bush justice, however the crisis remains acute.²²⁹ Opinions vary on the causes underlying Alaska's high rate of sexual violence, but the trend indicates that the reforms of the 1970s failed

²²⁷ John D. Sutter, "List: States where rape is most common," *CNN* (Online), February 4, 2014, <https://www.cnn.com/2014/02/03/opinion/sutter-alaska-rape-list/index.html>.

²²⁸ Alexander Keller Hirsch, "Alaska should declare a sexual assault state of disaster," *Anchorage Daily News* (Anchorage, AK), August 7, 2017, <https://www.adn.com/opinions/2017/08/07/alaska-should-declare-a-sexual-assault-state-of-disaster/>.

²²⁹ André B. Rosay, "Violence against American Indian and Alaska Native Women and Men," *National Institute of Justice Journal*, no. 277 (September 2016): [Page 1], <https://scholarworks.alaska.edu/bitstream/handle/11122/7030/1607.04.violence-vs-aian.nij-jl-277.rosay.pdf?sequence=1>.

to impede the escalating rates of alcohol abuse and domestic violence – issues that village leaders and court officials alike struggled to address throughout the twentieth century.²³⁰

The history of bush justice, however, also tells a story in which Native and non-Native court officials creatively adapted a system to benefit local villages. A significant group of magistrates and judges sought to make the court accessible to Native people, incorporate community opinion in sentencing decisions, and keep the judicial process in the village.²³¹ These leaders frequently believed that traditional customs and state justice could be successfully reconciled. By adapting and at times subverting the state system, they sought to adjust how justice would actually be implemented in their communities. “I’m just hoping that... they can coordinate the villages and the court system and it has got to be a combination of both,” Nora Guinn asserted. “One can’t lean back and neither can the other.”²³²

Many of these officials achieved remarkable popularity. Judge Roy Madsen, Magistrate Arlene Clay, and Judge Beverly Cutler each had courthouses named after them. Judge Nora Guinn and Magistrate Sadie Neakok received honorary doctorates of law from the University of Alaska Anchorage. Judge Michael Jeffery became a beloved fixture of Utqiagvik, winning the Nora Guinn Award in 2008 for exemplary service in bush justice. In 2016, the Alaska Federation of Natives presented Jeffrey with the Denali Award, the highest award a non-Native can receive from the organization.²³³

²³⁰ André B. Rosay, "Violence against American Indian and Alaska Native Women and Men," *National Institute of Justice Journal*, no. 277 (September 2016): [Page 1], <https://scholarworks.alaska.edu/bitstream/handle/11122/7030/1607.04.violence-vs-aian.nij-jl-277.rosay.pdf?sequence=1>.

²³¹ Shady Grove Oliver, "Barrow judge honored for decades of service," *The Arctic Sounder*, November 25, 2016, http://www.thearcticsounder.com/article/1647barrow_judge_honored_for_decades_of_service.

²³² Nora Guinn, "Judge Nora Guinn," interview by Evan McKenzie, Judges of Alaska Project Jukebox, last modified 1976, <http://jukebox.uaf.edu/site7/p/382>.

²³³ Shady Grove Oliver, "Barrow judge honored for decades of service," *The Arctic Sounder*, November 25, 2016, http://www.thearcticsounder.com/article/1647barrow_judge_honored_for_decades_of_service.



Sadie Neakok being congratulated for her honorary doctorate by her granddaughter Aqpauraq Miller, May 1987, Photograph by Bill Hess.²³⁴

In reflecting on the successes and failures of bush justice, the very philosophical underpinnings of western courts come under scrutiny. American justice theoretically upholds ideals such as equality, due process, objectivity and assumption of innocence. On these fronts, bush justice in Alaska from 1959 to 1980 struggled. It could be biased, inconsistent, and dependent on the characters of the people assigned to positions of authority. But standardization did not solve the escalating crisis of violence, nor did investments in facilities. The personal nature of the system opened it up to exploitation, however it also allowed magistrates and judges to shape justice to community needs. As Art Snowden spoke with Judge Roy Madsen in 2006, he reflected on the changes he had witnessed over his forty-year career and whether or not progress had been achieved:

I remember when I first came out of the seventy-seven magistrate locations, fifty-eight people were working off of their kitchen tables. We've probably got them all into offices

²³⁴ Bill Hess, Sadie being congratulated for her honorary doctorate by her granddaughter Aqpauraq Miller, 1987, in *Sadie Brower Neakok: An Iñupiaq Woman*, comp. Margaret B. Blackman (Seattle, WA: University of Washington Press, 1989).

*over the years. But the fact is, I don't know if it was all bad working off your kitchen table. The people knew you and so on and so forth. I think it added a little when we could get them some office space. But they performed very admirably.*²³⁵

Indeed, the history of bush justice in rural Alaska begs a thoughtful evaluation of what “justice” means in environments defined by relationships, for beloved state officials did not judge in any traditionally western sense. With little support or precedent to build upon, they overlooked countless legal precepts and basic civil rights, but strived to produce justice that centered on the fundamental unit of communities: people. Attorney Stephen Cline remembers sitting at Sadie Neakok’s kitchen table: “She didn’t go into court with an air of authority at all...

She went in there like a mother.”²³⁶

²³⁵ Madsen, "Judge Roy Madsen," interview, Judges of Alaska, Project Jukebox.

²³⁶ Margaret B. Blackman, comp., *Sadie Brower Neakok: An Iñupiaq Woman* (Seattle, WA: University of Washington Press, 1989), [Page 202].

Glossary

ANCSA. The Alaska Native Claims Settlement Act of 1971. This Act was intended to settle outstanding land claims and establish clear title to Alaska's land and resources. To do this, the Act established twelve regional corporations (and a thirteenth region representing those Alaska Natives who were no longer residents of Alaska) and a method of conveying surface estate (land) and subsurface estate (mineral and other resources) to each regional corporation. ANCSA also established village corporations and gave each village corporation, subject to valid existing rights, the right to the surface estate (land) in and around the village.²³⁷

Alaska Judicial Council. An independent citizens' commission created by the Alaska Constitution. The Council screens applicants for judicial vacancies and nominates the most qualified applicants for appointment by the governor, evaluates the performance of judges and recommends whether voters should retain judges for another term, and conducts research to improve the administration of justice in Alaska.²³⁸

Bush justice. Defined as (1) the historical interplay between state and village law or (2) the delivery and implantation of state law and services upon nearly twenty percent of Alaska's population who reside in more than one hundred isolated villages and towns.²³⁹

Borough. The entire state of Alaska is divided into nineteen organized boroughs and one unorganized borough. Six of the organized boroughs are consolidated with a particular city and operate as a unified government with those cities.²⁴⁰

ISEGR. The Institute of Social, Economic, and Government Research. Today known as the Institute of Social and Economic Research (ISER), the Institute at the University of Alaska Anchorage conducts research that helps Alaskans better understand the state's changing economy and population.

²³⁷State of Alaska. "Alaska Native Claims Settlement Act (ANCSA) Section 14(c) Land Claims." Department of Commerce, Community, and Economic Development Division of Community and Regional Affairs. Last modified December 18, 2014. <https://www.commerce.alaska.gov/web/dcra/>

²³⁸ State of Alaska, "About the Council," Alaska Judicial Council, <http://www.ajc.state.ak.us/about-the-council>.

²³⁹ Stephen Conn, "Bush Justice Unplugged: The Road Taken and the Research Trail Left Behind" (paper presented at First Alaska Native Studies Conference, University of Alaska Anchorage, Anchorage, AK, April 2013), [Page 1], http://stephenconn-ak.com/conn.2013.bush_justice_unplugged.pdf, Stephen Conn, "Bush Justice and Development in Alaska: Why Legal Process in Village Alaska Has Not Kept up with Changing Social Needs" (paper presented at the annual meeting of the Western Regional Science Association, Monterey, CA February 1984), <http://hdl.handle.net/11122/9770>.

²⁴⁰ State of Alaska, "Local Boundary Commission," Department of Commerce, Community, and Economic Development: Division of Community and Regional Affairs, <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission.aspx>.

University of Alaska Anchorage Justice Center. The University of Alaska Anchorage Justice Center, established by the Alaska Legislature in 1975, has a mandate to provide statewide justice-related education, research, and service. The Justice Center is an interdisciplinary unit that provides undergraduate, graduate, and professional education; conducts research in the areas of crime, law, and justice; and provides services to government units, justice agencies, and community organizations throughout urban and rural Alaska to promote a safe, healthy, and just society.²⁴¹

²⁴¹ University of Alaska Anchorage Justice Center, Our mission, Justice Center, <https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/>.

Appendix

***Draft Version of the First Bush Justice Conference Resolutions:
(Mt. Alyeska, 1970)²⁴²***

1. The locus of decision-making in the administration of justice in village Alaska must move closer to the village.
2. There must be greater native participation at all levels in the administration of justice.
3. There must be a greater access to legal services and the process of justice in village Alaska.
4. The strengthening of village councils is central to the administration of justice in remote Alaska.
5. Some modifications in substantive law are necessary to correct inequities in village Alaska. Some such modifications relate, of course, to the administration of justice in urban Alaska as well.
6. Venue [listed in original document]
7. As each community should have better control of its affairs, legislation should be enacted to authorize the issuance of package and by-the-drink liquor licenses to corporations wholly owned by municipal corporations or organized communities.
8. Every village should have a detention facility and a juvenile detention facility separate from the detention facility and standards be established for such facilities. These are need to protect villages from dangerous persons without delay and without unduly long incarceration because of transportation time.
9. The State Director of Communications should coordinate present existing radio communications nets and establish others as required whereby all areas not having access to communications may be served. The center of each net should be located in the area of each presiding district court judge of each judicial district and be made available to all agencies and persons associated with the justice system on a 24 hour per day basis.
10. The ordinary method of travel in the bush is by air. To meet the basic requirements of regular travel and to enable emergency service, State Troopers should be authorized to operate leased or state owned aircraft for their official duties and to aid officers of the court and associated agencies in the performance of their duties.
11. Special emphasis must be give to the development of manpower capable of dealing effectively with the administration of justice in village Alaska, and to appropriate education for the affected public.

***Official Version of the First Bush Justice Conference Resolutions:
(Mt. Alyeska, 1970)²⁴³***

1. The locus of decision-making in the administration of justice in village Alaska must move closer to the village. To achieve this result there must be greater Native participation at all levels in the administration of justice.
2. There must be greater access to legal services and the process of justice in village Alaska.

²⁴² Alaska Judicial Council, "Bush Justice Conference," December 11, 1970, Record Group 1, ACSA 2003.23.14, Susan Miller Files, Boney State Law Library, Anchorage, AK.

²⁴³ Evan McKenzie, "The Report of the Third Bush Justice Conference," Alaska Federation of Natives, Anchorage, AK. October 7-9, 1976.

3. Some modifications in substantive law are necessary to correct inequities in village Alaska. Such modifications relate to the administration of justice in urban Alaska as well. (Among the specific recommendations to this resolution is 'dispositional process alternatives prior to invocation of the criminal and juvenile process should be legitimated and encouraged.')
4. The state should encourage and provide planning assistance in the establishment of community mental health centers in the regional service centers of the state, such as Bethel, Nome, Kotzebue, Barrow, Ft. Yukon and others. Also, the Commissioner of the Department of Health and Social Services should consult with the Director of Mental Health and the Superintendent of the Alaska Psychiatric Institute to provide resident quarters for persons referred by the courts from rural areas for evaluation and referral until such time as mental health facilities are available.
5. The State Director of Communications should coordinate present existing radio communications nets and establish others as required, whereby all areas not having access to communications may be served. The center of each net should be located in the area of each presiding district court judge of each judicial district and be made available to all agencies and persons associated with the justice system on a 24-hour-per-day basis. In conjunction with the above, the judicial council or other appropriate agencies should intervene in the FCC docket on domestic satellites to urge the need in village Alaska for improved communications in the administration of justice.
6. As each community should have better control of its affairs, legislation should be enacted to authorize the issuance of package and by-the-drink licenses to corporations wholly owned by municipal corporations or organized communities.
7. This conference recommends that another justice in the bush conference be held somewhere in a rural community.

Findings of the Second Bush Justice Conference:
(Minto, 1974)²⁴⁴

1. That police protection for village people is inferior and in need of improvement.
2. That the importance of fish and game protection to village people is underestimated by state authorities and fish and game laws are unequally applied between sport and subsistence users.
3. That village people do not generally understand the state justice system and that the state justice system does not generally understand the village people.
4. That village people do not want their children or elderly removed from the village by police, courts, schools or other agencies.
5. That participation of village people in virtually all agencies of the justice system is severely lacking.
6. That village life should be governed by village law and custom as much as possible.
7. That progress in the improvement of the bush justice system since December 1970 has been much too slow.

²⁴⁴ Evan McKenzie, "The Report of the Third Bush Justice Conference," Alaska Federation of Natives, Anchorage, AK. October 7-9, 1976.

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