

Executive Summary



Rural Alaskan communities have developed methods of resolving disputes locally that may benefit the state's justice system as well as the communities' residents. The Alaska Judicial Council has evaluated a conciliation organization in Barrow (PACT), the Minto Tribal Court and the Sitka Tribal Court to describe and assess these organizations and the approaches they have taken to rural justice in Alaska. The Council found that the largely volunteer organizations functioned with varying degrees of effectiveness, depending upon the strength of their case referral systems, and the level of community commitment to supporting the organization and resolving disputes through it. Recommendations included continued cooperation among local organizations and state courts and agencies, increased mutual education between tribal court and state court judges, and increased voluntary development of local organizations in other communities to resolve disputes.

The Executive Summary includes an overall description of the evaluation project, brief descriptions of each of the three organizations evaluated, and the findings, conclusions and recommendations of the Judicial Council. The report itself includes chapters on the cultural and justice system setting for each community, a brief summary of rural justice needs and alternative dispute resolution in Alaska, the legal context for the functioning of the tribal courts, and detailed evaluations of each organization. A chapter comparing the three organizations, a discussion of interactions with state courts, and a chapter on the conditions needed to replicate the work done by these organizations in other communities complete the report. Appendices to the main report include a more thorough discussion of the evaluation methods, a list of references used in the report, and a memo summarizing the recommendations made at rural justice conferences and the outcomes of those recommendations.

A. Purposes and Structure of the Evaluation

The Alaska Judicial Council set rural justice issues as a top priority for its staff in 1987.* The Council proposed that the State Justice Institute fund an evaluation of three organizations in

* The Judicial Council is required by the state's constitution (Article 4, § 9) to conduct studies and report to the legislature on improving the administration of justice.

rural communities that provided alternative means of resolving disputes. The purpose of the evaluation was to conduct a neutral review that would benefit the local organizations, as well as state courts and agencies and other communities. Local organizations would benefit because their limited resources would not otherwise permit them to obtain an independent review of their work. State courts and other agencies would gain by having a neutral view of the characteristics, strengths and weaknesses of the organizations that would enable the state courts to increase their involvement with local communities. Other communities, both within and outside of Alaska, would benefit from an understanding of the qualities and conditions needed to replicate effective local means of resolving disputes.

Criteria for evaluating organizations included a history of continuous functioning for at least two years, access to written case records, some level of interaction with state courts (or indication that the organization's work had an effect on the work of the state courts), and willingness of the organization's personnel to collaborate in the evaluation. The diversity of rural organizations is embodied in the three evaluated: three of Alaska's five main Native groups are represented (Inupiat in Barrow, Athabascan in Minto and Tlingit in Sitka); three of the state's five major geographical areas (Barrow on the North Slope, Minto in the Interior and Sitka in Southeast); three very different organizational structures (panels of volunteer conciliators in Barrow, a panel of elected judges in Minto, and a single appointed judge in Sitka); and three major groupings of case types (small claims and civil disputes in Barrow, civil regulatory/quasi-criminal in Minto, and children's cases in Sitka).

The evaluation relied on various methods of collecting information to provide a comprehensive picture of the organizations and the contexts (legal and cultural) in which they act. Methods sensitive to cultural differences and small databases were selected, including extensive interviews with the decision-makers/conciliators in each organization, other volunteers associated with the organization's work, and state court judges, regional Native non-profit corporation staff, and others familiar with the organizations' activities. Each of the organizations gave the evaluators access to their case files; although limited in numbers, these were a rich source of information. Secondary sources, case law, analyses of Indian law, and data from state court case files and state Department of Public Safety files provided the basis for analysis of data from the interviews and organizations' case files.

Of critical importance to the accuracy and completeness of the report was the draft report review process. Over one hundred and twenty-five copies of the draft report were sent out for review, to organization volunteers, decision-makers/conciliators, all persons interviewed for the report, academicians, attorneys specializing in Indian law, and the project's Advisory Committee.** The Project Evaluator returned to each community for several days to go over the report personally with the people interviewed to check for accuracy and completeness of the description of the organization. This thorough review process was an intrinsic part of the evaluation and helps

** Members of the Advisory Committee who assisted in the evaluation design and report revision were Judge Michael Jeffery (Alaska Superior Court, Barrow), Judge Douglas Luna (Central Council Tlingit and Haida Indian Tribes of Alaska, Juneau, Alaska), and Dr. Gary Copus (Professor, Political Science, University of Alaska, Fairbanks).

firmly to validate the findings and conclusions drawn from the information gathered about the organizations.

B. Summary Descriptions of the Organizations Evaluated

1. Minto Tribal Court

- ▶ The court was established in about 1940 with Bureau of Indian Affairs assistance. It was unused during the 1970s, then re-established in 1985.
- ▶ The court was re-established to serve as a governmental entity, and to "help" the village by resolving local problems in a traditional Athabascan manner.
- ▶ Five judges are popularly elected to serve staggered three-year terms without payment.
- ▶ The court holds regular hearings. Typically, only the Village Public Safety Officer, parties, and witnesses attend hearings, although the defendant may ask for an open hearing. The court maintains strict confidentiality of proceedings and case files.
- ▶ Part of each hearing is devoted to "counseling" parties. Judges use this opportunity to speak of community values, to warn those who are misbehaving of the consequences of their actions, to praise good role models, and to offer practical solutions to problems.
- ▶ The court applies the Minto Code of Village Regulations. The Code contains substantive provisions regulating liquor (Minto is a dry community), weapons, vehicle safety, minor and dependent children, animal control, and sanitation.
- ▶ The court's caseload is split between 84% civil regulatory actions (enforcement of local ordinances) and 16% children's matters. Over 50% of the court's civil regulatory cases are alcohol-related. Defendants commonly plead guilty or no contest.
- ▶ The most common sanctions imposed include fines and community work service. The court also may order counseling, rehabilitation, and restitution.
- ▶ Children's cases may come to the court through notice under the Indian Child Welfare Act (ICWA), or upon petition of family members, e.g., for approval of traditional adoptions. In the past, the court has called before it parents who appeared to be neglecting their children. The court also has assisted in negotiating child custody agreements.
- ▶ Parties have a right of appeal to the Minto Village Council.
- ▶ Apparently as a result of the Minto Tribal Court's activity, almost no local criminal cases are prosecuted in state court.

2. Sitka Tribal Court

- ▶ The Sitka Tribal Court was first established in 1981 to hear children's cases under ICWA and traditional Tlingit law. The court is an arm of the Sitka Tribe of Alaska, which is organized under the Indian Reorganization Act.
- ▶ The court has had one judge, appointed by the tribal council, since its inception. The judge has received only token compensation.
- ▶ The court has held a handful of formal hearings. Generally, court activity is conducted informally with the judge functioning as a mediator-negotiator.
- ▶ The court operates under a Code of Civil Procedure and Children's Code. The court asserts personal jurisdiction, under traditional Tlingit law, over children born to female clan members regardless of their state of residence.
- ▶ The tribal Children's Code mandates that the court cooperate with the State Division of Family and Youth Services (DFYS) and others to coordinate functions in the best interest of Indian children and their families. Cooperation is a hallmark of tribal-DFYS relations.
- ▶ Aside from three civil actions which involved internal tribal politics, the court's entire caseload has been comprised of children's cases. The court receives referrals from attorneys, notice under ICWA from the state courts and DFYS, and from other states. A number of cases come from the tribal social service agency and from self-referrals.
- ▶ Typical cases include guardianships and tribal child in need of aid matters. The court has also intervened in ICWA proceedings in Alaska and elsewhere, and successfully won transfer of some actions to tribal court. Recently the court has assisted in negotiating child custody and visitation questions.
- ▶ Parties have a right of appeal to the Sitka Tribal Council.

3. PACT

- ▶ PACT is a community conciliation organization in Barrow. Its name is an acronym for the Tagalog (Filipino), Inupiat (Eskimo), and English words for "come together." The group has been active since 1989.
- ▶ Broadly, PACT's goal is to promote harmony in the community. Activities designed to meet this goal include offering free conciliation for Barrow residents, educating the community about conciliation, and promoting community responsibility for conflict prevention and resolution. PACT also provides technical assistance to other Alaska communities interested in conciliation.

- ▶ PACT is an independent group with no institutional ties to any power structure in Barrow. The group believes its independence gives it credibility and flexibility.
- ▶ PACT is organized as a nonprofit corporation. Its only requirement for membership is that one be "ready, willing and able to participate as much as possible in PACT activities." Members have responsibility for carrying out tasks they volunteer to complete.
- ▶ PACT applies no substantive law. Disputants craft their own solutions. The process emphasizes consensus.
- ▶ PACT's dispute resolution process begins with intake and screening. All disputants must personally request services. If a case is deemed inappropriate for PACT, referrals are made. Sometimes a PACT member trained in dispute resolution helps the disputants resolve their disagreement without resort to the panel process. If early resolution is not possible, the parties are referred for a panel session. These generally take up to four hours and provide the disputants an opportunity to talk about the facts of their disagreement and their feelings about the problem in a structured, safe, and non-judgmental atmosphere.
- ▶ Resolutions vary depending upon the unique circumstances of the case. Except in instances where the parties have agreed to a payment schedule and written out the details, case resolutions are typically memorialized by a handshake. Afterwards, a PACT member follows up to assure that the resolution is holding. Disputants may ask to have the panel reconvene if they want to further negotiate an issue.
- ▶ PACT's guidelines specifically exclude the following types of disputes: child abuse or neglect, foster care, child in need of aid, domestic violence, probate, disputes being processed by another agency, or cases in court. The group does agree to hear such matters as landlord-tenant problems, noise or pet complaints between neighbors, property damage, vandalism, unpaid bills, and workplace or school problems. PACT has handled a large number of small claims-type actions and landlord-tenant disputes.

C. Findings, Conclusions and Recommendations

The purpose of this project was to describe and evaluate three organizations in rural Alaska, other than the state court system, that resolve disputes. After reviewing all of the case files from the Minto and Sitka tribal courts and the Barrow PACT conciliation organization, comparing those case files with similar cases in the state courts, interviewing nearly 100 attorneys, judges, decision-makers, conciliators, and other persons interested in the organizations, reviewing Native law and current alternative dispute resolution processes, and assessing a wide range of other information about each organization, the Judicial Council makes the following findings.

1. Findings

Rural Alaskans in Barrow, Minto and Sitka have found ways to solve their disputes locally. They have adapted three methods of dispute resolution to their unique circumstances. Barrow's PACT blends the urban, apolitical Community Boards and the rural Indian Peacemakers in the Arctic environment. Sitka's tribal court harmonizes federal, state, and traditional Tlingit law in its decisions and process. The Minto Tribal Court embodies Athabascan justice, modern and ancient. These three organizations indicate that many Alaska communities could create equally unique and effective dispute resolution organizations. The evaluation found that the organizations shared the following characteristics.

Reliance on Volunteer Effort. Each organization was founded by individuals strongly committed to an idea, whether the idea was a vision of community harmony or well-being, or of collective responsibility. This initial commitment has translated over the years into a willingness to work long hours, for little or no pay. However, this reliance on volunteer support has left all three organizations susceptible, in varying degrees, to burnout and turnover among decision-makers/conciliators and support staff.

Absence of Outside Funding. None of the three organizations relies on outside funding sources; in fact, none of the three has any significant material support. PACT owns an answering machine, Minto owns case files alone, and Sitka owns only a file cabinet. That these organizations have accomplished so much with so little is testimony to the integrity of the ideas that inspired them and the commitment necessary to bring those ideas to life.

Community Support and Acceptance. Each organization has been continuously active in varying degrees, for a number of years. This continuity is tied to broad-based community support and acceptance. In Minto, every member of the village had the opportunity to assist in drafting village ordinances. Public participation in law-making has given the tribal court heightened credibility and visibility within the community. In Minto and Sitka, community support and awareness of the court's work serves to attract participants and to be a factor in their compliance with the courts' decisions. In a few instances, non-Native members of the community voluntarily used or cooperated with the tribal courts in the resolution of children's and family matters, and in civil regulatory cases. Community support is also key in Barrow, since PACT hears cases only when both disputants consent.

State and Governmental Agency Support and Acceptance. Each of the organizations interacts with one or more state or other governmental agencies. The Sitka tribal court works with the state's social workers and the state courts. Minto relies heavily on the VPSO program that is funded through the state Department of Public Safety. PACT, in Barrow, interacts least routinely with state agencies, but the state court does distribute information about PACT to everyone inquiring about small claims litigation.

Referral Systems. A strong system for referring cases to the organization is critical to its effectiveness, judging by the experiences of these three organizations. The strongest and most reliable referral sources are those tied to governmental structures, such as the VPSO in Minto and the Sitka tribal and state social workers. The tribal courts also draw on ICWA referrals, and referrals from state agencies. PACT lacks a consistent referral source, and has the smallest caseload of the three organizations.

Case Screening. Decision-makers/conciliators select the cases they will take and reject those that do not meet criteria they set. PACT formally expresses these criteria in writing. The Sitka Tribal Court judge screens cases based on past experience, and the Minto Tribal Court relies on discussions among its members about which cases to accept or reject. As a practical matter (given the unsettled legal status of tribal courts in Alaska), the Minto and Sitka tribal courts attempt to avoid cases that might directly challenge their authority or jurisdiction. PACT's case screening focuses more on the organization's philosophical beliefs about the types of cases appropriate for conciliation than on concerns about challenges to its jurisdiction.

Caseload Characteristics. The three organizations differ in the types of cases that they hear. Minto's tribal court attempts to police the community, not so much to punish offenders as to "help" villagers solve problems. The court also handles some traditional adoptions in addition to the civil regulatory cases that make up the bulk of its work. The Sitka Tribal Court's cases consist almost entirely of child custody proceedings, some of which are involuntary proceedings under ICWA and some of which are guardianships. A few have been formally transferred to the tribal court from state or county courts in other states. PACT handles mostly civil matters such as landlord-tenant matters and small business cases. PACT, to date, has not handled any criminal or domestic matters.

Importance of Dispute Resolution Style. Participants in each organization believed strongly that the opportunity to resolve disputes in a certain way (e.g., with equal participation, in a conciliatory manner, or in "the traditional Athabascan way") was one of the most important reasons for, and benefits of, an alternative dispute resolution process.

Separation of Tribal Court Activities from Sovereignty Issues. Tribal courts were able to handle many types of disputes satisfactorily without resolution of sovereignty issues. Rather surprisingly, the presence of those unsettled issues did not interfere significantly with the tribal courts' ability to resolve disputes productively.

Cultural Cohesiveness. The three organizations studied differ in the degree of cultural cohesiveness within their communities and their participants. Sitka's tribal court operates in the fourth-largest Alaska community and serves not only Tlingit, but also other Alaska Natives and Indians from other states. Indianness predominates among Sitka Tribal Court disputants, although some are non-Indians related through marriage or joint parenthood to Indian disputants. In Minto, participants are more alike, ethnically and culturally, than they are different. In contrast to these two, PACT offers conciliation services in Barrow to a wide range of cultures. Cultural or ethnic cohesiveness of the community may be helpful, but does not appear to be at all necessary.

2. Conclusions

Effective Dispute Resolution. Each of the organizations has demonstrated the ability to effectively and fairly resolve disputes within its community to the satisfaction of the great majority of participants, and it seems, to the satisfaction of parties whose cases were handled by the organization. They also have operated continuously for a substantial period of time.

Interaction with State Courts. The organizations interact with state courts to varying degrees; each has demonstrated the potential for increased interaction to the benefit of the state courts.

Interaction with Other State Agencies. The organizations interact with other state agencies to varying degrees. In particular, DFYS social workers and VPSOs are important sources of case referrals for the tribal courts. In general, these interactions appear to be beneficial for all parties. For example, the Minto Tribal Court appears to ease the workload of state prosecutors.

Characteristics. The characteristics of effective rural dispute resolution organizations, based on this evaluation, appear to include committed volunteers to run the organization; voluntary acceptance by disputants of the organization's resolution of disputes whether through conciliation methods or other techniques; one or more reliable sources of case referrals; and acceptance, at least informally, by state courts and governmental agencies of the organization's activities.

Resources Needed. Remarkably few resources were needed for the operation of each organization. Increased resources would permit better training of decision-makers/conciliators, less turnover and burnout among decision-makers/conciliators, and more effective service to the communities, among other benefits. However, the organizations' fiscal resources were not the most important aspect of their operations.

Resolution of Sovereignty Issues. In the long run, the tribal courts' ability to work with the state courts and other agencies will be improved by the resolution of sovereignty issues because the ambiguity of those issues will not act as a barrier to cooperation on the resolution of cases.

Use of Tribal Courts by Non-Natives. Non-Natives voluntarily used or cooperated with tribal courts in the resolution of children's and family matters, and civil regulatory cases. This indicates that the tribal courts can serve citizens of all races in the state in their capacity as local dispute resolution organizations.

Wide Range of Disputes Resolved. All three organizations evaluated appeared to have the potential to handle a very wide range of dispute types that are presently filed in state courts, including typical civil matters, family and children's matters (this was less clearly demonstrated in the case of PACT), and quasi-criminal matters. They also were able to deal with personal disputes that normally would not be handled by the state courts.

Homogeneity of Community. Homogeneity of a community's population did not appear to be related to the ability of the organization to resolve disputes.

Replication. To the extent that other communities can replicate the conditions that appear to be essential (i.e., committed volunteers, strong referral sources, willingness of community members to submit their disputes to the particular process chosen), they should be able to establish local organizations to resolve disputes within the community. Effective local organizations will serve somewhat different needs in each community and it is not recommended that a community attempt to duplicate exactly any one of the three organizations evaluated.

3. Recommendations

Cooperative attitude towards legitimate work of tribal courts. Issues of Native sovereignty and the authority of tribal courts have been in dispute in Alaska for many years and will likely continue to be so. The Judicial Council takes no position on the resolution of these issues, which are beyond the scope of this study. None of the following recommendations should be taken as supporting or opposing Native sovereignty or the authority of tribal courts to compel compliance with their proceedings or orders. They should, however, be taken as supporting a cooperative attitude on the part of the State and the Tribes toward the legitimate work of tribal courts. To the extent that local communities voluntarily submit to the authority of dispute resolution organizations, the State has every reason to support this effort, including cooperation with organizations identified as tribal courts.

Further discussion of remaining issues in the ICWA state/tribal agreement. The Judicial Council recommends that in an attempt to foster cooperation between the state and its Native population, the Department of Health and Social Services considers beginning discussions on the issues that were reserved for subsequent negotiation in the 1989 ICWA State-Tribal Agreement. Those issues were tribal courts, jurisdiction, and state funding for social services and for children placed in foster homes by a tribe. Included in negotiations on state funding of social services should be discussion of a tribal guardian ad litem program modeled after the state's.

Continued voluntary cooperation among rural dispute resolution organizations and state personnel. The Judicial Council recommends that state agencies and employees continue to cooperate voluntarily with rural organizations to further local justice in both civil and criminal matters, in order to meet the legitimate expectations of rural communities for justice in their communities.

Increased voluntary development of local alternative dispute resolution organizations in interested communities. The Judicial Council supports greater development of voluntary local dispute resolution organizations in interested communities. The State does not provide law enforcement and prosecution services to all villages for minor criminal matters, and it is appropriate for village governments to assert control over these matters and to seek local solutions. The Council recommends that the Department of Public Safety establish clear policy encouraging the referral by Troopers and VPSOs of appropriate criminal matters to local dispute resolution organizations, including tribal courts. The Department also should include discussions of local dispute resolution options in VPSO training.

Continued mutual education between state and tribal courts. The Judicial Council recommends that the state and tribal court judges make continuing efforts to communicate with each other. Current efforts at mutual education include the Tribal/State Court Working Group, composed of ten lawyers and judges who work with state and tribal courts in Alaska. A second important step toward mutual understanding was the half-day tribal court session at the 1992 Alaska Judges Conference. The Judicial Council recognizes the very important steps these activities represent and praises the coordinators of and participants at this year's judicial conference for their efforts at opening communication between state and tribal court judges.

Also welcome are other efforts by the tribal courts to invite state court judges and court personnel to visit their locations (Metlakatla, for example, recently invited the Chief Justice and state court judges in its area to visit). Further discussions should take place in a series of meetings at which work groups organized by both state and regional levels conduct research and carry out specific tasks. Work groups should reconvene at the meetings to report on progress achieved.

Support for court-referred victim/offender mediation by PACT. The Council recommends that the State support any efforts by PACT to commence agency or court-referred victim-offender mediation. PACT can provide a valuable service to Barrow by providing the service, and in turn, can benefit from the institutional connection with the referring agency or court system.