



# **Strengthening Tribal Courts Overview**

**28<sup>th</sup> Alaska Tribal Court Conference  
Fairbanks  
August 2012**

**Prepared by Lisa Jaeger  
Tribal Government Specialist  
Tanana Chiefs Conference  
Fairbanks 1-800-478-6822  
[lisa.jaeger@tananachiefs.org](mailto:lisa.jaeger@tananachiefs.org)**



# **Welcome to the 29<sup>th</sup> annual Alaska Tribal Court Development Conference!!!!**

**1984 - 2012**

*“Every right we have was acquired at a significant cost, paid for by us or by others to whom that right was worth fighting for. Yet unless we know what our rights are, we cannot exercise them, and unless we exercise them, we will lose them.”*

Steven L. Pevar, Indian Rights Teacher and Attorney



## ◆ Progress since 1984:

- 1986, 1987, 1992 series of child's cases involving Alaska Native children in State court held that even if there were tribes in Alaska, P.L. 280 terminated any jurisdiction they might have
- 1988 Native Village of Stevens v. Alaska Management and Planning: (AK Supreme)....basically there are no tribes in Alaska outside Metlakatla
- 1989 Nome Eskimo Community: (AK Supreme)...Land can't be taken away from an 'entity' that has an IRA constitution without it's consent
- 1991 Blatchford v. Native Village of Noatak and Circle...Noatak and Circle can't sue Alaska over revenue sharing money, but, the US Supreme Court recognized both Noatak and Circle as tribes!
- Formal recognition of Alaska tribes
  - BIA 1993 List of federally recognized tribes,
  - Congress 1994 List Act



- **Sorting out of jurisdiction**

- **1998: Venetie Tax Case...land that has gone through ANCSA is no longer Indian country**
- **1999: John v Baker...Tribes have jurisdiction concurrent with the State over child custody matters, even without Indian country**
- **2001: C.R.H...ICWA cases can be transferred from State court to tribal courts**
- **2003: Perryville v. Tague...Alaska tribes can banish a member from the village due to violent behavior**
- **2010: Kaltag v Hogan...Alaska tribes have jurisdiction to initiate and hear child adoption cases**
- **2011: Alaska v Tanana...Alaska tribes can initiate child protection cases**
- **2011: Central Council Tlingit and Haida...Tribe can adjudicate child support for children who are members of the Tribe**
- **Parks....stay tuned!!**

# http://tm112.community.uaf.edu/

The screenshot shows a web browser window with the address bar displaying <http://tm112.community.uaf.edu/>. The browser tabs include MSN.com and TM112. The website header features the title "Federal Indian Law For Alaska Tribes" and the subtitle "TM112 Course Materials". Below the title is a navigation menu with links: Home, Current Events, About, Unit 1, Unit 2, Unit 3, Unit 4, Blackboard (UAF), and a Search bar. A large banner image shows a traditional stone and wood structure in a grassy field. Below the banner are two buttons: "View Current Events & Updates" and "Register For Class". The main content area displays four units, each with a representative image: UNIT 1 (a historical painting of people), UNIT 2 (a group photo of people), UNIT 3 (a map of Alaska with colored regions), and UNIT 4 (a decorative circular pattern).

http://tm112.community.uaf.edu/

Federal Indian Law For Alaska Tribes

TM112 Course Materials

Home Current Events About Unit 1 Unit 2 Unit 3 Unit 4 Blackboard (UAF) Search

View Current Events & Updates Register For Class

UNIT 1

UNIT 2

UNIT 3

UNIT 4

# **Two key issues for exercising your jurisdiction! Membership and Due Process**

**It is critical for determining jurisdiction of the tribal court, and for the identity of the Tribes to have clear written guidance on tribal membership and enrollment in your constitutions and ordinances!!!**

**Have a base roll that is clearly defined and documentation that it is in deed the base roll !!**

**Have clear rules for adopting new persons into the Tribe.**

**Address the issue of dual enrollment!**



**Intertribal jurisdiction, concurrent  
Inter-tribal collaboration  
Comity between tribes**







## **Fundamental Guidance for Tribal Courts**

**Three core elements of 'Due Process,' and four 'Best Practices' for Tribal Courts.**

**Andy Harrington  
Fairbanks, Alaska**

*Andy was extraordinary in his assistance and service to Alaska Native people and tribes during his service as Executive Director of the Alaska Legal Services.*





## **A few updates since last year....**

- ◆ **Central Council of Tlingit and Haida Indian Tribes of Alaska v. State of Alaska Child Support Services Division: Oct. 25, 2011: Alaska Superior Court: The Court order reaffirms the Tribe's inherent jurisdiction to handle the full range of family law issues affecting its citizens, including the particular issue of child support for the benefit of tribal children.**
- ◆ **McCrary v. Ivanof Bay Village: Dec. 9 2011, Alaska Superior Court: The decision was basically that Ivanof Bay is a tribe, and as such it has sovereign immunity.**
- ◆ **Native Village of Karluk v. Koniag, Inc. : July 3, 2012: U.S. District Court, Alaska : The Tribe lacked jurisdiction over a merger between the Karluk village corporation and the regional Koniag corporation.**
- ◆ **Parks Case pending....**
- ◆ **Rule for registering Tribal Court Orders...**
  - **pending until after Parks case**



- ◆ **New sample domestic relations code**
- ◆ **Harbor Seal Commission – tribal ordinance regulating traditional taking of marine mammals**
- ◆ **VAWA reauthorization**
- ◆ **Department of Justice is developing survey of tribal courts, and will develop a specific one for Alaska tribes.**
- ◆ **New film, Alaska Tribes: The Story of Federal Indian Law in Alaska.**

## **There is increasing support for tribes to handle misdemeanors, juvenile issues !**



**“What would happen if each of our tribes created a well-thought-out, well-planned system for enforcing law and order? Could any outside force really stop us, 231 tribes, from maintaining peace and harmony within our villages?”**

**Elizabeth Hensley  
AFN 2009**

***“There is no doubt that the reduction in state-tribal conflict over jurisdictional issues, and the increased cooperation, coordination, and collaboration between State and tribal courts and agencies would greatly improve life in rural Alaska and better serve all Alaskans.”***

**Alaska Rural Justice and Law Enforcement Commission  
2006**





# **Extraordinary Tribal State Collaboration**

**Magistrate McLane  
Based in Galena**

**Community  
Sentencing  
Recommendation  
Circles**





**Work with state counterparts, reach  
out to figure out how to work better  
with each other!!!**



**Learn what the possibilities are!**  
**Find out what other tribes are doing!**  
**Share with others!**

