



NARF Legal Review

Native American Rights Fund

ALASKA TRIBES SUE FOR EQUAL STATE LAW ENFORCEMENT SERVICES

The Native American Rights Fund, on behalf of ten Native villages and seven Native individuals, filed a civil lawsuit on October 25, 1999, in the Superior Court for the State of Alaska, seeking declaratory and injunctive relief against the State of Alaska for failure to provide minimally adequate police protection to off-road Native villages and for discriminating against them in the provision of State law enforcement services.

In *Alaska v. Native Village of Venetie*, the State argued that Native Villages were not "Indian country" and therefore lacked taxing authority to raise revenue for tribal governmental services, like police protection. The State claimed that tribal taxing authority was not necessary because the State was providing all essential governmental services. The indisputable facts in this new case demonstrate the falsity of the State's extravagant misrepresentations in the *Venetie* case. Nonetheless, based in part on these misrepresentations, Alaska succeeded in convincing the United States Supreme Court in 1998 to deny Native Villages' the critical means of providing local police protection through tribal jurisdiction. Now the time has come for Alaska to pay the price for its dubious *Venetie* victory. And that price will not be cheap. When decision time comes

in this new case, it will be the price of providing equal law enforcement services, *in every respect*, to 165 Alaska Native Villages, whose Native residents the State has treated like second-class citizens for over 40 years.

The complaint alleges that the actions of the State in unlawfully prohibiting Native villages from keeping the peace in their traditional ways, which rendered them defenseless to lawbreakers, while failing to provide them even minimally-adequate police protection under the State law enforcement system, violated the Villages' rights to Due Process of law and basic law enforcement protection guaranteed by the Fourteenth Amendment to the United States Constitution and Article I of the Alaska Constitution. The

complaint also alleges that the State's discriminatory treatment of Native villages in the provision of police protection is based on race and therefore violates the Villages' rights to Equal Protection of the law under the Fourteenth Amendment to the United States Constitution and Article I of the Alaska Constitution.

The complaint also alleges that the State's use of State and federal funds and services in State law enforcement programs which discriminate against Alaska Natives in the provision of police protection violates

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Venetie Village Council Meeting - circa 1939. Left to right: Ginnis Golon, Jimmy Robert, Jonas Robert, Elijah John, Andrew Robert, Peter Robert, John Fredson.

their rights under Alaska statutes and Title VI of the Federal Civil Rights Act of 1964.

Native Villages Traditionally Provided For Their Own Protection

The complaint sets forth in sad detail the history of discrimination against Native Villages in the provision of law enforcement by both the Territorial and State governments.

For 40 years the State of Alaska has unlawfully barred Native village governments from keeping the peace in their traditional ways, while failing to provide them minimally adequate police protection through the State law enforcement system. There are 225 Alaska Native Villages that are federally recognized tribes. Prior to Statehood, these villages had effective indigenous mechanisms for resolving disputes

and keeping the peace which they had employed for thousands of years. Offenders were often required to make restitution or perform community service. The most serious offenders were on occasion banished or even executed. Historically, these functions were carried out pursuant to custom and tradition by Chiefs, Headmen, Elders, clans, families, and others. Early in this century this system gradually gave way to elected Village Councils who took over the law enforcement and peacekeeping roles.

In 1959, when Alaska entered the Union, virtually every Village Council was actively engaged in law enforcement and dispute resolution. During the next few years, however, the State effectively immobilized these efforts, and by the early 1980s only a handful of Councils remained active in the criminal justice arena. The fact that most Native Village Councils are no longer

engaged in law enforcement is directly attributable to the State.

The Territorial Government Allocated its Law Enforcement Resources in a Consciously Race-based Manner

The territorial government had allocated its law enforcement resources almost exclusively to the regional and urban centers where the federal commissioners, marshals, and other territorial officials were located — centers which were predominantly white or had high concentrations of white residents. Despite their obligation to prosecute serious felonies in the villages under the Major Crimes Act, federal marshals largely stuck to their posts, rarely venturing out to the villages without an arrest warrant; and virtually every serious felony in the villages, except murder and rape, was reduced to “disorderly conduct,” if prosecuted at all. Recognizing this void in law enforcement, federal officials permitted, indeed encouraged, Native villages to continue their traditional methods of maintaining order and keeping the peace, except in the case of serious felony cases, which territorial officials promised to handle. Territorial officials also promised to back up the Councils’ law enforcement efforts with prosecutions of recalcitrant lesser offenders, a promise they rarely kept. However, in that largely pre-alcohol era, an occasional territorial prosecution, plus the threat of such, was generally sufficient to maintain the Councils’ credibility as an effective law enforcement instrumentality.

Unlike the territorial government, during the first 12 years of Statehood, before the Alaska Native Claims Settlement Act extinguished most Indian Country in Alaska in 1971, the State illegally prohibited the villages from enforcing their own criminal laws, and for the last 40 years the State has illegally prohibited the villages from enforcing their own civil laws — even against their own members. The State has insisted there were no tribes in Alaska and even if there were, they lacked any inherent governmental powers. State officials took the position that Statehood had, somehow, extinguished the villages’ criminal law enforcement authority altogether, even over misdemeanors and alcohol-related offenses, and advised the villages that in the future the Councils’ peacekeeping efforts, even their author-

ity to prohibit alcohol or impose civil sanctions on their own members, would be extra-legal, and compliance with the Councils’ decisions would be strictly voluntary. State officials even threatened the Councils with criminal prosecution should they attempt to enforce their village laws.

The State Effectively Stripped the Villages of Their Indigenous Mechanisms for Keeping the Peace

Upon Statehood in 1959, pursuant to Public Law 280, the State acquired jurisdiction and assumed the obligation to enforce its criminal laws in “Indian Country,” which included Native villages. This jurisdictional authority was not limited to felonies. It included all crimes. Contrary to this obligation and the law enforcement obligations imposed by its own constitution, for its first 20 years, the State rarely prosecuted crimes — serious or petty — in off-road, Native villages other than regional centers where the Troopers were stationed. With Statehood, the Troopers took over the marshals’ role and most were stationed in the same regional centers with high concentrations of non-natives where the marshals had been located. The Troopers also adopted the Marshals’ policy of providing local police protection to the regional centers where they were stationed, but virtually no police services to outlying Native villages, except in the case of serious felonies, when they were only available after a crime had been committed. *Thus, the State inherited and perpetuated the race-based dual system of law enforcement initially adopted by the territorial government, as well as its policy that predominantly white communities and communities with high concentrations of white residents need and deserve adequate police protection, whereas Native villages do not.*

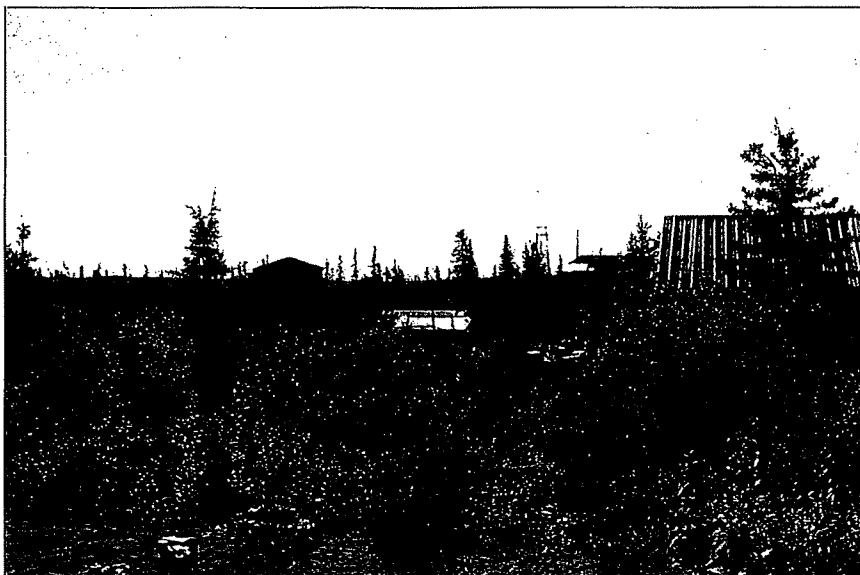
The State’s Discriminatory Treatment of Native Villages has Rendered Them Defenseless to Law Breakers

Today, there is a great disparity between the police protection afforded urban areas, communities on the interconnected road system and off-road regional centers, and the police protection afforded off-road outlying predominantly Native communities. Today, all urban areas of the ▶

state and all rural regional centers receive full police protection from municipal police departments staffed by adequately trained Alaska Police Standard Council (APSC) "certified" police officers. The State provides full police protection through APSC "certified" Troopers to all other communities in the state that lack adequately trained "certified" officers *except* for 165 off-road predominantly Native communities.

The full police protection provided by the Troopers to on-road communities which lack "certified" police officers, includes patrolling the communities and handling *all* criminal offenses which arise, both misdemeanors and felonies. "Certified" police are officers, including the Troopers, who have met the qualification requirements and successfully completed the APSC stringent law enforcement training program for "Police Officers." The Troopers do not provide the 165 off-road outlying communities that lack adequately trained "certified" police with the same protection they provide on-road communities. In fact, with few exceptions, the Troopers do not provide these off-road outlying communities *any* local police protection. The Troopers neither patrol, nor, with rare exceptions, do they handle misdemeanor offenses in such communities. Rather, for these communities, the Troopers are only available to respond to felonies, and usually only able to *promptly* respond in the case of serious felonies when they are called in from regional centers after a crime has been committed.

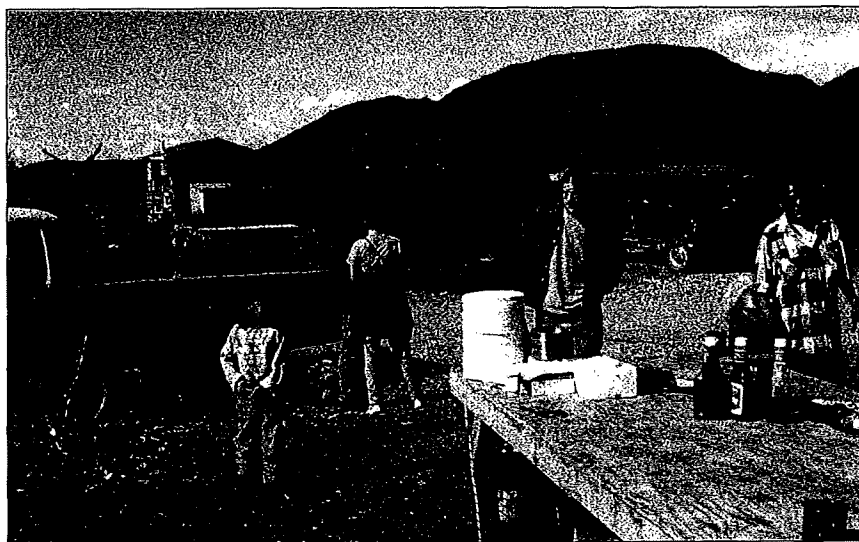
Limited personnel, and the lack of airport lights, along with inclement weather, frequently preclude the Troopers from responding in a timely manner to crimes in off-road outlying communities, even in the case of serious felonies. On the road system, for example, Troopers generally respond to life threatening situations within 45 minutes. Off-the-road system, however, Trooper response generally takes hours and many times, depending on the weather, even days.



Arctic Village, Alaska (both photos)

There is a huge disparity between the training Troopers receive and the training that local village law enforcement officers receive. Troopers receive 1130 hours of law enforcement training compared to 200 hours for Village Public Safety Officers (VPSOs). Pursuant to state law, Village Police Officers (VPOs) are supposed to receive 48 hours of training. However, they never even receive this minimal instruction. Since this 48-hour training requirement was adopted in 1981, not a single VPO has ever completed this training program because the legislature has failed to provide the funding. In summary, APSC-certified Troopers receive almost 6 times the training VPSOs are supposed to receive, and over 21 times the training VPOs are supposed to receive, but do not. Because neither VPSOs nor VPOs have met APSC qualification and training requirements, they are not "certified" police officers.

The huge disparity between "certified" and "non-certified" police officers is not limited to training. It also encompasses their staffing, equipment, arms, working conditions, salaries, and benefits. For example, including their benefits, Troopers in off-road rural areas easily make more than twice as much as VPSOs and several times more than VPOs. Unlike the Troopers and other APSC-certified police, neither VPOs nor VPSOs are eligible to participate in the State-employees' retirement and health plans. VPOs and VPSOs are generally on call 24 hours a day, 7



days a week, and are required to work many hours of overtime. Unlike the Troopers, however, VPSOs and VPOs are not paid for being on call, and receive little or no overtime pay. Most VPSOs and VPOs are solo officers, with no back-up, and even villages with more than one officer are greatly understaffed. "Burnout" is a routine occupational hazard. The annual turnover rate for VPSOs is over 40 percent, and for VPOs, much higher. Such rates preclude effective training programs, even if such programs were available, which they are not. All VPOs and VPSOs are unarmed, and most are ill equipped. Many have to use their home for office space as well as a holding facility for detainees, and must walk or run to the scene of a crime because they lack essential transportation such as snow-machines, four-wheelers and boats, as well as essential equipment such as rape kits, bulletproof jackets and breathalyzers.

Sixty-four of the 165 off-road communities that lack "certified" police officers are served exclusively by VPSOs or by both VPSOs and VPOs. Another 28 rely exclusively on VPOs for local police protection. *The remaining 73 off-road communities have no local police, whatsoever.* Given the high turnover rates of village law enforcement officers, plus the fact that most local police are solo officers (which means their villages are without any police protection when they are away), the *actual* number of Native villages lacking local police protection at any given time is much higher.

The total lack of local police has a very serious impact on a community's ability to maintain law and order and keep the peace. The lack of local police means there is no police "presence" to deter crime in the first instance. In fact, the total absence of local police operates as an open invitation to the illegal importation of alcohol and drugs, which are the primary factors in most crimes in the villages. Without local police, there is no one locally available to make arrests, and no one to hold offenders in cus-

tody pending their court appearance. Indeed, with the exception of serious felonies handled by the Troopers, there will probably be no court appearance, because without local police, a complaint will not likely be filed.

The lack of local police leaves the villages with no one to stop domestic violence as it is occurring, no one to make mandatory arrests as required by the Domestic Violence Act, no one, except the Troopers (who are generally not available without substantial delay), to serve domestic violence restraining orders, and no one to enforce them if they are served.

The lack of local police means that victims of child abuse are not timely taken into protective custody since there is no local police officer to accompany the social worker who seeks to remove a child from the home of a dangerous child abuser. The absence of local police also means that intoxicated gunmen have and will terrorize entire villages for hours and, depending on the weather, even days, until the Troopers are finally able to respond.

Even villages with local police lack the most basic and critical protection against armed, intoxicated lawbreakers. Because they have not received firearms training, VPSOs are prohibited by the Troopers from carrying firearms, and are specifically instructed not to confront an armed offender, but rather to call the Troopers and



Bethel, Alaska

wait for their arrival. On many occasions courageous VPSOs have violated these instructions, risking their lives to disarm violent offenders and protect the lives of others. However, on many other occasions, VPSOs have followed the Troopers' instructions, leaving the offender's wife, children, or others in harm's way for hours or days. Although not under the supervision of the Troopers, VPOs are likewise unarmed and must confront the same armed and intoxicated offenders and face the same dilemma of risking their lives for the sake of others or waiting for the Troopers.

The State Unlawfully Limits the Law Enforcement Authority of Village Police Officers

The disparate police protection that the State affords off-road, outlying communities is also the result of limitations on the law enforcement authority local village law enforcement officers may exercise. Because VPSOs have not received adequate training, they are prohibited by the Troopers from exercising the most basic authority exercised by all other police officers in the state, i.e., the authority to arrest, file criminal complaints, and investigate felonies, without the prior approval of the Troopers. Such prohibitions inevitably result in delays — frequently lengthy delays — which often mean the loss of testimony and evidence, and frequently the lack of prosecution. Although VPOs are not under Trooper supervision, and consequently not covered by

such prohibitions, their almost total lack of law enforcement training severely limits the authority they are able or willing to exercise, including the making of arrests, filing of complaints, and investigation of crimes, all with the same effect — lack of adequate local police protection in the outlying villages.

The disparate impact of the State's allocation of law enforcement resources falls overwhelmingly on Native villages. Over 87 percent of the population of Alaska who receive fully trained, APSC "certified" local police protection are non-Native, whereas over 80 percent of the population who lack such protection are Native.

In summary, for 40 years the State and its officials have implemented a dual law enforcement system that discriminates against Native Villages on clearly racial lines. Consequently, the State and its officials knew or reasonably should have known they were violating the Constitutional and Statutory rights of Alaska Natives.

This lawsuit seeks to end these decades of discrimination. Among other things, the plaintiff Villages request the Court to preliminarily and permanently enjoin the State from discriminating against Native Villages in the provision of police protection and to eliminate the effects of past discrimination. The Villages also ask the Court to enjoin the State from using the over eight million dollars in federal funds which the State receives annually in the State's law enforcement programs until the State ceases its discriminatory conduct. ☉