



Structural Options for Tribal Courts

lisa.jaeger@tananachiefs.org
lisa.jaeger.tgs@gmail.com

April 2019

“ 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

Author: Rights of Indians and Tribes

American Civil Liberties Union



Tanana
Chiefs
Conference

*Our*Communities
*Our*Future

***“.....Same thing with the tribal court.
That came in long before white people.
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.”***



Traditional Chief Peter John
Minto 1900 - 2003



Tanana
Chiefs
Conference

*Our*Communities
*Our*Future



Village councils played a major role in resolving disputes in rural Alaska from the early 20th century through the 1950s.



Tanana
Chiefs
Conference

*Our*Communities
*Our*Future

The state magistrate system replaced the village council system of justice upon statehood in 1959.



Fairbanks Daily News Miner:

Sept. 7, 1961 – Kids, take notice of what can happen if you want to do any stealing in Kaltag.

‘Two juveniles in the village were recently sentenced to cut 1 ¼ cords of wood for the community hall for stealing about \$10 worth of candy and soda from a store warehouse.’



Tanana
Chiefs
Conference

Our **Communities**
Our **Future**

With the passage of the Alaska Native Claims Settlement Act in 1971, the existence of tribes was left unclear.

If they still existed, what was the extent of their jurisdiction?



Tanana
Chiefs
Conference

Our **Communities**
Our **Future**

1978: Indian Child Welfare Act:

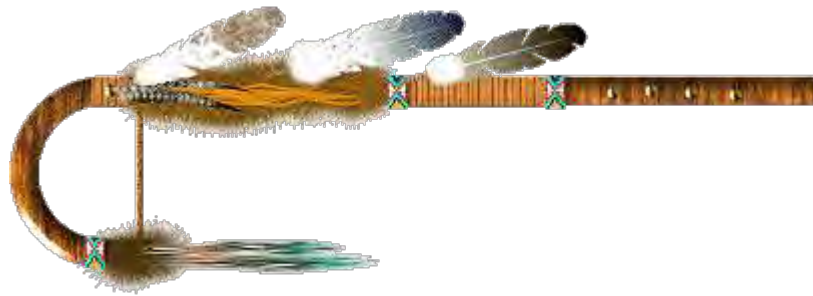
- **Designed to stop Native children from being taken from their families and placed in non-Native homes**
- **Specifically recognized Alaska Native Villages as tribes**
- **Opened opportunity for tribes to intervene in state ICWA cases**
- **Opened opportunity for Alaska tribes to initiate tribal child protection cases in their own tribal courts**



Tanana
Chiefs
Conference

Our **Communities**
Our **Future**

Very early 1980s the Interior tribes organized tribal courts, using their village councils to protect children.



Challenges to these actions created a lot of case law, some negative.....and then positive.



Tanana
Chiefs
Conference

Our **Communities**
Our **Future**

1999: *John v. Baker* (Alaska Supreme Court) Recognized the list of federally recognized tribes. Ruled that Alaska tribes have jurisdiction over child custody matters even if they don't have Indian country.

Tribes must give 'due process' but it doesn't have to look identical to the State.



Tanana
Chiefs
Conference

Our **Communities**
Our **Future**

Tribes have exclusive jurisdiction to structure their courts in the manner in which they choose.



Tanana
Chiefs
Conference

Our Communities
Our Future

Tribal Citizens



Constitution



Tribal Council

Executive	Judicial	Legislative
Leadership Financial oversight Provide Services Policies Advocacy Planning Enrollment Land management Law enforcement	Tribal Court Judicial Code Domestic Relations Public Safety Provide checks and balances when separate from Council	Develop Tribal Codes



Tanana
Chiefs
Conference

Our **Communities**
Our **Future**

Structures of Interior Courts – Judicial Code

Chapter 1: Establishes the tribal court, describes structure of tribal court, jurisdiction of the court, judicial ethics, visiting judges, relation to intertribal courts

Chapter 2: Procedures: How cases come to tribal court, hearing procedures, various types of court orders, contempt of court, evidence, attorneys in the courtroom

Chapter 3: Appellate Court: Who are the appellate court judges, appellate court procedures, options for appellate court orders

Chapter 4: Circle Justice: General procedures for using circles for cases



Tanana
Chiefs
Conference

Our **Communities**
Our **Future**

Structures of Interior Courts

- **37 federally recognized tribes**
- **6 tribal courts are separated from the Council**
- **Council plus elected or appointed judges to make a pool. Pools may be 10 – 15 judges**
- **Minimum of 3 judges to hear cases**
- **No judges (Council, Appointed, Elected, Visiting) may hear children's cases who have criminal records of crimes listed in the Indian Child Protection and Family Violence Prevention Act 1990**
- **A variety of forms of intertribal courts**





**Andy Harrington
Fairbanks, Alaska**

Fundamental Guidance for Tribal Courts

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



Tanana
Chiefs
Conference