Bush Justice Unplugged: The Road Taken
and the Research Trail Left Behind

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Abstract

This paper describes the author's study since the 1970s of the historical experiences of Alaska Native villages with territorial and state law, especially with alcohol control, and conducted experiments with bicultural legal education, village problem boards and Native paralegals. This work drew on the author's prior successful work and legal practice with Navajo legal advocates to formulate an action plan to legitimize a working relationship between state and village legal process and his study of comparable problems in Canada, Greenland, Australia and Brazil. Alaska state agencies responded, but, in the end, resisted what they perceived as power sharing between competing sovereigns. The Alaska courts retreated to towns and urban centers and the Alaska State Troopers protected their rural turf. Indifference to a mutually beneficial relationship continues to the present.

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Bush justice is the historical interplay between state and village law; both are critical to defining behavior and resolving problems in rural Alaskan villages. This was the focus of my teaching and research from 1968 until 2009.¹ For the discipline of Alaska Native Studies, the subject of bush justice serves as an interdisciplinary lodestone, drawing upon Alaska Native experiences with the territorial and state legal systems, especially with regard to alcohol problems.

I brought important lessons to Alaska, gleaned from time spent with the Navajo tribe and in Brazilian squatter colonies, there studying their internal real property laws (Conn, 1969). These were, briefly, that more than one law can influence behavior and problem solving at the same place and at the same time, that the relationship between these laws and its history is best understood by local residents who receive and adapt to ever-changing postures by outside law imposed on them, and, finally, that for both legal processes to work together, links between each can and are best forged by people and institutions on the ground, often what the official system would term “paraprofessionals,” literate in each law. I will examine these premises and show how I attempted to put them into play in Alaska.

Drawing on what might be termed, “legal pluralism,” I conducted field experiments with bicultural legal education, created with bush teachers, village problem (or conciliation) boards which replicated village council legal process, and Alaska Native paralegals, trained and placed with state justice agencies and Alaska Legal Services (Vicenti, Jimson, Conn, & Kellogg, 1972; Barthel, McDearman, & Conn, 1977; Conn & Hippler, 1973a, 1974a, 1974b, 1974c; Conn, 1980). None of these induced permanent and positive state change, nor did comparative studies I did and reported on in Alaska about rural justice experiences in Canada, Greenland, Australia and Brazil. During my tenure Alaska justice agencies resisted formal power sharing with villages, however useful. But new generations of scholars can take up the challenges. And Alaska Native Studies is an appropriate haven for such research,
better because its constituents are Alaska Natives and not justice agencies. In a project to place both published and unpublished works online, I have learned many new things by reviewing my own materials in the University of Alaska Anchorage (UAA) archives and watching my own thinking and efforts evolve. Perhaps future students of bush justice will learn from my efforts at reform.

First, more than one law can exist at the same place and at the same time. One law may have official dominance, but the other may draw informal authority from official law as well because it can get the job done and because it is closer to and followed by the local people. That second law may be called “traditional,” “village,” or, even, “squatters’ law” (as in Brazil where it guides all matters pertaining to real estate in squatter colonies not considered legal by the state; Conn, 1969). Both laws are important. When a person schooled (or “literate”) in one system of law confronts a problem defined by a second legal system, someone must help that person understand his or her rights in the second law, using the law he or she knows as a comparative guide. From that discovery came, first, an effort both in Ramah, New Mexico and, again, in Alaska, to develop bicultural legal education instruction (Vicenti et al., 1972; Barthel et al., 1977). The Navajo (and, later, the Alaskan) project made of students, their parents’ educators, teaching them to deal with relevant consumer, family, and community problems as defined by formal law through the prism of traditional law, tracing the history of that second form of law. Students also learned about official law; they also developed an appreciation for traditional law which they may have perceived as “old fashioned” or no longer relevant. They learned about the history of traditional law and its roots in the historical experiences of their people with both legal systems. So Law of the People (Vicenti et al., 1972) was directed at problems confronted by Navajo people and directed to young people who often helped adults literate in Navajo legal culture when their new problems arose. The second purpose of bicultural legal education was to teach young people the contemporary relevance of both legal cultures and how to use comparative law instrumentally to make wise choices for themselves (Conn, 1982). Alaska Natives and the Law (Barthel et al., 1977) served the same purposes.

Second, local people who recognize that more than one law may be “happening” at the same time in the same place can do more to help people deal with their problems than those who are expert in one law only and blind (or indifferent) to a second legal culture. Navajo men and women hired to work with we Poverty Law attorneys as interpreter-investigators,
were taught relevant American and formal tribal law but were already expert in traditional law or had ready access to it from their elders. These, perhaps America’s first paralegals, could better communicate with all clients who came in the office of legal services, be they desirous of a Western approach or solution to their problem or a traditional one (Conn & Hippler, 1973a). I came to Alaska with the proven idea that indigenous non-lawyers could do a better job than lawyers in welding both systems together just as then-Alaskan Chief Justice George Boney seemed to desire (Alaska Judicial Council, 1970). And, of course, no better examples of these legal culture brokers existed in the Alaska judicial system than District Court Judge Nora Guinn of Bethel and Barrow Magistrate, Sadie Neakok. I worked and learned from both and watched each in action. What I did not understand was that these women were used for the convenience of the state judicial system until it could implant legal professionals in both Bethel and Barrow.

Third, law, whether modern or traditional, is more than rules; it is a process or approach to a problem and its resolution. On the Navajo reservation many problems were solved at the hogan level; tribal courts were usually reserved for cases brought by the police or social service workers. The traditional approach was called by many names — mediation, conciliation, peace making, etc. It was well described in anthropological literature about Navajo people and was often used even by Navajo judges when an appropriate case came before them. My early Alaskan research showed traditional law’s continuing role and relevance among small Athabascan and Northern Eskimo villages (Hippler & Conn, 1972, 1973a). In fact, it had been institutionalized by teachers, missionaries and even the Indian Bureau in Indian Reorganization Act councils (Peratrovich, 1973). Extralegal village councils worked in tandem with commissioners, marshals and, later, with the early troopers assigned to the bush (Nix, 1973; Hippler & Conn, 1975). I learned about the Alaskan village council process by reading decades of council records, sitting in on council sessions and interviewing council members, past and present.

Fourth, both laws have a history of working together and the ones who best remember how both worked together (or failed to do so) were usually the consumers of law, not the ever-changing crop of professional legal representatives. This legal history — as a history of interaction between modern and traditional community law — was important, but history was and is a moving train. It did not start when one gets on (is hired) or stop when one gets off (retires). It was incumbent for representatives of the state system to learn about the past
and its impact on current perceptions of the appropriate roles for state and village law. This history was grounded in hard facts and not in ideology, but was not taught in law schools or in police academies.

Local law is affected by the historical role of the state or federal law and the messages received from representatives of this powerful force. Bearers of traditional law learn to bend this outside power to their own needs or to deflect it — as when a traditional chief, Chee Dodge, became an Indian policeman and told the community after the return to the reservation under military occupation that the white man had given them “a long rope.” (Williams, 1970, p. 14).

A working relationship between traditional justice — whatever it is called or in whatever package it is wrapped — and powerful, resources of state, federal or official tribal law, can make the entire legal process work for everyone’s benefit. I have called this continuum different things, at different times. For example in a 1985 paper (Conn), I described it as consisting of three components — nonlegal social control, extra-legal authority, and Western police, judicial, and correctional services. The pragmatic, working links are the most important thing — between towns and villages, between villages, between the state system and local system, between the past and the present, between professionals and locals, between the past and the present, and between urban and rural legal processes. The lesser-empowered have a better sense of legal history than the newcomers who represent the more powerful law and use that knowledge to manipulate the system’s impact on them whenever they can — for example, when Navajo chiefs become police or when Alaska Natives use the cover afforded councils or magistrates by state authority to reinforce a traditional legal approach or result. The local people have a better sense of the limits of that system than do the state representatives, especially the credibility of what they can do in the eyes of their own community and the limits of their authority based on their ability to access resources — for example, to successfully obtain a rapid response from the troopers when alcohol-related violence occurs.

Along with village council records from territorial days, I studied the records of official law in the bush (Conn, 1977). Few, if any, modern agents of law are required to dig into these same archives to understand their historical roles as police or judges. They fly to a village with a message framed by their higher-ups or taught to them in academies or in law schools. On the other hand, villagers have seen agents of law come and go for generations.
They have taken their promises, their threats and their recommendations and, sometimes, written them down. They have adapted their traditional approaches to the ebb and flow of modern law and what it was realistically prepared to do at the local level, as best they could. By exploiting state’s grants or authority, whether formal or informal, they have strengthened their own local authority (Conn, 1976a). They also watched the relationship fail them in modern times as their ties to the larger world and its problems became more ubiquitous and their ties to the modern legal system became less predictable or reliable.

State and territorial law had been impacted by the local law tradition because overwhelmed professionals had often put it to use as a local problem solver, usually informally, not out of respect but out of convenience (Nix, 1973). Early officials invented legal agents like “Native Police” or “Agents for Suppression of Alcohol among the Natives” that modern legal professionals would not recognize. So legal history of both systems matter — but the rural consumers of law are most aware of the relationships over time, their strengths and deficiencies. A flow of conferences on Bush Justice in Alaska and their recommendations documents this special knowledge (Alaska Judicial Council, 1970; Alaska Legal Services Corporation, 1974; McKenzie, 1976; Alaska Federation of Natives, 1985). All professionals in charge of each legal bureaucracy had to do was to listen and read these recommendations.

What I learned, first, from records of the Association of Village Council Presidents from the late 1960s was that members had told every agent of state and federal law they encountered that the councils needed more reliable police intervention when people did not listen to the councils. The councils did not ask for the state to provide all of the law, but to live up to its promises when the councils could not handle a problem, especially a problem that could become violent. From those records (republished in No Need of Gold, Conn & Moras, 1986), I learned the Fairbanks district attorney helped draft village rules, each backed by a state law violation. If the person did not listen and abide by the council’s advice, he promised, the Bethel trooper would intervene at the council’s request. Of course there was only a single trooper in the Bethel region and the letters he received (which I read in his office) told the same story as did the recommendations of statewide Bush Justice Conferences over many years: the state could not and did not hold up its end of the deal. Again and again, consumers told a parade of agency representatives (and scholars) what the failings of village justice were. They tried to make up for deficiencies in state service by
becoming more court-like, but were boxed in by an absence of resources and the state’s resistance to either shared jurisdiction, whether or not villages were cast as Alaskan second class cities or as Alaskan tribes.

What I created for Alaska and the Alaska State Supreme Court in the early 1970s were “action plans” which connected each agency in the justice system to the village council (or another body capable of conciliation or mediation; see below) through paralegals in the villages capable of working both as locally supported authorities and as agents of state authority, be it judicial, in corrections and probation, in defense or in prosecution or in law enforcement (Conn & Hippler, 1973b; Conn, 1976b). Judicially and locally-approved magistrates were to be used to keep a level of state judicial authority in the village. I knew it could be done because I had seen it work in Navajo country. Also, earlier relationships between troopers and councils had worked — until they were overwhelmed by alcohol importation and return of juveniles to villages for year-round residence, paracorrectional aides could supervise juveniles and probationers, for example, with the backing of the magistrate and councils. Lay advocates could argue for the prosecution and defense. My focus was on a working state system that would extend its authority to villages and limit its intervention to requests necessary to sustain village authority (Conn, 1974). Village authority could anticipate violent crimes — often associated with alcohol, save the state money, and make justice a daily, living reality in small villages. Many elements of this plan were field-tested. By the time that national experts on criminal justice were called upon to write the guiding document for the Criminal Justice Center at the University of Alaska (Strecher, Hoover, George, & Fox, 1974), my plan for a complete, decentralized justice system at the village level, linked both to agents of state and village authority, became the guiding rationale for a Bush Justice component with the center (and the probable reason I was hired). (See appendix).

Professor Art Hippler and I experimented in Emmonak with what we had called a conciliation board to retain, officially, within the state system the historical approach to disputes used by the village councils (but not, by the actual village council which by then was focused on land claims issues). We had several advantages. First, Bethel District Court Judge Nora Guinn understood the underlying process, embraced it and even renamed conciliation boards in Yupik as “problem boards.” Second, former council members who had worked on local problems wanted to be members of the problem board. Third, it was
connected to a Yupik village magistrate and an educated, locally raised Trooper Constable who was both Yupik and a former Seabee held in great esteem. Each was prepared to refer appropriate matters to the problem board. Fourth, along with an *UCLA-Alaska Law Review* article (Conn & Hippler, 1975), we publicized accounts of the experiment in two national legal magazines, *Judicature* and *Juris Doctor* (Conn & Hippler, 1974a, 1974b) and compared and contrasted it to the then-fashionable and federally funded urban Neighborhood Justice Centers and their work. This made it hard for the state court system to ignore. We reported the results to the state Supreme Court (Conn & Hippler, 1974c). The problems heard by problem boards were pre-legal and anticipated violent behavior. How did the court react? It tried the experiment, but initially cut out Emmonak (until we complained). It cut out local researchers entirely, hiring a national arbitration center to retrain Natives on how to solve their own problems! The court placed its own experiment into six villages (Alaska Court System, 1975). 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.

As might be expected, the court’s own experiment attracted few problems and failed except in Emmonak, which handled half of the reported matters. 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. Thirty-three years late, early intervention to head off violence is again in vogue in the American legal culture as an alternative to court appearances. Once again, some form of mediation of embryonic problems before each turns violent, one that uses peer pressure and gossip as well as formal legal support to give it credibility, could be set in place within a state court system. Whether it is called a Peacemaker Court, a Healing Circle, or was an approach used by the handful of Alaska Native magistrates left in the state judicial system, it could still help both the village and the state.

In a second experiment in the 1970s, the Department of Law and Public Defender Agency in Bethel and Nome used to good effect — according to reports of their trainers — paralegal investigators, as did Alaska Legal Services in Barrow (Conn 1980). These positions disappeared when federal job training funding disappeared. Permanent funding decisions were made in Anchorage and Juneau, not in the bush. Each bush office always needed more lawyers, even though the paralegals created new and reliable links to the villages. In the
meantime, I helped the Criminal Justice Center to educate paralegals for private practitioners who came to value paralegals for monetary reasons. I developed courses and taught on live television to rural towns like Kodiak and Nome in that pre-internet age. These paralegals took career positions in urban law firms.

The Navajo had taught me that non-lawyers with knowledge of local law can navigate the dual processes better than professionals to meet consumers' needs. I and my legal services peers transformed Navajos hired as interpreter-investigators into tribal court advocates who could determine whether clients wanted Western or Navajo-grounded remedies. As stated, I took this enthusiasm for paralegals to Alaska. But, as I now realize, I overplayed a valid historical argument by telling Alaska legal professionals that non-professionals in Alaska had taken up the lion’s share of legal work since the purchase from Russia because professionals had limited access to distant villages. (Conn & Hippler, 1973a). I consulted with several Magistrate Advisory Committees created by the court system and composed of rural lawyers. Their work, now available for study in the UAA archives, demonstrates that professionals did not perceive Alaska Native magistrates, including Magistrate Sadie Neakok and District Court Judge Nora Guinn, as productive legal culture brokers, but as embarrassments and threats to due process — even when the formal justice system was far away in towns or cities and would remain there for reasons of cost and caseload (Second Magistrate Advisory Committee, 1989). The professionals did not want to travel to appear before non-professionals. Neither did the court want to travel or bring potential jurors from villages to town. Jury selection stopped in many villages. Magistrate posts in villages where Native non-lawyers held the posts were reduced. The court system retreated from villages.

Alcohol policy had guided Western law imposed on Alaska Natives from the Russians to statehood (Conn & Moras, 1986). Historic and modern legal policy was examined, along with the impact of town-based decisions to go wet or dry on surrounding villages, dividing the villages based on alcohol-related violence reported in hospital records, records far better than crime statistics. The state legal process failed to keep up with changes as problems increased. (Remember, villages had warned the state in the late sixties of their own diminishing power without adequate external support). Decriminalization of public intoxication drove violent drinking behavior indoors in towns and villages. The state failed to appreciate the impact on what we termed “satellite villages” by denying them any legal say
in town decisions to go wet or dry, even when hospital statistics demonstrated exactly which villages were impacted by changes in town policies in Bethel and which were not. Changes in demographics and improvements in transportation and communication all had policy implications that the state failed to translate into needed legal policy changes and allocation of state resources. The villages knew they were part of a larger region when it came to alcohol-related violence and its consequences — but it did not matter.

In the 1970s, after discussing the ways Alaska Natives handled disputes, we advocated ways to make that happen productively with a modern justice system — paralegals and mediation Panels. With Antonia Moras (1986) and Bonnie Boedeker (1983), I studied the ways that alcohol control had influenced Alaska law and the actual legal experiences of Alaska Natives in historical and in modern times (Conn, 1977; Conn & Boedeker; Conn & Moras, 1986). In the 1980s, I focused on publishing articles on why these experiments had failed (Conn, 1988). At least one reason was the failure of the Alaska judiciary to trust that rural Alaskans had answers to their own problems. The state court came to model itself on modern court administration — what I now term the Snowden effect, named for the first modern court administrator in Alaska and his influence on the shape of the court system2 (Conn 1980, 1988). In the 1990s, I tried to reform each branch of the justice system, linking studies on corrections, juries, and policing to historical and modern studies to matters being litigated in state court. In each instance I testified as an expert. What I presented to the courts or opposing counsel was the history of corrections or jury selection or policing in the bush. In each instance I was challenged because my research seemed neither legal nor anthropological. What it was, was a retelling of the history of Alaska legal culture in the Bush — the way a government had behaved as consumers of justice services in the bush experienced it. In one case against the state I drew attention to the absence of correctional services in the Bush to supervise probationers in a case brought by one of several seriously wounded and killed victims of a person who had been placed in a small Native village without state supervision (Division of Corrections v. Neakok, 1986; Conn, 1976b). The state eventually settled when confronted with a likely trial in Kotzebue. Did the then-Department of Corrections remedy the situation with paracorrectional aides it had previously used in the Bush? No. Corrections brought probationers into the cities where they could be conveniently supervised even if recidivism was likely for persons plucked out of their rural homes. I was forced to conclude Alaskan Native recidivism was better for state policy
makers than lawsuits against the Department of Corrections or use of paracorrectional aides in the villages.

In other lawsuits, defendants argued that their cases had not been heard by juries of their peers because potential jurors from many villages were never called. My research (Conn, 1995) had shown that 128 villages had been excluded for jury pools. This included exclusion of 3,300 Alaska Native jurors for reasons of cost, 3,704 Natives for reason of distance from the court, according to rules set by presiding judges of superior courts, and 2,648 potential jurors because they were assigned to what I termed “phantom court locations” — places denominated as potential court locations where neither magistrates, nor district or superior courts ever held court. The results? Court findings for the state and against jury participation for as many as 24 percent of Alaska Natives in the Fourth Judicial District — except when called as a victim, defendant or witness to a trial in regional centers (Conn, 1995).

When the Native American Rights Fund tried to use an equal protection argument against the state to remedy unequal law enforcement in the villages, I showed that the use of non-police — unarmed Village Public Safety Officers — followed a long-standing approach to law enforcement dating from territorial police and copied in recent years from a long-abandoned Canadian program of using Native police to extend the reach of “real police” (Conn, 1999, 2000). The court decided against the Association of Village Council Presidents.

Apparently only political clout or the resources to remove oneself from the unorganized borough known as “the Bush” can force the state to try other approaches. Eban Hopson possessed sufficient tax revenues and political muscle to allow his Arctic Slope region to break the stranglehold of the trooper monopoly on law enforcement and within the state’s system of justice. And foreign models — such as the Canadian model of regular traveling courts (Morrow, 1974) or Royal Canadian Mounted Police postings in every Northern settlement serve only when they meet the needs of individual justice bureaucracies within the justice system. Reliable service seems secondary to an illusion of a modern state justice system that meets the needs of each centralized justice bureaucracy. Thus, the action plans that evolved into the Strecher plan of decentralized rural justice (Strecher et al., 1974) was a non-starter for a state criminal justice center, even before the ink dried.
Each branch of the justice system focused on its own self-interest and not on construction of a complete and working village justice system. With Chief Justice George Boney’s death soon after I arrived in Alaska and the appointment of the court’s first modern administrator, the court system looked to professionalize and base itself in cities and towns. Thus, despite many attempts to improve the magistrate system and link it to the process through circuit riding, portable jails, etc., by Magistrate Supervisor and former Bush trooper William Nix, the court ultimately reduced the number of magistrates and, with that, direct Alaska Native participation. To counter an Alaska Judicial Council report (1975) to transform official judicial districts into cultural regions reflective of the regional corporation boundaries, the court created service areas in towns which did draw in residential representational and prosecutorial services, but left outlying communities without retention votes when judges outside of their official judicial district were appointed. The court was happy with judicial districts drawn when riverboat traffic, not jets, was the way that legal professionals and citizens moved around the Alaskan landscape and feared new districts drawn around Alaska Native cultures in the Bush.

Juvenile services remained inadequate and attempts to link professional services to parents committee (such as the one we set up in Selawik, failed)(Conn 1985). This failure to respond to a major demographic shift when juveniles were allowed to stay in villages to attend high school may have had a dramatic impact on the success of village education. The troopers continued to employ para-police long used in other colonial domains, to hold down its turf by placing unarmed informants (called Bush trackers in the Australian outback) to be their resident eyes and ears, displacing village authority and its ability to act — entirely. Regional corporations made these Village Public Safety Officers their employees, wittingly or unwittingly weakening the historical link between village authorities and state police.

AFN’s Bush Justice Implementation Committee had advocated municipal courts in the mid-1970s (Case, 1977). But as villages began to see their powers as tribal, rather than derived from Alaska, the state, Bart Garber and I suggested that tribal powers must be used or they would be lost (Conn & Garber, 1981). The Indian Child Welfare Act (1978) brought some limited Congressionally-mandated approval of Alaska tribal justice to the fore, but the state fought its expansion (Case, 1984). The late Senator Ted Stevens seemed committed to killing off official tribal authority at the village level and wanted regional corporations, not villages, to be empowered, perhaps capable of placing restrictions on land use and
exploitation of subsurface holdings. He employed a revisionist history to kill off the jurisdictional concept of Indian Country in a successful amicus brief before the U.S. Supreme Court, and created a “rural”, not a tribal preference, as a Congressional substitute for the extinguishment of aboriginal hunting and fishing rights by ANCSA (Conn & Langdon, 1988; Conn & Garber, 1990). Still, I have argued that any village could take on federal recognition and even pass the tough, historical litmus test that requires evidence of ongoing tribal self-government, no matter what the external opposition is to it, because the historical record of self-governance is thorough in Alaska and very well-documented (Conn, 1987). Co-authored papers on potential tribal authority in Alaska by Conn and Garber (1990) and Conn and Langdon (1988) deserve attention. Each shows how the history of Alaskan tribal self-governance deserves to be put to use again to solve local problems and to weigh into the subsistence controversy.

**Conclusion: The road not taken in Alaska**

The Navajo legal system was able to evolve on its own terms, in part, because the tribe had learned how to manipulate the relationship between sovereigns who competed with it. Arizona, where most of the tribe lives on a reservation, had no abiding desire to take over the job of law and order on the reservation. In that Public Law 280 state, it had no capacity to tax tribal members or property and no desire to spend money if not reimbursed by the federal government. It was happy to cross-deputize Navajo police and let them take cases to Arizona magistrates as well as to tribal courts. When an Arizona creditor contended that he needed to use an Arizona court to collect a debt incurred on the reservation because the Navajo tribe had no civil code and civil court, the tribe and its legislative branch set about inventing a civil code before the case reached the United States Supreme Court (Williams v. Lee, 1959). When I examined Navajo tribal council transcripts from the period, I found that members modified suggestions made by their tribal attorney (Conn, 1978). Tribal judges were to be selected from among those steeped in both traditional and western legal process, even if the candidates were less trainable than younger men and women with higher education. The same was true of police. Items to be seized to pay debts were not to include sheep, this based on experience with federal sheep seizures in the 1930s to avoid overgrazing. In short, the tribe invented a civil law system it did not need as a kind of movie set to show the skeptical United States Supreme Court that it had a civil code which looked
like other civil codes. But it appointed persons to man that system who were prepared to adapt it to the legal pluralism alive and well on the reservation in the late 1950s.

The paralegals we had trained in the late 1960s as investigator-interpreters and as tribal court advocates continued to work in both systems. Years later a Navajo bar was established and both lawyers and paralegals had to be licensed by it and take a bar exam. As Navajo men and women attended law school, they joined the ranks of this bar. A Navajo law graduate eventually took over the DNA — Dinébe’iiná Náhiilna be Agha’diit’ahii, or “attorneys who work for the economic revitalization of The People” — the same Navajo legal services for which I worked in the late 1960s and early 1970s. The Navajo approach to dispute resolution at the hogan level — very close to what I had found among the Alaskan Athabascan at the village level in 1972 — was institutionalized into a peacemaker component of the tribal court system as that tribal court system became more Westernized to meet the modern legal needs of Navajo and non-Navajo litigants.

Reservation Indians lack jurisdiction over felonies. These cases are sent to the federal courts. The federal government has never shown a great interest in prosecuting felonies on the reservation. So Navajo justice had taken up most crimes as misdemeanors. But the level of punishment for many crimes has been kept very low until the tribe was ready to increase it:

People who possess liquor on the Navajo Nation, for example, would be fined $500 on the first offense. The current penalty for a first-time offense is a $50 fine. The penalty for shoplifting under the proposal would include jail time and fines, and would depend on the value of the goods taken.

A conviction for receiving stolen property could net a punishment of 180 days and a $500 fine, while contributing to the delinquency of a minor would change from no jail time or fine to a maximum of 180 days in jail and a $1,000 fine….

The list of 30 offenses, once allowed to result in no jail time, because of law of resources, were now made jailable. (Fonseca, 2013)

The Alaska penal code is defined and amended far away in Juneau. Village ordinances cannot be pursued because villagers lack the resources to enforce them, resources which must include provision for professional prosecution and defense and detention facilities which meet state standards. The villages are priced out of the legal system. Where Alaska has substituted mandatory sentences for judicial discretion, a rural judge cannot address local
concerns when he or she sentences — as in the past. An option for community input which I advocated in the 1970s has been lost (Hippler & Conn, 1973b).

Tribal and Alaskan village authority share a common trait. Both must be used to be retained, even if both the state and village want to share in the work. As future advocates for Bush Justice continue the work I and so many others began, it matters not whether village authority is based on internationally recognized group rights, federal Indian law, or state authority. The historical record demonstrates that a relationship flourished when it was reliable and, perhaps, because an absence of state resources to take on the whole job gave field operatives more latitude. The challenge then is for the state to see this same working relationship as worth funding to deal with modern problems brought into the village by modern infrastructures. Alaska must want to serve village Alaska and must end its concern with competing sovereigns.

Attacks on any advocate of hybrid reforms that reject neither state nor tribal responsibility for village justice can be anticipated. Many advocates of tribal rights see attempts to meld both systems into one as simply a return to colonialism. Pragmatism is equated with defeatism. As I drew on the experience of disempowered people to learn tactics of re-empowerment and survival, I never intended for citizens to lose their legal rights wherever they chose to live in Alaska. Today, accessible justice is used as an excuse for lack of access to due process. Small and local is not always “beautiful” for all people and the remedies they seek (Conn, 1978). The central idea for Bush Justice reforms was to give villagers options, including those provided urban Alaskans. But, as I discovered, the overall “look” of Alaska state justice as typical American justice trumps the state’s ability to meet the diverse challenges of the Bush. Just as the United States Supreme Court wanted to see a Navajo system of civil law which looked like the one it was used to seeing when it heard *Williams v. Lee* (1959), so, also, do Alaskan legal professionals seem to want the image of an American system of law in the bush, whether or not it serves the needs of the people who live there.
Endnotes

1. Interdisciplinary “Bush Justice” makes difficult a discoverable, full bibliography before Alaska Native Studies became a defined discipline. Many papers were unpublished or were contained in memos directed to international jurists or to justice personnel, including several chief justices of the Alaska State Supreme Court. But this problem is now set to be resolved as work, both published and unpublished, that I did during my tenure, will be available online at http://justice.uaa.alaska.edu/publications/authors/conn/ and stephenconn-ak.com. My plan is to archive and place online unpublished materials in a manner which will allow future students to make use of them. I am including in the collection not only published pieces, but also unpublished letters and memos directed at members of the state justice community, memos and letters to my colleagues and unpublished interviews with justice personnel, including troopers, correctional officers, defense attorneys and prosecutors. For example many reports on alcohol policy and its impact were unpublished. So this article is a “teaser” of sorts. Its editorial message is “read the original research, once it is placed online, which lead to the conclusions expressed here.”

2. George Boney, the late Chief Justice, focused on bush justice and was inclined not only to lead the court’s administration, but the entire justice system. A political animal, he chaired Governor’s Commission on the Administration of Justice meetings which divided federal Law Enforcement Assistance grants,(meetings which I attended). Other criminal justice bureaucracies did not seek that leadership, but the LEAA desk sought a coordinated vision of criminal justice outcomes. Chief Justice Jay Rabinowitz, Boney’s successor, was a dedicated Constitutional scholar with no administrative pretentions or interests. Art Snowden, who roomed with Rabinowitz when they visited bush Alaska, was a perfect fit for Rabinowitz and other justice bureaucracies with their own urban and rural agenda, set forth in Criminal Justice Plans of that era. In a personal discussion with Jay about a recent visit by an Australian Aborigine, he told me he viewed their traditional law as “a flaming spear in the leg.” In addition, Alaska’s early state legal history included a minor scandal involving an Alaskan chief justice who was said to have meddled overly much in management (this is outside the scope of this paper). Separation of administration and judging was the new and desired direction for Alaska’s state court system.
References


Appendix


Section 5
The Establishment of Bush Justice Programming

Bush Justice Programs

- Constable Training
- Village Para-Legal Training
  - Magistrate Training
  - Village Advocate Training
- Probation Aide Training

The Bush Justice Program design is a result of Alaska’s cultural diversity, population distribution patterns, and specific criminal justice problems at the village level.

1. The categories under the Bush Justice heading are programmatic, rather than discrete assignments for individual personnel. In fact, it is intended that a "Village Criminal Justice Team" concept be established. Within this concept, the native CJ personnel of a given village would proceed through the four phases of training together (at times separated for their special role-concept training). This design feature resulted from Eskimo and Indian comments to the consultants, which revealed the social pressures and isolation accorded village policemen, and other CJ practitioners, because of family and social ties in small communities. It is the judgment of the consultants that team training will establish a climate of professional, mutual support among village team members. The individual role requirements of independence and advocacy will have to be carefully built into the training programs.

2. The four phases of Village Criminal Justice Team training grew out of the realities of geography and multi-ethnicity of the State's rural areas. While the Assistant Director for Bush Justice Programs should occupy an office on the Anchorage campus, much of the program will be accomplished in distant satellite training centers, or in the rural work settings of the trainees. In Year One, the Assistant Director should use census data to determine the
number of village teams to be trained, and prepare a calendar for completion of the four-phased program for all villages in the State, with allowances for turnover.

a. Phase 1. Centralized Core Program

1. Village CJ Teams are brought to a training center (Anchorage, Fairbanks, or Sitka) for about two weeks of intensive basic training. Concentration should be upon subject-matter common to all of the four roles in the village team (substantive and procedural law; elemental records-keeping; ameliorative skills; procedures for serious offenses; role-learning and differentiation).

2. A question to explore is whether more than one ethnic group can be taught in the same course. If not, programming should contemplate a number of village teams from the same Eskimo or Indian group at any given time, with specific months of the year allocated to ethnic groups. Center staffing level will not permit more than one class at a time, but should permit coverage of several villages.

b. Phase 2. Decentralized Core Program

1. After having returned to their villages and performed rudimentary duties as a village CJ team, the team would be transported to a regional training center for an additional two to three weeks of intensive training. The regional centers would preferably be located on the community college campuses nearest the ethnic population centers; however, other governmental facilities might have to be used.

2. If community colleges provide the setting for this training, a faculty member might be designated as part-time coordinator of this phase of the program, and perhaps the Phase 4 work as well.

c. Phase 3. Traveling On-Job-Training Specialists

1. Members of each ethnic group should be identified, invited, and selected to become OJT specialists for each of the CJ team roles. This means that at least one magistrate, constable, village advocate, and probation aide would have to be designated within each ethnic group. This minimal level of operation would eventually become inadequate, because of the wearing nature of the duties, and the difficulties of absence from home.

2. OJT specialists would spend one week at a time with recent graduates of the Phase 2 training. This time would be spent in the trainees' villages, under working conditions. The OJT specialist would have a checklist, prepared by the Bush Justice
and Research units of the Center, for a systematic review of procedure. Much of this OJT time, regardless of the trainer's own team role, would involve all four, or three, or two members of the newly graduated CJ team.

3. This activity would have to be supported by well-prepared, translated training materials made available for dissemination by the OJT specialist.

d. Phase 4. Continuing CJ Team Training

1. This training might consist of an occasional visit by the OJT specialist, with programmed training material; or the material might be sent directly to team members for their personal use, without supervision.

2. The ideal packaged training material would address a given subject from the perspective of each village CJ team member. Each package would have to be translated by resources available to the Bush Justice and Research units of the Center. Feedback, in the form of programmed responses, would be an important part of this effort. The regional centers, hopefully on the community college campuses, might develop access to translation and distribution of the English language versions prepared at Anchorage.

3. This phase of training could serve an additional, very desirable purpose: that of "instant consultation" with village CJ teams on difficult cases. This would assume a communication network among the villages, which may not be feasible.

4. A final purpose of Phase 4 might well be on-going monitoring and evaluation of village CJ team operations. It was pointed out to the consultants by the corrections administrator that no adequate and consistent basis for evaluating, rewarding, and motivating village CJ workers (in his case, Probation Aides) now exists. It will be recommended that the Center Research unit examine the feasibility of melding this function into the continuing training program.