

Wedding U.S. Law to Eskimo Tradition

by Stephen Conn and Arthur E. Hippler

Joe Uktuk is an Eskimo with a legal problem he doesn't know how to solve. While he was away hunting caribou, his neighbor Tom shared some Canadian Club with Ed, the local bootlegger. Afterward Tom, feeling good, stumbled into Joe's cabin. Before he was caught by the village policeman, he broke several dishes and frightened Joe's wife and kids so badly that they fled from the house. It was sub-zero weather and they were in such a hurry that they left without their parkas.

When Joe returned he was angry, but his village is so isolated that he could not easily summon professional help. The village policeman had done what was expected—removed Tom and taken him home to sober up. Joe could have brought a complaint to the local lay judge, the state magistrate, but he knew that a complaint would only result in a fine or suspended sentence, and what good would that do? Anyway, he didn't want to exacerbate the situation with Tom, his whaling partner, since they couldn't afford to remain enemies for long. From Tom, Joe just wanted an apology and some money to replace the dishes. It was Ed, whom he saw as the instigator and a real threat to village life, who seemed to Joe to deserve more severe treatment.

Fifteen years ago Joe could have taken his problem to the village council, which probably would have solved it to everyone's satisfaction. Today, under the new system of Anglo-American law that is being introduced in Alaska, matters are considerably more complicated.

The complications—and Joe's problem—are the result of the strange evolution of village law in Alaska. Prior



to the arrival of white men, there was never a predictable solution to serious disputes between Eskimos. In their extremely egalitarian society, men were free to go their own way unimpeded by anything except the limits of their personal power.

Eskimo society eventually developed a host of sophisticated ways to avoid conflict. The village councils, apparently a 20th-century outgrowth of Eskimo contact with Euro-American law, were based on this experience. By using the existence of outside authority, groups of Eskimos could, it is true, petition marshals or the Coast Guard to remove violent offenders. But in practice the village councils—in part because of racism, massive disinterest, and the realities of transportation and communication problems—had to find alternatives in order to resolve local conflicts.

The resolution of disputes wasn't an adversary process but one of reconciliation between individuals who had to live together in a small community; centuries of experience had

given Eskimos tools of social control that didn't depend on force.

If Joe had brought his problem to a council, the council would have avoided a showdown between Joe and Tom by taking their testimonies separately, thereby avoiding face-to-face accusations. Ed would be invited to testify and his role in the matter would be aired at length. In the end, Ed and Tom would be encouraged to apologize, and would be asked, perhaps, for a token payment of money or fuel for Joe.

If Ed had refused to meet and take his share of the blame, the council would have recast his offense as bootlegging, a violation of local or state law, and called in a trooper. An arrest would have meant a certain conviction and fine by the state judge.

Changes in the native Alaskan village have challenged all of the Eskimos' social traditions. In the mid-1950s the United States Public Health Service began to deal seriously with tuberculosis and infant mortality. These efforts resulted in dramatic decreases in infant mortality and hence in increases in the number of young people. By the late 1960s more than half the population in many villages was younger than 14. Because there were too many children to be dealt with by traditional methods, ordinary patterns of discipline were weakened. There was, consequently, a greater need for institutional intervention in juvenile matters. Moreover, the jurisdiction over juvenile cases had been removed from rural courts to distant superior courts in the cities.

At the same time, the village council was not reinforced as a forum for juvenile cases. The energetic attempts

to provide better education for native children through state-operated and Bureau of Indian Affairs schools did not help the growing generation gap; young and old were increasingly estranged, not only by differences in education and experience but by language. As Alaskan rural communities grew, the village council was no longer adequate as a source of social integration. The forces of law and order, which had been administered by the council, were taking on a new shape. The villagers had learned, after U.S. law entered Alaskan villages, that they could have violent offenders removed. By using the threat of removal, villagers weakened the powers of the village council.

Though the council flowered as an extralegal institution, in part because it could look to American law for matters it could not handle, its success was not recognized by Alaska's legal policy makers. The success or failure of council justice was met with indifference; its records and its strange laws were treated with amusement or contempt.

Reading village council records, however, uncovers a rational inquiry into human conflict by these Eskimos and Indians. But, blind to the realities of council justice, the state justice system pulled more and more cases out of the village. This effectively ended local council resolution of minor offenses. Where a group of Eskimos once had to use outside authority only as a last resort to banish the most intransigent people, the removal of all cases from village jurisdiction transformed a form of "banishment" into a normal procedure for most cases. In the past, removal for weeks or months had eased tensions in the village; the present system of removal, in which offenses were handled in distant courts in only days or weeks, meant the convicted offender often was returned quickly. Tensions had no time to die down.

Moreover, the offender who came home with a conditioned suspension returned to a village where no one was charged with enforcing those conditions. Because long-term removal was no longer guaranteed, a victim who might have been served by an adversary system discovered that he had to tell his story again and again in the presence of the offender. This could only deepen the conflict. Even a conviction meant that the offender would soon return to meet his

peers on the street with a still smoldering grudge. Where the earlier system had taken the sting out of complaints, the new state of affairs protracted them.

In the past fifteen years the legal process of the state has brought into the village a local state magistrate (the Alaska justice of the peace) and a local constable. As far as the Eskimos are concerned, the legal system has taken a turn for the worse. The village's native judge serves in a court of limited jurisdiction to accept guilty pleas in misdemeanor cases, to hold trials with the defendant's permission, or to hear small claims. But few defendants ask for hearings, and the judge is not trained in running trials. The village doesn't yet have a complete adversary system with lawyers or lay advocates who can separate civil from criminal complaints, or bargain or litigate, depending on the needs of their clients.

Without the incorporation of a new judicial process, reforms of the state justice system can never compensate for the loss of the village council's ability to settle disputes between neighbors amicably. Lay judges, such as magistrates, have been challenged in other states as violative of due process. But in rural Alaska the situation is far worse. The local magistrate tends to accept the plea of guilty or impose a guilty plea, suspend all or part of the sentence, and finally

create a situation where no one, offender or offended, feels that the judicial system has done anything more than respond to its own needs and self-interests.

Practitioners frequently remove their cases to professional judges and as a rule are rarely asked to represent a client in a village dispute unless the client has been removed from the village. If an indigent requests a lawyer for a criminal offense in Alaska (where a state court decision affords representation to indigents even when incarceration is not involved) he must wait for a public defender to charter a plane for the visit. In reality, this never happens in small villages, and more serious crimes are removed to regional centers, where until recently there were no resident attorneys. An indigent who qualifies for and receives representation in a case in a regional center (or in Anchorage or Fairbanks) is billed for the public defender's services and airplane fares. This is just a routine bookkeeping gesture and even though they aren't legally obliged to do so, natives often feel impelled to pay.

Unless a dispute raises broader substantive legal issues, Alaska Legal Services Corporation does not take civil cases where less than \$500 in damages or property rights are involved. A.L.S.C. feels that only a broader case could possibly warrant the tremendous expense in time and

What It's Like Up There

Alaska, all 556,000 square miles of it, is larger than Texas, California, and Montana combined. Scattered over this expanse are more than 200 villages, in which most of the state's 60,000 Eskimos, Indians, and Aleutians live. Only four of the villages have more than 2,000 people; most average about 300.

A typical Eskimo village is on a river bank or an ocean beach 60 miles from the nearest neighboring village, and 300 miles from the closest regional center, where perhaps 1,000 people live. Houses are made of driftwood or plywood, and are expensive to heat. There are a few stores, an elementary school, and a mission or two. Hunting for sea mammals and fishing account for most of the day. There are a few dog teams and many snowmobiles.

The villages are separated from each other, in most cases, by miles

of tundra, impassable during periods of thawing or freezing; there are virtually no roads. Communication is by radio and "bush" air services.

Government jurisdictions are so large as to be almost unimaginable to city dwellers in the rest of the United States. Until recently, a single trooper in Bethel, in southwestern Alaska, enforced the law in more than 50 villages spanning more than 90,000 square miles of rivers, islands, and tundra. District attorneys and public defenders commute to hold preliminary hearings on felonies and to bargain sentences before clients in towns where physical facilities allow court to be held.

Of the dozen towns in Alaska, only one, Anchorage, has a population larger than 15,000. Alaska has 530 attorneys; 422 of them practice in Fairbanks and Anchorage.

—S. C. and A. H.

travel from their offices in towns and cities into the villages. Finally, the private Alaska bar lives primarily in the large cities. Only a few lawyers make even routine visits to the larger regional centers.

How, then, will the legal institutions that have supplanted the older, informal style of justice change to meet the continuing needs of villagers? Or must the Eskimos themselves change? Without attorneys, how can they change themselves or their problems? Because the village is still the village, some researchers are trying to help natives learn about existing procedures that will help them solve all but their most serious problems. They can do this by welding together, under an old state statute that allows the compromising of misdemeanors, customary Eskimo approaches with procedures drawn from Alaska law. The statute permits misdemeanors to be settled so that restitution or an agreement between the alleged offender and victim can be negotiated out of court. The system is derived from the old village council format, that is, a conciliation body.

In the conciliation process, now only an experiment, the village council interviews and selects five members of the community to settle disputes. Victims and alleged offenders appear by their own choice before the conciliation board. While the National Center for Dispute Resolution, which settles disputes in large cities, sends private criminal complaints to arbitrators, the village panel cannot use the contempt power of the court to enforce agreements. Either party can request that village members on the panel absent themselves because of special family ties or prejudices. The panel includes elderly, middle-aged, and young men and women from the village. Unlike urban arbitration panels, no attempt is made to use arbitrators who do not know the disputants. In fact, prior knowledge of the disputants—and of their good and bad qualities—is viewed as an asset.

Disputants may call witnesses or offer proof. They may have someone speak in their behalf. They may give testimony in English or in their native Eskimo language.

The conciliators dwell not on innocence or guilt but view the single act in terms of the history and the future of the disputants' relationship. Here again, village conciliation differs from

arbitration as an alternative to private criminal process in the urban courts. The goal of the conciliators is to maintain the relationship between disputants, not sever it. That relationship may be as hunting or fishing partner or as husband and wife. A final agreement cannot say, therefore, that the two parties should avoid each other (impractical in a village in any event).

The second consideration of the conciliators, as members of the village, is the relationship of both parties to the village. The conciliators, as one Eskimo councilman put it, have good common sense and do not dominate their fellow villagers, but are nonetheless comfortable in expressing independent judgments. The conciliators appear to apply a standard of reasonableness, but not abstractly. The standard is that of reasonable men who reside in an Eskimo village, real Eskimos who understand that small threatening acts in the village can upset the peace of the community. The goal of conciliation is to check disputes just as village councils once did, in a place where social and, to some extent, personal survival itself remains a goal of daily living. Unchecked disputes invariably lead to "trooper business"—shootings, stabbings, unexplained drownings.

The villages in which the reforms are being tested report some successes and some failures in settling criminal matters and advising the court on sentencing; this is unsurprising because both offender and victim must agree to solve their problem together. No denial of defendant's rights to remain silent, request an attorney, or plead not guilty is implied in the reform. In fact, the reform lessens the pressure to confront a legal question without legal assistance. Support for not guilty pleas, in fact, will emerge from the community when victims refuse to compromise, or when a preliminary review of a case points to offenders, such as Ed the bootlegger, who cannot be reached by the criminal process.

Similarly, the use of councils means that lynch-mob justice will not dominate a court's thinking. A judge who feels that the council's opinions are prejudiced or ill-advised will be obliged to explain his decision to them. And while the State Supreme Court demands such sentencing information from all judges, too often no explanation for judicial decisions

has been given to the villagers.

The Alaska experiment is giving village natives the power to make decisions within the state justice system—a power previously available only because of the indifference of professionals and courts to the village legal process. They are offering procedures that allow nonlawyers to take into account the significant issues that define community needs. All of this is happening without requiring Eskimos to redefine themselves solely as powerless clients of American justice or as satraps completely outside of judicial review. They will not be forced to take their problems to the state legal system when they can handle them better at home and still be under the rubric and protection of Alaska law, nor will they be forced to suffer in silence as Joe Uktuk had to.

The reforms in Alaska have a message for our entire system of jurisprudence: If people are long denied flexible access to justice, even for reasons other than poverty, a society is damaged at its very foundation. The Alaskan experiment is teaching us some of the ways to save that foundation. □



Photograph by L. Hippler

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