



A Publication of the  
Justice Center

# ALASKA JUSTICE FORUM

Alaska Justice  
Statistical Analysis Unit

Winter 2001

UNIVERSITY OF ALASKA ANCHORAGE

Vol. 17, No. 4

## Circle Peacemaking

Lisa Rieger

In his 1999 report to the state legislature, the Chief Justice of the Alaska Supreme Court noted the innovative circle sentencing court that has developed in conjunction with the magistrate's office in Kake. This example of local initiative for greater community responsibility over anti-social behavior reflects other restorative justice experiments within the state, the country and the world. It has arisen at a time when the effectiveness of justice services in rural Alaska is being questioned. On a visit to Kake, the Chief Justice had heard from the local residents how effective the circle had been in dealing with problems there.

A Justice Center research team working in Kake on legal ethnographic research funded by the National Science Foundation was able to observe the community's adoption of the circle sentence process over a period of eighteen months. What they saw was an example of a community selectively adopting and incorporating a model which community members also encountered in the context of the more global dialogue on justice issues provided by statewide agency conferences.

### Restorative Justice

Circle sentencing is a form of restorative justice, one of a number that have emerged over the past decade in response to demands for community and victim involvement in the

justice process. These community-based projects are value-based, seeking to repair harm done and to transform communities. As described by Bazemore and Schiff in *Restorative Community Justice*, they range from family conferences in lieu of juvenile court—an idea started in New Zealand and exported to Australia, Oregon and other states—to circles in correctional institutions in Minnesota, to meetings between shopping center owners and shoplifters, to victim-offender mediation in this country and the United Kingdom. Some of these justice projects are designed to prevent the occurrence of offenses; others intervene after arrest but before formal charging (and, hence, are linked structurally with diversion). Still others are initiated after the formal court process has begun. Circle sentencing, reintegrative shaming and similar approaches occur after conviction, in lieu of the traditional sentencing process. While many of these experiments have arisen in small homogeneous communities, highly diverse urban centers are also using restorative community processes.

### Circle Sentencing

The Justice Center researchers observed how presentations of the circle sentencing model that emerged in Carcross in the Yukon Territory in Canada opened discussions for the model now in place in Kake. In Carcross, circle sentencing occurs after conviction in the Crown court—the state court equivalent. Rather than issuing sentence in a city courtroom, however, the judge travels to the village to elicit community responses to the offense and the offender. The theory behind involving the community is that sentences will be more meaningful if created by consensus within the community, that the interests of the community will be better protected, and that victims and offenders will have the best chance for healing, particularly in situations where anonymity is not an option and relationships must be adjusted. As one Yukon Justice Committee member

involved in circle sentencing states, "After a circle, there are thirty probation officers in the village who know what the offender is supposed to be doing and whose influence can be brought to bear." This involvement of the community has the added benefit of the construction of positive, proactive organizations. Thus, in Carcross, where the Justice Committee started out responding to post-conviction sentences, the committee now also intervenes before arrest, after arrest but before conviction, and after probation violation. The emphasis on value-based justice offers reconnection for victim, offender and community and includes spirituality and emotionality in the process. The goal is a more holistic approach to justice issues.

Crown Judge Barry Stewart and three local Justice Committee members from Carcross, Yukon Territory presented their model of circle sentencing to Alaska at the Sitka Native Justice Conference in 1996, a conference organized by the Alaska Native Justice Center to bring state and tribal justice issues to the fore. Judge Stewart had spent a decade promoting this model of local control over justice issues, both in Canada and in the United States, through international dispute resolution organizations such as the Society of Professionals in Dispute Resolution (SPIDR). The presentation in Sitka included statistical information confirming the effectiveness of circle sentencing for offenders who had participated (low recidivism, high satisfaction rates for community, offender and victim) and descriptions pointing to the marked contrasts between the western model of justice and the restorative qualities of circle sentencing. Circles in Canada are used not only in minor juvenile misdemeanor cases, but also in serious felonies, including domestic violence cases, for offenders with long criminal histories.

Since the Sitka conference, the circle sentencing presentation has been given at an

Please see *Circle Peacemaking*, page 6

### HIGHLIGHTS INSIDE THIS ISSUE

- An overview of fourteen years of juvenile jail monitoring in Alaska (page 2).
- Justice Center paralegal students participate in service learning project (page 4).
- The Alaska Judicial Council reports on civil case filings (page 5).

# Juvenile Jail Monitoring in Alaska

Cassie Atwell

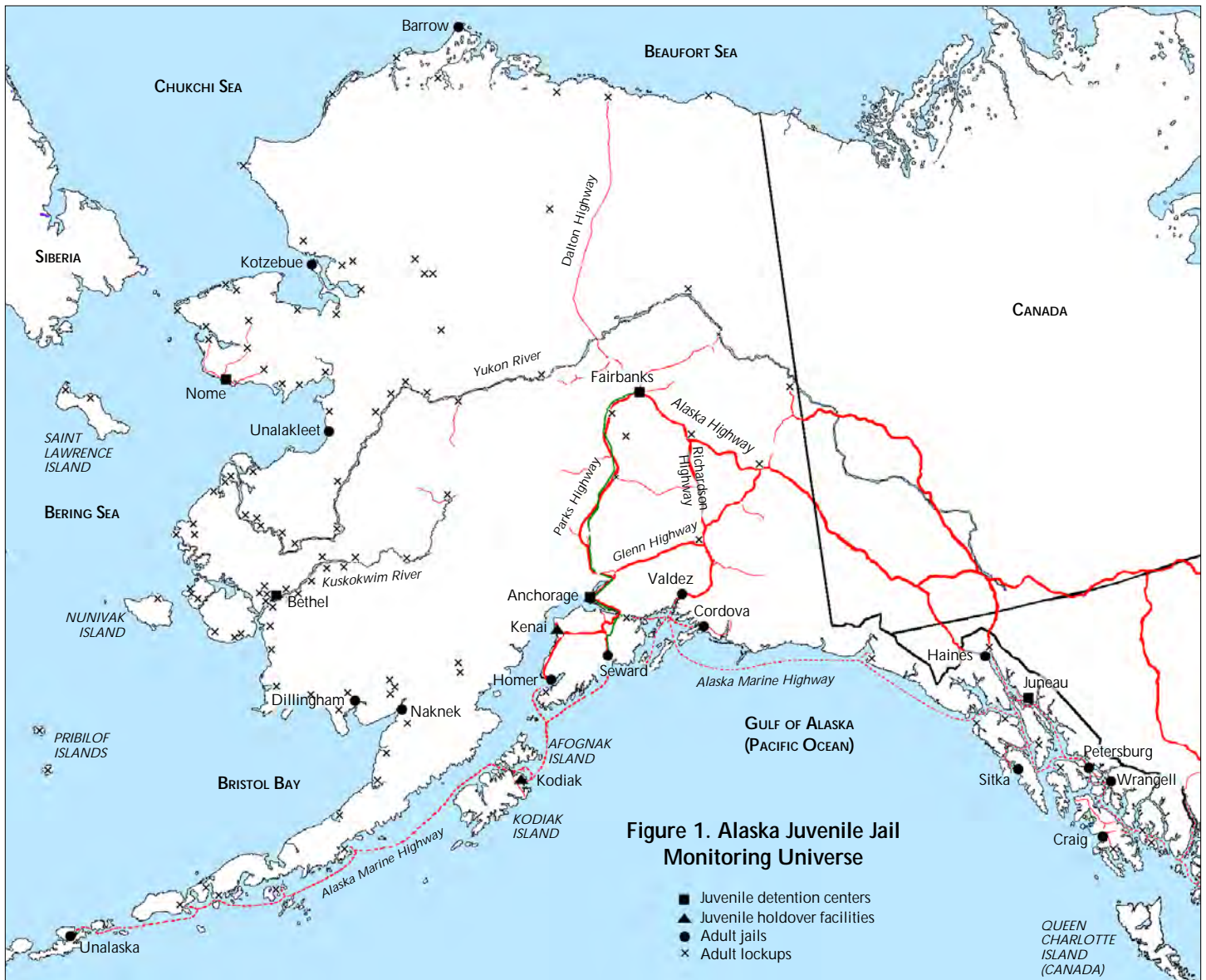
After over a decade of close monitoring of the detention of juveniles under the Juvenile Justice and Delinquency Prevention Act, Alaska has still not achieved substantial compliance with the provisions of the federal legislation, thus reducing its access to federal formula grant funds in the juvenile justice area. Since the state monitoring plan was accepted by the federal government and put in place in 1989, the state has made significant progress in reducing violations of the system of safeguards surrounding the detention of juveniles, but it continues to report a higher number of violations than is permitted under the act. In reality the number of actual violations is probably not as high as the number being reported. The problems with compliance are now essen-

tially tied to the difficulties in obtaining data from rural communities: when communities do not submit data on the actual detention of juveniles, the monitoring program requires that a formula of projections of violations be invoked. This is probably resulting in more being reported to the federal government than are actually occurring. Since in recent years, federal funding for some juvenile justice programs has become more tightly tied to compliance with the provisions of the Juvenile Justice and Delinquency Prevention Act, this over-reporting is especially problematic.

The Justice Center at the University of Alaska Anchorage has administered the monitoring program for the Alaska Division of Family and Youth Services since 1989. The following article discusses the nature of the federal act and the Alaska monitoring

program, and it provides an overview of the data accumulated over the last decade along with an analysis of problems involved in responding to the federal regulations.

The Juvenile Justice and Delinquency Prevention Act requires states to closely monitor the physical presence of juvenile offenders in the correctional system. Failure to meet the requirements reduces the eligibility of individual states for federal funds. The legislation restricts how, when and under what circumstances juveniles may be incarcerated. The act mandates several standards regarding the detention of juveniles. First, status offenders (those charged with an offense which would not be a crime if committed by an adult) cannot be held in any type of secure confinement, although a 24-hour grace period is permitted. (This is termed *deinstitutionalization*.) The jail re-



removal provisions require that those juveniles accused of or adjudicated on criminal offenses also not be placed in detention in adult facilities – again with a grace period, this time of six hours. A further provision mandates that all juveniles, regardless of their offender status, who are detained in a facility which also holds adults must be separated from the adults by sight and sound. The legislation requires each state to submit a workable plan for monitoring progress toward compliance with these provisions. In 1989 the Justice Center was asked by the State of Alaska Division of Family and Youth Services to create this plan for Alaska.

Complying with the federal act has been challenging. In the lower 48 states it is not unusual for staff from the monitoring agency to drive from facility to facility to verify records and inspect facilities. The lack of roads and the vast area to be covered in Alaska preclude this approach. Most monitoring visits are made by small plane.

Another challenge has been the diversity of jails and lock-ups throughout the state. Agencies such as the Alaska State Troopers, municipal police departments and Village Public Safety Officers or Village Police Officers run different types of holding facilities under differing authorities. Each of these authorities, as well as the Alaska Department of Corrections and the Alaska Court System, needs to be contacted and its cooperation gained to insure accurate monitoring of juvenile intake events.

The types of facilities monitored are juvenile detention facilities, contract jail facilities, state correctional centers, court holding facilities, village lock-ups and any other type of facility in which juveniles in state or municipal custody can be securely detained. Under the plan, an elaborate system was set up which entailed gathering information on which areas in the state had facilities that should be monitored, annually producing a list of those facilities (monitoring universe), dividing those facilities into manageable groups for visits and contacting each facility for copies of its records. The plan divided the universe into three groups, and required the annual collection of the required information from each facility within the group and site visits on a three-year cycle. Except for a change in 1994 from monitoring on a calendar year basis to monitoring on a state fiscal year basis, and a revision in 1995 in the way statistical weighting is

done for non-reporting sites, the plan has remained essentially the same since its adoption.

Each year, with the cooperation of the agencies involved, every facility on the universe list is asked to submit information (such as booking logs) on *all* persons detained during the monitoring year. The information requested includes name (or initials), date of birth, sex and race, charge (or other reason for detention), date and time in and date and time out. Even though the object of this study is the extent to which juveniles are detained within Alaska, information on all persons securely detained is necessary to determine if sight and sound separation of juveniles has been maintained. In addition, one group of facilities is visited each year on a rotating basis to verify accuracy of records and to determine whether each facility has the capability to provide sight-and-sound separation of juveniles.

As stated earlier, the state is required to be in substantial—not full—compliance with the act in order to continue receiving federal formula grant funds. (Substantial compliance is determined by a statistical formula.) Unfortunately, Alaska is not as yet in substantial compliance. The reasons behind the lack of compliance are many, ranging from the remoteness of the holding facility, to adverse weather conditions, to a lack of knowledge of the requirements of the act among members of law enforcement and the court, to the lack of reporting by the various holding facilities.

Table 1 illustrates this point. The number of sites reporting information has ranged from fifty to seventy-eight percent. Due in part to this lack of reporting, the number of violations has fluctuated from year to year, although in general it has declined greatly

Table 1. Total Annual JJDP Violations in Alaska, 1987-2000

Year	Per cent of sites reporting	Deinstitutionalization of status offenders	Sight and sound separation	Jail removal
1987	50 %	32	806	601
1988	51	9	564	409
1989	50	3	336	249
1990	55	0	135	99
1991	64	2	65	81
1992	64	2	11	44
1993	61	0	16	59
1994	65	0	17	53
1995	53	64	23	115
1996	66	8	3	44
1997	60	11	2	73
1998	78	4	2	57
1999	75	12	0	69
2000	53	8	45	82

from the initial three-year period.

In 1995 the Alaska Department of Corrections discontinued holding juveniles who have not been waived to adult status in their facilities. This has helped decrease the number of violations occurring every year. However, state-contracted adult jails and locally-run village lock-ups still show substantial jail removal violations. Table 2 illustrates the number of jail removal violations for three selected years of study.

The tables underscore the most pressing problem facing Alaska in its quest to comply with the requirements of the act. The one issue that causes the state the most violations is the lack of reporting by facilities on the universe list. The universe is divided into three distinct regions, with each facility in that group required to submit booking data on all detainees for the monitored fiscal year. When a facility within a group does not send in the information, the plan requires projecting a number of violations for that facility. Hence, if each reporting facility within a group shows two violations, it is projected that the non-reporting site probably also has two violations. This is reflected in the final tally. The unfortunate aspect of projecting violations is that the state may actually be claiming more violations than were actually committed, but until full reporting from all facilities is achieved, projecting violations

Please see *Jail Monitoring*, page 4

Table 2. Jail Removal Violations in Alaska in 1989, 1995 and 2000

	Status offender, non-offender			Adjudicated criminal			Accused criminal			Total		
	1989	1995	2000	1989	1995	2000	1989	1995	2000	1989	1995	2000
Adult jails	79	7	4	25	8	13	68	20	12	172	35	29
Department of Corrections	1	0	0	15	0	0	14	0	0	30	0	0
Adult lock-ups	26	33	8	0	9	15	21	38	30	47	80	53
<b>Total</b>	<b>106</b>	<b>40</b>	<b>12</b>	<b>40</b>	<b>17</b>	<b>28</b>	<b>103</b>	<b>58</b>	<b>42</b>	<b>249</b>	<b>115</b>	<b>82</b>

## Jail Monitoring (continued from page 3)

upon non-reporting sites is the only way to estimate the extent to which the state is in compliance with the act.

Why don't sites report? One reason is that in some rural villages in Alaska officers have not attended any type of law enforcement training course and therefore have not been taught the requirements of the act or the importance of keeping records of all persons detained in their facility.

Another problem is the high turnover among law enforcement personnel. Tribal and village police officers often do not stay long in their positions, and Village Public Safety Officers also change positions or leave the program quite frequently, thereby creating a situation where replacements need to be trained in the requirements of the act.

There are additional complications to achieving compliance with the act. Most of the 152 sites currently on the universe list are located in remote areas of Alaska. The very remoteness of these sites not only presents logistical problems for researchers verifying information, but is also problematic for those responsible for complying with the mandates of the act. For example, a juve-

nile arrested at 4:00 PM on a criminal charge on Saint Paul Island is taken to the local police department holding facility because Saint Paul has no juvenile detention center. In fact, the nearest juvenile detention center is 150 miles across the Bering Sea in Bethel. The next plane may not leave Saint Paul until 10:00 AM the following morning. Since a juvenile arrested on a criminal charge can only be held (sight-and-sound separated) in the jail for up to six hours before going to court and an additional six hours after going to court, what can the police chief do to avoid violating the JJDP Act? In such a case, a violation is probably inevitable. Unless the chief or other authority can find a non-secure temporary placement for the juvenile until the plane leaves, the juvenile will remain in the holding facility well beyond the time allowed.

Another problem is adverse weather conditions. There have been instances where a juvenile has been forced to stay in a local holding facility because the plane he was to take was unable to land due to fog, high winds or blizzard conditions. Again, unless the detaining authority can find a non-secure placement for the juvenile, violation of the act will occur. At present, the state is working with the federal government to delineate

an exception to the time provisions of the act because of weather or transportation problems, but this exception may present its own administrative problems because it requires state certification of facilities for sight-and-sound separation, something currently not in place.

The lack of knowledge of the requirements of the act has also caused some violations. For example, in some areas of the state, magistrates sentence juveniles to serve time in the local jail. This usually happens in connection with a charge of driving while intoxicated, which carries a mandatory three-day jail sentence. The jail has little choice but to accept the remanded juvenile, although this results in a violation under the act.

Efforts are underway to help sites report the required information each year and training is taking place at state trooper and VPSO academies across the state. It is hoped that these steps and additional assistance from Congress recognizing the unique conditions in Alaska will help to ensure that Alaska is in at least substantial compliance in the near future.

*Cassie Atwell is a research associate with the Justice Center.*

## Alaska Legal Services Service Learning Project

*Pamela R. Kelley*

As part of a community partnership with Alaska Legal Services, Justice Center paralegal students are working and learning in the Anchorage Legal Services office while assisting with client intake, interviews and case assessments. The service learning project is part of a course redesign that will permit students to apply theoretical knowledge in work with clients who may be unfamiliar with or intimidated by the legal process. The project is being funded initially by a grant from the UAA Center for Community Engagement and Learning.

Alaska Legal Services (ALS) assists low-income individuals facing civil law problems. As a result of significant funding cuts from state and federal sources, the agency has been forced to reduce its staff and limit the number of hours devoted to initial client intakes to approximately fifteen hours each week. As a direct result of the limited hours available for initial client screening, ALS sees fewer clients. Since the ALS client base is populated by individuals who cannot afford legal services from the private sector at all, individuals who cannot see ALS in a timely fashion are effectively denied mean-

ingful access to the civil justice system.

PARL 235, a required course for students enrolled in the Paralegal Studies Program, develops student proficiencies in conducting the kinds of information collection legal assistants perform in the law office environment. Students receive traditional classroom instruction regarding the foundations for interviewing, with an emphasis on the ethical and professional responsibilities of paralegals acting as agents for supervising attorneys. While staffing client intake and working on housing cases at ALS, students conduct interviews with the objectives identified through classroom instruction.

During the Spring 2001 semester, PARL 235 students have been required to spend fifteen hours at the Anchorage Legal Services office conducting client intakes and subsequent interviews. Students work directly with ALS staff on intake screening, interviews and case assessments. They also work on housing cases under the supervision of ALS attorneys. The student work during the project term will allow ALS effectively to double the amount of time it can devote to intake services.

Through the use of student journals and class discussion, students have also been

participating in structured reflection activities. For the most part, paralegal students do not pursue poverty law as a career objective; therefore, exposure to the obstacles facing poor people with legal problems expands their views on how the legal system works as a problem-solving enterprise. The client population served by ALS differs from that encountered in the usual private law office environment. For these individuals, there exist serious institutional impediments to obtaining civil justice through the courts. This service learning project permits students to apply theoretical knowledge in interviewing to specific legal problems faced by ALS clients, some of whom have difficulty in expressing the nature of their problems due to language barriers. The students also gain knowledge of practical restrictions facing the working poor who have legal problems that cannot be resolved through ALS because they are simply not "poor enough" to qualify for ALS representation.

The grant from the Center for Community Engagement and Learning is supported by the Corporation for National Service.

*Pamela R. Kelley is the coordinator of the Paralegal Certificate Program.*

## Judicial Council Analysis of Civil Cases

As one consequence of the tort reform legislation passed by the state legislature in 1997, the Alaska Judicial Council has begun to report on closed civil cases, using data from forms filed by attorneys and the parties to provide the legislature and the public with information about the civil case process. The first Judicial Council report presents a basic analysis of the forms filed from September 1997 through May 1999. The data are extremely limited but they present a first look at the actual figures surrounding civil settlements.

The legislation required the Council to design a form to be used by parties in civil cases. The form requests: the case name and number; a general description of the claims; whether the case was resolved by means of settlement; the amount of the settlement; to whom the settlement was paid; and the amount of costs and fees deducted from the total gross settlement amount to show how much money may have gone to the client. For a variety of reasons, discussed later, the Council received civil case data forms in only a small percentage of cases for this period. A total of 2,034 forms were submitted for 1,685 cases—only about 5 per cent of the cases covered by the reporting provision of the legislation.

The analysis presented here refers only to a subset of 901 cases from these 1,685 -- cases involving debt, personal injury, malpractice, property damage, employment and other civil and business disputes. Administrative appeals, forcible entry and detainer actions, and DWI vehicle forfeiture actions were considered separately. The preponderance of cases—79 per cent—fell in the areas of debt, other business and civil disputes and personal injury. A comparison with the number and type of civil cases filed in Anchorage in 1998 indicates that the Judicial Council settlement case database roughly reflects the overall distribution of

types of cases.

The types of damages and relief sought centered heavily on compensation for actual damages (68%). Twenty-four per cent sought non-economic damages and 12 per cent, punitive damages. Over half the parties requested costs and attorney fees (53%), and a few requested (8%) requested injunctive relief. (Because a party could request more than one type of relief, percentages do not add to 100 per cent.)

### Settlements

Settlement amounts ranged from zero to about \$16,500,000. (Because it was not possible to distinguish those cases in which there was no award from those for which no amount was entered on the reporting form, the analysis considered only those cases that showed a dollar amount in judgment—653 cases.) Of the case forms analyzed, the awards in 451 cases, 69 per cent, were less than \$20,000 and 543, or 83 per cent, were less than \$50,000. Cases that could be identified as torts (personal injury, malpractice and property damage) had slightly higher settlements, with 57 per cent less than \$20,000, and employment cases had the highest average settlements, with only 45 per cent less than \$20,000.

To refine the analysis somewhat, the amounts in settled tort cases were compared with awards in tort jury cases as compiled for a Judicial Council study conducted in 1996. For the cases judged by juries, only 61 per cent of the awards were less than \$20,000. At the higher end, about 17 per cent of the settled cases received amounts of \$50,000 or higher, compared to 24 per cent in the tort jury verdict study. Seven per cent of the settlement amounts fell between \$100,000 and \$499,999, compared to 9 per cent of the tort jury verdicts. One per cent of the settled cases received \$500,000 or

more; 6 per cent of the tort jury verdicts fell in this range.

For the overall settlement case database, punitive damages were included in only five settlements, despite having been asked for in 108 cases. Declarative relief was included in three awards and non-economic damages in 43 settlements.

Information about the amount from the settlement that the client received was available in 41 per cent of the cases. The most common payment (39 %) was between \$1,000 and \$4,999, and 30 per cent received between \$5,000 and \$19,999. Eleven per cent received between \$20,000 and \$49,999 and 10 per cent between \$50,000 and \$499,999. The larger settlement amounts went to clients in personal injury, employment and other civil cases; smaller settlements were received in debt and property cases.

### Attorney Fees

In general the total amount in attorney fees for the party filing the data form was less than \$5,000. (Of those who filed forms, 216 parties, or 24 per cent, did not provide information on the total amount of attorneys' fees from the settlement amount to the party.)

Many more attorneys charged hourly fees than contingency fees, with 59 per cent of those on an hourly basis charging from \$126 to \$150 per hour. One third of plaintiffs' attorneys charged on a contingency basis—typically between 30 per cent and 40 per cent of the total settlement. A small number of those filing forms were paid in other ways: some were "in-house" attorneys; some received a flat fee; and several cases were pro se.

### Time to Disposition

Over 90 per cent of the cases examined provided information on time to disposition. About half the cases (53%) settled between 61 and 360 days; 20 per cent settled in 60 days or less; and 19 per cent took longer than 360 days.

### Limitations of Data

Because the data presented in this first Judicial Council report on civil cases represent such a small number of cases from a brief period, they should be interpreted with care. Only 1,685 cases are represented, and for most of these (83%) only one party

### Highlights of Settled Civil Cases from September 1997 to May 1999

- 83 per cent of cases received settlement amounts under \$50,000.
- One per cent of settlement amounts were \$500,000 or over, with the highest award over \$16 million.
- The typical hourly attorney fee ranged between \$126 and \$150.
- One-third of plaintiffs' attorneys charged contingency fees, with 89 per cent of these charging between of 10 and 33 per cent of the total settlement amount.

Please see *Civil Cases*, page 6

## Civil Cases (continued from page 5)

to the case submitted the form. In addition, many forms were incomplete. The original legislation only imposed an affirmative obligation on parties to file the form in a limited number of types of cases; for other types the filing was voluntary. In addition, there seems to have been reluctance, because of privacy considerations, on the part of some attorneys to submit the requested information.

A 1999 amendment to the tort reform legislation now imposes an affirmative duty upon attorneys and pro se litigants to submit

the Judicial Council form within thirty days of resolution for the civil cases covered. (Data are no longer collected on forcible entry and detainer cases, administrative appeals, and vehicle forfeiture cases—not discussed in this article.)

### On-going Data Collection

In addition to the changes in the collection effort made by the legislative amendment, the Judicial Council has adopted a procedure to review the completeness of the forms at the time of initial submission and to contact parties who have submitted incomplete data. The form now requests a listing of all parties

to a case, making further follow-up possible, and the form is available on-line. It appears that the legislative and procedural changes have resulted in improved reporting. The Council has included 3,741 reports from an eighteen-month period in its review of civil case data currently underway, versus the 2,034 forms for the 21-month period discussed here. The Council plans to publish its next analysis of civil case data in March or April 2001.

*The full Judicial Council report on which this article was based, **An Analysis of Civil Case Data Collected from September 1997-May 1999**, is available online at <http://www.ajc.state.ak.us/>.*

## Circle Peacemaking (continued from page 1)

annual magistrates' training conference sponsored by the Alaska Court System; at a Bureau of Indian Affairs annual providers' conference; in Kake at a tribe-sponsored training session; in Bethel at a training session sponsored by the tribe with federal financial support; and in Anchorage, through the Alaska Native Justice Center, for juvenile justice and local justice personnel. The Carcross group has also taken their form of restorative justice and problem solving elsewhere in Canada and the United States—to child protective services in Minneapolis, outside Indian reservations, and business corporations. Thus, the model is one now being explored at local, regional, national and international levels.

Although there is some variation, the general circle sentencing model requires an offender's application for the circle and a waiver from the state justice system. (In Carcross, the Crown judicial system ratifies the agreement from the circle and makes it the sentence.) Carcross requires an elder to sponsor an offender. This is set in motion when the offender brings an offering to the elder—a traditional incorporative activity—and obtains his or her support for the circle. Each offender is required to develop a healing plan and put together a healing committee, whose members will attend the circle. Similarly, the victim develops a safety plan and a safety committee. These individuals come up with suggestions for the circle, which they attend. Anyone who wants to do so may attend a circle (community members who experience the circle also benefit from it), but what goes on in the circle remains confidential except for what is publicly announced. A circle may take three to eight hours. Each participant talks in turn, holding a feather or a talking stick or other

indicator of the right to speak. The discussion goes around the circle until the group as a whole reaches consensus about what the plan should be. Then the offender must agree to the plan and to completing it within a certain period of time.

Criticisms of the circle with regard to victims have surfaced in Canada and in the Navajo peacemaking process. The Navajo Nation has a long history of western-styled tribal and appellate courts. However, in the early 1990s, the Navajo Nation instituted a parallel justice system based on traditional concepts and processes. Navajo peacemaking utilizes techniques similar to the circle, including family and community members as support teams, a mediation approach and the guidance of elders. As described by Coker in "Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking" (*UCLA Law Review* 47:1, 1999), domestic violence and victims' advocates express concerns that much interpersonal violence flows from issues of power and control. People fear that the circle will perpetuate the cycle of power and domination that results in victims in the first place. Thus, victims who are terrorized by their attackers are often in subjugated roles (child, spouse, elder), cut off from other support systems and vulnerable to psychological and physical power plays. Mediation in general, and circles specifically, do not necessarily militate against these power relations. The actors in the mediation or peacemaking need to be aware of, and have methods to counteract, repetitions of controlling behavior taken into this milieu. For example, a victim may not want to participate in a circle process, or a circle itself might not give adequate strength to the victim to speak openly. However, the Carcross presenters have emphasized that if the safety committee does its job and "systems people" (state agencies) do their jobs, these issues of power and domination

should not occur.

### Kake and Circle Sentencing

In Kake, issues of sovereignty and identity have been embedded in concerns about local autonomy and peacekeeping; "global" ideas and resources such as circle sentencing, described at numerous Alaska state conferences, reflect systems once used and now in the process of revitalization for local purposes. Thus, one can assess the impact of globalization through observing the operation of a centralized legal system in a diverse local community. A selective incorporation spearheaded by legal, tribal, and economic leadership has included unique adaptations to the demands of local clan identity.

Alaska's multitude of statewide, regional and federal conferences allows local program people from communities such as Kake to interact with funding and governmental agencies. Between October 5 and December 11, 1999, Kake tribal government personnel attended at least ten statewide and federal conferences on issues related to local governance, tribal operations, and child welfare. (The Justice Center researchers also attended most of these.)

The Justice Center researchers observed how ideas and opportunities presented in the larger forum, within a more global dialogue, were conveyed and incorporated by Kake at both city and tribal council meetings following these conferences. At two events—the magistrate training and the conference for BIA providers—representatives from Carcross made presentations. After this, Kake became the first Alaska Native village to arrange for training on circle sentencing. The tribal government of Kake—the Organized Village of Kake (OVK) Council—invited the circle-sentencing trainers from Carcross to provide the four-day training session in Kake.

Individuals involved in anti-social behavior control in the village (drug and alcohol counselors, the magistrate, the chief of police, the Presbyterian and Salvation Army ministers and OVK staff) were the majority of those attending the training, but several members of the general community also came and two classes from the high school attended on the last day as well.

The particular method of conflict resolution presented in circle sentencing seemed to resonate for the Kake residents who participated. As might be expected, in Tlingit Kake, the Tlingit Carcross presenters relied more heavily on cultural references than they did in the more general presentations offered at regional and statewide conferences. Members of the circle were forthcoming and emotional in their comments. The Kake magistrate reported that he and others in his generation (he is in his 40s) had memories of sitting in a circle to resolve family problems. There was very little formal justice discussion; rather, the focus of those present was helping troubled individuals and families better respond to alcohol and drug

problems and the legal problems that ensue from substance abuse. Significantly, the group altered the model that the Canadians presented to them to more closely reflect local priorities of the Raven and Eagle moieties and their responsibilities. The circle sentencing model, then, is not a blueprint that allows only one implementation; rather, there is room for local modification. While the basic model of the circle is to level the forum for the actors by giving each a chance to speak as the discussion moves around the circle, Kake instead used the keeper of the circle role to identify representatives of the Eagle and Raven clan and allowed them to call on speakers for each side of a dispute. In so doing, the Kake version of the circle reincorporated clan identification and authority. Although they stressed that the circle was a community problem-solving mechanism and therefore open to all, they considered it important to incorporate Tlingit values in the way the circle was conducted. In promoting the circle, the tribal leadership enhanced its credibility for the community. Its broad intention is noted by its name in Kake: "circle peacemaking." One community member has noted that the Kake circle peacemaking is a revival of something that has lain dormant in the community since people began to try to assimilate to mainstream western ways.

To date, thirty-six circles have been held in Kake. Because offenses such as underage consumption of alcohol that are suited to the circle process often come first to the magistrate, the magistrate's court, the police and OVK social services provide referrals to circle peacemaking in Kake—making the circles primarily a form of diversion from prosecution. All of the circles have involved misdemeanor activity or parental alcohol abuse. One young person who went through the circle for a minor consuming case was surprised by how many people attended. After everyone had spoken, he responded that he had had no idea how many people cared about him; rather, he had felt completely marginalized in the community. This provided a poignant example of the way in which the circle acts to reintegrate transgressors into the community of which they form a part. Currently, all minor consuming alcohol cases are referred to the circle.

In another example, one of the first circle cases, a substance-abusing mother agreed to get treatment outside the village while family members helped with her children. After a successful treatment program she returned to the village, where support systems put in place through the circle assisted her. One of the celebration circles applauded the success of this case and emphasized that the aim of

the circle is not to condemn or even just put back to right, but rather to honor the community and its members. According to the tribal historian, who was the field assistant for the Justice Center research, "each circle makes its own shape." All the cases that have gone through the circle have been "successful" in the lay magistrate's eyes.

As with other alternative approaches to serving justice needs, the use of circle sentencing can involve jurisdictional questions. In Kake, tribal staff avoided a jurisdictional conflict when the local district attorney objected to a domestic violence case going to the circle, by deciding that this particular case was not appropriate for the circle after all. However, these cases raise the question of jurisdictional tension between state and tribal legal systems.

In Kake, the circle is open to both Natives and non-Natives: everyone is considered part of the community. This raises the question of what impact placing locality over sovereignty will have now that Kake has chosen such an approach to dispute resolution in lieu of a tribal court based on political sovereignty. Other interesting developments include the use of the circle for drug court and the designation of the circle as the tribal court for the Organized Village of Kake. OVK recognizes the values and possibilities of the circle for substance abuse issues, and thus is the recipient of one of nine new drug court planning grants for 2001. The village intends to use the circle for its drug court once the planning stage is over.

## Conclusion

What seems to be happening is that ideas, ways, processes discussed in broad-ranging big forums are not *adopted*, but rather resonate with strains already present in individual communities. This seems to be happening simultaneously in many communities. Thus, one observes in this example from the Tlingit village of Kake, Alaska the ways in which a process developed in Canada, presented internationally and introduced to Alaska by state, federal, and non-profit agencies reflected local processes and provided an opportunity to revitalize traditional problem-solving systems. An example of the selective incorporation of the global, "circle peacemaking" demonstrates the benefit of exposing communities to a variety of ideas that can combine with local readiness and a sense of identity in meaningful ways.

*Lisa Rieger is an associate professor with the Justice Center.*



## Alaska Justice Forum

Editor: Antonia Moras  
 Editorial Board: Cassie Atwell, Allan Barnes, Richard Curtis, Matthew Giblin, Maurice Godwin, Pamela Kelley, Robert Langworthy, Deborah Periman, Lisa Rieger, John Riley, Nancy Schafer, Lawrence Trostle, Darryl Wood

Typesetting and Layout: Melissa Green

Justice Center, Robert Langworthy, Director

Alaska Justice Statistical Analysis Unit, N.E. Schafer, Director

Published quarterly by the Justice Center and the Alaska Justice Statistical Analysis Unit at the University of Alaska Anchorage, 3211 Providence Drive, Anchorage, AK 99508; (907) 786-1810; fax 786-7777; Internet address [ajjust@uaa.alaska.edu](mailto:ajjust@uaa.alaska.edu); World Wide Web <http://www.uaa.alaska.edu/just/>

© 2001 Justice Center,  
 University of Alaska Anchorage  
 ISSN 0893-8903

The opinions expressed are those of individual authors and may not be those of the Justice Center.

The University of Alaska provides equal education and employment opportunities for all, regardless of race, color, religion, national origin, sex, age, disability, or status as a Vietnam-era or disabled veteran.

---

*Alaska Justice Forum*  
Justice Center  
University of Alaska Anchorage  
3211 Providence Drive  
Anchorage, AK 99508

Non-Profit Organization  
U.S. Postage  
PAID  
Anchorage, Alaska  
Permit No. 107

Return service requested