

Address to AFN Convention
October 19, 2024
Justice Jennifer Stuart Henderson

It is an honor for me to get to be in this room with you all today on the lands of the Dena'ina people. Since time immemorial the Dena'ina people have and continue to be the stewards of this land, and I thank them for upholding that vital responsibility that we share in with them today. I also want to thank all of you, as the descendants of those who have been the caretakers of the lands across what is now known as Alaska. On behalf of myself and on behalf of the Alaska Court System, chin'an for inviting me and allowing me to speak with you all today.

I am one of five justices that sit on the Alaska Supreme Court. Part of the job of our court is to make decisions on cases that get appealed to us from the trial courts or the court of appeals. Our role as a branch of the government is to make decisions in court cases when the people or groups involved disagree about what has happened or what the law is, or how the law applies in their case. That is somewhat limiting in some ways because it means we can't as judges just take action where we might see a need; rather, there has to be a legal case brought before us, and then our job is to apply the law in making a decision. But that brings me to the other part of the state supreme court's job, which is to lead the state court system and to make decisions about how the court system should run and how we can improve the way that we serve the people and the communities of this state. It is that second part of our job that brings me here to get to speak with you today.

I want to start out today with an acknowledgement and an invitation. First the acknowledgement: As a state court judge and as a person, there is so much that I don't know. A lot of what I have done in my life has been focused on learning, and still, there is so much I don't know and so much I have to learn. Similarly, as a state court system, we have so much to learn. And in particular, we have so much to learn from you, from your communities, and from your tribal courts and tribal court judges so that we can really best serve the people of Alaska.

And now the invitation: Let's get to know each other better, and let's keep talking with each other. As a state court system, we know that we have so much to learn and understand, and we are committed to reaching out to communities and tribal courts around the state so that we can get to know and understand each other. There are some places in the state in which the relationship between the state court, and tribes and tribal courts within the community, are strong, but there are so many places in which we don't engage with each other. We are committed to changing that.

We see how well our systems can work, and the way that we can really meaningfully serve people, when our systems collaborate. Let me talk for just a minute about some of the collaborations that are currently happening. One example of a state court getting to really learn from and work with a tribal court is the Henu Community Wellness Court, which involves

collaboration between the state court in Kenai and the Kenaitze Tribe. The Henu court works with adults who have legal troubles stemming from substance use. Each week Chief Tribal Judge Evelyn Dolchok sits with Judge Kelly Lawson of the Kenai Superior Court, at the Kenaitze Tribal Courthouse, and the two judges sit together and work together with participants. The court's approach is grounded in Kenaitze Tribe's traditional values, and works with participants to reduce recidivism, while improving the lives of the participants, and building a safer and healthier community.

There has been a similar collaboration in Sitka, where the Sitka Tribe and the Sitka Superior Court work together, again with an approach grounded in the Tribe's values, in a tribal healing to wellness court.

And in Juneau, the court is working with the Central Council Tlingit and Haida Tribes and with other agencies to try to start a collaborative ICWA court.

We see how well we can serve people when we are open to learning and when our systems are able to work together.

We have also had wonderful opportunities to get to participate in collaborative educational programs with Alaska Native Justice Center and with others. During our annual training for judges – our annual judicial conference – we are dedicating time to learning from and talking with tribal leaders and judges. In fact, we are holding our annual conference for judges across the state next week, and we are very excited hear and learn from Dr. Jessica Ullrich regarding indigenous connectedness and the vital nature of this connectedness for child well-being.

I understand that the theme of the convention centers on something so precious and vital – your children and your future ancestors. Most of you also know that children are at the heart of many of the cases that come before both state and tribal courts, so I want to talk with you a little bit about some things the state court system is doing to support the work of Native Alaskan tribes as related to their children.

We continue to benefit from the work of the Court Improvement Program or “CIP”. CIP works to monitor and improve the way the court system handles child in need of aid cases, and enhances coordination and communication between the court, other agencies, and the tribes involved in the cases. Very importantly, CIP includes and relies upon tribal representation – there are currently five tribal representatives – to help ensure that the court is handling cases and issues related to children in ways that are informed by the tribes.

Through CIP, the court system is also helping to support the partnership between AFN, tribes, and state entities in working on steps forward under an ICWA State-Tribal Partnership Best Practices grant. This is a federal grant meant to support work on changing our systems and using best practices to better preserve and reunify families. One of the goals of the partners in this grant is to reduce the disproportionate number of Alaska Native and American Indian children in

foster care. The vision of the project partners is to create a model for handling child welfare cases that is both community-based and culturally relevant, and that will lead to improved outcomes for Alaska Native children, families, and communities, while addressing trauma and supporting connectedness.

We have also been changing some of our court processes in Child In Need of Aid and other cases. We have created a clearer and more streamlined process for tribes to intervene and become parties in CINA cases. We have also created a clearer process for requesting that a CINA case be transferred from state court to tribal court so that the tribal court handles the case and makes the decisions about what should happen.

Turning to some changes we have made in other areas, during this last year, our court adopted a new rule that provides a uniform procedure for registering tribal court orders in a number of types of cases within the state court so that those orders can be enforced in state court. This is in addition to those types of tribal court orders that already received full faith and credit in state court. The rule provides a clear process for recognition of tribal court orders – so that parties wanting enforcement of certain tribal court orders and judges handling those requests know what to do and what to consider.

We are also working on ways that we can involve tribes and tribal communities in restorative justice sentencing in criminal cases. We have a process in our court rules that allows for cases to be referred to a tribal court to engage in a process led by the tribe and to propose a sentence that can then be imposed by the state court. This is something that hasn't been used all that often, but we have been providing more education to judges about the process, and we are communicating with tribes about this, and with the agencies involved in criminal cases. Hopefully this can be an area in which our systems work together more frequently moving forward.

I talked a little bit earlier about getting to know each other better, and I have done some thinking about what I could share with you about our state court judges today. I would go way over my time with you if I tried to give you information about each of the judges individually, but I thought it might be helpful if I tell you how our judges are selected – because I think that will tell you a little bit more about them.

Alaska's system for selecting judges is different from the systems in many other states. In Alaska, judges are not elected, and they are not purely appointed. The framers of Alaska's Constitution wanted to get away from systems where judges were trying to get votes and campaign donations, maybe from the very people that would be appearing before them in court, and they wanted to get away from systems where someone can be a judge just because of their political party. So we have what we call merit selection, where a neutral body, the Judicial Council, made up of lawyers and non-lawyers from around the state, gathers lots of information about the people who have applied for a judgeship, surveying groups that have experience with the applicants, and taking comments from the public. The Judicial Council considers all of this

information, and interviews applicants, and then the Council selects the most qualified candidates for the governor to choose from, and the governor makes that final choice.

And while the framers of the constitution did not want judges to be elected, they still wanted for judges to be accountable to the people, and so judges in Alaska go through retention elections. When a judge is up for a retention election, they don't run against anyone else – instead, the question for the voter is whether that person should continue being a judge or not – so it is a yes or a no. Understandably, many people do not know the state's judges all that well. A lot of people are not necessarily in court all that often and so may not be familiar with judges' work. Here is where the Judicial Council comes in again, and once again gathers a great deal of information about the judges, surveying all of those groups that interact with the judges, including lawyers, peace officers, social workers, jurors, and others, and finally, provides that information to the public and makes a recommendation yes or no for whether the judge should keep their job.

I tell you all of this because it helps to explain a few things about Alaska's state judges. They are not beholden to any particular person or group for electing or re-electing them. They do not consider politics in making their decisions. Their decisions are not to be based on their own personal views of what the law should be, or on what they think the most popular outcome will be – instead, the judge is to make decisions purely based on the law. In order for our system of law to work, people need to be able to trust that judges are applying the law fairly and consistently. And the framers of our constitution designed a system of selecting and retaining judges to try to ensure that.

As good a system as we have for selecting judges, and as much as we rely on courts and our systems of laws, we have some real difficulties when it comes to encouraging and supporting people within our communities in becoming lawyers and potentially judges. It is a really tough thing for anyone to set aside the time and effort necessary to go through law school, but it is especially hard for people in Alaska, where we do not have a law school. And we have a lot of talented young people growing up throughout the state who may have no idea that they could work in the law and they could even be a judge within their own community someday.

These are things that we are thinking a lot about and that we frankly need help with. We wrestle with how to make legal careers more accessible for everyone. We think about how to reach out to communities and to young people in particular to show them what is happening in the courts, and get them thinking about the law as a possibility. We have a lot of progress to make on these fronts, but I can tell you about some of the work that is happening.

First, although Alaska does not have a law school, some Alaska universities have developed partnerships with law schools including direct admission, less time to complete degrees, scholarships, and other partnerships. In addition, there are now 18 ABA-approved law schools

that allow distance education so you can complete your degree while primarily living and working in Alaska.

In terms of engaging young people in this state with the law, each year the Court System works with partners to hold the Color of Justice program, a multi-day event in which high-school students are invited to come and interact with judges and legal professionals in workshops and presentations like “You be the Judge”, “Constitutional Cranium”, “Mentor Jet”, and others. The Alaska Native Justice Center partners with the court system to put on the program in the Southcentral region, with a focus on involving Alaska Native and American Indian youth. We are actually starting to have the experience of some of the alums of the program – youth who participated while in high school – coming back in law and justice professions and serving as mentors to current high schoolers. Indeed, our magistrate judge in Nome, Pam Smith, is an alum of the Color of Justice program.

As a court we also want for young people to have the chance to really see up front and learn about the process that we go through in deciding cases on the supreme court. So we host what we call Supreme Court Live, where we hold oral argument at a high-school, and give students the opportunity ahead of time to study the briefs that have been filed and the issues to be decided in the case, and where the students get to observe live, in their own school environment, a supreme court oral argument, and then have the chance to talk afterward with the attorneys involved and with the justices. And we are very excited that in just a couple of weeks, we will be holding Supreme Court Live in Nome! We look forward to engaging with students in Nome very soon!

As I said, we know that there is so much more progress we can make, but I wanted to share some of steps that the court system has taken in the last year or so that I thought you would be interested in. And of course, let me circle back to the invitation at the beginning of these remarks today. I hope that our courts and communities can continue to build relationships and to communicate with each other. We invite your tribal councils and tribal courts to reach out to us with ideas for strengthening our understanding of, and connectedness with, each other. Again, thank you so much for inviting me and allowing me to speak with you today – it is truly an honor. And I wish you well for the remainder of your conference.