



The Honorable Jon Tester  
Chairman  
Committee on Indian Affairs  
United States Senate  
Washington, DC 20510

July 15, 2014

Dear Chairman Tester:

This letter is in response to your letter dated June 13, 2014 requesting written responses from the Indian Law and Order Commission to questions posed by Members of the United States Senate Committee on Indian Affairs. Thank you very much for contacting us about these very important matters. For ease of reference, Commissioner Affie Ellis of Wyoming and I hereby provide the following joint response to the question posed by Senator Begich. Commissioner Ellis previously responded, by letter also dated July 15, 2014, to the question posed by Senator Johnson and I concur with her response in its entirety as do the other commissioners.

**Questions for the Record Submitted by the Honorable Mark Begich**

**Question #1.** *Can you further explain the report's finding in Chapter 2 that "the State of Alaska cannot simultaneously assert that, outside the Metlakatla Reservation, there is no Indian country in Alaska and that P.L. 83-280 prevails." This is a concept that has not received much public discussion.*

**Answer #1.** Public Law 83-280 by its terms only authorizes state jurisdiction within "Indian country." See 18 U.S.C. Sec. 1162; 28 U.S.C. Sec. 1360. Therefore, if the State of Alaska is denying that Indian country exists outside the Metlakatla Reservation, it must also be denying that state jurisdiction is authorized on those lands under P.L. 83-280. State jurisdiction may exist on those lands for other reasons, but not because of P.L. 83-280.

**Question #2.** *In Chapter 2, the report suggests that in order to "avoid ongoing and costly litigation, State-Tribal relations should be characterized by respect, mutual recognition, and partnership."*

**Answer #2.** The Commission's unanimous position is that State-Tribal relations in Alaska and the rest of our country should be based on mutual recognition and respect. See *Roadmap for Making Native America Safer*, Ch. 2, pg. 47. Unfortunately, the State of Alaska instead tends to favor legal and policy positions that marginalize the potential for Alaska Native Nations to make and enforce their own criminal laws to prevent, deter and punish violent crime. The enclosed essay by Chairman Eid from *Alaska Dispatch News*, dated June 21, 2014, highlights some of the Commission's findings and recommendations on these important issues.

The Commission respectfully encourages Governor Parnell and his administration to reassess their current preference for litigating with Alaska Native Nations instead of cooperating

more closely with them. Alaska Natives, after all, are also Alaska state citizens. Seemingly open-ended litigation over these issues by the State of Alaska, the Commission noted in its report, undermines public safety. It makes it more rather than less difficult for different jurisdictions to work together to protect lives and property. In the lower 48, where tribes and local governments frequently set aside their differences and enter into inter-governmental agreements for criminal justice – in many cases, simply “agreeing to disagree” and setting aside the jurisdictional questions for another day – the two sovereigns have made substantial progress in interdicting crime, making arrests, and bringing offenders to justice. The result is increased confidence in criminal justice overall, the real benefit of crime deterrence, and increased support for the victims of crime. Alaska is currently on the wrong path, but it does not have to be this way.

**Question #3.** *The State of Alaska's current approach to solve these issues, as was noted in the report, has been to increase funding for VPSOs. In addition to this, the State has also launched a public campaign known as Choose Respect. Once a year communities across Alaska and in Washington D.C. rally in an effort to raise awareness about domestic violence issues.*

*a. In your time in Alaska, did you identify tangible results from either of these efforts?*

**Answer #3a.** While the Alaska Attorney General made mention of the Governor’s “Choose Respect” Initiative in his February 1, 2013 letter to the Commission, the Commission itself did not see or hear of any change in the reports of domestic violence or sexual assault in Alaska Native communities as a result of the initiative. Raising awareness about domestic violence is certainly a worthy goal, particularly given that reported rates of domestic violence in Alaska are as high as 10 times the national average, according to the Commission’s report.

*b. Do you think that the Governor's "Choose Respect" campaign does anything to strengthen 'State-Tribal' relations? What could work better?*

**Answer #3b.** Without knowing of any tangible result of the campaign, beyond the youth rallies and marches, the Commission is unable to speculate on its potential for success. It is clearly a worthwhile and laudable goal, and the Commission supports that goal wholeheartedly. Yet according to the most recent Legislative Report on the “Choose Respect” campaign, the campaign itself does not appear to include any direct outreach to or partnership with Alaska Native Nations. While the campaign would increase VSPO numbers and data collection, it relies almost exclusively on existing state agencies and community non-profit entities to implement its programs and channel its expenditures. In sum, the campaign is aimed at promoting public awareness, which is a good and worthwhile objective, but does little to “strengthen ‘State-Tribal’ relations” because the State still refuses to recognize and respect Alaska Native Nations on a government-to-government basis.

The Governor’s office should consider consulting with tribal governments to discuss ways that the campaign can channel expenditures, program assets and goals, and overall efforts

to the tribal government entities that can implement locally-based preventive programs, education, wrap-around services, and increased enforcement and prosecution. The campaign should also encourage appropriate inter-governmental agreements with Alaska Native tribal councils to jointly implement some of the campaign elements on a government-to-government basis with the State of Alaska - sharing resources, accountability and responsibility.

***Question #4.** In your opinion, would arming Village Police Safety Officers with guns enhance village public safety?*

**Answer #4.** Arming VPSOs would enhance not only Village public safety, but the safety of the VPSOs themselves. Alcohol and controlled substances are associated with a high proportion of offenses committed in Alaska Native communities, and many households and offenders already possess firearms. This volatile combination makes it very risky for law enforcement officers to respond to calls for service.

The two VPSOs killed in the line of duty (Thomas Madole on 3-19-2013 and Ronald Zimin on 10-22-1986) were killed by gunfire. Both VPSOs are honored on the National Law Enforcement Memorial in Washington, DC. This pattern of officer deaths is hardly unique to Alaska Native Villages. Three-quarters of all law enforcement officers killed in the line of duty in Alaska were killed by gunfire.

Both houses of the Alaska legislature recently voted to have VPSOs be armed, and this legislation has been sent to the Governor for his signature. The Indian Law and Order Commission strongly supports this legislation. The bill sponsor's statement puts it well: "VPSOs work often without backup in remote locations where a call to the State Troopers can mean hours before backup arrives. I believe my fellow legislators will agree that it is not reasonable to continue to ask our VPSOs to walk unarmed into situations that pose obvious dangers. It's my hope that arming these first responders will have a deterrent effect that makes not just the officers but whole communities safer."

***Question #5:** Are you aware of any existing models that have been successful in banning or limiting the importation of alcohol/drugs in populations seeking to reduce crime related to alcohol, which Alaska can look to as an option to address this problem?*

**Answer #5.** Best practices in this area appear to be lacking. The experience to date suggests that tribal laws banning or limiting alcohol possession, distribution and "bootlegging" are only as good as their practical enforcement, which is often severely deficient. Native Nations in the lower 48 have the option under 18 U.S.C. § 1161 to opt-out of federal liquor control laws applicable to Indian country. Consequently, some Indian reservations are considered "dry," because sale and/or possession of alcohol is prohibited under federal and tribal law, while others allow possession and/or sale of alcohol. Although the causal relationship is unclear, there is no evidence that tribes prohibiting possession and/or sale of alcohol experience lower levels of

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substance abuse and crime. Moreover, where alcohol is prohibited on reservations, nearby off-reservation communities often become places where reservation residents congregate to purchase and abuse alcohol, making local roads dangerous. Thus, the Indian Law and Order Commission did not recommend reintroducing federal laws that would ban all introduction of alcohol onto reservations.

With respect to Alaska, the Commission found evidence that illegal shipments of alcohol and controlled substances are having extremely harmful effects in Alaska Native communities, and federal and state officials are largely ineffective in stopping such traffic. For example, the Captain of the North Slope Borough Police Department explained how bootlegging and illegal drugs are the scourge of Barrow, where alcohol can be imported, subject to supposedly strict regulations and restrictions. Most alcohol comes in through the U.S. Postal Service at the local post office, and in air charters, which do not have inspections, examinations, or dog sniffers (or metal detectors, no less backscatter X-ray machines). People are flying in and out of Barrow all day long (weather permitting) with boxes, bags and containers. Sexual assaults are frequently the result of binges with the alcohol smuggled in, consumed without limit, with the victims often unconscious or heavily intoxicated during the attacks. More enforcement resources are definitely needed to intercept and seize illegal shipments of alcohol and controlled substances, along with building Alaska Native tribal capacity to control alcohol and drug abuse at the local level.

The Commission stands ready to continue working with the Committee to implement the recommendations of the *Roadmap*. It is imperative that we continue to work together to make Native American and Alaska Native Nations safer and more just for all U.S. citizens. Your leadership and that of your colleagues is making a positive difference and is greatly appreciated by all of us in the field. Please let us know how we can be of continued service.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy A. Eid". The signature is fluid and cursive, with a large initial "T" and a long horizontal stroke at the end.

Troy A. Eid  
Chairman

FOR THE INDIAN LAW AND ORDER COMMISSION

# Alaska Dispatch News

Published on *Alaska Dispatch* (<http://www.alaskadispatch.com>)

[Home](#) > Reasons to be optimistic about Alaska's public safety crisis

Troy A. Eid  
June 21, 2014

## **Main Image Caption:**

OPINION: We members of the Indian Law and Order Commission keep returning to Alaska because we're convinced that the lack of accountability for criminals who keep harming women and children in rural and urban Alaska is something Alaskans can and will fix.

Entering a taxi cab at the Ted Stevens Airport, the driver asks: "How much longer are you going to keep coming to Alaska?" A cabbie in Fairbanks said the same thing to me last March.

It's refreshing how many Alaskans have heard about the Indian Law and Order Commission and its recent report urging the State of Alaska, the Federal government, and all 229 Alaska Native Nations to work together to make Alaska safer and more just.

The report of the all-volunteer, bi-partisan commission, "A Roadmap for Making Native America Safer," highlights Alaska's violent crime epidemic. This includes a domestic violence rate 10 times the national average and sexual assault rates 12 times higher. It's a crisis in the Bush, but also in Anchorage and other cities where families flee when village life becomes unbearable. Where criminals keep victimizing women and children because they were never held accountable for their crimes back home.

My fellow commissioners and I keep coming back because we're convinced this lack of accountability is something Alaskans can and will fix.

Admittedly, the commission's report concluded that Alaska's current policy is on the wrong track. Many State policies marginalize the potential of Alaska Native Nations to prevent and combat crime in their own communities.

Instead of respecting Tribally based sovereignty and self-government as other states routinely do, Alaska tries to police and judge Native citizens from afar using too few people and resources: Colonialism on the cheap.

If we've learned anything from the Big Government policy failures of the 1960s and '70s, it's that federal and state leaders must help locally elected governments build their own crime-fighting and prevention efforts, not the other way around. Crime control strategies need to be locally tailored and enforced -- and court decisions given full faith and credit by the State -- to be effective.

Yet precisely the opposite often happens in Alaska, which has the nation's most centralized law enforcement system. The commission found, for example, that in 75 Alaska Native Nations, the State asserts exclusive criminal jurisdiction but routinely provides no law enforcement services at all.

Elsewhere there aren't enough Village Public Safety Officers (VPSOs) and other first responders on the ground. The lack of basic infrastructure supporting them in the bush is inexplicable. It's been more than a half-century since statehood, yet there's just one women's shelter in any Alaska Native village and no shelters where children can escape their perpetrators.

Nor should Alaska Troopers -- among the finest public servants anywhere -- be fairly expected to work miracles from afar. When the commission visited the Village of Tanana in October 2012, the Tribal Council told us someone would probably get killed there unless the State helped them boost the capacity of the Village's court system and supported local policing and family protective services. As we talked that day, a repeat violent offender freely roamed Tanana's streets despite Tribal court restraining orders against him, orders the State refused to recognize.

The tribal leaders with whom we met in Tanana and many other villages demanded swift State action so they could do more to help themselves. They wanted recognition and respect, not a handout. They need Tribally based police and courts with the capacity to enforce the civil rights of all Alaskans, Native and non-Native alike.

This same approach already works well in much of the Lower 48, which is why Congress last year recognized Tribal court jurisdiction there by enacting the Violence Against Women Act (VAWA). VAWA permits Native Nations to enforce laws criminalizing domestic violence over all citizens with Tribes' territories so long as their courts enforce defendants' constitutional rights.

This is the same Tanana where Sergeant Scott Johnson and Trooper Gabe Rich were brutally murdered in Tanana last May 1st while responding to an earlier threat against an unarmed VPSO. In the same state where violence in many villages has decimated the citizenry so that average life expectancies are closer to Haiti's than the rest of the United States.

So why are we so bullish that times are changing for the better for Alaska Natives and indeed all Alaskans?

It isn't just a growing awareness of the problem, necessary though that is. Plenty of Alaskans, including those who email me daily, are saying that enough is enough.

This past February, Alaska's senior U.S. Senator, Lisa Murkowski -- who co-sponsored VAWA -- declared it now needs to be extended to Alaska Native Nations. Both Alaska's Senators are now vowing to make that happen.

This could be a watershed. Recognizing Alaska Native Nations' power over all citizens to bring perpetrators of domestic violence to justice will, over time, confirm and accelerate the larger trend in Alaska and across the country to help Native Nations make and enforce their own laws. Where that's already happened elsewhere, the commission documented that violent crime rates have gone down. The same can happen in Alaska.

In recent years, the State has insisted that Alaska Native Nations lack any territorial sovereignty, or legal control over their lands -- a conclusion contradicted by Federal law, as the commission's report and previous studies by Alaska's own experts make clear. Extending VAWA to Alaska, however, will make it essential for the State and Alaska Native villages to determine jointly -- on a government-to-government basis -- the precise boundaries in which tribes' have civil and criminal jurisdiction to make and enforce their own domestic violence laws over Native and non-Native people living and working there.

This line-drawing can happen in many different ways -- by negotiating inter-governmental agreements between Native Nations and the State, for example -- and need not replicate the Indian reservation system in the Lower 48, as is sometimes mistakenly suggested.

Once territorial lines are drawn for VAWA purposes, they can be enforced not by State fiat or decree, but through a process of give-and-take based on mutual recognition and respect. Both sides will have a seat at the table. State policy will begin to shift toward building more Tribally based capacity for self-governance in order to keep the peace and respect everyone's civil rights.

Looking forward, as such jurisdictional lines are drawn between the State and Alaska Native Nations as VAWA requires, those same territorial boundaries can be used for other public safety purposes -- to combat the scourge of drugs and alcohol and host of other ills plaguing the bush and radiating into the cities.

Thanks in part to VAWA, we believe a much brighter future may be replacing the old Colonial model and the violence it begets, a future worthy of Alaska's independent heritage and values. This future will be built the Alaska way -- not imposed by outsiders. But it can and we believe will be accomplished.

It will be a privilege to keep coming back to Alaska and see how much you will keep achieving by working together.

**Troy A. Eid** is the former U.S. Attorney for Colorado under President George W. Bush and chaired the Indian Law and Order Commission.

*The views expressed here are the writer's own and are not necessarily endorsed by Alaska Dispatch News, which welcomes a broad range of viewpoints. To submit a piece for consideration, e-mail [commentary\(at\)alaskadispatch.com](mailto:commentary(at)alaskadispatch.com) [1].*

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