

the standard." It's a reality of the current limitations in Indian country, one in which we are often found looking for stopgaps to help address violence in our communities until we can find solutions that are not only **sovereign** but also **practical** and **sustainable**.

But does the western prosecution approach fit into the tribal justice approach? Is it better for our tribal legal systems to assimilate to western standards? Is it a reality that we have to accept? Or is it for our tribal prosecutors or our law-trained American Indian and Alaska Native sisters and brothers to use the tools they received in their legal training toward a bigger goal: strengthening the sovereign response? Can we do both? Are both beneficial? These are questions we have to explore.

## A Tribal Perspective on VAWA 2018

### Extending the Same Protections for Alaska Native Women

By Michelle Demmert, Chief Justice of the Central Council of Tlingit and Haida Indian Tribes of Alaska Supreme Court

*The time is now to end the confusion and remove the dangerous jurisdictional maze preventing Alaska Native villages and tribal courts from fully protecting Native women.*

We have seen the disproportionate representation of Alaska Native women in domestic violence, sexual assault, and trafficking crimes. While the state of Alaska has been responsible for the investigation and prosecution of these crimes within the state of Alaska, their track record demonstrates a lack of engagement and follow through that continues to create one of the most dangerous situations for Native women in the nation.

Alaska Native women need change now. Local control for local solutions with resources is key to improving the situation for our Alaska Native brothers and sisters. There is an opportunity to make this change in the reauthorization of the Violence Against Women Act of 2018, H.R. 6546.

#### Background of Alaska Native Jurisdiction

The situation in Alaska is different than all of Indian Country. Alaska tribes have no treaties, which often define important governmental authority and territorial jurisdiction. To understand why there are no treaties and how we got to this situation today in Alaska requires a short explanation of important historical events.

The Alaska Territory was purchased by the United States from Russia in 1867. Three short years later, Congress prohibited the President from "treating"

#### Conclusion

Until we have those sovereign and sustainable solutions, the Tribal SAUSA program may prove to be a significant stopgap in addressing violence in our communities. There are important questions around how this program will be relaunched by OVW. However, regardless of how those questions are answered, it is critical to evaluate whether or not the program fits into our sovereignty framework and whether or not the program represents a priority that we view as being part of long-term strategic reform efforts.

with tribal governments. Alaska Natives were virtually left alone and were free to live their cultural life with few interruptions until natural resources were found on their land and the United States found a pressing need to resolve land claims. Since the purchase of Alaska, there were Executive Order Reservations within Alaska (estimated at over 150), and Native townsites which were set aside for the benefit and use of "Indians" or "Eskimos"; however, with the discovery of oil, the federal government wanted to put an end to any question of land status for natives.

**The Alaska Native Claims Settlement Act (ANCSA)** came at the tail end of the Termination Era of federal Indian policy (Termination Era mid-1940s to mid-1960s) and came to fruition after being in the works for several years. The Termination Era was designed to abolish tribes and assimilate individual Indians. After ANCSA was enacted, the only remaining Alaska reservation is the Annette Island Reserve in Southeast Alaska. This exception was consistent with Public Law 280, which allowed the federal government to transfer the specific criminal authority it had over Alaska tribes to the state creating the current maze of state-tribal concurrent criminal jurisdiction, with the exception of the Annette Island Reservation, which is the village of Metlakatla.

ANCSA created a new and novel approach to tribal land tenure. Rather than recognize sovereign tribal lands, ANCSA created for-profit corporations and transferred tribal lands in fee to these entities to manage more than 40 million acres of land. ANCSA divided the state into 12 regional corporations and over 200 village corporations that would identify with



their regional corporation. Many of these villages had corresponding tribal village governments but, with the passage of ANCSA, no meaningful land base. As a result, unlike most court systems that have defined territorial jurisdiction and personal jurisdiction, Alaska tribal courts generally exercise jurisdiction through tribal citizenship, and not through a geographic space defined as "Indian country" because of ANCSA and in part due to *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), a case in which the U.S. Supreme Court held that with the exception of the Annette Island Reservation, there is virtually no Indian country in Alaska.

**Indian country** defines a confined area of territorial jurisdiction tied to a tribe. The term "Indian country" means "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have

not been extinguished, including rights-of-way running through the same." Most grants and federal programs reference eligibility of "Indian country" for certain programs. While federal programs have expanded their definitions for Alaska Native tribes to take advantage of most programs as "dependent Indian communities," the lack of true legally defined "Indian country" continues to create a dangerous situation in Alaska and for tribal governments to protect their women and children.

In addition, without the ability to tax, without Indian gaming, and without consistent and predictable tribal court appropriations, Alaska tribes lack the revenue typically available to other tribal governments to fund and sustain essential government infrastructure and services such as a court or police force. All Alaska tribes are in a similar position, and must find innovative ways to raise governmental revenue and to leverage other resources to sustain their tribal courts, public safety, and victim services. Because of this resource dilemma, available grants for developing and sustaining programs are incredibly important for Alaska tribes. Although, in a PL 280 state, Alaska tribal communities should have access to state justice services. However,

those services are centered in a handful of Alaskan urban areas, making them often more theoretical than real. As mentioned, many communities have no law enforcement, no 911, no state official they could conceive of raising a complaint to, given the separation of geography, language, and culture. Also, because Alaska is a mandatory PL 280 state and because of other factors previously discussed, jurisdictional issues in Alaska create extremely dangerous conditions for Alaska Native women living in our small, remote communities.

**Congress in part created this crisis and can also resolve it by amending federal Indian law to address this injustice and reflect the reality that tribal governments are the ones present in villages.**

Equally important is the reality that as sovereigns they have the right to protect women and children. Such a legislative fix is within reach and only requires the will of Congress to act and begin to address this crisis. The Tribal Law and Order Act Commission, specifically, recommended a legislative fix for the Venetie decision as follows: amending the definitions of "Indian country" to include Alaska Native allotments and Native-owned townsites; supporting land into trust applications by Alaska Native tribes; channeling more resources directly to Alaska Native tribal governments for the provision of governmental services; and supporting Alaska Native tribes and villages with the exercise of criminal jurisdiction within their communities. Such a federal amendment could be inserted into pending legislation such as the Native Youth and Tribal Officer Protection Act, the reauthorization of Tribal Law and Order Act, or the reauthorization this year of the Violence Against Women Act. The reform could also be accomplished by amending other federal laws such as the statute defining Indian country, or accomplished through other changes in federal policy allowing the Department of the Interior to accept land into trust for all federally recognized Alaska tribes.

Congress has a unique opportunity to fix the dangerous situation that our tribes are faced with and to correct these shortfalls in the law. Alaska Native villages are confronting head-on a civil and human rights crisis reflected in the disproportionate disappearances, murders, human trafficking, and unconscionable acts of ongoing violence of women and girls. We must look deeper and focus reform efforts on fundamental changes required to allow Alaska Native villages to protect our women and girls. We can no longer wait. The most comprehensive bill pending is H.R. 6546 Violence Against Women Reauthorization Act of 2018, and a few provisions could be added as suggested below.

**With Respect to Alaska:**

- Add to "Findings" Section 901: "(6) restoring and enhancing local, tribal capacity to violence against women provides for greater local control, safety, accountability, and transparency. (7) in states with restrictive land settlement acts such as Alaska, "Indian country" is limited, resources for local tribal responses either nonexistent or insufficient to meet the needs, jurisdiction unnecessarily complicated and increases the already high levels of victimization of American Indian and Alaska Native women. According to the Tribal Law and Order Act Commission Report, Alaska Native women are over-represented in the domestic violence victim population by 250%; they comprise 19% of the state population, but are 47% of reported rape victims. And among other Indian Tribes, Alaska Native women suffer the highest rates of domestic and sexual violence in the country."
- Adopt a jurisdictional fix to the Indian country issue, and work closely with the Alaska Delegation and the Alaska Native Women's Resource Center to ensure that provisions added will address the unique needs of Alaska Native tribal governments. A legislative fix to recognize a tribe's jurisdiction equivalent to the ANCSA Village and including to state, specifically, that 18 USC §2265(e) (Full faith and Credit provisions of the VAWA) applies to all Alaska tribes without respect to "Indian country" or the population of the Native village associated with the tribe. This issue is especially important with the June 29, 2018, Withdrawal or Solicitor Opinion M-37043, "Authority to Acquire Land into Trust in Alaska."
- Create a Pilot Project for Alaska so that more than just one of the 229 federally recognized tribes can exercise Special Domestic Violence Criminal Jurisdiction. The pilot phase could be like the SDVCJ in VAWA 2013, could require application, participation in a similar Intertribal Working Group to the SDVCJ, involve a planning phase for the development of written tribal laws and ordinances, development of enforcement mechanisms, and tribal court structuring. Upon the conclusion of the planning phase the tribe would seek plan certification from the Department of Justice like the SDVCJ Pilot Phase.