

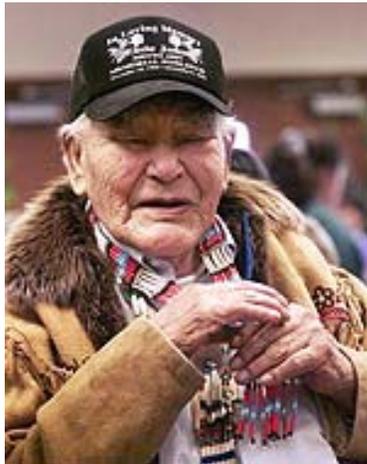
Alaska Tribal Court Development

Rural Providers Conference, Nome 2015



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".....Same thing with the tribal court. That came in long before white people. The court brought everything out in the open, before the people. They talked to the person making trouble right in front of him. They just talk. As peaceful as they can. The Indian way is to have respect for one another."



Traditional Chief Peter John

Minto 1900 - 2003



Village councils played a major role in resolving disputes in rural Alaska from the early 20th century through the 1950s and into the 1960s. When State Magistrates assumed the primary judicial role in bush Alaska.

With the passage of the Alaska Native Claims Settlement Act in 1971, two things were left unclear:

The existence of tribes and the extent of their jurisdiction

Adequate provision for Alaska Native hunting and fishing



1975: Indian Self-Determination and Education Assistance Act
– Requires federal agencies to allow tribes to administer various federal Indian programs under the Bureau of Indian Affairs and Indian Health Service.

1978: Indian Child Welfare Act:

- Designed to stop the loss of Native children by being taken and placed in non-Native homes
- Specifically recognized Alaska Native Villages as tribes
- Opened opportunity to tribes as interveners in ICWA cases
- Opened opportunity for Alaska tribes to initiate tribal child protection cases



Multipronged strategy to prove that tribes survived ANCSA and that they had jurisdiction

- ◆ **Develop tribal courts to protect children**
- ◆ **Advocate to include Alaska Natives, in all legislation**
- ◆ **Apply for IRA constitutions for all tribes**
- ◆ **Publish tribal alcohol ordinances/federal register**
- ◆ **Litigation**



- ◆ **1982 : First tribal intervention in an ICWA case in Alaska– (In re J.R.S.) Chalkyitsik.....State Court**
- ◆ **1984 : First time a tribe in Alaska took formal custody – Stevens Village.....Tribal Court**
- ◆ **1984 : TCC started providing tribal court training for tribes in the region.**

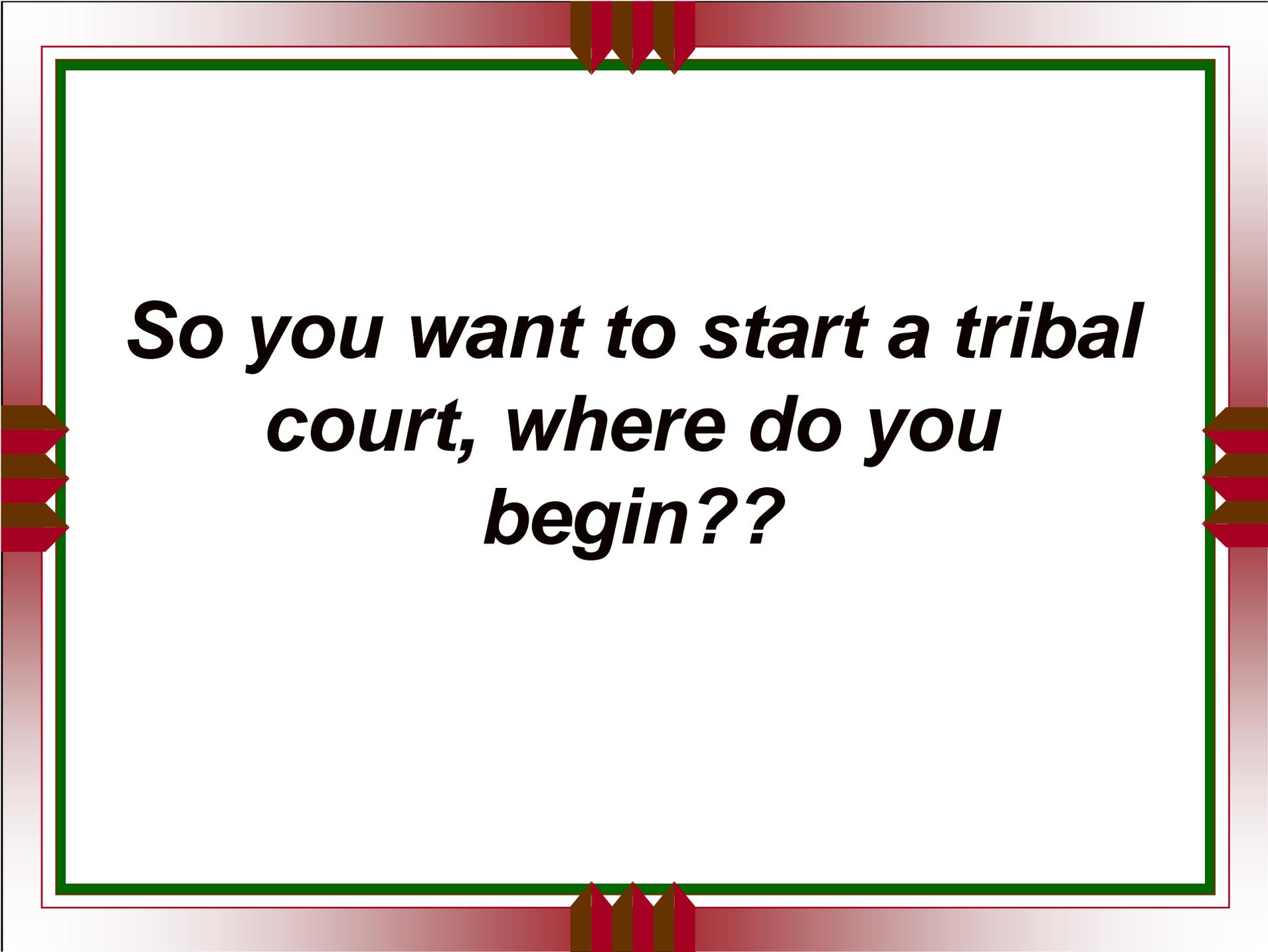
During the 1980s, the tribes in the TCC Region used their tribal councils as the court, using panels of at least 3 tribal council members. Some tribes had some simple tribal court codes, others did not. TCC hired a full time tribal court facilitator to give technical assistance to the courts in the Region.

1990s

Tribal courts in the TCC Region continued to conduct child custody and child protection cases, even experiencing some cooperation from state agencies. From somewhere in the 1990s, the number of children in custody began to run around ½ in tribal custody, and ½ in state custody. (currently around 144 child protection cases in tribal courts in the TCC region and 180 in state custody).

Some tribal courts in the TCC region were/are also addressing misdemeanors in a civil manner, domestic violence, banishments, trespass, animal control, alcohol regulation, status offenses, etc.

During the 1990s, some tribes began separating the councils from the tribal courts and developing more detailed tribal codes



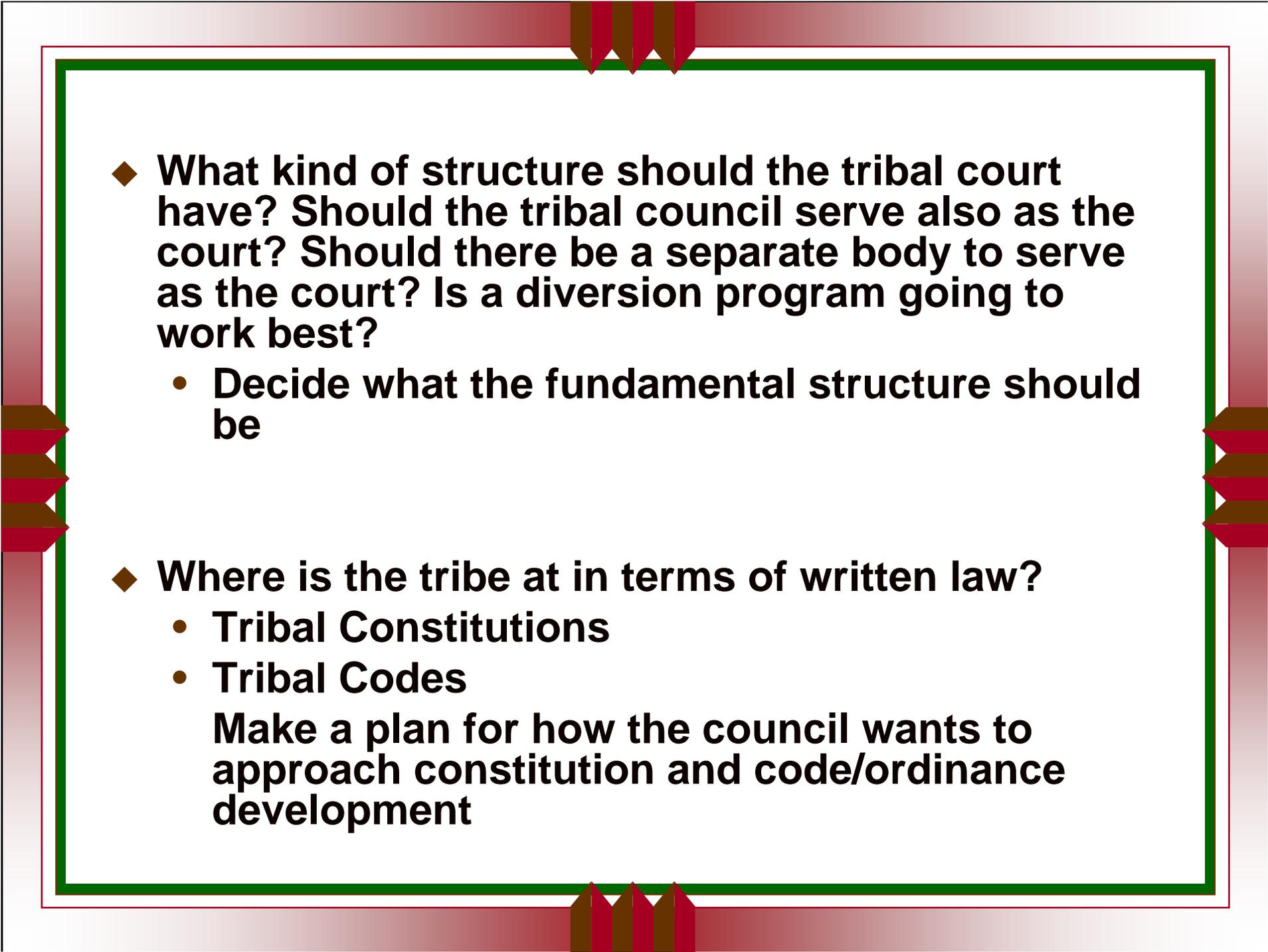
***So you want to start a tribal
court, where do you
begin??***

Evaluating the Current Situation



- ◆ **What problems in the village need to be / should be addressed by a tribal court? What subjects should the tribal court address?**
 - **Identify problems**
 - **Identify what subjects the tribal members will support the court in dealing with**

- ◆ **What are the resources available to work with?(human resources, financial resources, support services)**
 - **Inventory resources**

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- ◆ **What kind of structure should the tribal court have? Should the tribal council serve also as the court? Should there be a separate body to serve as the court? Is a diversion program going to work best?**
 - **Decide what the fundamental structure should be**

 - ◆ **Where is the tribe at in terms of written law?**
 - **Tribal Constitutions**
 - **Tribal Codes**

Make a plan for how the council wants to approach constitution and code/ordinance development

Goals

Develop a tribal court to deal with....

Expand our tribal court to....

Revise our tribal court to....

Maintain our tribal court by.....



Common Tribal Court Structures



Structures of Alaska Tribal Courts

- **Tribal Councils as Tribal Courts**



- May use only officers of the council or certain members
 - Qualifications for tribal council may be an issue if felonies are not addressed in the qualifications for tribal council positions
- Often using a different quorum number (when panels of judges are used) than for regular council business
- Tribal council members plus a few non-council members added to make a ‘pool’ of judges



- **Separated tribal courts**
 - Tribal judges do not sit on the tribal council
 - Appointed by the council or elected by tribal members
 - May be used to provide a check and balance on the tribal council, for election disputes for example
- **Single judge courts**
- **Specialty courts such as youth courts**
- **Inter-tribal courts**
- **‘Visiting’ judges**

- ◆ **Appellate court structures are in place in all tribal court in the TCC region, but are rarely utilized**
 - **Highly recommended that each tribal judicial system include an appellate court**

- ◆ **Most are courts of ‘general jurisdiction’ but some tribes have placed jurisdictional limits on their tribal courts**



Advantages of using multiple judges to hear cases

- ◆ **When multiple judges hear cases, parties tend to respect their decisions more**
- ◆ **Shares the responsibility for decision making**
- ◆ **More ideas for solutions, more ideas for questioning parties**
- ◆ **May be closer to traditional ways of decision making**
- ◆ **Tends to avoid the single judge/robe concept associated with adversarial style courts**



Disadvantages of using multiple judges to hear cases

- ◆ Sometimes hard to get a 'quorum' of judges to hear cases
- ◆ More people to train as judges if using more than one judge to hear cases
- ◆ Harder to find multiple people in the village without conflicts of interests with cases
- ◆ More chances of breaches of confidentiality





Justice Circle Process

- ◆ **Opening the circle**
 - A prayer, words from an Elder, or any other meaningful way to signal the opening
 - The Circle leader describes what the situation is and asks that participants observe the rules of the Circle

- ◆ **Phase one: Passing a talking piece around several times**
 - Talking about the situation
 - Giving information about the situation
 - Describing feelings about the situation
 - Giving advise or counseling to the offender and victim if the victim is participating in the circle

- ◆ **Phase two: Passing a talking piece around several times**
 - Talking about the solution
 - Coming to consensus on the sentence

- ◆ **Closing the Circle**
 - May be a prayer, words from an Elder, the Circle leader may offer closing words, or any other meaningful way to signal the closing



Funding.....



- ◆ **The Bureau of Indian Affairs does not provide tribal court funding in P.L. 280 states. There is a major lobbying effort to change this.**

- ◆ **The Department of Justice does provide competitive grant funding through their CTAS grant program.**
 - **3 year grants for tribal courts, tribal police, tribal youth courts, substance abuse programs, victims of violence, etc. RFP comes out in the winter, grants are awarded to begin Oct. 1.**

- ◆ **Grants.gov, private grants, Casey Foundation, possibly limited funding from the State of Alaska through the Division of Juvenile Justice or other sources.**

Funding picture for tribal courts in the Tanana Chiefs Conference Region

- ◆ **Very few courts have grant funding....**
- ◆ **All of the tribes use their tribal family youth specialist (ICWA worker) as the tribal court clerk**
- ◆ **Some tribes give judges stipends for hearing cases, typically out of their aid to tribal government funding**
- ◆ **Judges volunteer their time for hearing cases in most tribal courts**
- ◆ **Tanana Chiefs Conference gives free technical assistance for all tribal courts in the Region in code development and court facilitation.**

In summary.....

- ◆ **Determine why the tribe wants to start a tribal court, what kinds of cases does it want to hear? Cover the subjects in the tribal codes....**
- ◆ **What tribal court structure would work best? Describe it in a judicial code....**
- ◆ **Assess available resources in the village**
- ◆ **Know where your available resources are outside your village**
- ◆ **Start as simple as possible.....**

Good Tribal Governance starts with aVision

We envision our village as safe, healthy and economically sustainable. Our culture is practiced and respected. In our village people work with each other for the good of the community, communicating openly and honestly. The relationships between all of the entities in the village are positive and we have built great bridges to those governments, organizations, and entities outside our community. We have a fair and stable tribal government that is well organized, and has good plans for going forward. We have the resources and services that promote the well-being of our community.

It takes planning and commitment to get there!!!!

