

## Transcript of Alaska News Nightly, on APRN for October 15, 2003.

**Anchor:** One of the largest issues confronting AK Natives at this year's Alaska Federation of Natives convention is Senator Stevens' Call for some mechanism to combine and streamline funding for Alaska Native services. Earlier this year, Stevens told native he was going to wait till January to change the system of interlocking programs, which serves the State's native populations. He wants Natives to put forth their own proposals for regionalizing services. Johanna Urich reports that there will be a lot of time set aside at the convention to talk about regionalization but so far, few innovative approaches have come forward.

**Urich:** Since last year, when Senator Ted Stevens called for regionalizing AK Native programs, the competition for federal funds has gotten worse. Not only is president bush pressing a costly war abroad, but the State has decided to balance its books by using more federal dollars. Trefon Angasan, co-chair for the AFN says that this competition for funds is what lies behind Sen. Stevens' rider, transferring money from tribal courts, to the State's public safety programs.

**Angasan:** That's one way that we think the State plans to narrow the budget down, by competing with the Alaska Native organizations for funds from Washington.

**Urich:** Senator Stevens has said that if the tribes don't come up with a plan to more efficiently use federal tribal dollars, he will. Initially tribal advocates said that the Senator was anti-tribes. But those concerns are beginning to fall by the wayside, as Native leaders close ranks in support of maintaining tribal status. But so far, Angasan says there is no major effort to promote any single approach to regionalizing funding.

**Angasan:** People are holding the cards pretty close to the vest, its really a political issue, more so than anything else at this point.

**Urich:** The regional non-profit corporations and native associations which have taken a position on regionalization, have tended to support the status quo. The Bristol Bay Native Association is a significant exception. BBNA is pushing a block grant approach for all the programs. Terry Hefferly, chief operating officer with the association, points to how his organization has managed to cut over 30% of its administrative costs by combining funds from federal programs and, he says, has rolled that savings back to its villages. He says a similar approach should be adopted statewide, and expanded to include not only native funds, but a lot of the federal past-through programs.

**Hefferly:** Perhaps money from all the various sources, whether it be environmental protection, or department of justice, or department of education or department of labor, U.S. fish and wildlife service, whatever the source would be, we might be able to reduce them to four or so block grants to the tribes, and they would only have to make 4 reports over the course of the year rather than reports on every program from whatever funding source it happens to come from.

**Urich:** Selling this program statewide may be tough. Not only are entrenched bureaucracies like the Bureau of Indian Affairs threatened by such a blanket approach, but those tribes who have

contracted directly with the federal government worry that they may lose out. Lynn Carlson with the Port Hayden tribal council fears, they could lose autonomy and money.

**Carlson:** If we went back to regionalization where the money was forced back into a regional, we would be forced back under that umbrella. And right now there is no assurances that we will receive the same amount of funding that we receive right now, or the freedom.

**Urich:** One of the underlying issues in this debate, is the huge migration of native people from rural Alaska to Anchorage and surrounding areas. Hefferly says that these are mostly young families, moving to the city to get access to better schools and jobs. The Cook Inlet Tribal Council in Anchorage is having a hard time keeping up with the demand for services in its area. The problem is aggravated by BIA formulas which use outdated census data from the 1990s. There will no doubt be a lot of jockeying around regionalization at AFN this year. All involved remember the last time the Senator asked the Native community to come up with the solution to centralized programs. The inability of the Native tribal and corporate interests to work out a statewide plan to manage the Alaska Native Hospital led to the creation by Stevens of the Alaska Native Health Consortium, and as Hefferly points out, Stevens did so using riders on funding bills and circumventing the normal legislative process.

**Hefferly:** Its only an Alaskan issue, and as such, if the Alaska delegation agrees to it, the United States Senate, as a courtesy, will just allow it to become law, that's the way they operate.

**Urich:** After the Alaska Federation of Native debate regionalization, the Alaska Inter-Tribal Council will take up the same issue at its meeting following the AFN convention. I'm Johanna Urich.

**Anchor:** Earlier today, I spoke with Anchorage Attorney Don Mitchell regarding funding for tribal courts and the legal status of Alaska Tribes. Mitchell is the former Vice President and General Counsel for AFN. In recent years he has represented the State of Alaska on tribal status issues, and he represented Senator Ted Stevens during the Supreme Court litigation of the Venetie case. I asked him if he agreed with Senator Stevens taking Justice Department funding for tribal courts away from tribes and redirecting those funds to the state. His response involves a legal interpretation that looks at issues much larger than consolidation of funding.

**Mitchell:** Speaking only for myself on this, the giving of funding from the federal government to tribal courts and police, which was something that was done without any real thinking about it on the part of Congress, presupposes that there are tribal courts that in fact have some sort of legal jurisdiction that they need to be exercising, and it presupposes that there are tribal governments who can provide legal jurisdiction to police officials who are running around apparently doing whatever they are doing including, I guess uh, imposing criminal penalties and arresting people, i don't know, that would be an interesting question to find out what kinds of activities tribal police are doing with the federal funding they have gotten in the past. But if there is no jurisdiction, uh, then there are no entities which the federal government should be funding.

**Anchor:** Regardless of federal recognition though, there's no denying that there are tribal governments in these places, and they have been there for hundreds of thousands of years, and they have always had a traditional system of keeping some sort of civil behavior in their communities. So the easiest way to support that would be to continue with the system that is currently in place rather than trying to switch to a system of magistrates flying in and out of communities and the state which is already overtaxed as far as budgetary concerns, and trying to let the state take over this jurisdiction.

**Mitchell:** Well that's a policy argument that in fact if presented to Congress, for all I know, may be persuasive, but that has nothing to do with what the legal situation presently is. I would say with respect to your policy argument that of course there are tribes in Alaska, but they are tribes in an ethnological sense, not a legal sense. Everyone who is involved in the law in this area, including the attorneys who represent the various native organizations that feel so passionately about this issue, everyone would agree that one of the intellectual leaders of lawyers who think about Indian law matters is a fellow by the name of Felix Cohen, who was the chief lawyer on Indian matters in the Department of the Interior for many years in the 1930s and 1940s and he wrote a famous text book about all this and one of the first things he said was that it is very important to always keep in mind that the single word tribe can have two distinct meanings. One of those meanings is legal, which is, has Congress designated a group of native Americans as a tribe and who that designation conferred on them a certain political status. That's one definition. The other definition is an ethnological definition. As a matter of reality on the ground, are there a group of folks who are descendants of the nation's indigenous population, who live together cohesively, and have had systems of dispute resolution that they have worked out on their own and the answer to that, in Alaska, is of course. But that has nothing to do with the first definition of tribes.

**Anchor:** Would you say based on that statement that federal recognition of tribes has to be revisited or redecided before we can even look at this tribal courts issue.

**Mitchell:** That certainly would be my legal view. There was an attempt, in the Department of the Interior back in 1993, to basically have the secretary of the interior confer this political status that I've been talking about, on all residents of all native villages, and on the members of some native organizations. This was the famous, or now famous Ada Deer list in the federal register. The trouble with that in my view, is that this is a status that only Congress can confer, and Congress can delegate its authority to do this to the Secretary of the Interior but there has to be a federal statute to delegate that authority, and there never was one. And so therefore the attempt by the Bill Clinton, Bruce Babbitt interior department back in 1993 to do this was itself unlawful. That at the moment is at issue in a couple of cases that are pending in the U.S. District Court in Anchorage, and I'm hopeful that we will get a federal court decision about whether what I just said was legally accurate sometime here in the next year or so.