

# Case of Two Minor Native Children

## *Barrow Children Taken by Trooper to Grand Jury Trial*

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A complaint was filed last week in the Superior Court in Fairbanks protesting the removal of two minor children from the city of Barrow to appear as witnesses against their father before a grand jury in Fairbanks last November.

Plaintiffs in the suit are the

two minor children and their parents, all residents of Barrow. The defendants are the State of Alaska, the Commissioner of Public Safety, the State Trooper from the Barrow area, and the District Attorney for the Fourth Judicial District.

The children were witnesses to an incident which occurred in the family home. The mother of the family was injured by the father and was admitted to the local hospital. She would not, however, sign a criminal com-

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plaint against her husband.

In the meantime, the father voluntarily entered into an alcoholism and counseling program. In November, one of the children underwent an operation on both ear drums.

He was told that he should not travel by airplane for at least six weeks, as high altitude pressure could cause a rupture of the new ear drums.

On November 13, the State Trooper, Alphies Rowe, was directed to bring both children to appear before the grand jury in Fairbanks the following day.

Trooper Rowe deputized two persons to pick up the children at the BIA elementary school. They were taken out of school to their home where they were told to get enough clothing for a two-day stay in Fairbanks.

The father, who was home, inquired what was going on, but the children were allegedly told not to speak to their father.

According to the complaint, "At no time were the children, their parents, or anyone else in Barrow shown a subpoena or any other court order stating that the children were required to travel to Fairbanks."

Neither the father nor the mother were asked for permission for the children to go. By the time the mother contacted the airport, the children were already enroute to Fairbanks.

During their stay in Fairbanks Alaska Legal Services tried unsuccessfully to free the children and have them returned to the legal custody of their parents. There was a small perforation in the newly-mended eardrum of the one child as a result of the flight, but it appears at this date, to have mended with no permanent damage.

The children were accompanied on the trip by Trooper Rowe and his wife and were lodged in the Golden North Motel. There was no consultation with the parents as to these arrangements.

The legal question revolves around the rules governing the summoning of witnesses to appear at criminal proceedings and more specifically, whether the District Attorney can order a child to testify without the parents' knowledge.

Both Alaska Legal Services and the District Attorney's office confirm that a subpoena is merely a summons directing a witness to appear at a forthcoming trial.

A subpoena does not give the state the right to seize a person and escort him to the trial. Only if he fails to appear, can he be held in contempt and he may then be "escorted" to the court proceedings.

There are no rules for serving a subpoena on a minor child that differentiate from serving a subpoena on an adult.

However, an official form used by the Alaska State Troopers entitled "Service of Summons on Infant (Any Juvenile)" requires that two copies of a summons in a civil case be served, one on the child and one on the parent, guardian, or person having custody of the defendant.

The case in point is not a civil case and the form above does not apply. Yet it raises the question, should the parents be notified when children are ordered to take part in any legal proceedings? To what extent does a child understand the nature of a legal summons?

The complaint filed by the parents and the children state that the children were seized by the state without lawful authority and that, in so doing, the State of Alaska falsely imprisoned them and deprived them of their civil rights, causing

emotional distress and mental anguish to both parents and children.

The position of the State, as stated by the District Attorney, is that the children "were not seized", and that they willingly accompanied Trooper Rowe after explanation was made to them.

The District Attorney's office alleged that they "were not in an alien environment", that they knew the people they were with (the Trooper's house in Barrow is only a few doors from the family in question), that they were not frightened, although they are "shy and bashful as

most people from their environment are."

(It is interesting to note that at the same time the DA's office states they were NOT in an alien environment, it proceeds to use the term "people from THEIR environment".)

The fault may lie neither with the District Attorney's office nor the State Troopers, but in inadequate provisions for this type of incident in the bush.

The question arises whether the incident might have had a happier ending if whoever initiated the order had contacted the local official, in this case the

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local magistrate, Sadie Neakok, an Eskimo woman well acquainted with the family and the situation, before removing the children.

Alaska Legal Service goes one step further. Why couldn't the local magistrate or any qualified notary public, have taken statements from the children and sent those statements to the grand jury in Fairbanks? Then the children would not have had come to Fairbanks to testify at all.

Would the children have been removed from the home of a non-native family under similar circumstances?

One could argue that the family situation endangered the children and that they were removed for their own protection. In the case of an intra-family quarrel, such might have been the case.

And yet in the case of the Barrow children, two children in the family were called as witnesses and transported to Fairbanks, but four other children remained at home in the care of the father, so protection does not seem to be the issue.

The Eskimo word for trooper is "tiguuree". According to Tundra Times' Barrow correspondent, Guy Okakok, "tiguuree" means "the fellow who picks up the people".

It relates to the Superman concept of State Trooper, the guy who flies down in a blue suit and flies away with the criminals. Only in the case of the Barrow children, the children were not criminals. They were merely witnesses.