

88-49-136

Forrest J. Gerard, undersecretary for Indian Affairs at the Alaska Federation of Natives Convention

Jeff Kennedy, moderator

Anchorage, Alaska

Series: Potlatch series

November 12, 1977

Jeff Kennedy said this past summer President Carter appointed Forrest Gerard to head the Bureau of Indian Affairs. He was named an undersecretary of the Interior. He reports to the Secretary of the Interior. He has won the Heller Award. In 1966 he got the Indian Achievement Award. He spoke on November 12 he addressed the Alaska Federation of Natives Convention.

Forrest Gerard said in the four months that he has spent at the Department of the Interior he has come to recognize that there are many competing interests in Alaska that are trying to push the Native interest aside much like the Indian interests were pushed aside in the lower 48 one hundred years ago. These competing interests can best be discussed in terms of modern technology versus tradition. Hunting, trapping and whaling were influenced by the introduction of technology. This technology has been woven into the thread of traditional village life. This blending of Native and non-Native lifestyles improves efficiency and survival capabilities within the context of Native culture. The discovery and development of vast energy resources has also had an intensifying effect on the technological movement into Alaska. This has resulted in increasing conflict between Native lifestyle and state development plans. The development of the North Slope oil fields and the construction of the pipeline has caused both real and potential devastation and disruption of a subsistence culture of many Natives. This is due to the blocking of migratory routes of animals and birds used for subsistence and mysteries decrease in their numbers. The increase of Native wealth has resulted in the use of non-Native alternatives for the subsistence lifestyle. He said he sees two sorts of conflicts created by all of the activity in Alaska. The first is the conflict felt by Natives to change their traditional values and lifestyles in response to progress. The most significant impact resulting from this are the ability of Natives to engage in subsistence activities free from outside regulations and to integrate new weapons, technology, transportation and food sources into Native culture without changing the important values of the essence of that Native identity. The second source of conflict is the perception of many non-Natives that access to and use of non-Native technological innovations has so tainted Native culture that it ceases to exist and some aspects are not worth saving. This causes pressures to be brought on federal and state governments to treat Natives and non-Natives alike for all purposes. If development and resources exploration in Alaska continues at the present rate or increase then this conflict between Native traditional lifestyle and new technology will continue to cause turmoil in Native's lives.

Song by Judy Collins

Jeff Kennedy said Forrest Gerard told the Alaska Federation of Natives that the new post of undersecretary of Indian Affairs allows three advantages - the head of the BIA becomes a member of the policy making team, he gets as much authority as other undersecretaries of the Interior Department and he can deal with those in other parts of government who make decisions that affect the lives of Native Americans.

Forrest Gerard said he would like to address issues facing Alaska Natives and the Department as an agency charged with resolving them. At the time ANCSA was passed the question of aboriginal rights of Alaska Natives was solved. They now know that there are still questions to be answered. He talked about legal aspects. He discussed the Edwardson and the ARCO cases. In the Edwardson case the judge decided that the Settlement Act extinguished aboriginal titles, but did not extinguish pre-existing claims for trespass to aboriginal lands. As a result of Edwardson the United States filed the ARCO suit in October 1975 against the state of Alaska and against over 100 oil companies. The suit seeks damages for oil exploration activities on the North Slope prior to the Settlement Act. Judge Fitzgerald ruled against them in June 1977. On September 6 of that year they appealed his decision to the 9th Circuit Court of Appeal. One of the main issues of the case is if the state of Alaska had any rights under the Statehood Act to select lands which were claimed by Alaska Natives. The Statehood Act requires the state to disclaim any rights or titles to Native lands, but also gives the state the right to select over 100 million acres. They argued that the disclaimer meant the state had no right to select or lease Native occupied land. Judge Fitzgerald declined to rule on this issue because he felt that the Statehood Act was ambiguous. They will present their position again in the appeal. The other major issue in the Arco case is whether the Settlement Act extinguished the rights of Natives to bring suit for past damages. Judge Fitzgerald held that it did which was in conflict with the decision of the Edwardson case. The law on this question is unclear. The Department will continue to support the Native interest and will proceed under the assumption that they will be successful in the courts.

Song by Buffy Sainte Marie.

12:12

Forrest Gerard said he wanted to turn now to the continuing trust responsibilities they have for Native groups. He said as a public official the Settlement Act has raised questions as to what their trust responsibilities are now that the Act has been signed into law. He said that responsibility is being challenged by many interests in competition with the Native's interest. In order to clarify this they have pressed for a solicitor's opinion which is expected to be handed down in the near future. It is his hope that opinion is going to be positive and will clear the air. He addressed those that question their trust responsibility to Alaska. He said it is one thing to look at the settlement act in isolation but you have to look at what Congress has done subsequent to the passage of the Settlement Act. That institution took additional steps enacted them into law that further lays out their trust responsibility. In Public Law 93638 Alaska Natives are written in as beneficiaries of that legislation. Public Law 94437 (the Indian Health Care Improvement Act) the same Congress wrote into that statue that Alaska Natives were participating beneficiaries. Each year Congress appropriates millions of dollars in trust services for the Native people in

Alaska. He talked about another issue relating to subsistence – the enforcement of regulations on lands that the Natives might hunt or gather on.

Barrow dancers

Forrest Gerard said he wanted to talk about one specific issue in the forefront. The Department lost its battle with to other federal agencies in an attempt to have the United States file an objection to the ban invoked by the International Whaling Commission on the Eskimo's bowhead whale hunt. He said this issue is one of those where the Department's role in the decision making process is important but it is now conclusive. In this case statutory responsibility for the decision whether to object lay with the Secretary of the State with the concurrence of the Secretary of Commerce. Their role was to interject some serious consideration of the trust responsibility to Eskimos and to inform Congress of the state of the impact that the decision would have on Eskimo culture and lives. They fought this consideration of the Eskimo interest very actively and even though the Department's recommendation was not accepted by the administration they made some valuable headway. He said it is significant that in this instance the Department strongly recommended that an objection be filed with the IWC in recognition of its trust responsibility. The Department maintained a unified position. Although their position was ultimately rejected the Department's position they significantly increased the possibility of increasing their changes of having some whale hunting reinstated in December. Although they have lost the decision they have made progress with other departments which will ensure cooperation in their efforts to obtain a legal bowhead whale hunt under terms they hope are acceptable in the Eskimo community. They will continue to work with other agencies to get the approval for continued bowhead whale hunts.

Song by Charlie Panigoniak

Forrest Gerard said in his view Alaska represents a federal challenge in many ways. Its vast size, harsh climate, and isolation from the mainland have made the intrusion of non-Native culture into Native communities minimal until recently. Subsistence activities continue today to range over hundreds of square miles preserving the land and unique cultures found in Alaska. The Alaska Native Claims Settlement Act affects the historic land ownership and use rights of Alaska Natives, the federal government and the state. The federal Alaska Native relationship is different than that of the treaty Indians of the lower forty eight. It is not yet clear just exactly what that relationship will be. One of the unique challenges presented is in relation to the regulation of wildlife relied upon by Alaska Natives for its subsistence and access of Natives to the land and water bodies within their migratory range. All of these issues together emphasis the atypical nature of their current relationship with and responsibilities in Alaska. They present a tremendous challenge. Within the Department there is a new found awareness of the agency's trust responsibilities. This has led to a reorganization of the Bureau of Indian Affairs. He does not pretend to be an expert, but he thinks there are ways that he can enhance his abilities to serve them more completely. He is looking at applications and hopes to appoint someone to his staff to serve as advisor on Alaska issues.

Song by Peter LaFarge

Forrest Gerard said his keen interest in Alaska was brought about by their lobbying efforts for ANCSA. The passage of the Act did not solve all of the problems. If they are going to resolve those issues it is imperative that they stay united. The importance of the effort comes down to their leadership being aware of competing interests that are opposed to their causes. He would like to think in his role he is working closely with them trying to win some of those issues. He talked about Public Law 93638. He said they are all placed in a position to compromise and negotiate some of the issues. He said he has spent almost a week in Alaska and it has helped him to gain insight into the problems and issues. He will return in the fall to visit villages and to see what life is like there.

Jeff Kennedy said Willie Hensley has been appointed to the Interior Department's task force as advisor for making changes to the Bureau of Indian Affairs.