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Mike Gross, John Wabaunsee and Jacob Pompan talk about Public Law 93-638, the Indian Self-Determination and Education Act

Moses Wassillie, moderator

Series: Potlatch series

Moses Wassillie said in September they attended a workshop sponsored by the Alaska Federation of Natives for P.L 93-638. Mike Gross a lawyer from New Mexico explained his background. Mike Gross said he is primarily a law teacher. He is conducting a special program in educational reform law with emphasis on Indian education reform for law students in New Hampshire and five fellows or scholarship recipients from the coalition of Indian controlled school boards in Denver. He began in this field in 1968 when he first went to work as a legal services lawyer on the Navajo Indian Reservation and then helped a community in Raymond, N.M. to start an Indian controlled high school. In 1971 he participated with other Indian education leaders in organizing the Coalition of Indian Controlled School Boards which now has over 200 members throughout the country including the AFN. Moses Wassillie said Mike Gross talked about how he became involved in the Self-Determination Workshop and gave some background in the history of relationships between Indians and government. Mike Gross said he got a call last week from the AFN asking him to come up to Alaska and help explain and analyze the Indian Self-Determination Act which was just passed in Congress last year and the regulations which are now being drafted by the BIA and the Department of HEW to implement the law. The session is primarily designed to review the regulations, analyze them and come up with recommendations for changes if necessary. He said it must be remembered that the purpose of the U.S. government has historically been to try to work towards Indian assimilation. That whole program lingers today and is responsible for the terrible tragedy of Indian education. In the 1920s the Merriam report came to the conclusion this assimilation was wrong and that control of Indian education would have to be returned to Indian people before any meaningful education reform could be achieved. The idea in this Act is to permit Indian tribes and organizations on their own choice to take over government programs for their own benefit. This is primarily in the fields of education and health services. Up until now any program run by Indians under contract to the government or drawing funds from the government has been operated at the pleasure of the executive branch of government. The officials have had the discretion to choose whether they turned programs over to Indian control. Title one of the Act changes this. It removed discretion or the greatest measure from the secretary of the Interior or HEW and directs him to write the contract if requested by an Indian tribe. He said that word direct is a major innovation in federal Indian relations and wasn't in the original draft of the law. The original draft of the law spoke of the secretary being authorized to write a contract upon request from an Indian tribe. Various organizations pointed out that that was a discrepancy. It was recommended and finally adopted as law that "discretion" be removed. Section 104 650 provides for grants in aid of self-determination to Indian tribes or organizations. Section 105 makes personnel changes that are necessary to make it possible for Indian tribes and organizations realistically to take over control of previously operated federal operated installations like schools where there were federal civil servants at work. Up until the Act was passed it was difficult to make any

transfers because of the fear of government workers at these installations would either lose employment or their benefits. It makes it possible to makes it possible for employments to retain civil service benefits.

Song by Willie Dunn

Mike Gross said to summarize it seems to those who have worked with the Coalition in analyzing the regulations in classic fashion the BIA has used the opportunity to write regulations under this law to achieve BIA self-preservation rather than Indian self-determination. The BIA on the law first repeats the congressional findings but then they state policies of the BIA is to facilitate the efforts of Indian tribes to plan, conduct and administer programs, etc. That is the first introduction of the work tribes. The BIA is interpreting the Indian people and Indian communities to mean only tribes. That makes possible later on is tribal veto power over all programs of a self-determination nature. That is something that Congress does not intend to do through this law and is not sanctioned by the language of the law itself. They are mostly concerned with the issue of whether the BIA is installing a tribal spoil system and patronage system as a substitute for what is true Indian self-determination. The term retrocession interpreted by BIA in such a way as to encourage tribal governments to ask for retrocession any time they want to take over a program without notice or hearing to an Indian organization running the programs or to the parents or children of programs that are affected by these contracts. Another provision more or less suggesting that Indian tribes take over retro-seeded programs. He gives an example of a case on the Pine Ridge Reservation. There was a private non-profit Indian organization which was running a bilingual program under contract of the BIA. The BIA evaluators gave the programs high marks. In the middle of the year a new tribal chairman was elected. He was a political opponent of the group running the bilingual program. He asked that the contract be removed from the control of the group that had been running it and transferred to an organization he approved of. The BIA deferred to the new chairman's wishes. Eventually the program died. This was tragic in terms of the welfare of the children. It is indicative of the very system that is now going to be incorporated as federal law under these regulations unless they are changed.

Moses Wassillie said John Wabaunsee is an Indian attorney for the Native American Rights Fund. He said he is a member of the Prairie Band of the Potawatomi tribe of Kansas. He has been practicing law for two years with NARF. It is an Indian interest law firm funded by the Ford Foundation to provide legal assistance to American Indians and Alaska Natives. They have done a fair amount of work in Alaska. They represented the North Slope Borough in the boundary question. They worked on some of the Settlement Act, with the bush justice conference, Johnson O'Malley Act and P.L. 93-638. Wassillie said John compares the reservation system in the lower forty-eight with Alaskan Natives and he talked about some problems with the law. John said some of the section of the law were drafted for lower forty-eight tribes and did not take into considerations of the unique political structure of the Alaska Natives. The reservation system sets aside an area of land for Indians in the lower forty eight. The Indians have considerable amount of sovereignty over that land. They have the rights to control certain activities within their reservation boundaries. They control the rights to hunt and fish to the exclusion of the state. They set civil laws. They handle their own internal tribal affairs. For example the Navajo tribe can set up their own corporations. They have the right to set up their own laws except major felonies. If you

commit a crime on a Navajo reservation you are tried in tribal court in the Navajo language. It is an exercise in sovereignty by a Native people facilitated by having a land base. Another difference in Alaska is the Settlement Act. Tribes in the lower forty eight don't have the money issues that Alaska Natives have. They don't have the structures of the regional village corporation which have money to work on projects for the benefit of the Alaskan Natives. The lower forty-eight tribes may have sovereignty which may not do much because of the lack of worth of the land and the tribe doesn't have any money. Up in Alaska they don't have the territorial sovereignty, but they have money and land.

Song by Willie Dunn

John Wabaunsee said what this allows is the village corporation and the twelve regional corporations to move into areas that are not devoted to making profit. It allows them to move into the areas of delivering social services by contract. This law has given the twelve regional corporations and village corporations the status as Indian tribes. They are defined for purposes of this Act as tribes. It expands the powers of the twelve regional corporations and they can move into activities which are not profit making. Problems it could create is the bureaucracy would not be run by BIA, but there would be an Indian bureaucracy. Unless the tribes works hard to cut that down it may be the result. The problem with the bill is it is not sufficiently funded. There isn't enough money right now to fully fund the contracted proposals already filed. Congress has to appropriate more money for Indian Affairs.

Moses Wassillie said Jacob Pompan talked about how he became involved at the Anchorage workshop for PL 93-638. Jacob Pompan said the practice of the firm and his practice is primarily in the government contract arena. He speaks occasionally for a group that does training in the procurement area. During one of those trainings he ran into a group of Native Alaskans including Carl Jack. They invited him up to Alaska to hold a procurement course. He had done a great deal of that in the service. He formed a relationship between AFN and himself. He was interested in what he saw up here in the need for a deeper understanding of contracts and a willingness on the part of the Native to understand this new theory. It is important to recognize what is fundamentally taking place is a change from a fiduciary relationship between the federal government and the Native to a contractual relationship. The public law has taken the fiduciary relationship in many areas and give the Native the opportunity to make it a more formalized relationship. He feels the Native can prosper under it if he understands it. He must understand the basic difference between the fiduciary relationship which is one of trust understanding between people and a dependence of one person upon another. The contractual relationship is different. It depends on a written document. [In his training] he is going into the laws and regulations that promulgate and implement that law. He is going through clauses on subcontracting and taking it word by word. He said they must recognize also if they decide to change that back in Washington the bureaucracy won't change. They have made apparent to many people in the seminar that it is very difficult to deal with regulations and the regulations will control the relationship and that is the important thing. One of the major problems is whether or not the Native wants to assume responsibilities of a program. They should not assume the responsibilities merely because the opportunity is there. They should assume the responsibility only when they are confident they can carry out those responsibilities and they are confident that the government is operating at a standard or at a level that is consistent with its own standard. They shouldn't take over a hospital or service when a

building is in violation of a fire code or occupational safety and health act. If they fail to meet those standards then the government has the option of reassuming that responsibility. They should do what they can to make sure that the government is not given the opportunity to take over a program because they failed to carry out their obligations as contractors to the people who are the beneficiaries of the program. He said they must recognize their survival depends upon how they operate within the contractual environment that is being set up.

Song by Willie Dunn

Moses Wassillie said Jacob Pompan talked about what self-determination means to him. He said it is an opportunity to get these nice things and do these nice things that the Congress said in Section three policy. It is a challenge. He asked if they are up to the challenge of doing the job properly and the responsibility. He said responsibility means that they must study the rights and recognizing that there is no one in the government thinking how they can help the Indians and Natives to get self-determination. He said it is now up to the Indians and Natives to make it work for them. He said it is the beginning for the opportunity to stand up and take the cause and make the system work for you.