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Barry Jackson comments on the Alaska Native Claims Settlement Act.

Jeff Kennedy, moderator

Series: Potlatch series

Jeff Kennedy said Fairbanks lawyer, Barry Jackson, represented the Alaska Federation of Natives in its campaign to settle the aboriginal claims of Alaska Natives.

Barry Jackson said they wanted to be able to deal with the land without interference from the Secretary of the Interior. They wanted a fee simple title. They didn't want the federal government and the state would not own the mineral rights under the land that would be received by the Alaska Natives in the settlement. From 1967 they concluded that since Natives had always owned land in common it was in a sense corporate ownership. They would use the corporation as a device for holding title to the land. In the lower 48 if you didn't have reservations the standard means of settling an Indian claim was to put a price on the land. After appropriation of dollars the federal government would divide up the money and hand it out. He said a few years later the money would be gone and there wouldn't be any change in their circumstances. Another method was allotment land. The program turned the Indians into farmers. It was an unsuccessful program. The land was also taxable and ended up with 40 million acres passing into non-Native ownership. It was in response to those programs that the concept of trust title evolved. That was not practical because there was no economic control of the land. They felt that land had been held in common and they wanted to continue that using the corporate structure.

Native song

Barry Jack said it is fair to say that there are needless provisions in the Act. The clause where regional corporations have to share profits of the subsurface of their regional lands with all other regional corporations and surface timber resources which a regional corporation may have is complex. The staff members of Congress didn't understand the situation and the complexities of the problems they are creating. It is causing a tremendous amount of litigation. He said you have to remember they were attempting not to follow simple methods of settlement that had been used before. They wanted to create a structure that would be effective in a complex society. It would mean the Alaska Natives would have effective self determination over their property. When they first came up with a pattern of corporations, land selection and the profit making corporations they were told it was needlessly complex and Congress wouldn't understand it. The Alaska Native leadership recognized that settlement in the past failed and they needed a new approach. They insisted on a complex solution to a complex problem. There are the provisions in the Act that are extremely difficult.

Jeff Kennedy said on a previous Potlatch program Sam DeLorean suggested that the relationship between village and regional corporations may be needlessly complex. Barry Jackson said he did not agree because the idea behind the structure of the village and regional corporations was they would be free of federal supervision and control. For a limited period the regional corporation does have a

responsibility of oversight of village corporate affairs. They put it in because Congress would have put them under the Secretary of the Interior. Once the initial period was over then the village corporations would be free to go their own way. If they want to voluntarily get together with other village corporations or with a regional corporation and by contract develop a relationship they can. He said village corporations would be independent legally. He said he hopes many of them do try a cooperative approach because many of them are so small that they will not be economically viable entities unless they do cooperate. At the present time there isn't enough staff to adequately provide the expertise needed in the average village corporation. He said village corporations have very little money to work with and need to combine. There has been a move to merger in several of the regions. In the Interior Doyon has sponsored the formation of the Interior Village Associations which will be controlled by village corporations which will provide expertise and staffing within the Doyon region. There are moves in other regions for a number of village corporations to get together and work together. He said he has also seen two or three villages getting together to invest in a particular enterprise. These sorts of development are needed. There is no single pattern statewide.

Jeff Kennedy said the concept of a corporation has been criticized. Barry Jackson said criticism has been made by people who do not understand corporations. He said there have been studies which compare tribes and the way their governmental structure operates to the power structure of a corporation operation. There are many similarities. He thinks they will adapt to corporations readily.

Jeff Kennedy asked about differences in cultures of Alaska Natives and Indians in the lower forty eight. Jackson said there are differences between the patterns of the culture of the groups in Alaska. The Tlingits are known as the diplomats and have a highly sophisticated culture. The Eskimos had very small family groups and had a minimum amount of social structure because they didn't need it. He talked about the skills of the Inuit and their ease of adaptation.

Jackson talked about vested property rights. He said if you have a legal right to a piece of ground they still can't take your land away from you without paying fair value. He said there are complicated parts of the Act. He said a great deal can be done at a voluntary level. It is being explored by the regional corporations. He said there is a great deal of freedom under the Act. If a regional corporation wanted to dissolve and transfer the property into another association it can be done without any approval of Congress or interference by government. They can legally sell off all of their land and dissolve the corporation. He said that will not be done but the flexibility is great. They can sponsor other types of organizations. They have been doing this. He said one change he would like to see is extending the period in which stock cannot be sold. In Alaska they are attempting to go beyond investment into ownership. This is beyond anything seen in this country. It will require time to create an ethic of ownership and a sense of responsibility. He said they originally thought that the stock should not be available for sale for 100 years. Congress gave them twenty years. There is the problem of taxation of the undeveloped land after twenty years. He believes that all land in Alaska that is undeveloped should be exempt from taxation. There should not be economic pressure to develop land that ought to be left in its natural state. He talked about taxes that the corporations would have to be paying in 1991 and the complications that may develop.

Native song

Barry Jackson said it is often overlooked that the settlement was essentially created by the Alaska Native leadership and then was lobbied through Congress and the Administration. It was not imposed by the government on Alaska. It was a complex piece of legislation that was developed by the leadership. It was a brilliant exercise in democracy. They put together a coalition of interests. He attributed the work to the sophistication of the Alaska leadership and their ability to function in the political process because they had been trained in the Alaska political scene. They were prepared to deal with the administration and the Congress. He thought there should have been more money and land in the Settlement Act. He said they had an opportunity window through which they could drive a basic equitable settlement and one that would meet the needs of the Alaska Native people. He said if the pipeline went before the settlement they would have lost political muscle. The Alaska Native leaders in 1967 were disenchanted with the way the federal government had carried out its trust responsibilities for Natives and Indians in the lower forty eight. They did not have self determination. They were tired of not being free. They felt they could manage their own assets. They felt they had the talent in Alaska of leadership and they could develop what they didn't have in a short period of time.

Barry Jackson talked about making the wrong decisions about selling property. If they hire people to manage the companies there may be some mistakes. He said this is a learning process. He thinks the Natives at the leadership and shareholder level are learning fast. He thinks the overall result will be far greater than having the BIA manage the land and money. He said there are BIA people who are dedicated to the welfare of the Indian people. The BIA is like any other bureaucracy. It is subject to an imperative. He suspects that there is a game in bureaucracies. He said this isn't just a problem in the BIA. He said a great deal has been done by giving Indian groups more self determination there is still a long way to go. He foresees problems, but thinks there is more accountability in the Alaska Native corporations. Shareholders have equal ownership and directors have a great sense of responsibility and interest in the shareholders. The shareholders will have a great deal of information and the shareholders will have a great sense of identity and concern in the corporation.