

H86-31/100

ALASKA NATIVE REVIEW COMMISSION

429 "D" STREET, SUITE 317
ANCHORAGE, ALASKA 99501

(907) 279-1522

HON. THOMAS R. BERGER
COMMISSIONER

July 30, 1984

Mr. George Vogt
Program Officer, Records Program
National Historic Publications Commission
National Archives Building
Washington, D.C. 20408

Dear Sir:

We are seeking financial assistance for the distribution of transcripts that are of importance to Alaskans and Native peoples throughout the United States.

Paul McCarthy, archivist and head of the Alaska and Polar Regions Collections at the Rasmusen Library in Fairbanks, suggested that you might be able to provide the assistance we need. Our transcripts are prepared by official court reporters under our general operating budget. We now need help in distributing that record to libraries and others who have a direct interest in our work. In response to the interest generated by the transcripts, we are also seeking help in preparing an index to the proceedings. A

This Commission was established by the Inuit Circumpolar Conference (ICC) and the World Council of Indigenous People (WCIP). We are charged with examining the effects of what was billed in 1971 as the largest most generous land claims settlement ever. Alaska Natives and their counterparts in the lower '48 are increasingly disturbed by what has happened here. Internationally, Native peoples are concerned because Alaska has become the de facto model for settlements elsewhere.

The ICC/WCIP asked the Hon. Thomas R. Berger, a Canadian jurist with a worldwide reputation, to do an independent study of the situation. He began in September '84 and will report in September '85.

To make a full and fair assessment, Judge Berger is basing his work on testimony given by Native People throughout village Alaska. Over 50 village meetings will be held so that the people can speak directly, in their own way, in their own language, about what their experience has been with the Act and what they see as their future. After 25 meetings, it is obvious that this testimony is of great historical importance. A sample transcript is enclosed.

The village meetings are supplemented with two kinds of more formal hearings. We began last February with three weeks of Overview Hearings where experts helped to establish the intellectual framework for our assessment. Those hearings were

Letter to Mr. Vogt
July 30, 1984
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sponsored by the Alaska Humanities Forum, the National Endowment for the Humanities and the Ford Foundation. I am enclosing a recent article that describes the Overview Hearings.

This fall we will be holding a number of Issue Specific Hearings to examine in-depth the themes that have become apparent through the village meetings. Experts from many countries will come to discuss the legal, moral, ethical and political consequences of the Alaskan experience.

As a kind of summary of all this, I am enclosing an Alaska Native News article and our two-page background. I trust this will give you a good sense of what our work entails.

I would be happy to discuss this with you in more detail. I do hope that there is some way for you to assist us.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Don Gamble", with a long horizontal line extending from the end of the signature.

Don J. Gamble
Commission Coordinator

DJG:jlj

Enclosures as noted

cc: Paul McCarthy



National Historical Publications and Records Commission

National Archives Building, Washington, DC 20408

Phone 202-724-1616

RECORDS PROGRAM

Grant Application

Institution or Organization (name, address) Project Director (name, address, phone) Authorizing Official (name, address, phone) Principal Investigator (name, address, phone) Project Title	5. Budget A. Outright grant (NHPRC) \$ _____ B. Matching grant (NHPRC) \$ _____ C. Total from NHPRC (A+B) \$ _____ D. Matching (Other donor) \$ _____ (D must equal B) E. Cost sharing \$ _____ F. Total project budget (C+D+E) \$ _____ 6. Dates of Requested Grant Period 7. Other Federal Agencies Considering Request Non-Federal _____ 8. Project Category State Project _____ Regional Project _____ National Project _____
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Project Title

Project Summary

Purpose

Significance

Plan of Work

ntended Product

Key Personnel

udget Summary

We agree that (1) the program for which any grant is made will be conducted in compliance with, and we will comply with, all requirements imposed by or pursuant to the regulations of the General Services Administration published in 41 CFR 101-6.2 issued under the provisions of Title VI of the Civil Rights Act of 1964; Public Law 88-352 (78 Stat. 241; 42 U.S.C. 2000d); (2) this agreement shall be subject in all respects to the provisions of said regulations; (3) we will immediately take and continue to take such action as may be necessary to effectuate this agreement; (4) this agreement shall be effective for the period during which any Federal financial assistance is extended pursuant to any grant; and (5) the United States of America shall have the right to seek judicial enforcement of this agreement.

To the best of my knowledge and belief, data in this application are true and correct, the document has been duly authorized by the governing body of the applicant institution, and the applicant will comply with all procedures and regulations of the National Historical Publications and Records Commission if the grant is awarded.

By _____
(Authorizing Official in #3, page 1)

Title _____

Date _____

1486-31/100

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HON. THOMAS R. BERGER
COMMISSIONER

Background Description of the Overview Hearings

In July, 1983, at their international conference in Frobisher Bay, Canada, the Inuit Circumpolar Conference (ICC) announced the creation of the Alaska Native Review Commission and appointed the Honorable Thomas R. Berger, an internationally recognized Canadian jurist, to be commissioner.

The Inuit Circumpolar Conference, founded in June 1977, is an Inuit (Eskimo) organization of twenty Alaskan, Canadian, and Greenlandic regional associations concerned with environmental protection, reasoned economic development, and indigenous self-determination in the Arctic. Membership ranges from across the Arctic areas of Canada, Greenland, and Alaska. The primary aim of the ICC is to encourage nations to develop Arctic policies which focus not only on the extraction of Arctic mineral and biotic resources, but which take into account the fragile Arctic environment, the fish and wildlife species, and the culture and traditions of the Inuit.

The Alaska Native Review Commission is to examine and report on:

1. The socio-economic status of Alaska Natives;
2. The history and intent of the Alaska Native Claims Settlement Act of 1971 (ANCSA);
3. The historic policies and practices of the United States in settling claims by Native Americans, placing ANCSA in political perspective;
4. The functions of the various Native corporations in fulfilling the "spirit" of ANCSA for Alaska Natives; and
5. The social, cultural, economic, political and environmental significance of ANCSA to indigenous peoples around the world.

These terms of reference are broad, for the Commission is to make long-term recommendations to protect and promote Native culture, land, and communities in Alaska and elsewhere. Although the Commission will elicit testimony of greatest importance on these subjects at village meetings later in 1984 and 1985, the Overview Hearings are meant to provide a solid, intellectual context for the full sweep of moral, ethical, legal, and other humane issues arising from the Alaskan experience of aboriginal peoples.

For this reason, the Overview Hearings will precede the village meetings which are the core of the larger project. The Overview Hearings are designed to provide the clearest possible articulation of the intellectual issues which are fundamental to the Commission's terms of reference.

The Commission will also hold separate subject-specific hearings and contract for research as necessary to deal with certain complexities of ANCSA. Furthermore, in dealing with broad questions such as "the social and economic status of Alaska Natives," the Commission will take advantage of available literature and the current work of academics and others, as well as ongoing studies (such as the Department of Interior's 1985 study, expected to be made public in June 1984).

Although established by the ICC, the Alaska Native Review Commission is independent, a condition agreed to when Judge Berger accepted his appointment. The Commission is responsible to the ICC within the terms of reference, the budget, and various administrative items as outlined in the formal agreement between the two parties. The methodology and budget described in this proposal are those put forward by Judge Berger and agreed to in total by the ICC.

On December 13, 1983, in a unanimous motion, the World Council of Indigenous People agreed to co-sponsor the Alaska Native Review Commission. This co-sponsorship emphasizes the international importance of the Alaskan experience.

OVERVIEW HEARINGS

The goal of the Overview Hearings is to explore the meaning of the Alaska Native Claims Settlement Act through examination of its philosophical roots, historical antecedents, its intent, effects, and consequences, and its relevance to indigenous peoples elsewhere, for the purpose of enlightening public understanding of the issues.

Specific objectives are as follows:

1. To identify Alaska Native expectations of a claims settlement prior to enactment of ANCSA and the values Natives sought to protect, and to examine the moral and ethical principles upon which their claims rested;
2. To describe and evaluate the effects of changes in land tenure and traditional land use upon the quality of life of Alaska Natives, the changes experienced in Native relationships with the state, and changes of expectation with regard to their settlement;
3. To review and assess the meaning and values inherent in the history of U.S. national policies and practices toward Native Americans;
4. To evaluate ANCSA in terms of its applicability to the situations of indigenous people from other states and nations who have been or are presently involved in a struggle for a claims settlement or self-determination, and, in turn, to bring the experience of those peoples to bear on the situation in Alaska;

5. To explore and clarify the intellectual background of Western culture to help us see how ANCSA fits in our historic attitudes toward indigenous peoples, and to get at fundamental philosophical issues behind notions such as sovereignty, natural right, and aboriginal rights;
6. To prepare a summary report on the Overview Hearings.

THE CONTEXT OF THE OVERVIEW HEARINGS

"The Spaniards were unable to exterminate the Indian race by those unparalleled atrocities which brand them with indelible shame, nor did they succeed even in wholly depriving it of its rights; but the Americans of the United States have accomplished this two-fold purpose with singular felicity, tranquilly, legally, philanthropically, without shedding blood, and without violating a single great principle of morality in the eyes of the world. It is impossible to destroy men with more respect for the laws of humanity."

Alexis de Toqueville
Democracy in America, 1835

We live in a nation based upon principles of freedom and diversity and the rule of just law, those same principles said to underlie ANCSA, yet we are made uneasy by what lies behind Toqueville's observation. Toqueville's insight helps to pinpoint the value questions that must be addressed by the humanities in the Overview Hearings. Because of the provisions in the Alaska Native Claims Settlement Act (ANCSA) related to enrollment, taxation, transfer of corporate stock, etc., 1991 has become a deadline in Alaska--a symbol for issues that ANCSA raises for Alaska Natives.

There is, however, another significant date approaching. In 1992, Americans will celebrate the 500th anniversary of Columbus' landfall in the West Indies. In 1492, Columbus "discovered" America. Since that time, European civilization and European institutions have quickly dominated North and South America.

After Columbus, there came what has been called the second discovery of America. Early in the 16th century, Bartoleme de Las Casas, then others, insisted that the indigenous peoples of America were not inferior species, but were people with their own evolved customs and cultures, religions, languages, laws, and institutions, and that the Europeans were obliged to deal fairly with them.

Here in the New World the two great streams of humanity from the Old World and the New came together. One was able to dominate the other. Yet there has always persisted some sense of obligation towards the original inhabitants. The relationship has produced one of the most predominant and recurrent moral and ethical questions throughout the history of the settlement of the Americas.

As settlement moved West in the last century, and Native lands were needed by farmers and developers, the lands were taken, sometimes by war, sometimes by less violent means. The treaties that followed are the legacy of those times.

The encounter between the Old World and the New still goes on. It takes an intense and contemporary form in the northern regions of the continent. Here geography has permitted the Native peoples to be left alone; traditional modes of life have predominated. In recent years, however, this has changed. Native lands are sought for purposes of development of non-renewable resources: minerals, oil and gas required by the metropolitan centers of North America.

Thus, a new attempt has been made, in our own time, here in the North, to reach an accommodation with the Native people. As always, the central issue is the land. This was so in Columbus' time, it was so in the last century when the treaties were made in the Lower 48, it is so today.

The Alaska Native Claims Settlement Act of 1971 represents a pioneering venture in the settlement of Native claims in the modern era. With the approach of 1991, Alaska Natives are pausing to reassess the Act and its consequences.

Once again, we are asked to face the moral and ethical dilemma that Las Casas first called to the attention of the Europeans 500 years ago, and which still faces us today: What is just, and what arrangements regarding Native land and governance are workable?

Twelve years of experience have highlighted both strengths and weaknesses of ANCSA. Only Alaska Natives alive in 1971 received shares under ANCSA; those born since have no legal interest in the Native corporations or the Native land which the corporations hold. In 1991 shares in corporations become tradeable, and Native lands become taxable. Hence, experience thus far and concerns about the future are joined.

The growing apprehension and anxiety causes non-Native observers surprise at the resurgence of issues they thought had been put to rest over a decade ago. Alaska Native societies are undergoing major transformations as a result of the passage of the Alaska Native Claims Settlement Act. The settlement reformulated Alaska land tenure systems and significantly affected the relationship between Native peoples and both the federal and state governments. As a result, the Act has been a catalyst for events that touch virtually all aspects of life in Alaska.

Some people fear that after 1991, when the shares become freely transferable, sales of stock to non-Natives will result in Native land and resources falling into non-Native hands. These concerns are not unfounded. The American Indian Policy Review Commission told Congress in 1976:

Land itself was the focus of the struggle...before the Act passed the danger was great that Native Alaskans would lose all their land to white encroachments. Nothing in the history of early Native/White contacts would soften that perspective. With passage of the Act, danger to Native lands shifted. Now five (twelve) years into the settlement era, other threats to Native

land are emerging. Some stem from arbitrary regulations established by various bureaucracies involved in implementing the Act. Still others lie in human fallibility and foibles of Native leaders themselves.

Whatever the source of threat, the possibility that land apparently awarded to Natives under the Act will never become theirs, or will soon pass into non-Native hands, is very real.

The loss of Alaska Native control over their lands has many implications, but not all people see these implications in the same light. Consider, for example, the statement made by former Governor of Alaska and Secretary of the Interior, Walter J. Hickel during an August 1983 interview on public television:

I think a very important point and one of the reasons I was for the Native Land Claims Settlement, is regardless of what happens to the stock in 1991--I hope they can hold on to it--that land will be in private hands. One of the biggest difficult things we had with the statehood fight, we have today, is how do we get lands in private hands. The forty plus million acres that the Natives received in their land claims settlement will be private land regardless of who owns them.

Time, a critical element of the Act, is quickly running out as 1991 approaches. Taxation, stock alienation, and land loss--all these are on the minds of Native people throughout the state. If the greater community fails to address these issues, the social consequences could be devastating. Other concerns, such as Native sovereignty and self-rule, not addressed by ANCSA, also demand careful examination. This is because a movement has arisen among Alaska Natives seeking to have traditional lands restored to ownership by tribal institutions, that is, to separate the issue of Native corporations from the land issue by removing the land from the control of corporations.

Some say it is already too late, that the die is cast, that Native Alaskans are caught in a flow of events that will eventually consume them. That remains to be seen. Certainly the challenges are awesome. Informed choices must be made that will take the individual, and the Native community as a whole, beyond 1991 and into the 21st century. The issues go beyond the specifics of 1991 and to the heart of relationships between Native peoples and the land and the larger community of which they are a part.

The grass roots movements behind these broader issues is exemplified to a large degree by the thrust of the "tribal" movement in Alaska and the formation of the United Tribes of Alaska (UTA). In May 1983, the newly formed United Tribes of Alaska passed, in one of their first acts of business, passed a resolution requesting the Inuit Circumpolar Conference and the Alaska Native Review Commission in particular, to undertake a study of Alaska Native sovereignty. There is, quite understandably, concern in many quarters over this volatile issue.

The complexities of the 1991 issues created by ANCSA are now enveloped in the larger debate on subjects that go well beyond ANCSA. These are manifestations, at least in part, of what the American Indian Policy Commission alluded to when it referred to the "unanticipated consequences" of ANCSA. Events are moving quickly. Fundamental questions are being asked and, with increasing intensity, answers are being demanded as Native people seek their own place in the larger society--a new accommodation with their historical roots in the land and a meaningful measure of self-determination in the governance of their lives.

A review of the history tends to support the notion that the Alaska Native Claims Settlement Act of 1971 represents a major break by the federal government with its previous policies for addressing the "Indian question." This is especially true when it comes to the issue of land. Yet the Act can be seen as part of a continuing pattern of policies. Lawrence Rosen highlighted the situation in 1976 when he wrote:

The social and economic problems of the Indian do not result only from the greed and duplicity of those who invaded the continent and forced or cajoled its original inhabitants to occupy ever more marginal lands. These problems also result from a long history of inconsistent laws and regulations, ill conceived policies and contradictory reforms.

Five years after ANCSA was enacted, Congressman Lloyd Meeds, Vice Chairman of the American Indian Policy Review Commission, described the complexity that is becoming more and more apparent as events unfold in Alaska:

The [Indian-governmental] relationship established from the inception of this country...has no exact counterpart in the history of international or domestic law. This unique relationship has never been exactly defined. Therefore, the inconsistent history of governmental relations and the vague body of law related to the Indian field has made it impossible to find justice for Indians and non-Indians alike. Solomon would have wept had he to decide justice in present-day Indian affairs.

The federal policy implementing this relationship has shifted and changed with different administrations and passing years. These policies have included peacemaking diplomacy, armed conflict, tribal removal, subjugation, extermination, concentration, assimilation, termination, and self-determination--not necessarily in that order. Laws were piled upon laws without regard to the effect of the one upon the other. Programs have been initiated, terminated, replaced, and reinstituted without apparent rational design. In short, there exists a unique relationship between the United States and Indian tribes which has never been admitted of an exact definition and which has never been implemented by a coherent, consistent policy.

It is against the tangled thicket of relationships between Natives and governmental authority--both federal and state--that the Overview Hearings must consider the underlying values on both sides and the means of reconciliation.

Some observers have pointed out that even though ANCSA is said to have had the greatest impact on Alaska's land and people since statehood, dramatic changes in the lives of Native people in rural Alaska have come about primarily through alterations in their relationship to the state. Such changes can be seen in fish and game regulations, educational jurisdictions, resource development, local government, etc. The physical and social characteristics of village communities have been altered significantly as new housing, schools, water and sewer systems have been built and communications systems arrive and are put into use.

Village communities are under stress as these changes occur, and there is evidence of growing dissatisfaction with the multi-layered local government brought about through national Indian policies of the federal government (IRA councils), ANCSA, established village corporations, traditional councils, and municipal governments. The conflicts in leadership, sources of authority, values, and priorities are widespread.

Clearly, the Overview Hearings must explore these issues to produce a better understanding of how and on what basis public policy is being determined at the national, state, and local levels.

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(907) 279-1522

February 10, 1984

OVERVIEW ROUNDTABLE DISCUSSIONS

Agenda and Procedures

The Alaska Native Review Commission's Overview Roundtable Discussions are scheduled over a three-week period, February 27 through March 16, in Anchorage. All sessions will be held at the "Rondy Palace," 737 West Fifth Avenue (opposite the Sheffield House). The daily schedule will be 9:00 - 12:00 a.m. and 1:30 - 4:00 p.m.

Each of the four sessions outlined below will begin with a prepared presentation, followed by comments and discussion by "roundtable" panelists. The meeting will then be opened to anyone who wishes to participate. The Honorable Thomas R. Berger, Commissioner of Alaska Native Review Commission, will moderate the discussions.

Week 1: February 27 through 30

This session will focus on the issues underlying a claims settlement, beginning with viewpoints expressed at Congressional hearings on Native claims in 1968 and 1969. Testimony from the hearings record is the basis of a paper prepared by Ann Fienup-Riordan - The Spirit of ANCSA: Native Aspirations and the Alaska Native Claims Settlement Act.

March 1 through 3

This session will consider the Alaska Native Claims Settlement Act of 1971 from multiple perspectives. Changes in land tenure and the institutions established by ANCSA, and their effects, will be central. A framework for discussion is provided by a paper prepared by Walter B. Parker: A Commentary on Institutions and Legal Regimes Arising from the Alaska Native Claims Settlement Act and the Alaska National Interest Land and Conservation Act.

Week 2: March 6 through 9

This session will examine the history of intentions and consequences of U.S. policy on Native claims and settlements. Indian leaders from the lower-48 will describe their own experiences and reflect on the broader implications for other indigenous peoples. Discussion will follow a presentation by Joseph Jorgensen: Native American Claims to Resources in the Lower-48 and United States' Policies.

Week 3: March 13 through 16

This session will provide a summary view of the worldwide movement by indigenous peoples for self-determination. The discussion will follow a presentation by Douglas Sanders, Legal Counsel to the World Council of Indigenous People, and involve native leaders from Canada, Greenland, and other countries. Sander's paper: The Re-Emergence of Indigenous Questions in International Law and a Comparative and International Chronology of Indigenous Rights.

The Commission wishes to acknowledge with thanks the grants provided by the Alaska Humanities Forum and the North Slope Borough in support of the Overview Roundtable Discussions.

PARTICIPANTS (preliminary list)

SESSION 1: The Spirit of ANCSA

Feb. 27, 28, 29

Paper: Ann Fienup-Riordan

ROUNDTABLE: John Borbridge
Tom Brower
Francis Degnan
Martha Demientieff
Charlie Edwardson

Richard Frank
Al Ketzler
Lily McGarvey
Emil Notti
Don Wright

Invited Participants:

John Borbridge
Tom Brower
Harry Carter
David Case
Francis Degnan
Martha Demientieff
Dennis Demmert

Charlie Edwardson
Roy Ewan
Richard Frank
John Havelock
David Hickok
John Hope
Roy Huhndorf

SESSION 3: U.S. National Policy

March 6, 7, 8, 9

Paper: Joseph Jorgensen

ROUNDTABLE: David Case
Ted Chamberlin
Ada Deer

Tom Hawkins
Russell Jim
Ralph Johnson

Invited Participants:

Claudine Arthur
David Case
Tom Coulter

Shelton Davis
Rennard Strickland
Thomas Tureen

SESSION 4: International

March 13, 14, 15, 16

Paper: Doug Sanders

ROUNDTABLE: Harry Allen
Asjborn Eide
George Erasmus

Peter Green
Alf Isak Keskitalo
Finn Lynge

Invited Participants:

Greenland:
Finn Lynge
Robert Petersen

Switzerland:
Asjborn Eide

Costa Rica:
Jose Carlos Marales

Norway:
Alf Isak Keskitalo

Canada:
Harry Allen
John Amagoalik
David Case
George Erasmus
Wally Firth

SESSION 2: ANCSA INSTITUTIONS AND LEGAL REGIMES

March 1, 2, 3

Paper: Walter Parker

ROUNDTABLE: John Havelock
David Hickok
Roy Huhndorf
Charles Johnson
Douglas Jones

Guy Martin
Byron Mallott
Emil Notti
Joe Upicksoun
William van Ness

Charles Johnson
Douglas Jones
Al Ketzler, Sr.
Flore Lekanoff
Byron Mallott
Lily McGarvey
George Miller

Guy Martin
Emil Notti
Fred Paul
Frank Peterson
Ralph Purdue
Alfred Starr
Ruby Tansy

Paul Tiulana
Joe Upicksoun
William van Ness
Don Wright

Alma Upicksoun
Peterson Zah

Mary Simon

Canada:
Peter Green
Mark Gordon
Steve Kakwi
Dennis Patterson
Dave Porter
Mary Simon

Australia:
Graham L. MacDonald
Garth Nettheim
Pat O'Shane
Stanley Scrutton
Philip Teitzel
Gualaroy Yunupingu