

water resources, to existing American enterprises. With this social, economic and political aid of the Federal government, proper development came about in the lower 48 states. It has now become necessary to allow financial assistance and sufficient land base for the necessary development of Alaska Natives.

Where does the larger business community receive their services and expertise? Like any proper development it is planned and organized to insure the necessary human resources which the larger American community has. If Congress has further doubts of proper development of Alaska the two living and historical experiences are Metlakatla and the Tyoneks. Their development is based on ownership of land, minerals and sufficient financial resources. The rest of the Native community has been left behind because the Congress of the United States of America has been dormant. We have waited a long time. We have had a lot of promises from the great white chiefs resting in Washington. We want this chance to enable the invisible people of Alaska to become full-fledged American citizens with rights to their land which is rightfully theirs.

Now with our existing technological economic expertise, we will develop our rightful resources.

Mr. EDWARDSSEN. We have experienced by the nature of our social and political institutions that it was advantageous for the white community to move on westward at the cost of the American Indian. This became a public policy of the United States. This policy was the taking of land, when the friendship and the cooperation of the American Indian was not necessary. As the white community established a foothold he moved on northward. This movement did not stop. It went on to Alaska. Having the same principles at this hour the economic institution in America is our public lands. This is how the United States of America has paid its debt—on the taking and sale of these lands at the cost of the American Indian.

What we hope to do is to change that policy, that we as Americans are guilty in many ways and forms of taking of Indian lands.

I thank you.

Mr. HALEY. Are there any questions?

Mr. ASPINALL. I have two questions, Mr. Chairman. Mr. Edwardsen, what is your Eskimo blood; how much?

Mr. EDWARDSSEN. I am three-quarter Eskimo, and one-quarter Norwegian. I was the last of the whaling group.

Mr. ASPINALL. That is fine.

Your presentation, Mr. Edwardsen, is somewhat correct. It is not entirely correct. The U.S. Treasury has never received too much money because of the sale of its lands. Most of our lands have been given to settlers, as far as that is concerned, or given to railroads; it was said this morning by one of the witnesses in his presentation for the industrial settlement. What has happened is that the United States has condoned the march westward in order to get these lands developed. The financial rewards that came were from the lands themselves after they were settled and not especially because of the sale of the lands; isn't that largely correct, except for the revolutionary period.

Mr. EDWARDSSEN. Yes and no. In my analysis the Federal Government has also subsidized any form of development, at least in the Northwest expansion and the Northwest movement. But my basic question is that it is a political question. It was only good and necessary for the white leaders under their own institutions to go against the American Indian regardless of our principles that this Nation is founded under.

Mr. ASPINALL. I have no quarrel with that statement at all. I think that is history. That is all, Mr. Chairman.

Mr. HALEY. Are there any further questions?

Mr. BERRY. Only to comment, Mr. Chairman, that in looking at the map, you come from Point Barrow, probably the most northern point in the United States.

Mr. EDWARDSSEN. That is right.

Mr. BERRY. Our chairman, from Florida, comes from almost the most southern point. So this is quite an expansion between the two of you. Thank you.

Mr. HALEY. Thank you very much, Mr. Edwardsen.

Mr. POLLOCK. I would like to add to the comment that Carlie Edwardsen's home is the place where Will Rogers and Wiley Post were killed in 1935. Americans will never forget the place.

Mr. HALEY. I might say to the gentleman the late gentlemen were very good personal friends of mine. It was a great tragedy. At that particular time in the history of our country, I hope the gentleman noted, that the Congress, recognizing his great contribution to the American way of life, he made a request, if he was ever put in the Statuary Hall over here, that his statue be placed where he would be looking at the door of the Congress, and that is where they put it. He is keeping a sharp eye on us yet.

Mr. HALEY. The next witness is Mrs. Laura Bergt. Will you tell us who you are and who you represent?

May I say that you are the best looking witness we had today, and I appreciate you coming down here because I like to see a pretty young lady, even at my age.

STATEMENT OF LAURA BERGT, MEMBER, NATIVE LAND CLAIMS TASK FORCE, MEMBER OF STATE REMOTE HOUSING COMMITTEE, STATE TOURISM ADVISORY BOARD AND STATE COMMITTEE ON CHILDREN AND YOUTH, HEALTH, AND WELFARE

Mrs. BERGT. Thank you, Mr. Chairman.

Mr. Chairman, my name is Laura Bergt. I am a member of the native land claims task force. I am also a member of the State remote housing committee, State tourism advisory board, and the State committee on children and youth—health and welfare.

I was raised in Nome and Kotzebue and have lived in southeastern Alaska, Fairbanks, and in Barrow where I worked as a secretary in the hospital. I have traveled extensively throughout the State of Alaska, to the Arctic, interior, southeastern and the Koskokwin areas. Through this, I have become very well acquainted with the extreme poverty, poor housing, and health conditions of the natives throughout the State.

There are approximately 50,000 natives in Alaska. Approximately one-half of the native population is below 15 years of age. In 1955 Congress delegated health care for the Alaska natives to the division of Indian Health, USPHS, which is provided either directly through seven PHS hospitals in Alaska or by contract with private physicians in Kodiak, Wrangell, Nome, and Fairbanks. Preventive health services are jointly provided by the USPHS and the Public Health nurses of the State division of health through a contract.

The doctors at the USPHS, Barrow, Tanana, Kotzebue, Bethel, and Kakanak field hospitals make periodic visits to the various villages

in their area in order to carry out case findings, health supervision, chronic disease followup, and health education. The hospitals maintain daily radio contact with the remote villages of their areas, communicating with the native health aid who is trained to report symptoms and to dispense medication and first aid under medical advice.

Native housing in Alaska is totally inadequate, with severe overcrowding and no sanitation facilities, and is closely related to adverse health conditions.

The typical Alaskan native home is small—about 12 by 24 feet, on the average. It is dark, cold, and poorly ventilated during the long winter. There are often 10 to 12 persons, mostly children, living in that one room. Fuel is costly, water is scarce, and usually hard to come by. Except in a few villages where wells have recently been dug by USPHS, the people must go great distances for water, which is too often contaminated from rivers, sloughs, and ponds. During the winter, ice and snow are melted and consumed without prior boiling or chlorination.

In most of the homes, a "honey bucket," as it is generally known, is used for human waste disposal. Garbage and other refuse are often deposited just outside the homes, to be strewn about by children and dogs.

The high death rate due to respiratory disease is a direct result of overcrowding. Many of those recovering from severe respiratory infections have been left with very severe damage that will handicap them for the rest of their lives, according to Dr. Martha Wilson, Service Director of Alaska's Public Health Service. Too frequently, those cured of respiratory diseases return home to conditions favoring reinfection or some other disease.

The Alaskan native's average age at death is 34.7 years in contrast to the national average of about 70. The high incidence of infant mortality—more than twice the rate than in the United States—is one of the contributing causes, and of all deaths of Alaskan natives in 1964, 25 percent were infants, in contrast to 6 percent for the Nation. Contamination, infection, and contagion are a constant problem for the Alaskan native; it is little wonder that the native's lifespan is half that of other American citizens.

The preceding is only a brief sketch of the health problems facing the Alaskan native.

A generous settlement of the Alaska native land claims would have a side effect of relieving many of the native health problems, since the basic living environment would be improved. This is an example of how the benefits under this legislation complement numerous Government programs which have already been in operation for the betterment of Alaskan natives, the goals of which have not been reached.

Mr. HALEY. Does that complete your statement, young lady?

Mrs. BERGT. Yes; it does.

Mr. HALEY. It is a very good statement.

The gentleman from Colorado.

Mr. ASPINALL. I, too, want to welcome Mrs. Bergt before the committee. I did not mean to imply that I did not want to hear about the health situation and social advancement and educational advancement I just wanted to let the witnesses know that this was largely outside the jurisdiction of this committee.

Were you in Kotzebue in 1951?

Mrs. BERGT. Yes; I was.

Mr. ASPINALL. There were a few of us who visited there. One of the outstanding personalities I remember was Abe Lincoln.

Mrs. BERGT. Yes; I know Abe very well.

Mr. ASPINALL. He was very, very articulate and in his way made a very good impression on the committee that was there. Also, we ate lunch. We made an awful trip that day. We went from Fairbanks—this was in November—to Kotzebue to Nome before the day was over. I never saw daylight in Nome, by the way. We had some kind of pie with berries out of the marshes. What kind of berries were those?

Mrs. BERGT. Blueberries.

Mr. ASPINALL. It was a blueberry pie and it certainly shook me. Blueberries north of the Arctic Circle. I could never get over that. I still remember the water situation, as you referred to, which was ice taken from partly fresh water and piled up next to the house. I can remember many other things. They were, and are in want. Don't get me wrong. I want to see the conditions in all of Alaska change. I want all of Alaska to have the same benefits. Some people in my district do not have any less hardship. They have just as much hardship as many of the natives in Alaska, much to my distress.

Thank you very much.

Mr. HALEY. The gentleman from South Dakota.

Mr. BERRY. Mr. Chairman, I join the chairman of the committee in complimenting you on your statement.

Mr. HALEY. The gentleman from Alaska.

Mr. POLLOCK. Thank you, Mr. Chairman.

I just want to compliment Laura, also, on your testimony. If you ever decide you need a brief respite from your toil in Alaska, I would be happy to have you in my office.

Mrs. BERGT. Thank you.

Mr. HALEY. We are very happy to have you here.

Mrs. BERGT. I am very glad to be here.

Mr. HALEY. The next witness is Mr. William Paul.

STATEMENT OF WILLIAM PAUL, ATTORNEY AT LAW, SPOKANE, WASH.

Mr. PAUL. Mr. Chairman, I have been sitting back here sweating all day long.

Mr. HALEY. You won't have to sweat very long, Mr. Paul, because my time is running out.

Mr. PAUL. I have rewritten my speech a dozen times and I am going to confine it to the questions posed. My grandfather and grandmother on both sides were Indians. My legal residence is in Alaska. My domicile right now is in Seattle. I am one of the attorneys for the Arctic Slope Association, and they are the ones that have probably the richest area of oil in all of the North American Continent.

Referring to a remark of the chairman a while ago about Abraham Lincoln, it is perhaps some distinction to me that my mother was once betrothed to an Abraham Lincoln. Fortunately she got out of it. That is the reason my name is not Lincoln. The thing that I noticed as we went on with our subject was this: Continually it has come up and

the remark has been made that the United States bought Alaska from Russia. That is not a statement of fact. The fact is the United States bought the sovereignty, and it did not disturb the actual ownership, use, and occupation of the inhabitants. That is based upon international law.

Along back in the 15th century there were five nations that came together and they decided what rights each discoverer should have in the new land. This was reduced to one statement; namely, that the inhabitants who dwelt in North America would not be disturbed in their possession except in one respect—they could not sell without the permission of the discovering nation. On that theory we eventually came to the position where the United States holds the legal title, but the equitable title is in the hands of the inhabitants who lived in this country. So through that scheme we finally came to the place where we have guardians. The United States holds the title for us, we are wards of the Government, the Government is the guardian. All of the trouble that has come up to us since that time is due to the fact of this guardianship. I say that the 103 million acres given to Alaska was not a gift of the equitable title. It was given to Alaska with a flaw in it; namely, the Indian title. I will read a paragraph from a law case:

The contention that Indian lands are public lands, subject to the disposition as such in 17 Wall, 211 was again rejected by the court. In this case the defendant, Joy, claimed under certain preemption Acts of Congress. The Court pointed out that the occupancy rights in the land in question had been in the Indians from the start and was therefor clearly subject to the disposition by the Indian Treaties.

In the matter of the rights that go along with the equitable title, the Indian title is good against anybody and everybody except the United States. I heard Mr. Dwart when he was up with a committee of Congress challenge me on the statement. You are correct. We cannot sue the United States. But we can sue every single homesteader and miner that comes into our country and on that he had no exception. Subject to the right of possession, the ultimate fee was in the Crown and its grantees which could be granted while the land remained in the possession of the Indian could not be taken without their consent.

This is in *Mitchell v. United States* published way back in 1935. The definition of Indian title consists of, for that word Indian title is a subject—it is not in the law itself. Here is what Judge Marshall said:

Indian possession or occupation was considered with reference to their habits and modes of life. Their hunting grounds were as much in their actual possession as the cleared fields of the whites and their rights to its exclusive enjoyment in their own way and for their own purposes were as much respected. It is enough to consider it as a settled principle that their right of occupancy is considered as sacred as the fee simple of the whites.

That I call good title. That is what the Court calls ownership. That is a word over which there is much dispute. But Judge Marshall from the Supreme Court of the United States said that occupation for hunting purposes alone—we say we do not need these laws. We have plenty of laws. We don't need any \$3,500 million that seems to frighten this committee. Just tell the Indian Bureau and others who have authority to let us do the leasing of those oilfields. We can lease them. We can make a lot of money.

Governor Hickel can come along and tax all the products which may run as high as 50 percent or more. We know the courts have said that

the right to tax is the right to destroy. We do not need anything from Congress. But because we were pushed into a corner the Alaska Federation of Natives wrote a bill—I don't know what the House title is—the Senate title is S. 2020 and I would like to know from anybody what is wrong with that bill. That bill says that the Court of Claims shall decide what we have lost, and we will be paid for it. It will also decide what we still own. Concerning that there will be delineation of what that quantity is.

Gentlemen, that is the reason why the Governor of Alaska and others are against the bill, because they do not want our property line defined. I think I have said enough.

Thank you very much.

Mr. HALEY. Thank you very much, Mr. Paul.

The gentleman from Colorado.

Mr. ASPINALL. Mr. Chairman, I have heard Mr. Paul several times. I think this is the most elegant and succinct statement he ever made.

Mr. PAUL. I did better than that one time when I was told to give a 2-minute speech. It was the best speech I ever made.

Mr. HALEY. Short speeches are good speeches.

I have a letter signed by Frank W. Rogers, Western Oil & Gas Association, who asks that this be made a part of the record and without objection, it will be so ordered.

(The information follows:)

WESTERN OIL & GAS ASSOCIATION,
Washington, D.C., July 11, 1968.

HON. WAYNE N. ASPINALL,
Chairman, House Committee on Interior and Insular Affairs,
Washington, D.C.

DEAR MR. CHAIRMAN: The attached statement expresses the views of the Western Oil & Gas Association with respect to H.R. 17129 and related bills dealing with the Alaska native claims problem.

It is submitted for your committee's consideration with the request that it be made part of the record of the hearings on this matter. Your consideration of this request will be very much appreciated.

Sincerely yours,

FRANK W. ROGERS,
Washington Representative.

STATEMENT OF THE WESTERN OIL & GAS ASSOCIATION

ALASKAN NATIVE CLAIMS LEGISLATION

Pursuant to the announcement of a hearing to be held on July 11 on the pending bills for settlement of the Alaskan native claims, at which only witnesses from Alaska will be heard, we submit this statement for the record.

We are interested in the pending legislation because various member companies of this Association have extensive interests and operations in Alaska under oil and gas leases issued by the United States and by the State of Alaska. We believe that the Alaskan native claims should be settled on a fair and equitable basis, and we favor the enactment of legislation to that end as soon as practical. Legislative resolution of these claims, and the lifting of the administrative land freeze imposed by the Department of the Interior, are clearly in the interest of all concerned—the natives, whose needs and moral claims should be equitably dealt with; the State of Alaska, whose revenues, land grants, and general economic development are being adversely affected; persons who have homestead, mineral, and other rights and interests under the public land laws and who have applied for such rights and interests, but are subjected to some uncertainties and delays because of the claims; and the public generally.

This statement is limited to matters in the legislation which particularly concern us and our members. We do not presume to speak on the many other matters covered by the pending bills on which we have no particular information or com-

petence and which primarily concern others. These matters include such things as the amount of compensation which should be granted to the natives in extinguishment of their claims, and the extent to which the United States should exercise trust or other controls over grants made to the natives.¹

We are concerned with four matters of particular interest to us which do not appear to be adequately covered by any of the pending bills. We believe that these matters should be appropriately included in the legislation in order to achieve the objective, which seems generally desired and in everyone's interest, of having a complete and definitive legislative solution of the problem of the Alaskan native claims—a solution which will leave no uncertainties or loose ends for future resolution.²

These matters of particular concern to us, and our suggestions for handling them in the legislation, are generally as follows:

1. There needs to be a more comprehensive statement of the native claims which are being settled. Some of the Alaskan native claims purport to embrace water as well as land areas, but the pending bills would only settle claims to lands. Accordingly, the legislation should be expanded to extinguish native claims to waters as well as lands, particularly since there appears to be no basis for asserting native claims to waters;³ exception could, of course, be made for any water areas included in existing reserves which might be granted as provided in Section 6 of H.R. 17129. It would also seem that all native claims which have not been heretofore resolved should be covered by the settlement, regardless of whether they are based on aboriginal use or occupancy, or are asserted under the Organic Acts of 1884 and 1900, or otherwise.

2. The various provisions of the pending bills which make native grants "subject to valid existing rights" are all right so far as they go in protecting the State of Alaska and others to whom the United States has transferred public lands or granted interests in such lands. However they need supplementation and clarification, particularly in the case of mineral leases issued by the United States. Such leases are "valid existing rights", and no doubt should be left on that score, particularly in view of the millions which have been invested in developing them and the production which has been obtained with resultant benefit to Alaska and its inhabitants. In addition, the words "subject to" are of uncertain meaning in the case of leases which are traditionally regarded as not disposing of the land covered by them. For example, those words can be read as barring the grant to natives of lands covered by Federal mineral leases. It may also be possible to read them as permitting the grants to be made burdened with the leases, but then there are further questions as to how the leases, and particularly the rights reserved therein to the United States, are to be handled thereafter.⁴ There are

¹ For example, the question of compensation primarily concerns the natives, the United States, and the State of Alaska; we could offer nothing on the point other than the general principle that settlement should be fair and equitable, having in mind, of course, that Congress has complete power to award as much or as little compensation as it sees fit, since Congress is dealing with moral claims rather than legal rights, *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339, 347 (1941), and *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 278-82 (1955), and that there is a split of authority over whether these aboriginal claims of the natives of Alaska survived the Treaty of Cession. The Ninth Circuit held in *Miller v. United States*, 159 F. 2d 997, 1001-02 (1947), that Russia extinguished aboriginal title as part of the consideration for the Treaty. However, the Court of Claims reached a contrary conclusion in *The Tlingit and Haida Indians*, 147 Ct. Cl. 315, 333-34 (1959), holding that the aboriginal title of those particular Indians had not been extinguished by the Treaty.

² As the Secretary of the Interior indicated in his letter of April 30, 1968, transmitting the latest legislative proposal of the Department which has been introduced by request as H.R. 17129 (with certain technical changes) and as S. 3586: the extent to which the Alaskan native claims are to be recognized is exclusively a policy matter for Congressional determination, and a solution of the problem by Congress, after weighing the equities involved and the data available, is preferable to authorizing judicial proceedings because of the delays and difficulties attendant upon litigation.

³ The Court of Claims refused to award compensation to the Tlingits and Haidas for fisheries, stating *inter alia* that "Navigable waterways are not subject to private possession." *The Tlingit and Haida Indians of Alaska et al. v. The United States*, No. 47900, decided January 19, 1968 (Slip opinion, pp. 7-14).

⁴ The Solicitor of the Department of the Interior has held that, without legislative authorization, the Secretary cannot transfer his jurisdiction over leases or the interests of the United States as lessor and must, therefore, retain title to oil and gas in the United States when he conveys lands covered by leases. Opinion M-36254 (December 28, 1954), *Authority To Issue Patent Without Reservation of Oil and Gas Where Subsequent to a Consent by the Entryman to Such a Reservation the United States Has Issued an Oil and Gas Lease and Thereafter Has Classified the Land as Not Prospectively Valuable for Oil and Gas*; Opinion M-86436 (May 9, 1957), *Mineral Reservations in Exchanges of Indian Trust Patent Allotments Under the Act of March 3, 1921*, and Supplement to M-36436 (April 14, 1958), *Authority of the Secretary of the Interior To Assign His Jurisdiction Over an Oil and Gas Lease or the Lessor's Interest Therein*.

also additional questions as to what happens if only part of the lands covered by a lease are granted. These matters have not been left hanging in making grants to the States of lands covered by Federal mineral leases.⁵ They should likewise be appropriately resolved here. We accordingly suggest that provisions should be included in the legislation which—

- (a) would recognize that the validity of Federal mineral leases is not affected by the native claims;
- (b) would state that the existence of a Federal mineral lease does not bar a grant to natives of all or part of the lands covered thereby;
- (c) would provide that the Secretary would continue to administer such a lease for its duration notwithstanding the grant; and
- (d) would give the natives such share of the lease revenues reserved to the United States as Congress may deem appropriate.

Appropriate recognition should also be given to the rights of the State of Alaska under its land grants. Under familiar principles a state selection is complete and the rights of a state vest when a proper application to select is filed in accordance with all legal requirements, *Payne v. New Mexico*, 255 U.S. 367 (1921); *Wyoming v. United States*, 255 U.S. 489 (1921). In Alaska's case, Section 6(g) of the Statehood Act (72 Stat. 341) authorizes the State to make conditional leases and conditional sales of selected lands following the selection and the tentative approval of the selection by the Secretary of the Interior. These selections and tentative approvals, unlike mineral leases, involves disposal of the land itself and cannot be accommodated with a grant of the same land to natives; in this context, it should accordingly be recognized that the rights of the State bar a grant to the natives and that this is the necessary effect of providing that grants may be made "subject to valid existing rights".

3. The imposition of the administrative land freeze in early 1967 stopped the issuance of Federal mineral leases for public lands in Alaska. Numerous applications filed before and subsequent to the freeze have been pending without action, and substantial amounts of advance rentals tendered therewith have been tied up in the meantime. We believe that there should be provisions in the legislation which would: (a) lift the land freeze as soon as possible, (b) provide for resumption of the processing of mineral and other applications for the public lands in Alaska, and (c) give appropriate consideration to the equities of those who have had applications delayed by the freeze. Section 7 of H.R. 17129 would help considerably in these respects, but would apparently permit the present situation to continue for an indeterminate time with respect to the 20 million acres which may be withdrawn under it. We question whether this result is necessary or desirable in the case of mineral leasing, since mineral leasing can be handled in ways which will not prejudice the objectives of the withdrawal. Inasmuch as mineral leasing does not constitute a disposal of the land, it is possible to permit leasing of any withdrawn lands under escrow or other appropriate provisions which will safeguard the interests of the natives in the event that the withdrawn lands should eventually be granted to them. We believe that provisions along these lines should be included in the legislation.

4. The legislation should contain clear authority for the creation of easements over lands granted to the natives which are needed for the administration and utilization of Federal lands. We note the authority contained in Section 7(g) of H.R. 17129 to make grants subject to such easements. We wonder, however, if this authority is broad enough to reserve easements, the need for which may not be apparent at the time of grant but which subsequently become necessary in order to administer otherwise landlocked Federal holdings. We suggest that consideration be given to this point.

In conclusion, we agree that the proper solution of the Alaskan native claims is a difficult and complex task which requires careful study. We assume that there will be further hearings and consideration before a definitive legislative solution emerges. We will accordingly be glad at the appropriate time to elaborate on the general views expressed herein and to submit specific language to carry out our suggestions. We may also have additional suggestions to make after further study. Meanwhile, we appreciate the opportunity to submit this statement and to acquaint the Committee generally with our views and our support for legislative resolution of the Alaskan native claims which is urgently needed. We hope it will be helpful to the Committee to have this statement from us as it continues its work on the matter.

⁵ See, for example, 43 U.S.C. 852(a), and Section 6(h) of the Alaska Statehood Act as amended (72 Stat. 342, 73 Stat. 395, 74 Stat. 1025, 78 Stat. 168).

Mr. PAUL. I would like to enlarge on my testimony and file it later.

Mr. HALEY. You have the permission and the committee stands adjourned.

(Whereupon, at 4 p.m., the subcommittee adjourned.)

(The supplemental statement of Mr. Paul received subsequent to the hearing follows:)

STATEMENT BY FREDERICK PAUL, ATTORNEY FOR THE ARCTIC SLOPE NATIVE ASSOCIATION

It is the curse of modern political practice that when there is a need amongst some of the citizenry, the Congress appropriates vast sums of money, and thereby the Congress has done its duty to correct the wrong. Aside from a relatively minor modification by way of a recognition of relatively small areas of land, the basic intent and purpose of the Department-sponsored bill in solving the Alaska native land problem is to pay the natives some money. The Arctic Slope Native Association is opposed to such a solution.

We use the phrase describing the granting of money as a "curse of modern political practice" advisedly and with some poignancy in the instant situation. While the Alaska Federation of Natives has suggested that the funds to be appropriated under its plan be administered by an independent agency rather than the Bureau of Indian Affairs, nevertheless, we can use the experience with the Bureau as some sort of a guide as to the net result of the appropriation of money. The Bureau gets an annual appropriation around \$300,000,000, and so far as solving the Indian problem in the continental United States, the Bureau has been a failure. (Perhaps inadequate Congressional authority has contributed to the Bureau's failure, but in any event, for whatever reason, the Bureau system has failed.)

The Congress is likely to forget that, as of now, the natives have title to much of Alaska; even the worst Indian fighters will agree that the land tenure by Indians under the authority of "Indian title" includes substantial rights. The extent of such ownership is several hundred million acres, even when we exclude direct invasions by the United States through the granting of patents, mining claims, forest lands, townsites, etc. Congress itself has said, back in 1884, that such lands in the possession of the natives or claimed by them should remain undisturbed. Finally, the Court of Claims has said in *Tlingit and Haida Indians of Alaska v. United States*, 177 F. Supp. 452 (1959) that as to the whole of Southeastern Alaska, that area was owned by the Tlingits and Haidas, that such ownership survived the Russian Treaty, and survived the laws of general application for homesteads, mining claims, townsites, etc. The reason why the Indians in the Tlingit and Haida case prevailed and got some money from the United States is that the national forest proclamations were an expropriation. But in the balance of Alaska, aside from relatively minor exceptions, there are no invasions by the United States, and so as of today, the natives own the vast majority of the land, including mineral rights, by way of Indian title.

If we were to speak legally, we recognize that the Congress has the authority to continue the rape of the Indian by taking such ownership away from them without further ado. But this is 1968, and we have confidence in the moral integrity of both the Congress and the people of the United States that a flat expropriation will be so offensive that it will not and cannot happen.

In order to salve this conscience, the Department has come up with a policy of recognizing Indian title to relatively modest areas around the villages and giving the various groups a sop by way of money. The Arctic Slope Native Association is appealing to the Congress and to the people of the United States for land. Its whole fight has been for the land of their forefathers, where their culture is inextricably woven and, if you please, where they today make their sustenance.

The Association asserts, as civilization moves in, the sustenance to be yielded by the land will shift from whales, reindeer, moose, and salmon to the minerals and other natural usufructs. The Association asserts that its members are becoming sophisticated and can manage the yield of the land in a provident manner. Money is fleeting; and with the experience of more than a century of Bureau of Indian Affairs' management, the Association believes that it will be, in the large sense, useless. Land is permanent; and when it is the foundation of one's culture, it has an emotional impact on the occupier, which money can never

supplant. The Association further asserts that an appropriation of money, no matter how much, as a substitute for land, is a sop which cannot vindicate the national conscience. A rape is a rape, and the mere fact that money is supposed to relieve the national conscience does not change its true character; it is still a rape.

The Association, as a member of the Alaska Federation of Natives, has agreed to modify its respective claim to a lesser amount of land than it owns. If the Congress were to be completely intellectually honest, the Congress would not permit such a modification; but the Association recognizes that powerful interests are at play, that civilization is moving in, that in the continental United States, it has been the history of our government to reduce Indian claims to a lesser amount, and so for these reasons of policy, the Association has agreed to a lesser amount. As to the area occupied by the Eskimos, a couple of million acres of icebergs is not very much and, therefore, a compromise further than the recommendation by the Alaska Federation of Natives changes the form from a compromise to an out and out expropriation.

Attached to the within memorandum is a letter of answers to a questionnaire submitted to the undersigned by the University of Alaska with the request that it be included as a part of this memorandum. Your attention is respectfully directed to the Tlingit and Haida case, and to that portion of it which held that even the barren and inaccessible mountain peaks were within the dominion of those Indians, and that the only reason why, on an expropriation of them, the Indians would not be paid for such barren and inaccessible places was because such had no value. Now that oil has been discovered, and remembering the Alcea Band of Tillamook case included discovered mineral rights, i.e., discovered prior to the expropriation, the icebergs in the Eskimo country can provide the metamorphosis from surfaces sustenance for the modern Eskimo to industrial sustenance for centuries to come.

The Arctic Slope Native Association respectfully petitions the Congress to adopt the bill sponsored by the Alaska Federation of Natives.

Respectfully yours,

FREDERICK PAUL.

SEATTLE, WASH., April 13, 1967.

UNIVERSITY OF ALASKA,
Alaska Review of Business and Economic Conditions,
College, Alaska.

(Attention Mr. Victor Fischer, Director).

DEAR MR. FISCHER: In response to your inquiry of April 3, 1967, I submit the following. I am literally following the format you have suggested in your series of questions. I suspect, however, that the full impact of my answers will be less meaningful than an article organized according to the natural conditions of the subject. I am not going to succumb to the temptation of submitting such because the University of Alaska has sufficient prestige for me literally to follow your outline.

Questions 1. Have you taken any definite steps to deal with lessees on state-selected lands in the north slope area?

Answer. Yes. We have written to each of the successful bidders and offered to enter into covenants not to sue so that their title from the State would be secure. We have had no responses from any of them of sufficient importance to be called answers.

In order to give a complete answer, however, we must tell you of the experience we have had in the Yakutat area. The Colorado Oil and Gas Company was anxious to secure oil rights near the Indian village of Yakutat, but there, too, the Indians had a blanket claim, and such was of sufficient dignity to prevent the Bureau of Land Management in issuing a federal lease for oil rights. Through a series of negotiations, the five chiefs of Yakutat entered into an agreement not to sue the Colorado Company on payment to the five chiefs, acting in their tribal capacity, of some \$65,000.00. The money was paid, and the Colorado Company got their federal lease. A substantial sum of money still remains of this fund.

The Department of the Interior is aware of this fund. I am not sure if formal approval was given to its creation, but I do know that informal approval was. This is important because 25 U.S. Code 177 prohibits conveyances of land by Indian tribes to anyone. Therefore, with Department approval of the Yakutat formula, we have consistently advocated that such a formula is legal and effective, at least for a temporary solution.

Question 2. What do you think the state's role should be in the state-native-leasee relationship?

Answer. We think that Alaska should be developed for Alaskans. Our text in this area is our experience in Southeastern. The problem is a little personal to me because approximately half of the timber being cut for the Ketchikan pulp mill comes from the areas which was aboriginally held by my family, the Tee-hit-ton tribe of Indians. Let us assume that the Tongass National Forest was not, in its creation, a taking of the aboriginally held lands of the southeastern Indians. (We will later develop other phases of the southeastern problem.) For many years, many profound thinkers thought that the exceptions contained in the Proclamation of the President creating the Tongass National Forest included Indian-title lands. The Congress was so uncertain that it passed a joint resolution in 1947 authorizing the United States Forest Service to sell the stumpage in the Tongass National Forest and to place the fund thus created in a special escrow fund. The fund was to be held intact pending determination of the question whether the United States on the one hand or the southeastern Indians on the other owned the timber, and whoever was finally determined to be the owner would get the fund.

Had the Indians prevailed in southeastern, the escrow fund would be owned by the respective groups within southeastern Alaska. So far as the economy of Alaska is concerned, it is much the better that the Indians own the money than the United States do. I can see huge developments being made as a result of local ownership of the stumpage being yielded by the Tongass National Forest. Instead, the money is being funnelled into the Treasury of the United States.

Using our southeastern experience, it is to the interest of the state government of Alaska to promote native ownership of the lands.

The problem becomes acute, however, because the state government has the right to select more than one hundred million acres of so-called public domain. The more lands held by the native groups in Alaska, the less lands will be available for state selection. But the role of a government is not that of a capitalist. A capitalist, by definition, is seeking profit for himself. The role of a government, however, is to seek justice for its citizens. The natives are part of its constituents. Therefore, the state government, if it had any integrity, must support the native claims. This is true, even if it diminish the area that is available for state selection.

The trouble, however, is that the state is hungry for money because its tax base is so perilous. I need only to point to the state's utilizing the oil lease rentals as if it were current income, rather than as its capital, in order to sustain its state government. Therefore, the exigencies of the state in supporting itself and its services to the communities have promoted a greed. Necessarily, the state, in order to meet these exigencies, has felt compelled to oppose native claims. This is a short-sighted solution, because the economic development which the native groups could, through wise management of their funds, produces for the good of all could be tremendous. We need cite only the Tyonek experience as proof of this thought. Other native groups are just as qualified in resisting the improvidence of the Bureau of India Affairs in economic affairs as do the Tyoneks.

But to get back to your question: What should the role of the state be? It should be to promote justice. Whatever the truth is, let it be. Thus, the role of the state should be to assist in providing a vehicle for the determination of that question. It should assist the native groups in the enactment of legislation by the Congress for the determination of the native rights. Not necessarily that there should be a vehicle for paying the Indians and the Eskimos and the Aleuts. Rather, there should be a vehicle for the definition of the native rights, if it be money or definition of the area of present ownership or both.

Certainly, the role of the state should not be to belittle the fundamental basis of native rights. Certainly, the state should not advertise publicly that native rights are fraudulent. Certainly, the state should not advertise that the native rights are baseless.

We, all of us, should have faith in our courts to find the truth. If the natives do have rights, let us have faith that the native will be protected by the courts; if the natives do not have rights, let us have faith that the courts will find that result. If the natives do had land rights, let us have faith that the natives will utilize such rights for the good of all. So far as Alaska is concerned, it is the better for Alaska that the natives have such rights, than it is for the federal government to have such.

The role of the state in this entire problem has tremendous impact on public opinion. It will unduly lengthen the solution of the native rights problem

if the state oppose them *carte blanche*. The reason for such a thought is that the Congress traditionally has been unwilling to continue the traditional injustices inflicted on the Indians by further encroachments. The Congress will do so if enough pressure is brought to bear. But the Congress will take its own sweet time in doing so, and it will take a longer time than if some other equitable solution can be found. It is, therefore, our prognosis that if the role of the state is merely to oppose native rights, the ultimate solution will be delayed.

To answer your question categorically, we believe that the role of the state in solving our problem should be to assist the natives in their request in Congress for a legal vehicle for the determination of their rights and the extent of such.

Question 3. What do you think is the best interim solution to the native claim vs. state selected land problem?

Answer. As a temporary palliative, we recommend the Yakutat formula.

Question 4. What are your views on a reasonable test for "actual possession" of lands by natives from time immemorial? (Emphasis not supplied.)

Answer. We are a little puzzled by this question because of your use of the word "reasonable." It seems to connote that there are unreasonable definitions of possession.

In order to fully express our views on this subject we should start rather obliquely. *Tee-hit-ton Tribe of Indians v. the United States* held that the Act of 1884 did not ripen aboriginal rights in Alaska to a dignity sufficient to be protected by the Fifth Amendment. Therefore, in suing the United States, the Tee-hit-ton Indians needed the consent of the United States. There being no consent, the action was dismissed. But notice that the Supreme Court did not hold that there were no aboriginal rights in Alaska. The Court did not hold that third parties could invade Indian-title lands.

The Court did hold that the Tongass National Forest situation, that the Congress could put the Tongass National Forest stumpage into an escrow fund, with or without the consent of the Indians, and the Indians could not complain. An important principle to be gained from the Tee-hit-ton case is that the converse is true: While the United States may do as it pleases with aboriginally held lands, no third person can do so. Traditionally, the United States has protected any invasion of aboriginally held lands by a third person, which, of course, would include the state.

A second oblique comment should be about *Miller v. The United States*, which arose out of Juneau. First, the individual members of a tribe, as distinguished from the tribe itself, brought that action. Secondly, it was a case which arose early in the Alaskan situation. Thirdly, it has been discredited in *Hynes v. Grimes Packing Company*. We mention this case because apparently our good friend W. C. Arnold seems to believe that it has some dignity. The *Miller* case is only misleading to the student of Alaskan native rights.

The text in any Alaskan situation and native rights is *Tlingit and Haida Indians v. The United States*, rendered by the Court of Claims in 1959. It can be found in 177 Fed. Supp. 452. The Court is composed of five members and had the benefit of able counsel on both sides. While the attitude of the United States, as such, has been beneficent towards Indians, the Department of Justice has done its best to protect the United States' Treasury. In any event, the Court of Claims held, at page 463, 464:

"The Commissioner has found and we have adopted his findings that the use and occupancy title of the Tlingit and Haida Indians to the area shown on the map reproduced herein was not extinguished by the Treaty of 1867 between the United States and Russia, 15 Stat. 539, nor were any rights held by these Indians arising out of their occupancy and use extinguished by the treaty."

Thus, not only did the Indians of Southeastern own all of Southeastern (the map there mentioned includes all of Southeastern), but also such ownership, by way of Indian title, survived the Russian Treaty and the public domain laws and the laws of general application relating to homesteads, mining claims, etc.

In the Southeastern situation, so far as any wholesale appropriation of Indian title lands by the Tlingit and Haidas are concerned, the Court had to rely upon the Tongass National Forest Proclamations as the act of expropriation.

"These acts (principally the Tongass National Forest Proclamation) on the part of the Government represent takings of land and water aboriginally used and occupied by the Tlingit and Haida Indians for which they are entitled to compensation under the terms of the jurisdictional act. 177 Fed. Supp. 452, 467, 468."

Applying these criteria to the interior of Alaska, we have no Tongass National Forest Proclamation. All we have are the Russian Treaty, the general laws relating to homestead and mining, and generalities of that type. Therefore the syllogism is that Indian title in the Interior of Alaska has never been extinguished, and the natives there still own that which they have always owned.

In this context, you ask me what should be a reasonable test for actual possession. The Court of Claims found that the Tlingit and Haida Indians owned all of Southeastern Alaska. To be sure, there were areas in Southeastern which were entirely inaccessible, and other areas which were entirely unusable because there was simply nothing there for use, as for example, mountain tops. As to these barren and inaccessible areas, the Court of Claims held that the Tlingit and Haida Indians owned the same and that they exercised dominion of the same, but "no value" could be "assigned" to them because of their barrenness.

Now to answer your question more directly: What would be a reasonable test? The answer must be that the test is a relative one. In the Eskimo area, no doubt one family needed one-hundred miles square. That is because the usufruct of the area were so meagre that such a large area was necessary in order to sustain the family. Bear in mind that my use of the term family is in its native sense and could consist of several white man's families. Even though the area was large, the Eskimos exercised dominion over the same. No other person was permitted to trespass on the same. In the Eskimo region, of course, the white man has refused to trespass on the same because of its remoteness and hardships. The type of use, of course, is important. Thus, the Eskimos have their hunting trails, their winter lodgings, their summer fishing spots, their vegetable resources over well-defined and well-protected locations and areas. As is demonstrated by some material that I am enclosing, the Courts do not consider that merely the square footage of an igloo is in the possession of the Eskimo, but rather his hunting areas, his fishing locations, the land over which he exercises dominion, as being in his possession.

More importantly, however, the question should be viewed from the practical. We, as advisors for the Eskimo groups, recognize that the United States could deprive the Eskimos completely of their rights and, as is demonstrated by the Tee-hit-ton case, such deprivation is not a taking within the meaning of the Fifth Amendment. Thus, we and the Eskimos recognize there has to be a practical solution, that the demands of the state as well as justice to the Eskimo, both must have recognition. We say, categorically, that we on our side are willing to find a practical solution between these two diametrically opposed thoughts.

But this last thought is one of compromise and not of pure justice.

Question 5. Do you further define "time immemorial" or do you consider this term self-explanatory?

Answer. The question is not important because, in the context of Alaska, the groups have been in possession of their lands since time immemorial under any definition.

Question 6. What constitutes "abandonment"?

Answer. The English common law definition of abandonment is that one intends to turn his back forever on a thing he possessed. To understand abandonment from the standpoint of an Eskimo, Aleut, or Indian, one must understand his frame of reference. Land is non-transferable; such a thought is unthinkable; it is immoral to entertain such. Where man was himself reared, where he married and bore his children, where he reared his children, where he knew his grandmother and grandfather, and where he played with his grandchildren, to turn his back on such a place is incomprehensible.

To be sure, the younger generation is moving away. They are going to the white man's school, and going to college. Or maybe they have succumbed to the frailties of society and bar in Skid Row.

We suppose that if an area has been abandoned for a couple of generations, then it is gone. Its being abandoned, however, is more a matter of the natives having died out, rather than intentionally turning his back on his home. Certainly, there are areas where the true owner has disappeared and thus, there are areas which have been abandoned.

Question 7. What is your definition of "aboriginal rights"?

Answer. My definition is not important. The definition that I favor is that which is enforced by the Courts, namely: that of the Tlingit and Haida case. The Tlingit and Haida case held that all of Southeastern Alaska was aboriginally held by the Tlingit and Haida Indians. And when I say all of Southeastern, I mean all.

Question 8. Do you think the test for actual possession of native land should be the same as for white's?

Answer. The term actual possession is improper. The term possession is the proper term. The word "actual" probably creeps in because of its use in the Act of 1884, but notice that in the Act of 1884, that there is a second phrase, thus: "that the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them."

Those who stand to gain by diminishing native rights put some hope in the term "actual." But the basic right of aboriginal rights in Alaska is not the Act of 1884, but basic American law which we have discussed at some length in the accompanying papers.

Now, in comparing native possession with white possession, the two thoughts are of a different world. White people cannot ripen their possession into anything; when they squat on land, they are always squatters. The native, however, is not a squatter; he is an owner and has been protected by private international law, by all of the European countries, as well as the United States. I, therefore, cannot compare the same.

Question 9. Do you think the changing mode of native life from a hunting and trapping economy (e)ffects (sic) the premise that natives need large sections of land to maintain this type of economy?

Answer. Your question has two aspects: what he owns and what is good for him. As an advisor to the Eskimo and Athabascan, I am only secondarily interested in their social progress. It is our duty to protect their legal rights. Whether it is good for them or not to have a lesser quantity of land is not our primary concern. We do say that just because the white man thinks it socially better for the Indian to have a lesser quantity of land, that so far as we are concerned, such is not a justifiable reason for taking away from the native his ownership rights.

Your question reminds me of the reservation problem in continental United States. There are many profound thinkers who believe that the reservation system is wrong. They may be right. It may well be that the reservation system has injured the American Indian. But is that a sufficient reason for the reservation Indian to be summarily dispossessed of his reservation? Why is it not better to follow the usual capitalistic system that we have in the United States of paying the Indian for the change. We are in danger of forgetting the strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.

When we realize that the native in this day and age is becoming a little bit sophisticated and able to manage his own money, and when we begin to realize that the natives' having money is good for Alaska, then perhaps we will forget about the idea of merely dispossessing the native.

Question 10. Do you see a problem in differentiating between the land rights of native citizens and the land rights of white citizens?

Answer. Probably, this question has been answered by much of the foregoing.

Question 11. Do you think that natives have a right to the mineral and forest resources of the land they claim on the basis of having used that land only for hunting and trapping? Why?

Answer. You oversimplify the native economy. The natives, whether the Tlingit and Haida or Aleut or Eskimo or Athabascan, utilized all the resources of his country, except perhaps some of the minerals. But certainly as to forests, all of the native economies directly used the forests. Therefore, the forests are but an incident to aboriginal rights, which all of us who have studied the problem traditionally understand.

As to subsurface rights, Alcea Band of Tillamook Indians prevailed against the United States in their claims case in seeking damages against the United States for, among other things, subsurface rights. Thus, minerals are included within aboriginal rights.

Logically speaking, this makes sense, because aboriginal rights comprehends dominion over an area. Whatever is there is owned by that respective native group.

Question 12. Are you working on legislation to be introduced to Congress concerning native land claims? If so can we obtain a copy of this legislation?

Answer. I attended the native conference of chiefs in October, 1966, in Anchorage. It was my idea that the Court of Claims be entrusted with the determination of the area of present Indian ownership of lands by having the Court define the area. I endorsed that legislation and still do.

We are against suing merely for money. The Tlingit and Haida case was first authorized in 1935 and is still going strong. Thus, I am against the delay that is inherent when suing merely for money.

I believe that the Indian, Eskimo and Aleut can manage his own affairs. They are sophisticated. As I mentioned previously, the Tyoneks are a grand example of self-government. Once the thought that what is good for the native of Alaska is good for Alaska is truly comprehended, then the true lover of Alaska will endorse the proposal of the state-wide conference of native chiefs.

One of the problems of drafting legislation is that usually in aboriginal rights cases, the Indians are suing the United States for a taking, an expropriation. That is why the Tlingit and Haida case is so important in the Alaska situation, because were it not for the Tongass National Forest Proclamation, there would never have been a taking. Thus, in framing legislation, either the Congress (and Congress is the sole authority for this purpose) must, by legislation, deprive the natives of their land rights, in which event the natives would be relegated to an action for money against the United States; or alternatively, the present condition will continue where the action would be for a judgment defining the area still held by the natives and an action for money for the miscellaneous takings by way of patents scattered throughout the State. Hence, our recommendation is for the second alternative.

Under your suggestion for any material I may have, or ideas on emphasis and treatment, may I add these following comments:

A. The *Tlingit and Haida* case holds that aboriginal rights in Alaska survived the treaty with Russia and all general public laws relating to land.

B. Were it not for the Tongass National Forest Proclamation, the Southeastern Indians would still own Southeastern Alaska, disregarding actual patents issued by the United States, which certainly must be regarded as "a taking," by the United States.

C. Using the criterion of the *Tlingit and Haida* case, the balance of the interior of Alaska is still owned by the respective aboriginal groups there, again disregarding actual patents issued by the United States.

D. This is not a catastrophic idea because the native groups are becoming more and more sophisticated and can well manage their own affairs to the good of Alaska and to themselves.

E. The State of Alaska is making a tragic mistake in merely opposing native rights; no doubt the State is motivated by its desire for self-aggrandizement by the state selection rights of one hundred odd million acres.

F. The State of Alaska has an obligation to protect all of its citizens, including the natives, and is thus morally bound not to merely deprive the native of his ancestral homes.

G. But the State of Alaska is distrusted by the native groups because of the thought generated by the State officials that the native claims are baseless and perhaps even fraudulent.

H. Notwithstanding the foregoing, the native groups are still willing to work out an interim method of covenants not to use; and

I. The native groups desire that their areas be defined and that a responsible mechanism be devised for the determination of such areas; and

J. If there be a mechanism entrusted with the definition of the natives' area, the natives will react responsibly in such an effort,

K. Because the natives realize that the United States, as such, may deprive them of their rights altogether.

Yours very truly,

FREDERICK PAUL.

