Origin of The Land Claim Movement

Editor's note: The following story is from a book that Fred Paul is writing on the history of civil rights, including our land fight, among the Natives of Alaska. This chapter tells the origin of the Alaskan Native land endeavors. Fred Paul is the son of William L. Paul, Sr. He represented the Tlingits and the Haidas in their claims case from 1946 to 1956 and Arctic Slope Eskimos from 1966 to 1972.

On a certain island in Southeastern Alaska, a Tlingit whose first name was George went to his garden patch in early Spring of 1921. For years on this little island he had planted potatoes in the Spring to be harvested that Fall. His only fertilizer was seaweed, tons of seaweed, which he would pile on the patch after the harvest. Believe me, he had prime potatoes.

George had been reared in that country. As to him that island was as much his as the Tee-Hit-Ton country was ours. For centuries his people traversed their hunting trails in that defined area, each family having its hunting cabin, fish camps and berry patches.

As George was bringing his stuff ashore from his gasboat, he heard a shot, a rifle shot, ring out. George didn't think much about it, "Somebody's probably hunting," he said to himself.

How mistaken he was. As he stepped out of his skiff, he was met by a man whose name he later learned was Oscar. Oscar was menacing his rifle.

"Get the hell out of here," Oscar commanded. "This is my island," Oscar continued. "I got a permit from the Forest Service and Land Office." Then George had a flashback: that shot was aimed at him, a warning shot.

George retreated and went back to his winter village. He learned that Oscar had established a fox farm on his island. Raising wild foxes was becoming very profitable. On small islands, perhaps a mile across, one could turn his foxes loose, for the water was a natural fence. All Oscar had to do was to get the strain started and feed them. At harvest time, he could snare them and be on his way to market.

George was not alone. A couple of dozen others had been ordered off their ancestral lands. They all had a deep seated anger. By the time the 1924 election took place, the confrontation between them resulted in a plank in the white man's party platform favoring: "Passage of legislation by Congress giving the fox farmers title to lands occupied and improved by them thus ending definitely a possibility that the Indian leaders might succeed in driving ranchers from their island establishments which Paul and his supporters claim belong to the Indians."

For years the annual conventions of the Alaska Native Brotherhood were both serious and festival. All Amy Hollingstad had to do was to stand up and survey her audience. Without a word spoken, the audience caught her humor, the sparkle in her eye. Sam Davis and Sandy Stevens always had a contest as to who had the biggest, flappiest ears. The band contest was a highlight, Metlakatla's with Alfred Gordon as their trumpet player, Kake's under the direction of Walter Williams and Ketchikan's with Ed Ridley as clarinetist. On the last night, there was the Grand March. What a week.

Sometime during the convention, Peter Simpson, long a widower, would keep the delegates and visitors in such suspense until he finally confirmed he was young enough (that is, virile enough), to take unto himself a bride, that he was still looking and could be caught.

During the 1925 convention Peter took Dad aside and asked him, "Willie, who owns this land?"

After a long pause, Dad responded, "We do."

"Then fight for it," Peter, in a sense commanded, like a laying on of the hands.

Thus was born the Alaska land claims movement.

As I reflect back, I think it was the fox farmers who triggered the Indians' determination. It was something they could understand, the abrupt ejection from their garden patches.

The average Indian, as of then, had a fatalism towards the United States. They sort of felt that if the United States decreed it was government land, they were powerless to fight it. I can still remember Grampa saying with conviction, "That's guv'ment land."

It took four years for Dad to convince enough of the Tlingit and Haida leaders to get the Haines 1929 ANB Convention to endorse the idea.

There are a few people still living today who attended that convention. Frank G. Johnson ("Doc" as we called him because of his graduation in a pre-medical course by the University of Oregon) has told and retold the story of that high time. A tribal cousin of mine, Samuel G. Martin, Sr., was the sergeant-at-arms there and today takes great pride in his sitting on the inner council and for his contribution to the Indians' determination. And there were many, many others.

The idea as of then was that the United States had already expropriated the Indians' property: thus, the only available method of redress was to sue for the value thereof. The ANB resolution embodied that thought in these words:

"Whereas the United States government has locked up the forest so that what was formerly ours must now be purchased from a government that gave us nothing for it."

The full resolution tells a rather heart rending tale and here it is:

"Whereas from year to year the condition of the native Indians of southeastern Alaska has been getting worse and worse so that they now look toward the future almost without hope; and

Whereas when the United States government took over Alaska from our forefathers, it was a land of plenty, with rivers teeming with all kinds of salmon, the woods with fur and game animals, and forests were free to us; and

Whereas the United States government has locked up the forests to that what was formerly ours must now be purchased from a government that gave us nothing for it; and

Whereas our fish streams have been taken from us by the United States Government so that we can neither fish nor live near our ancient fish streams, not only because in the changing civilization the same Government has taught us to live like civilized people and not on a diet of fish like our fathers, but also because our Government without giving us a hearing has prohibited us from catching fish at our ancient fish streams for our support; and

Whereas the same Government has made fishing regulations so that the only people who can catch fish with profit are those who can afford to invest from ten to twenty-five thousand dollars in a huge fish trap; and

Whereas all of this has reduced our people till our income averages less than $150 to a family of five all of which endangers the health of our children; and

Whereas all of this responsibility must be laid at the door of our own Government: Therefore be it

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Resolved, that we petition in the name of the Alaska Native Brotherhood, that great organization of our people comprising over 5,000 native Indians in southeastern Alaska, to the Congress of the United States for relief; And it be further

Resolved, that congress be asked to delegate a committee of fair minded men to investigate our condition, with money to get the evidence, uninfluenced by the different bureaus which are directly responsible for our condition: And be it further

Resolved, that copies of this resolution be sent to each Senator and Representative of the Congress of the United States with the hope that some day one may be touched to ask justice for us.

Adopted by authority of the grand convention of the Alaska Native Brotherhood at their annual convention meeting at Haines, Alaska, on November 25, 1929.

William L. Paul
Grand President

Attest: Frank G. Johnson
Grand Secretary."

The Alaska Native Brotherhood hired James Wickersham as its lawyer. Judge Wickersham had been appointed by President McKinley in 1900 as the federal judge to clean up the scandal in the gold fields, particularly at Nome. The incumbent judge, Noyes, had a system whereby one of his gang through judicial proceeding got title with the good judge's help to profitable gold claims. Later Judge Wickersham had been delegate to Congress for many years ending in 1920.

He, too, proceeded on the theory that the Indians had already lost their title to the land; he had a pretty good idea, though, of the true nature of aboriginal rights, as we shall shortly see.

The Indians' true friend, Dan Sutherland, as delegate to the Congress from Alaska promptly in 1930 introduced a bill authorizing the Indians to sue the United States in the Court of Claims for the value of the land they had lost. As a part of our heritage from England, one cannot sue the United States for an injustice without the government's permission to sue. It emanates from the old axiom "The King can do no wrong," as the lawmaker all the King need do is to change the law defining the wrong so that it is no longer a wrong.

Sutherland's bill was referred to the Committee on Claims and there it died. That is a favorite legislative maneuver either to kill or give vitality to a bill through assigning it to adverse or friendly committees.

In November 1930, Judge Wickersham was elected delegate on Sutherland's retirement. Of course, he had to give up his employment by the Indians. As delegate, he reintroduced Sutherland's bill and got it assigned to the two committees on Indian Affairs (S 1196th, 72nd Congress). Routinely Congress asks for a report from the executive on proposed legislation and so the storm, as in William Tell's Overture, began. It is a storm that is still blowing today.

The laws of the United States by and large have been pretty good. Through our more than 200 years of life, the United States has formally recognized its trust relationship with its aboriginal peoples. United States vs. Kagama decided by the U.S. Supreme Court in 1886 is fairly representative of the obligations that the U.S. government has towards Natives wherein the Court stated:

"These Indian tribes are the wards of the nation. They are communities dependent on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question has arisen."

The trouble with these good laws is that those entrusted for their execution don't pay much attention to them. Thus in the Alaska situation, back in the early 1930s, the Commisssioner of Indian Affairs, G.J. Rhoades, recommended against the enactment of Delegate Wickersham's bill, in these words:

"After careful consideration of the matter, I perceive no need for the enactment of legislation proposed in S 1196."

His thinking was that when the United States acquired Alaska, the U.S. acquired "title" to all the lands. His report on S1106 stated:

"With the exceptions noted in the Treaty of Cession, the title to all the lands embraced in the domain ceded was acquired by the United States."

His exceptions contained in his report related to lands "actually" in their possession, as for example, the few square feet embraced in a home.

Where the Commissioner got the idea that Alaska was different than the continental United States is a puzzle. The Treaty of Cession between Russia and the United States provided:

"That the uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country."

And again in the Act of May 17, 1884, the Congress declared 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 but the terms under which such person may acquire title to such lands is reserved for future legislation by Congress."

These are pretty good laws, because the genesis of the treaty making process between the United States and the respective tribes throughout the United States had by this time, in 1932, been fully defined. These treaties gave nothing to the Indians; rather these treaties were a cession by the Indians to the United States reserving to the Indians certain defined areas. That is where the term "reservation" comes from. The Indians "reserving" unto themselves those areas which came to be known as reservations. Thus in the famous Yakima case of United States vs. Winans back in 1905 the Supreme Court stated:

"In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them — a reservation of those not granted."

Commissioner Rhoades apparently had never heard of Chief Justice John Marshal's famous words in 1935 that the hunting fields of the Indians are as much in their actual possession as the cleared fields of the whites, because the Commissioner stated:

"in view of the long, established policy, it seems clear that any actions based upon a general assertion of ownership on the part of the Natives with respect to lands not actually occupied by them would be without foundation of law or fact, and the expense incidental to pursuing this litigation would entail an unnecessary burden upon the Natives not commensurate with any benefits they may hope to secure."

One must remember that Delegate Wickersham's bill simply authorized the opening of the door. In other words, the Commissioner was taking it upon himself to be judge and jury and held that the Indians had no rights and since he said so, the door to the courts should not be opened.

The infidelity on the part of the Commissioner of Indian Affairs, in part, was inherent within the Department of

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the Interior. Thus, the Commissioner reported to the Assistant Secretary of the Interior having charge of public lands. For decades this office of Assistant Secretary was entitled Assistant Secretary for Public Lands. If the Department of Interior ruled that the Indians had rights to lands, it would thereby be ruling that the public domain owned by the United States in its propriety capacity would be the less. With the emphasis on the part of the Assistant Secretary for Public Lands being placed upon his responsibility to the people of the United States as conservator of the public lands, the Indians always lost that argument. Even with a sympathetic Commissioner of Indian Affairs, the heirarchy of the government is such that the Commissioner is always overruled by the General Land Office or as we know it today by the Bureau of Land Management.

In this instance Secretary Ray Lyman Wilbur by his letter of March 11, 1932, wrote:

"After a review of the proposed measure, I agree with the Commissioner (in his report)."

Judge Wickersham had a diffferent idea as he explained in the hearings:

"But they had a title by occupancy, a possessory title which was of value, and the Supreme Court of the United States had held that that property was of such a value that it could not be foreceably taken away from them except by war.

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Wherever there was an Indian claim of possession, however, it has been the policy of our government from the beginning and the British government prior to that time, to settle with these Natives and procure the quieting of the possessory rights by purchase."

Judge Wickersham likewise gave due credit to the Alaska Native Brotherhood as the sponsors of his bill:

"The Alaska Native Brotherhood was organized some years ago, as the best organization that tribes represented in this bill could make of themselves for their own protection. This organization has been in existence now ten or fifteen years. They have been meeting every year. They have an organization, a president and secretary, and they have Southeastern Alaska divided up into districts, have a representative at the head of each district, and they all sign the roll. They meet and have discussion with respect to their rights, and it was at one of these meetings out of which this bill grew. The old men indicated that they ought to have compensation for their lands from the government. They did not know how to get it, but they knew that the Natives in the United States had received it, and they had the matter looked up and discovered that they were in the same category exactly as the Natives of the United States, so that they insisted on preparing this bill and making their application to Congress."

The autumn of 1932 brought the Roosevelt landslide. Dad had run as a Republican for Attorney General of Alaska, a territory-wide office and of course had been soundly defeated. So was Judge Wickersham. It was an ominous time for the Native cause, because Anthony J. Dimond was the Democratic nominee and was elected. He had been a cannery lawyer in his firm of Donohue & Dimond. Back in 1924 as a territorial legislator, he had sponsored a literacy test for voters, a direct threat to the Indian vote. But Mr. Dimond was a surprise. As delegate, he saw other Indian tribes throughout the United States petitioning the Congress for authority to bring their claims before the United States Court of Claims. He learned that this was not an outlandish idea. He learned that it was simply granting an Indian tribe the right to present their grievances to a court. The idea appealed to his sense of justice.

By the winter of 1934-35, during Dimond's second term in the Congress, he had acquired an immense reputation in the Congress. It was with this political prestige that brought the proposal of the Alaska Native Brotherhood back to the floor of the Congress.

When Harold L. Ickes was summoned by President-elect Franklin Roosevelt from Chicago to Washington, D.C., he had gone there with the expectation and hope that Roosevelt would consider him for the job of Commissioner of Indian Affairs. Instead he became Secretary of the Interior. He was a bright and shining spot in that office and Indian Affairs remained throughout his career as Secretary of a special interest to him.

On March 8, 1935, he wrote Congressman Will Rogers, Chairman of the House Committee on Indian Affairs, endorsing the enactment of the bill authorizing the Tlingits and Haidas to sue the United States. We often call this bill the Jurisdictional Act. A similar report went to the U.S. Senate and on June 19, 1935, the President signed the bill into law. We all believed that that was a glorious day. Soon the Indians would have monies with which something really fine could be done in this capitalistic world, that we could compete in a white man's world with this kind of funding. Certainly it could not have been done without Mr. Dimond's steadfast support and industry.

Gradually, through the years, as we struggled to implement our lawsuit against the United States, I began to realize that the whole concept of pitting Indians against the government and the government against the Indians, aided and abetted by an overzealous Department of Justice only exacerbated the feeling of frustration, almost akin to a feeling of hatred inside the Indians; their own government having stolen their land, was refusing to pay for the same and was fighting tooth and nail never, never to pay them.

Henry Benson

1925-1980

I think of Henry
in the night
Lying in bed
waiting for sleep
I think of Henry
Naawoosh Keitl (the first name)
Xaäyadaska (the second name)
The son of Kaagwaantaan
Kiksadi man
Tlingit man
He belonged to Gagaan Hit (Sunshine House)
I think of Henry
Remembering
Henry speaking in the ANB Hall
Henry speaking at the conventions
Henry joking with the crowd
Henry's gone
Remembering Henry
I think of Henry in the night
I think of Henry in the night

—Andrew Hope