

'Indian Country' and what it means

By Alex Scala

Last week the discussion centered upon Indian Sovereignty, or the basic right of indigenous Americans to govern themselves and determine their own destiny. But to fit the mold of Federal Indian Law, that sovereignty can only be exercised over a particular territory; for which Congress and the courts have coined the term "Indian Country."

Indian Country can be defined as territory within which Indian Laws and customs and Federal Laws relating to Indians are generally applicable. According to the noted Indian Law expert, Felix Cohen, "within these territories (Indian Country) the Indian Tribe or Nations had not only full jurisdiction over their own citizens but the same jurisdiction over citizens of the United States that any other power might lawfully exercise over emigrants from the United States. Treaties between the United States and various Tribes commonly stipulated that citizens of the United States within the territory of the Indian Nations were to be subject to the Laws of those Nations."

The current legal definition of Indian Country is set out in 18 United States Code Section 1151 which is the result of the 1948 revision of Title 18 of the Federal Code. The

definition says Indian Country is (a) all land within the limits of any Indian Reservation, (b) all dependent Indian communities and (c) all Indian allotments.

The section of the definition that is most applicable to Alaska is section (b), pertaining to dependent Indian communities. For an historical perspective of this definition one needs to look at the Pueblos and trace their land tenure through history.

An in-depth historical and legal analysis of the land tenure patterns of the Pueblos is a much needed exercise in order to pull together similarities between Alaskan Native Village land ownership and that of the Pueblos. But this is an endeavor beyond the scope of this work and certainly beyond the capabilities of this writer.

The Pueblo Lands are classified as Indian Country even though, like Alaskan Native villages, the Pueblos live in scattered, discontinuous communities. The classification came out of a court case in 1913, *U.S. vs. Sandoval*, where the Supreme Court upheld the constitutionality of a provision of the New Mexico Statehood Act which provided that the lands then owned and occupied by the Pueblo Indians were to be treated as Indian Country.

The Pueblo Lands, at the time, embraced 17,000 acres

with a population of over 8,000. According to the Court the lands were held in communal, fee simple ownership under grants from the King of Spain.

In ruling the Pueblo Lands be classified as Indian Country the Court said the following:

"It is also said that such legislation cannot be made to include the Lands of the Pueblos because the Indians have a fee simple title. It is true that the Indians of each Pueblo do have such title to all the lands connected therewith, excepting such as are occupied under Executive orders, but it is communal title, no individual owning any separate tract. In other words, the lands are public lands of the Pueblo and so the situation is essentially the same as it was with the Five Civilized Tribes, whose lands, although owned in fee under patents from the United States, were adjudged subject to the legislation of Congress enacted in the exercise of the government's guardianship over the Tribes and their affairs."

Many Alaskan Natives feel that, based on this historical perspective, their villages also should be classified as Indian Country, especially in instances like the Venetie lands, which are held in fee simple, communal ownership by the Tribe.

The similarities between the land ownership patterns of the Pueblos and Alaska Natives needs to be analyzed, especially in the growing interest of transferring Village Corporation lands to the Tribe.

When these similarities, or lack of, were presented to a representative of the Federal Solicitor's offices at the AFN sponsored IRA Conference held last March, his remarks were: "sometimes the law is unfair."

For the benefit of all, the fairness of the law needs to be analyzed and corrected, and once the unfairness has been isolated then compensation should be adjudicated to repair the damages caused by this "unfairness."

Next week Public Law 280.

Education an important element for 1991

To the Editor:

I think a lot about the ANCSA these days. One reason, I guess, is that the Native news media discuss it so often. Another is that I am a teacher looking for information so that I can present my students with up-to-date facts and figures.

Anyway, I'd like to very briefly add my two cents to the discussion:

1. In spite of the commendable resolutions proposed during the September Valdez Retreat by the AFN leadership, I find the educational dimension of the Settlement Act was hardly mentioned, including both the education of Native youth and that of Native

adults in villages and cities. An educational policy and strategy need to be decided upon and implemented on a statewide scale, otherwise we will continue to have the shoot-from-the-hip scatter gun approach that presently exists.

2. New corporate models should be actively sought after and discussed by both the Native profit corporations themselves and the Native non-profits and advocacy organizations such as AVCP and AFN. Alvin Toffler's recent book, *The Third Wave*, might be consulted in this regard, especially beginning on page 233.

3. Some realistic scenarios of stock alienation and land dispossession, however painful

and distasteful, should be candidly brainstormed and submitted to the broadest possible public for their scrutiny, input and constructive analysis. One such scenario was recently discussed in the Business section of Newsweek magazine (May 9, 1983).

4. Finally, it should be more forcefully recognized and declared that the process involved in the above will have profound effects upon all American Native peoples and possibly upon the Alaskan and American society in general. This awesome challenge should not deter Alaskan Natives from taking bold steps, however. It should encourage and promote such action. For in the final

instance, is it not the very survival of America's first peoples that we are doing all of this? Let the new models be shared, if that is desired, but first let them be aggressively invented.

I close with a quote from John Mohawk in *Akwesasne Notes* (Summer, 1983):

"It is not simply a matter of reconstructing an ancient society. It is a process of careful and sometimes painful construction of alternate forms of society which can survive in the contemporary social environments, and it is serious work."

Sincerely,

Frank Keim
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