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Tundra Times Exclusive Interview:

BIA Assistant Secretary Ross Swimmer

TUNDRA TIMES: BIA service programs are being cut in Alaska by about \$12 million. Almost one-third of all the cuts in BIA programs are coming from Alaska. It has been suggested that Alaska Natives are being singled out to bear more than their fair share of the cuts. Do you think that's a fair appraisal?

SWIMMER: No, that's not true; the Alaska Natives... are taking a share of the budget cuts and our goal this year was to submit a budget that met the deficit reduction guidelines — Gramm Rudman — so that we would not have to go through sequestering later in the year, which could result, in fact, in a much larger budget cut. If you took a per capita distribution of the cuts in Indian Affairs, I think it would show that there was a greater reduction proportionately in Alaska. There were several reasons and frankly, ... much of those issues were established before I got here. But in the areas that it was cut there was some belief in the Bureau that there were not the required services to Indian people in Alaska that we had in the Lower 48, i.e., welfare, some of the tribal self determination things, just some of the general monies that were going to Alaska in the past. And also an assumption, which I wouldn't vouch for one way or the other that the state was in a position at least to assume certain program elements. And apparently the same assumption had been used when education was transferred to the state that there was either a desire that education should be assumed by the state. I'm not saying the assumptions are valid or not; those are yet to be determined. In looking at getting to a budget target that we needed to get to, Alaska certainly took its share of the cuts. It did not take a third of the budget cuts; our budget was cut a little under five percent nationally, out of a billion dollars or so. What was the figure in Alaska? \$12 million? It was a sizeable reduction.

"I'm not going to suggest there won't be a negative impact... we reduce our budget four-and-a-half to five percent, we're going to put out less money..."

TUNDRA TIMES: What about the assumption of the Reagan Administration as articulated in the Department of Interior's budget, that ANCSA has made Alaska Natives prosperous to the point that service programs could sustain such massive cuts? That assumption is the Administration's justification for these cuts. Where did such an assumption come from, and do you think it's a fair one?

SWIMMER: Well, I think the jury is still out on that. I don't think that it's unfair; I think that the creation of the 12 regional corporations collectively and certainly some individually certainly have made assets work in Alaska and have, in fact, created employment opportunities that certainly weren't there before. The simple fact of putting \$900 million or a portion of it to work in the economy of Alaska has created jobs and the Native Alaskans have had opportunities at some of those jobs. Alaska is such a diversified economy, that if you were to go to the far regions of Northern Alaska and find a Native and say, "Have you benefitted by a job opportunity?" — of course not, because he's still living much on subsistence and whatever state and federal benefits

individually might be there. On the other hand it's provided economic opportunities. I understand some of the corporations have built hotels and motels and maybe even own a bank. In other words there has been economic development and job creation. Now, whether that would have been done otherwise, I don't know; but it has happened through the regional corporations that work for them using the assets that were part of that settlement act... I think there is a validity to say that yes, the economy has been impacted by the creation of the settlement act and the Native corporations and that benefit has directly and indirectly affected the Alaska Natives but certainly not one hundred percent.

TUNDRA TIMES: The question is: Is the nature of the development and the extent to which jobs have been created by ANCSA sufficient to take the place of the basic services that the BIA is cutting from this year's budget?

SWIMMER: Whether it would do it in total next year or whether it would take a series of years or whether it would do it at all, I don't know. I would say that we expect and have expected and believe with some certainty that the economic conditions for many of the Alaska Natives are better than what they are in the Lower 48. The services that we provide, except those that don't have any legal basis that were reduced, the other services are basically of a transfer of payment type service and if people are working and supporting themselves they don't need as much of that money, and there could be a reduction for that reason.

I'm not going to suggest that there won't be a negative impact because of the reduction, just as there will be in terms of transfer of payments. We reduce our budget four-and-a-half to five percent, were going to put out less money. But whether it's disproportionate with what the economic situation is up there — I have not been able to find out yet.

TUNDRA TIMES: Was there consultation with the Alaska Congressional Delegation or with Alaska Native individuals as to what percentage of Alaska Natives had benefitted through employment opportunities or to what extent basic services were increasingly available in the villages as a result of ANCSA?

SWIMMER: In general, not at the time the budget was formulated. The general nature of the budget process is you have to develop the budget and get it cleared through various agencies and then everybody else gets to take

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Also present while the interview was conducted were Messrs. Donahue and Oxedine of the BIA. —Ed.

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a shot at it. That kind of consultation generally has to happen after the fact. I'm not saying that's a good way of doing your budget; that's just the way the government develops its budget, and in fact, that kind of consultation has gone on intensively in the last month or two since the budget has come out. We are looking to see if there are mistakes that have been made and we'll have to evaluate our decision.

TUNDRA TIMES: When were you confirmed?

SWIMMER: December the 5th.

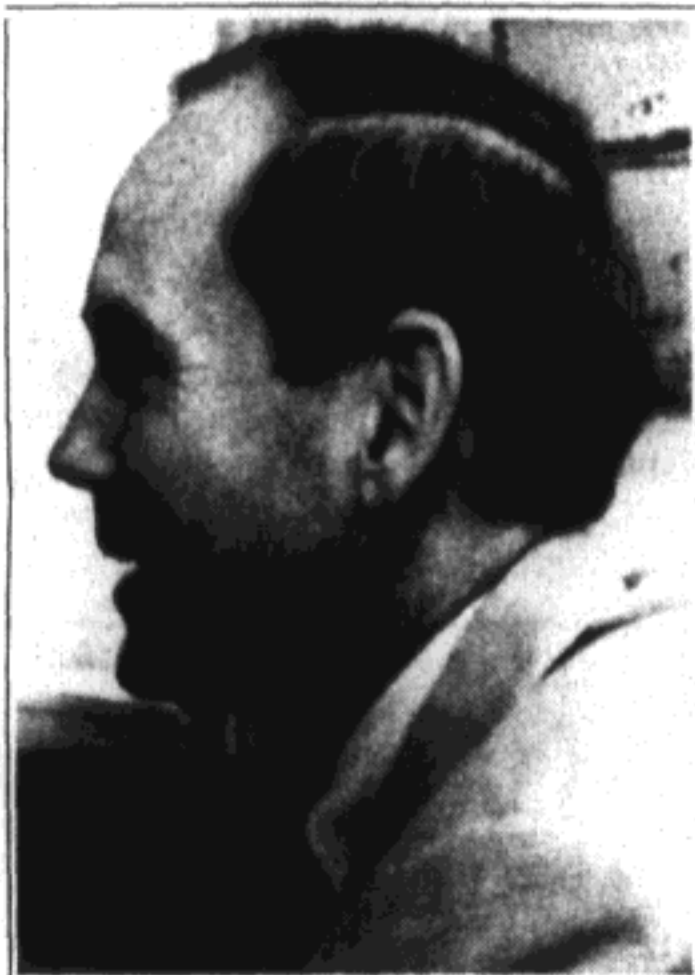
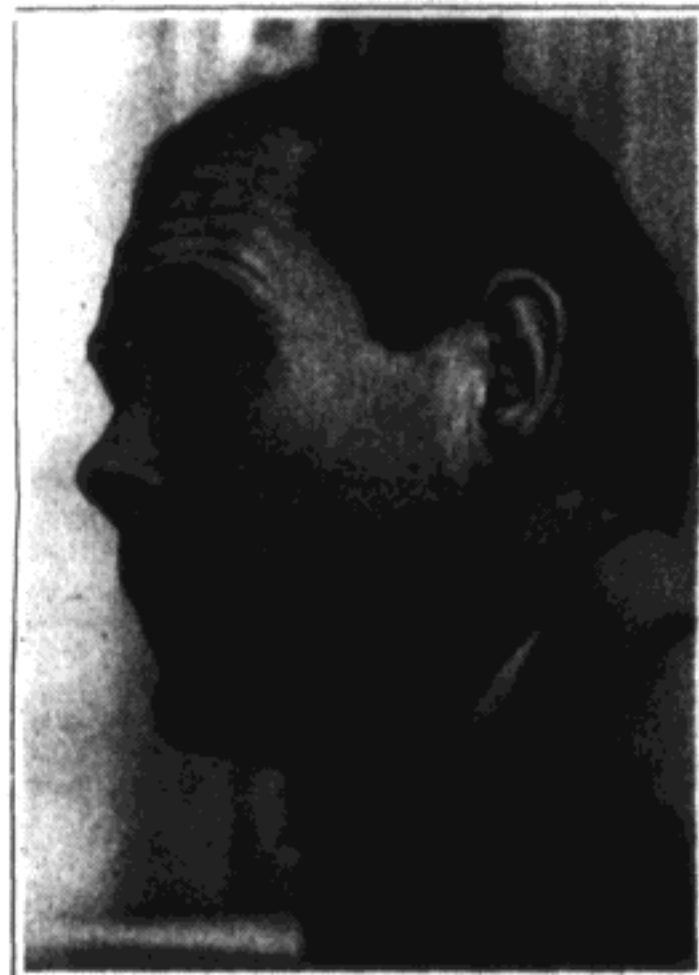
TUNDRA TIMES: So you came in on the tail end of this; all of the cuts and decisions were made, and now you're taking the heat?

SWIMMER: I'll take the responsibility, but you're right, what were dealing with now is the '88 budget. We will be in that process a year from now, but you're right, the '87 budget was developed a year ago and whatever impact we have today is somewhat minimal although there is the opportunity. It's a dynamic process. Just because our budget is up there — I've already heard from people on the hill that they don't like it — I think that overall the budget is an excellent budget for the department and for the bureau and that there might be some adjustments within the budget, but generally speaking, we met our goal and it does require some reductions and that is going to cause some problems with people. They would rather see it reduced over here than over there. There's always the opportunity for fine tuning.

TUNDRA TIMES: We have heard a lot in the last few years about the Reagan Administration's policy of 'self-determination' for Native Americans, but some Indian leaders have openly questioned whether or not 'termination' might not be a better name for it. What is this Administration's Indian policy?

SWIMMER: I recently had a meeting with the president to talk about that issue. My discussion with him and discussions we've had here have been that we strongly support the concept of self-determination. We also strongly support a political relationship that exists between tribes based on treaties or acts of Congress and the United States government.

In that respect, the Bureau of Indian Affairs has been put into a position to do certain things and provide certain services. It's my opinion that if we



are going to engage the tribes in self-determination, which is essentially doing what they believe is best for their particular government and their particular citizens, that we should be in the role of the enabler, or the partner in that process. We certainly can't have self-determination and at the same time be a heavy-handed bureaucrat that is second-guessing everything the tribe does. So I want to move in the direction of tribal sovereignty, tribal independence, tribal self-determination and tribal support. That, however, of necessity, incorporates a certain amount of risk taking by the tribes. It's very analogous to the 16-year-old who is finally going to get his driver's license. Now, either Mom and Dad can drive that car for him for the rest of his life, or they can back off and say, "O.K.; you got your license. You also have the responsibility. Don't break the law, don't have an accident, because if you do you're going to have to pay for it." Now, if the kid goes out and hot-

"Well, there isn't an answer to 'what is enough?' because you have to ask the next question, 'enough to do what?'"

rods around and every time he turns a corner he wrecks a car and Mom and Dad go out and say, "You did it again; here's a couple thousand dollars, go fix the car and stop doing that," well, he's never going to become self-determining. If, on the other hand, there is an attitude there that we are going to help teach the fellow how to drive that car and we're going to provide the back-up; we're going to provide assistance and education, but yet we recognize they're going to make mistakes. The additional role is that of a trustee. Well, a trustee then is in the position of saying, "we are going to protect the asset — we don't want the kid to go kill himself." Something less than that might be O.K., but we try to avoid the tribe going off the deep end, so to speak. But short of that it's a tribal decision. If they want to spend their money this way, that should be their decision. If they want to levy severance taxes, that

should be their decision. If they want to engage in activities that's legal on the reservation, they should do that. We should encourage that kind of thing, but at the same time we will also encourage the tribes to look for support. As they develop an economy, they have to develop a source of income to support that economy; and what we're saying is that our role of doing it for them needs to change to one of doing it with them and helping them achieve that level of independence and be truly self determining. There is no shred of evidence anywhere that suggests that this administration is desirous of cutting off that political relationship, of terminating any relationship — special or otherwise — that it has with tribal governments.

"I would challenge anyone to tell me how the \$30 billion that's been spent in the last ten years have achieved the goals... health care, jobs, housing..."

And, in fact, just the opposite is true. If you look at the budget, the budget has remained relatively stable. We're probably the third or fourth highest year of appropriations for Indian people... It's estimated that this year there'll be \$2.5 billion spent to help Native Americans and Indian tribes achieve that goal of self-determination and independence. Yet, we get the word back from tribes that that is still not enough. Well, there isn't an answer to "what is enough?" Because you have to ask the next question, "enough to do what?"

I think the other thing that is clearly evident from anything that the president has done, and this administration has done, is that they wouldn't have brought a former tribal leader in here to terminate the Indian tribes. In fact, the general attitude right now, the policy that I'm trying to incorporate is that we look to tribal governments first for the decisions they're making and that we're backing them up. You'll see on the hill time after time when we talk about judgement fund distributions, we are insisting that the tribe, in every



case possible, maintain those funds. Per capita payments is not a good way of doing business; you're decapitalizing the tribe. The tribal government has to make that decision; we don't make that decision. If the tribal government receives the judgement fund money and they want to go and give it out to everybody, fine, that's a government decision, and that leader has to respond to his electorate and that's the way it ought to be.

So this idea of saying to the Administration that, "Well, if you don't give us everything that we want, that's termination!" — that's a bunch of... nonsense.

TUNDRA TIMES: Your choice of an analogy in which parental figures compel a wayward child to accepting responsibilities and paying the bills leads me to believe that somewhere down the road this Administration or some future one will inform the tribes that the federal government no longer wishes to be responsible for provision of needed services. And, in fact, whether it is as a result of the stated policy or due to budget cuts or Gramm-Rudman, much less money is being made available. Does maintaining a trust relationship and promoting self-determination then become inconsistent?

Swimmer: Not at all; all I'm asking for is that we establish a real economy made up of jobs, income, taxes, and wealth creation on the reservation, instead of looking to the federal government for that kind of support. And I say it for that very reason that you bring up. It doesn't matter what administration is in Washington; when Congress controls the purse strings, they control your destiny. If the tribal governments are not going to develop local economies with which they can support their governments, financially they're always going to be under the threat of having whatever monies they do get cut off. That's not termination, but it can't be much worse. Why do you want to live at the mercy of the federal government who's always got the ability to drop the axe? You know, the political relationship I talked about is, to me, more important than every dollar that they get out of Washington; and that's what we're saying is the key...

As I said, there is no evidence that we have reduced the budget significantly; in fact, in Indian country we are fortunate that the Administration has kept it there. My feeling there is that we have to begin talking about local economic development, job creation, so that that translates into a viable economy on or near the reservation... I would challenge anyone to tell me how the \$30 billion that's been spent in the last 10 years, have achieved the goals that were allegedly desirable: healthcare, jobs, housing and everything else. If all we look at is money from Washington, if that's the answer, if that's what keeps

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everybody happy, Congress can keep sending money out there for ever and ever and ever and it would be cheaper than solving the problem.

In other words, the money hasn't proved effective. What I suggest we do is use the money as a vehicle and for whatever time we have left, three years, five years or 10 years, until Congress decides they don't want to give money to Indians anymore, let's use that money in a way that can, in fact, help turn around some of those economies.

I did that at the Cherokee Nation, and I really believe that it will work in other parts of Indian country. When you give money to people as a disincentive to work, it's not going to help bring economic development to the reservation. I guess I'm agreeing with you in saying yes, when they turn twenty-one,



"I'm sure that I could go home today and Mom would take me in and cook a meal for me..."

you say, "Go out there and make a living," (but) I will carry it one step further: I'm sure that I could go home today and Mom would take me in and cook a meal for me.

Somebody said, "Well, you came to the Bureau of Indian Affairs after you said you wanted to do away with it; what are you doing up there managing the BIA?" Well, my position is that I didn't say do away with the Bureau, but I do think that the ultimate goal out there is much less presence of the federal government involved in Indian affairs, a much greater involvement of tribal governments in what's going on on the reservation. You can't have the federal government — we've seen what that can do; look at our states, how they complain how they have to meet standards that are put in by the highway administration or some other federal — I mean we have states that say, "Get out of here, we don't want you anymore!" because federal dollars mean federal control and it doesn't matter if it's BIA or someone else.

TUNDRA TIMES: *Are Alaska tribes the same as Lower 48 tribes?*

SWIMMER: Well, I can't answer that question; I think we have to wait until we get some better law or court decision on it. In a sense, we can say no, and if you stop it (*indicates tape recorder*) there, you'll have me. But it's no because you cannot trace a Native tribe in Alaska to a treaty unless you go back to the one treaty between the U.S. and Russia. In the Lower 48 every single tribal government that's recognized today, with very few exceptions, have a treaty relationship with the federal government. Many of them (had them) with the (other) countries... treaties with Spain and France and other countries that were here, and those treaties, in many cases were transferred to the crown in England and on down the line to the new government of the colonies in the United States, but they go back to a treaty relationship by tribe. In that sense, we did not enter into treaties with the acquisition of Alaska with individual Native tribes so you don't have that particular type.

Groups in Alaska have been included by act of Congress, and in much of the legislation that has been passed, and in that sense they do have very similar characteristics to Lower 48 tribes.

TUNDRA TIMES: *A recent decision by Judge Holland of the U.S. Ninth Circuit Court states several times that there can be no doubt that Alaska tribes are 'quasi-governmental' entities. Comment?*

SWIMMER: We're going through it still in the Lower 48. Not even all the tribes in the Lower 48 know what the degree of sovereignty that they have is. I think this case is coming out that way. It's a beginning for some clarification in Alaska as to what sovereign status they might have. I just don't think it's clear; I think all we can say is that they have what they had. We're not taking anything away, and we haven't; some of them were organized, and some were filed under IRA (Indian Reorganization Act), and some are recognized and most of the Alaska Native groups are included in statutes that pertain to spending of money by the Bureau. And in that sense, we recognize ...these particular groups... and make the distributions.

When you get into the issue of sovereignty, that's something that is going to have to be decided by Congress, the courts, or someone.

TUNDRA TIMES: *Federal Indian law provides that unless Congress terminates your sovereign right to self-government, then you still have it. So, if Alaska Natives "have what they had," they are still entitled to self-governance, true?*

SWIMMER: The act of Congress that controls Indian tribes, it's the commerce clause, in article one, section eight, which says that Congress regulates commerce between states and with Indians. That has been interpreted by the courts to mean that Congress has plenary powers over Indian tribes. The purpose of that clause being included in the Constitution was that you had a lot of Indian tribes then in the Lower 48 who were at war with the United States. There was a no-man's land when those tribes were situated out there in such a way that the federal government did not allow trade between those tribes.

That's why it was written into the Constitution in the commerce clause; it was like dealings between states, and tribes were put into that classification. They, in fact, were separate governments, totally. And to conduct trade with

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those governments, you had to have permission of the federal government, and Congress retained that authority. The Alaska tribes, as we know them, were not in existence then; Alaska was not in existence then. And whether the courts will, in fact, interpret the commerce clause to include Alaska tribal groups, we don't know yet.

DONAHUE: I think there's a decision in the federal/state (tribal) relations task force, which quotes Judge Deady's decision, in the late 1800s, in which he decides that the only part that applied to Alaska was the... sale of liquor.

TUNDRA TIMES: *Alaska Natives are "Indians" for the purpose of federal law, are they not?*

SWIMMER: As they are mentioned in the law, they are.

TUNDRA TIMES: *And Indian tribes and people that have not been conquered or signed a treaty enjoy some sovereign rights, is that correct?*

DONAHUE: An Indian individual does not have any sovereignty unto himself. The sovereignty that an individual gives to his sovereign, an Indian individual can give to some sovereign governing power, a tribe, a tribal council, or some governing body.

TUNDRA TIMES: *How do they do that?*

DONAHUE: Through whatever methods they have in that tribe — if there is a tribe. O.K.? That may be or may not be anything we recognize as IRA or whatever. Then that group, or that governing body, from early day on, can establish relationships with other governing bodies around the world. O.K.? Then you get into the government-to-government, nation-to-nation, or whatever.

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But an individual Indian, because they're Indian, doesn't have sovereignty.

TUNDRA TIMES: *What are the powers that an Indian tribes exercises if it's sovereign?*

SWIMMER: Varies all over the spectrum.

TUNDRA TIMES: *But basically, we're talking about the power to tax, determine and regulate domestic relations within the tribe, control your own land use, and make you own laws?*

SWIMMER: Some tribes enjoy those, some don't. Some tribes have police power; some don't. Some tribes have taxing power; some don't. Some control domestic relations, control land use; some don't. It varies all over the spectrum. A lot of it is based on treaty, which the tribe signed, when it either

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ceded land to the federal government or some other action was taken. And it varies across the 300 tribes that are in the Lower 48.

TUNDRA TIMES: *What if you haven't signed a treaty with the federal government, spelling out what's what in that relationship?*

SWIMMER: Well, you had some recognition as aboriginal tribes, and there had to be some recognition, I suppose, either by treaty or act of Congress that that tribes could deal with the United States government, or it wouldn't be a tribe today. When we have a group of people that come in and say, "We are a tribe," we have about a two-to-four-year process that we go through.

We have to identify all those indicators, that in fact, there has been some kind of government, a governing body, established from this point back to a certain point in time, and that at that certain point in time, there was a relationship between that tribe and the United States government, based on some document. Some treaty, some act of Congress, or something that was done, and that from that point in time, when these people were governing themselves and making treaties, that there is a continuous line down to their descendants today, that they maintain some kind of relationship amongst themselves and relationship with the federal government. So, you establish that, and then you can be a tribe in the Lower 48. Otherwise, we have groups that come in, and they can't establish that they're more Indian than I am. We do! I've got full-blood Cherokees that are not members of any tribe! They're between Georgia and Oklahoma... they are not a member of any tribe.

TUNDRA TIMES: *There were a good number of tribes that were recognized as IRA councils by the Secretary, up to a certain date, and no more beyond that point. Beyond that, even those that have already been recognized have not been allowed to amend their constitutions. What's causing the delay on that? Why can't the Secretary recognize groups who are attempting to be recognized as IRA councils, or at least accomodate those who are attempting to amend their IRA constitutions?*

SWIMMER: I suppose the Secretary can do anything he wants to. I don't know the answer. So what I have asked is that any of those constitutions that are out there, that whatever internal review is supposed to be done, that it get completed, and let me take a look at them, and take up the policy issue.

I really don't know. I haven't looked into it enough to tell what the ramifications are. To me, if the tribe needs a governing document, they ought to have a governing document. I don't see that it confers upon them anything that they don't already have. It's a corporate charter. I don't know what concern there would be, I'd have to check with the legal folks, and the other issues to see if there is a problem with it. My research is like yours; it just says that we stopped doing it. I had this question asked by some people down at NCAI and I said that I'd look into it.

TUNDRA TIMES: *What are you prepared to tell me at this point about the reorganization of the Alaska office of the BIA?*

SWIMMER: Oh, Gee! I'd give you the whole thing! Jake (Lestenkof, BIA Area Director for Alaska) has been working on the organization up there for over a year. And one thing I'd like to make very clear is that the organization of that office is not for purposes of cutting the budget or eliminating funds, or anything else. The purpose of the (re)organization that Jake has been working on, our Area Director — I'm very pleased with it, because it was his initiative, and it's a way that he believes he can serve the tribes better...uh, the Natives up there, than what he is now. I've asked all of our area offices to consider those things; I just wish I could take credit for it. He started this effort long before I came on board, and I got to sign the papers.

But there is some confusion. And there is confusion that we're going to save a bunch of money, and that it's part of this budget decrease. Jake's stand is that there is going to be some savings, and I'm going to use those savings in a way to make more efficient what I'm doing. You (the Bureau) don't get it!

(See our cover story this issue)