

# Hugh Nicholls Rebuffs State Attorney Boyko

By Hugh Nicholls  
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At the Governor's conference with Native groups on 19 February in Anchorage, Mr. Boyko presented the State point of view regarding Native land claims and the right of title of the Native people thereto. In presenting the argument of the State, Mr. Boyko said that Native rights were a moral issue rather than a legal point of law, because Native title had been extinguished by Russian conquest.

This theory immediately poses two questions:

1. Was Alaska conquered by the Russians in its entirety?

and:

2. Does conquest extinguish land title or merely depose sovereign identity?

Regarding the first question raised, it is historical fact that the Russians occupied only a small part of the Alaskan land area in the Southeast, Southcentral and Southwest regions of the present State. If presence in numbers alone connotatively means conquest, the United States could have well claimed

(Continued on Page 2)

# NICHOLLS REBUFFS ATTORNEY ...

(continued from Page 1)

the country, because from the 1830's to the 1870's upwards of 5000 whalers used to winter along the coasts of the Bering and Arctic Seas each year, being more than twice the number of Russians ever assembled in Alaska at one single time.

The very wording of the Russian-American Fur Trading Charter as signed by the then ruling Monarch of all the Russians shows conclusively that they regarded the land as belonging to the indigenous people. In part, it stated that land required for buildings, stockades, storage facilities would be purchased from the Native people.

Further, the Treaty of Cession executed between the United States and Imperial Russia in 1867, specifically refers to land title, by defining what land and what title to same should pass to the United States. A treaty between nations is definitive and adhere to specifics. No assumptions can be derived from such a document by the very fact their power exceeds that of the Constitution, and interpretation of a treaty cannot diverge from the specific wording and meaning employed. No implied meaning may be read into it, nor divergence from the exact wording entertained.

Therefore, by Imperial decree, in the form of the Russian-American Fur Company Charter, which required purchase of lands from the Natives, Native title was recognized by Russia, and by virtue of the fact that such title was not mentioned in the Treaty of Cession, it therefore remained intact and such is recognized to be the case as determined by the United States Supreme Court in the Haida-Tlingit case.

It has already been determined in the above suit that the rights to the land were not extinguished in the case of the aboriginal natives of Alaska, but continue unimpaired, the United States assuming wardship and retaining title in trust at the time of the purchase of the Russian sovereignty over the territory.

The present problems confronting the State Government stem not from the Native people asserting their desire to protect that which is their own; to retain what is left of their hereditary lands for their own development and future welfare but from the difference between the logical good intent and reasoning of men as shown in the Statehood and Omnibus acts the 1884 and 1891 acts in regards to Native rights, and the baser desire of mankind to amass wealth at the expense of their less sophisticated brethren. Working agreements could be executed this very day between the State and the various associations which would allow immediate development of any area selected, but the State at present chooses not to give recognition to any right of the people by doing so, but rather in a calculated risk with a 'go for broke' attitude chance the less than even percentage of a favorable court decision. In other words, in lieu of a mutually beneficial working partnership, the State seeks the whole benefit, even at the risk of possible loss of all.

The second question, "Does conquest extinguish land title or merely depose sovereignty?", must be answered thus, "No, conquest merely displaces sovereignty."

In no instance, unless specifically mentioned in the peace treaty, has the land of individuals, or groups or corporations been extinguished in the wars of the so-called civilized western powers in the last two hundred and fifty years.

In 1898, the United States declared war upon Spain and then, by conquest took the Phillipine Islands. The United States desired to retain these islands for reasons outlined in the writings of the late Admiral Mahan. In a national twinge of conscience the United States paid Spain 20 million dollars for the Sovereignty of the islands. In spite of conquest by arms, in spite of sovereign purchase, not one nipa shack on one plot of ground was taken from the Phillipine people by any title extinguishment.

In 1918 the country of Poland was created by treaty, after having been non-existent for many years, being under Russia, Prussia and Austria-Hungary. In the years between 1918 and 1939 it was a distinct government. Today it is an independent communistic type sovereign state. None the less, this very day title to lands rests on the whole, with families who have held the land through armed conquest, political change and various alliances for generations.

In 1939-1940 when the Third German Reich, notorious for its disregard of individual human rights, siezed and occupied Belgium, Holland, and Luxembourg not one land title was extinguished by this over-act of conquest.

1945 saw the total defeat of the Third Reich by the Allies. Again, though sovereignty was extinguished the ordinary German burger, the farmer and the factory owner retained possession of his land and rents were collected the first of each month without the loss of a single payment.

In Italy where wars of conquest have swept back and forth for centuries, there are estates that have been in the possession of the same family for over six hundred years. By these and numerous other examples, it is seen that conquest seldom if ever displaces any but the sovereign governing body or titular head of state who embodies the government.

So in Alaska, by whatever deduction is used, the logical, inevitable court supported fact remains, original title exists, and it behooves those in position to do so, to concentrate on the fact that contracts of mutual agreement between the State or various corporations and the tribal groups are the surest, most logical way to bypass long enduring potential lawsuits for the benefit of the State as a whole.

A mutual agreement executed today will save taxpayers money tomorrow, for as surely as day follows night the State will have to compensate tribal groups for funds already accrued from disputed lands.