

# LISTEN TO THE CANARY: A REPLY TO PROFESSOR BRANSON

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Professor Douglas Branson has written a biting review of Thomas Berger's book, *Village Journey: The Report of the Alaska Native Review Commission*.<sup>1</sup> It requires a response. This reply is written from the perspective of one who worked intimately with Berger in the writing of *Village Journey*. As counsel to the Alaska Native Review Commission, I was one of several people who reviewed, critiqued, and edited Berger's manuscripts prior to the publication of the Commission's report. Thus, my views on the value of Berger's work are not without bias. Neither are Professor Branson's. Branson, however, does not tell us from what perspective he reviewed *Village Journey*.<sup>2</sup>

We do know that Branson disliked *Village Journey*. About the best Branson can say for Berger's effort is that it is "both lyrical and empirical."<sup>3</sup> Ultimately for Branson, "*Village Journey* is advocacy

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1. T. BERGER, VILLAGE JOURNEY: THE REPORT OF THE ALASKA NATIVE REVIEW COMMISSION (1985), reviewed by Branson, Book Review, 4 ALASKA L. REV. 197 (1987).

2. But see Branson, *Square Pegs in Round Holes: Alaska Native Claims Settlement Corporations Under Corporate Law*, 8 UCLA-ALASKA L. REV. 103, 137-38 (1979), concluding that:

Thus far, corporate law and the fit between corporate law and ANCSA have remained in the background as an inchoate conflict. While that condition still holds, the state of Alaska should earnestly begin to lay a smooth state law foundation for the large and unwieldy creature Congress has created in Alaska.

Branson concluded in 1979 that the corporate model could be made to fit the Alaska Native Claims Settlement Act ("ANCSA"), although doing so would require "firm choice of a state law model, revision of the corporation law, amalgamation of some village corporations, and conversions to not for profit status." *Id.* at 138. The successful completion of those steps would, in turn, require "hours of labor, difficult policy choices, and costs." *Id.* There is reason, therefore, to believe that Branson's perspective is that of one who is committed to making the corporate model fit ANCSA.

3. Branson, *supra* note 1, at 197.

scholarship—advocacy masquerading as scholarship.”<sup>4</sup> Berger’s study is, in Branson’s view, completely outcome oriented.<sup>5</sup>

This is but the first of Branson’s misperceptions (or mischaracterizations) of Berger’s report. Nowhere does Berger claim that *Village Journey* is an empirical, scientific, or other kind of study. Yet, that appears to be Branson’s frame of reference.<sup>6</sup> It is not surprising that *Village Journey* fails to satisfy Branson.<sup>7</sup>

Branson acknowledges that “problems exist with ANCSA.”<sup>8</sup> His solution is academic.

To deal with these problems, Alaskans with divergent points of view together must develop an analytical framework within which to formulate solutions that accommodate competing interests and correct those defects in the ANCSA scheme that jeopardize Natives’ birthrights.<sup>9</sup>

The fact is that the terms of reference for Berger’s commission did not call for Berger to develop the kind of “analytical framework” that Branson finds necessary.<sup>10</sup>

The Inuit Circumpolar Conference (“ICC”) terms of reference for Berger’s commission specifically required Berger to “hold public hearings . . . in rural Alaska” and to report on “the functions of the various Native corporations in fulfilling the ‘spirit’ of ANCSA for Alaska Natives.”<sup>11</sup> In many ways, the process influenced the product, but the process was central to the ICC’s charge to Berger. In recommending adoption of the report to the 1986 ICC General Assembly in Kotzebue, Alaska, the ICC Executive Council noted that:

[n]o one has ever asked the Native people about this land settlement and its impact on their day to day lives. The Alaska Native Review

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4. *Id.* at 198.

5. *Id.*

6. *See id.* at 197-98.

7. Scholars have also reached conclusions similar to Berger’s. *See* B. Pierce, *Native Village Corporations in Alaska: An Anomaly* (Dec. 12, 1985) (master’s thesis on file at the University of Washington Library). In his master’s thesis, Pierce states that “[t]he corporate entity as a tool will only insure a steady erosion of the Native land base in village Alaska. . . . This does not qualify as a fair and just settlement of Native land claims and alternative organizations are desparately [sic] needed.” *Id.* at 48. Pierce concludes that placing corporate lands in a “land bank” to protect them from creditors’ claims or transferring the lands in trust to an Indian Reorganization Act (25 U.S.C. §§ 461-79 (1982 & Supp. III 1985)) organization would be preferable to the present arrangement. *Id.* at 47.

8. Branson, *supra* note 1, at 198.

9. *Id.* at 199.

10. *See* Agreement Made as of August 29, 1983 Between Thomas R. Berger and Inuit Circumpolar Conference (revised Nov. 1983) [hereinafter ICC Terms of Reference]. The ICC Terms of Reference are reprinted in the Appendix to this reply.

11. ICC Terms of Reference, *supra* note 10.

Commission, through its village hearing process, allowed the Natives to speak in their own communities, in their own languages and in their own milieu.<sup>12</sup>

Even though the village hearings were the principal means of gathering information for the commission's report, Berger and his colleagues considered pursuing the kind of empirical and scientific data that Branson relishes. Cost prohibited the commission from gathering such data, but we all assumed (perhaps in retrospect "hoped" is a better term) that the Interior Department's ANCSA 1985 STUDY<sup>13</sup> would perform that task and perhaps even provide a counterpoint to what developed as Berger's recommendations.

The Interior Department has issued its ANCSA 1985 STUDY in draft form.<sup>14</sup> The study cost approximately \$500,000 and is about 600 pages long. Now, that *is* a study.<sup>15</sup> It is loaded with statistics on the status of Natives<sup>16</sup> and the Native corporations.<sup>17</sup> Like Berger's work, the study summarizes the role and the future of the ANCSA corporations in problematic terms.

[M]any looked to the corporations to preserve the Native heritage for future generations. . . . [T]hat meant preserving sufficient land and fostering an environment in which Natives could pursue traditional ways of life.

These expectations have placed unrealistic demands on the ANCSA corporations. Many are appropriate for governments, not corporations. . . . [The corporations] cannot fully engage in the mainstream of Alaskan economic activity and at the same time fully serve the aspirations of their many shareholders who continue to state that control of the land to preserve the traditional way of life is their primary objective. In sum, the ANCSA corporations have not been able to fulfill the range of high expectations placed on them, and it is highly unlikely that they might ever do so.<sup>18</sup>

12. Statement of the ICC Executive Council Regarding *Village Journey: The Report of the Alaska Native Review Commission 2* (Aug. 1, 1986) (available in Anchorage offices of ICC). The ICC subsequently adopted VILLAGE JOURNEY as the Commission's report.

13. U.S. DEP'T OF THE INTERIOR, ANCSA 1985 STUDY (Draft June 29, 1984) [hereinafter ANCSA 1985 STUDY].

14. Section 23 of ANCSA (43 U.S.C. § 1622 (1982)) requires that: [a]t the beginning of the first session of Congress in 1985 the Secretary [of the Interior] shall submit, through the President, a report of the status of the Natives and Native groups in Alaska, and a summary of actions taken under [ANCSA], together with such recommendations as may be appropriate. The 99th Congress has ended, and the Secretary has yet to submit any recommendations or the statutorily required report.

15. The author participated as a subcontractor on portions of the ANCSA 1985 STUDY.

16. ANCSA 1985 STUDY, *supra* note 13, at IV-i to IV-61.

17. *Id.* at V-1 to V-158.

18. *Id.* at ES-12.

The ANCSA 1985 STUDY also questions the financial stability of the corporations *qua* corporations.

Individual corporate performance runs the gamut from sustained profitability to sustained losses. Many village corporations have been hard pressed merely to survive. Most still exist, but many are in deep financial trouble. Some obtained land with valuable surface resources and sufficient money with which to develop these assets. Most did not. . . . The smallest village corporations received insufficient capital to maintain a headquarters and conduct operations. . . .

Even at the regional level, only one corporation has not reported a loss since its formation—and more than one has had to consider bankruptcy. . . .

In summary, the available evidence indicates that many village corporations and possibly one or more regional corporations may not remain viable, as well as that some corporations at both regional and village levels may achieve at least a modest success.<sup>19</sup>

Professor Branson believes that “[w]hat any study of ANCSA needs is participation by corporation law specialists who fully understand how to utilize the extreme flexibility afforded by modern corporation law.”<sup>20</sup> Berger solicited and obtained precisely that sort of participation. A series of four “Overview” hearings preceded the sixty village hearings. By conducting these hearings, Berger sought to explore the scope of the ICC’s terms of reference<sup>21</sup> and develop a framework for the village hearings that were scheduled to follow.

The first hearing explored the “Spirit of ANCSA” and assembled a number of Native and non-Native leaders who had participated in the creation of the Claims Act.<sup>22</sup> The second set of overview hearings analyzed the function and effects of the “ANCSA Institutions and Legal Regimes” that resulted from the Claims Act.<sup>23</sup> This overview primarily drew participation from past and present managers of the

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19. *Id.* at ES-14. Subsequent to the publication of the draft ANCSA 1985 STUDY, one regional corporation (Bering Straits Native Corporation) did file for protection from its creditors under chapter 11 of the Federal Bankruptcy Code. The author represents seven village corporations who are creditors of the Bering Straits Native Corporation in that action. *In re* Bering Straits Native Corporation, No. 2-86-00002 (Bankr. D. Alaska filed March 5, 1986). The Thirteenth Regional Corporation also filed for protection and has received approval of its plan of reorganization. Two village corporations, Haida Corporation (Hydaburg) and Tigara Corporation (Point Hope), have also filed under chapter 11.

20. Branson, *supra* note 1, at 208.

21. *See* ICC Terms of Reference, *supra* note 10.

22. Transcript of Proceedings of Alaska Native Review Commission, Vols. I-III, Overview Roundtable Discussions: The Spirit of ANCSA (Feb. 27-29, 1984) (on deposit at Elmer Rasmussen Library, University of Alaska, Fairbanks).

23. Transcript of Proceedings of Alaska Native Review Commission, Vols. IV-V, Overview Roundtable Discussions: ANCSA Institutions and Legal Regimes (Mar. 1-2, 1984) (on deposit at Elmer Rasmussen Library, University of Alaska, Fairbanks).

ANCSA corporations.<sup>24</sup> The two sets of hearings lasted five days and were devoted in significant part to the origin, history, purpose, and function of the ANCSA corporations.

After the overview and village hearings, Berger held another series of four "Issue-Specific Roundtables" in Anchorage. The issue-specific hearings were intended to permit Berger to evaluate the testimony of villagers and to probe deeply four specific issues. During one set of the issue-specific hearings, entitled "ANCSA & 1991," the discussion focused on the use of corporations to resolve the 1991 issues.<sup>25</sup> The participants included a professor of law from the University of California at Davis who held the position of technical adviser to the Alaska State Corporate Code Revision Commission. Other participants included corporate counsel and leaders from several ANCSA regional Native corporations.<sup>26</sup>

As indicated above, Berger requested and received the participation of "corporation law specialists."<sup>27</sup> Although Berger rejected the corporate alternatives Professor Branson advocates, Berger's work is not "plagued by a dearth of understanding of corporation law."<sup>28</sup> Nor does Berger's work evince an "incomplete understanding" of the law applicable to non-profit corporations.<sup>29</sup> Parts of *Village Journey* demonstrate Berger's fairly sophisticated grasp of corporate matters.<sup>30</sup>

Branson simply fails to appreciate the fundamental point to be gleaned from Berger's journey to Alaska's villages. As Berger says on the first page of the preface to *Village Journey*:

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24. The third overview explored "U.S. National Policy" toward Native Americans. This hearing attracted Native leaders, anthropologists, and attorneys from various parts of the United States. The final overview, "International Overview," brought together Native leaders and scholars from Canada, Greenland, Australia, Norway, and Alaska.

25. Transcript of Proceedings of Alaska Native Review Commission, Vols. XX-XXIII, Roundtable Discussions: ANCSA & 1991 (Nov. 14-16, 1984) (on deposit at Elmer Rasmussen Library, University of Alaska, Fairbanks).

26. The other issue-specific hearings focused on "Subsistence," "Alternate Approaches to Native Land and Governance," and "The Place of Native Peoples in the Western World."

27. See, e.g., Transcript of Proceedings of Alaska Native Review Commission, Vol. XXII, Roundtable Discussions: ANCSA & 1991, at 2250-58 (discussions of Professors Monroe Price and Daniel Fessler regarding taxation of lands owned by non-profit corporations and their conclusions that the use to which such lands were put, not ownership by a non-profit corporation, determined whether they were taxable or not); see also *id.* at 2259-75 (remarks of Professor Fessler regarding non-profit and cooperative associations).

28. Branson, *supra* note 1, at 207.

29. *Id.* at 208.

30. See, e.g., T. BERGER, *supra* note 1, at 190 (analyzing data on corporate finance found in the ANCSA 1985 STUDY, *supra* note 13).

It has not been easy for the people of village Alaska to be heard. For many years, they have been caught up in the cultural uncertainties of assimilationist policies. Yet I am convinced that in the villages of Alaska I have heard the authentic voice of the Native peoples. I have tried to capture it in this book.

...

My journey to the villages of Alaska was an inner journey as well. Any inquiry into the condition of the Native peoples, any discussion of their goals and aspirations, must also entail a consideration of our own values. What we learn in this process about Native society should teach us much about our own society.<sup>31</sup>

The ICC did not commission Berger to empanel a group of "corporation law specialists," study ANCSA, and "develop an analytical framework within which to formulate solutions."<sup>32</sup> As explained in the title and the preface to the book, the ICC commissioned Berger to journey to Alaska's villages and report his findings. Berger's report is not that of the "Indian and Native affairs specialists" who, "naturally inclined toward what they know best, focus on tribal government, reservation status, and government appropriation."<sup>33</sup> Instead, the report is Berger's attempt to capture the authentic voice of Alaska's Native village people.

Branson also questions the report's authenticity (and by implication Berger's integrity). Branson suggests that Berger's selective inclusion of testimony, which is predominately negative when it comes to ANCSA and the Native corporations, undermines the book's credibility.<sup>34</sup> Nowhere does Branson indicate that he undertook an independent review of the transcripts of the testimony on which Berger relied.

Berger is known in his country as a person of perception and integrity. He has enjoyed a distinguished career as a political party leader, judge, author, attorney, and member of the Canadian Parliament and the British Columbia provincial legislature.<sup>35</sup> Though not a

31. T. BERGER, *supra* note 1, at vii, viii-ix.

32. Branson, *supra* note 1, at 199, 208.

33. *Id.* at 206. Whether or not Berger may be fairly characterized as a Native affairs specialist, he clearly does not recommend government appropriation or reservation status as solutions to the problems of ANCSA. See T. BERGER, *supra* note 1, at 166-67, 171-72. Although he does recommend that Congress establish a fund to pay Native corporate debts, any funds provided by the federal government are to be reimbursed from the section 7(j) (43 U.S.C. § 1606(j) (1982)) income received by the corporation.

34. Branson, *supra* note 1, at 198.

35. Member of Parliament (N.D.P.), 1962-1963; Member of British Columbia Legislative Assembly (N.D.P.), 1966-69; Leader, New Democratic Party (N.D.P.) of British Columbia, 1969; Judge, Supreme Court of British Columbia, 1971-83; Member International Commission of Jurists, 1981-Present; Author of NORTHERN FRONTIER, NORTHERN HOMELAND: THE REPORT OF THE MACKENZIE VALLEY PIPELINE INQUIRY (1977), FRAGILE FREEDOMS HUMAN RIGHTS AND DISSIDENT IN CANADA

member of the Liberal Party, the Liberal government of Prime Minister Pierre Trudeau appointed Berger to the judicial bench. While a judge, Berger headed royal commissions of inquiry for governments formed by each of Canada's three major political parties.<sup>36</sup> It is not likely that Berger's perception and integrity suddenly deserted him in Alaska.

None of this is to imply that *Village Journey* might not be deserving of criticism — even along the lines that Professor Branson suggests. Perhaps the report lacks balance or an adequate justification for the rejection of corporate alternatives. Branson, however, goes too far. He has converted a scholastic review of a serious work into a veiled attack on the intelligence and integrity of the author. Branson also makes a few ad hominem appeals to some rather deeply rooted prejudices, which is illustrated by his discussion of treaty fishing rights in Washington State.

Branson purposely uses the Washington treaty example in a different way than Berger and then questions Berger's conclusions. While Berger included the example to show that cooperation between Native and state governments in the management of fish and game is not unusual,<sup>37</sup> Branson used it to prove that granting fishing rights inevitably leads to racial conflict.<sup>38</sup>

Branson does not deny Berger's point that the vindication of treaty fishing rights by the U.S. Supreme Court revitalized the Native economies and societies in western Washington. Instead, Branson says that the treaty interpretation granting Indians fifty percent of the fish resulted in:

[h]atred, armed range wars between non-Indians and Indians, backlash and resentment, and untold economic losses for non-Indian fishermen forced from their chosen vocations has been the result of the interpretation.<sup>39</sup>

This implies that the same thing will happen in Alaska if Berger's recommendations are implemented. Berger, however, does not claim that Alaska Natives have a right to fifty percent of the fish in Alaska or that they ought to be able to force non-Natives from their chosen vocations.<sup>40</sup> Fairly read, the reference to the Washington treaty fishing

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(1981). For a more complete biographical sketch of Berger, see T. BERGER, *supra* note 1, at 203.

36. Chairman, Royal Commission on Family and Children's Law (British Columbia), 1973-74; Sole Commissioner, Mackenzie Valley Pipeline Inquiry (Canada), 1974-77; Sole Commissioner, Advisory Commission on Indian and Inuit Health Consultation (Canada), 1979-80.

37. See T. BERGER, *supra* note 1, at 163-64.

38. See Branson, *supra* note 1, at 199 n.12.

39. *Id.*

40. See T. BERGER, *supra* note 1, at 162-66.

cases in *Village Journey* merely illustrates an historical example of U.S. Indian policy protecting aboriginal access to resources. Berger recommends that the government afford similar protection (in fact considerably less) to Alaska Natives. Natives currently have the power to exclude others from Native-owned lands. Outside Native lands, Berger says that "cooperative planning to manage and protect the interests of all parties will be necessary and desirable."<sup>41</sup>

Vindication of the Washington treaty fishing rights was the culmination of a legal struggle that began at the turn of the century.<sup>42</sup> The treaty rights have proven painful and difficult to enforce because of the lengthy legal proceedings. This does not mean that it is wrong to enforce those rights or that it will not (as Branson implies) be worth the "tremendous cost."<sup>43</sup>

Berger's examples speak for themselves. The State of Washington and the tribes share management responsibility under a cooperative arrangement. A similar scheme governs the land claim settlements recently reached in Canada's Arctic and sub-Arctic. Branson fails to support his conclusion that the alleged negative consequences of the Washington treaty cases will recur in Alaska if Berger's cooperative management proposals are implemented. Branson's use of this example, and the implications following from it, are rhetoric masquerading as reason.

Branson presses his attack with other more subtle rhetorical devices. For example, he says that Berger's work is "completely outcome oriented,"<sup>44</sup> "naive,"<sup>45</sup> and "revisionist" history.<sup>46</sup> These loaded words criticize without explaining and cast doubt or aspersion on the

41. *Id.* at 165.

42. *United States v. Winans*, 198 U.S. 371 (1905) (upholding treaty granting Indians right to fish at their "usual and accustomed" places).

43. Branson, *supra* note 1, at 199 n.12.

44. *Id.* at 198.

45. *Id.* at 201, 202.

46. *Id.* at 198, 203. In some sense, all history is "revisionist" insofar as it requires interpretation. Branson erroneously asserts that Berger "adopts a revisionist approach and concludes that . . . [the] unwilling or duped Natives . . . lacked capable leadership." *Id.* at 198. Berger certainly did not find that the Alaska Natives "lacked capable leadership." Instead, the record before the commission established that the Native leaders were quite capable of representing their constituents, but to some degree felt unfairly coerced into accepting certain parts of the legislation.

Don Wright, AFN President when ANCSA passed, told the commission:

I want to reemphasize that, no matter how hard we fight and no matter what our real legal rights are, and no matter how sympathetic a president like Mr. Nixon wants to be, he is still overpowered by the influence of the major oil companies, the major economic forces, to take from the Native people because they're lesser in number and weaker in education and money to fight



idea or person being discussed.<sup>47</sup> Perhaps appropriate in an argumentative brief, these techniques have no place in a scholarly work.

By employing these techniques, Branson runs the risk of unduly polarizing the debate over the difficulties with ANCSA. Branson seems to criticize Berger for creating the same risk,<sup>48</sup> but erroneously concludes that "Indian and Native affairs specialists like Berger have dominated the discussion about the future of ANCSA."<sup>49</sup> Prior to the publication of *Village Journey*, many worried about the dominance of the corporate viewpoint. Insofar as Berger's report lays out a comprehensive tribal alternative for Alaska Natives, it is probably as "one-sided" as Branson claims.<sup>50</sup> In the context of any discussion of the future of ANCSA, however, such a report provides the essential balance.

There is not likely to be any one "solution" to the problems spawned by ANCSA. The Alaska Native people are far too diverse a constituency to be pigeonholed into any one category. In a process that has now consumed nearly five years, the Alaska Federation of Natives ("AFN") developed "a menu of options" in resolution format

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with. . . . [U]nder the mandate of Congress, those special interests continually eroded away even the position of the highest officer in the United States at our expense. . . .

I consider it [ANCSA] an arbitrary mandate of the Congress of the United States and I don't believe the door is closed . . . at some point, there will be a reconsideration and justice will truly have been done.

(APPLAUSE)

Transcript of Proceedings of Alaska Native Review Commission, Vol. II, Overview Roundtable Discussions: The Spirit of ANCSA, at 131 (Feb. 28, 1984) (on deposit at Elmer Rasmussen Library, University of Alaska, Fairbanks). Mr. Wright also described the secrecy and deception that he believed accompanied the enactment of ANCSA. Transcript of Proceedings of Alaska Native Review Commission, Vol. III, Overview Roundtable Discussions: The Spirit of ANCSA, at 245-49 (Feb. 29, 1984) (on deposit at Elmer Rasmussen Library, University of Alaska, Fairbanks).

Professor Douglas Jones of Ohio State University, formerly chief economist for the Federal Field Committee in Alaska and legislative assistant to Senator Mike Gravel, told the commission that the alienation of Native lands and assets into non-Native hands was "exactly the possibility we had in mind." ANCSA, from his perspective, was designed to generate "[a] movement toward providing a sameness for the Native population in terms of the legal recognition and treatment it had. That is, being like everybody else." Transcript of Proceedings of Alaska Native Review Commission, Vol. IV, Overview Roundtable Discussions: ANCSA Institutions and Legal Regimes, at 360 (Mar. 1, 1984) (on deposit at Elmer Rasmussen Library, University of Alaska, Fairbanks).

47. See W. PROBERT, LAW, LANGUAGE AND COMMUNICATION 33-3 (1972) (discussing the concept of loaded words).

48. See Branson, *supra* note 1, at 206.

49. *Id.*

50. See, e.g., *id.* at 208.

to address the difficulties posed by ANCSA and 1991.<sup>51</sup> Legislation introduced in the 99th Congress<sup>52</sup> and subsequently reintroduced in the 100th Congress included many of these options.<sup>53</sup>

The greater part of the AFN legislation is intended to permit the corporations to avoid most of the risks associated with 1991 (for example, loss of land, corporate takeover, inclusion of new shareholders) and preserve the ANCSA corporate form. The legislation also provides for the implementation of non-corporate alternatives (notably land transfers to tribes and other "qualified transferee entities").<sup>54</sup>

With respect to the legislation passed by the House in the 99th Congress,<sup>55</sup> nine out of eighteen sections (by far the bulk of the bill's text) related almost exclusively to modifying ANCSA's corporate scheme. In terms of sheer sophistication, these provisions evidence the input of "corporation law specialists."<sup>56</sup> The single section describing the proposed statutory procedure to permit the transfer of corporate lands to tribal governments and other institutions appears relatively simple by comparison.<sup>57</sup>

The AFN legislation underwent a radical transformation in the Senate. The Senate significantly weakened the provisions relating to the preservation of corporate stock restrictions.<sup>58</sup> In addition, a number of the provisions concerning tribal government and land transfers were amended in ways that many perceived as detrimental to

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51. See AFN Newsletter: 1991 Special Edition, Sept. 1985, at 6, col. 1 (describing the history of the AFN process). Resolutions 84-1 through 84-6 were adopted at the special 1991 AFN Convention held in Anchorage, Alaska, on March 26-28, 1985. *Id.* at 4, col. 1 (resolutions reprinted at 4 and 5).

52. H.R. 4162, 99th Cong., 2d Sess., 132 CONG. REC. 4939 (1986) (version passed by House); S. 2065, 99th Cong., 2d Sess. (1986).

53. H.R. 278, 100th Cong., 1st Sess. (1987).

54. Although all the legislation has a strong corporate thrust, every bill introduced specifically includes a congressional finding that "the corporate model adopted by ANCSA is frequently ill-adapted to the reality of life in many Alaska Native villages and to traditional Native cultural values." *E.g.*, H.R. 4162, 99th Cong., 2d Sess. § 2(b), 132 CONG. REC. 4939 (1986) (version passed by House).

55. H.R. 4162, 99th Cong., 2d Sess., 132 CONG. REC. 4939 (1986).

56. See *id.* at § 4, 132 CONG. REC. 4940 (New Stock Issuance); *id.* at § 5, 132 CONG. REC. 4940-41 (Native Common Stock Rights: Alienation Restrictions); *id.* at § 6, 132 CONG. REC. 4941-43 (Bristol Bay Region: Special Provisions); *id.* at § 16, 132 CONG. REC. 4944 (Corporations Exempt from Securities Laws).

57. *Id.* at § 7, 132 CONG. REC. 4942-43 (Transfer of Assets: Qualified Transferee Entity).

58. See S. Amend. 3249, 99th Cong., 2d Sess. § 5, 132 CONG. REC. 15,412, 15,413-14 (1986) (stock restrictions); *id.* at § 9, 132 CONG. REC. 15,415-16 (dissenters' rights); *id.* at § 10, 132 CONG. REC. 15,416-17 (extension of restriction on alienation of common stock).

tribal claims.<sup>59</sup> The 20th annual AFN Convention, which met in October 1986 while this legislation was pending, rejected the Senate version by a two-to-one margin. The 1991 legislation then died in the 99th Congress.

The primary opposition to the Senate bill came from the Alaska Native Coalition ("ANC"). The ANC is a coalition of Alaska Native tribal governments and ANCSA corporations. It specifically represents the interests of tribal governments and other village institutions.<sup>60</sup> The outcome of the 1986 AFN Convention was generally characterized as a "victory" or an "historic embrace" for tribal governments.<sup>61</sup>

It would be incorrect and presumptuous to suggest that the outcome of the 1986 AFN Convention was a result of Berger's book. It does suggest that Berger accurately reported what he heard in the Alaska villages. For a substantial majority of Alaska Natives, land, self-government, and subsistence comprise the political agenda.<sup>62</sup> *Village Journey* is valuable because Berger accurately told us of the authentic voice of Alaska's Native villages. In a democracy committed to principles of liberty, free choice, and justice, this is important information.

Felix S. Cohen, that progenitor of "Native affairs specialists," wrote shortly before he died:

Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith. . . .<sup>63</sup>

Berger's message in *Village Journey* is that it behooves us to listen to the canary.

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59. *Id.* at § 12, 132 CONG. REC. 15,417-18 (transfer of lands); *id.* at § 21, 132 CONG. REC. 15,422 (disclaimer relating to sovereignty).

60. See Alaska Native Coalition Charter (Jan. 21, 1987) and the ANC Statement of Basic Principles.

61. Anchorage Times, Oct. 19, 1986, at 1, col. 1 ("victory for sovereignty backers"); Anchorage Daily News, Oct. 19, 1986, at B-1, col. 1 ("historic embrace to tribal governments").

62. See T. BERGER, *supra* note 1, at 167.

63. F. COHEN, FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, at v (1982 ed.).

APPENDIX A  
AGREEMENT MADE AS OF AUGUST 29, 1983 BETWEEN  
THOMAS R. BERGER AND INUIT  
CIRCUMPOLAR CONFERENCE  
ALASKA NATIVE REVIEW COMMISSION

WHEREAS, the purposes of the Inuit Circumpolar Conference are as follows:

1. to strengthen unity among the Inuit of the circumpolar region;
2. to promote Inuit rights and interests on the international level;
3. to ensure adequate Inuit participation in political, economic and social institutions which we Inuit deem relevant;
4. to promote greater self-sufficiency of Inuit in the circumpolar region;
5. to ensure the endurance and the growth of Inuit culture and societies for both present and future generations;
6. to promote long-term management and protection of arctic and sub-arctic wildlife, environment and biological productivity; and
7. to promote wise management and use of nonrenewable resources in the circumpolar region and incorporating such resources in the present and future development of Inuit economics, taking into account other Inuit interests.

AND WHEREAS, the Alaska Native Claims Settlement Act of 1971 (ANCSA) directly relates to the purposes of the Inuit Circumpolar Conference;

AND WHEREAS, numerous implications have evolved as a consequence of ANCSA that affect Alaskan Inuit socially, culturally, economically, politically, and environmentally;

AND WHEREAS, these issues demand immediate attention to protect Inuit interests;

THEREFORE, THE EXECUTIVE COUNCIL OF THE INUIT CIRCUMPOLAR CONFERENCE, in executing its trust, hereby proudly designates the Honorable Thomas R. Berger of the City of Vancouver in the Canadian Province of British Columbia, to inquire into and report upon the following:

1. the socioeconomic status of Alaskan Inuit;
2. the history and intent of the Alaska Native Claims Settlement Act of 1971 (ANCSA);
3. the historic policies and practices of the United States in settling claims by Native Americans, placing ANCSA in political perspective;
4. the performance of the various Native corporations in fulfilling the "spirit" of ANCSA for Alaskan Inuit; and
5. the social, cultural, economic, political, and environmental significance of ANCSA to the international Inuit community.

FURTHERMORE, THE EXECUTIVE COUNCIL OF THE INUIT CIRCUMPOLAR CONFERENCE authorizes the Honorable Thomas R. Berger

1. to hold public hearings pursuant to this mandate in rural Alaska or any location and at such times as he may decide in executing this commission;
2. to request any person whose attendance he considers necessary to promote this commission, to examine such persons, and to do those things he may consider necessary to ensure a complete and thorough inquiry;
3. to adopt practices and procedures for the inquiry that he thinks necessary or expedient for the conduct of this commission;
4. to engage those services necessary to aid him at such rates of remuneration as he deems reasonable;
5. to rent office space and hearing rooms.

FURTHERMORE, THE EXECUTIVE COUNCIL OF THE INUIT CIRCUMPOLAR CONFERENCE directs the Honorable Thomas R. Berger to present a final report, including any recommendations, upon the completion of this commission.

THE PRESIDENT OF THE INUIT CIRCUMPOLAR CONFERENCE, with the concurrence of the Executive Council, authorizes the Honorable Thomas R. Berger hereby to proceed with this commission effective on the specified date of 29 August 1983.

(signatures omitted)

ANRC TERMS OF REFERENCE (revised November 1983)

. . . to inquire into and report on the following:

- (I) The socioeconomic status of *Alaska Natives*;
- (II) The history and intent of the Alaska Native Claims Settlement Act of 1971 ("ANCSA");
- (III) The historic policies and practices of the United States in settling claims by Native Americans placing ANCSA in political perspective;
- (IV) The *functions* of the various Native Corporations in fulfilling the "spirit" of ANCSA for *Alaska Natives*; and
- (V) The social, cultural, economic, political and environmental, significance of ANCSA to *indigenous peoples around the world*.

(signatures omitted)