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BEFORE THE NAGPRA REVIEW COMMITTEE

In the Matter of:)
)
The Dispute between Sealaska)
Corporation and Alaska State)
Museum Relative to the)
Teeyhittaaan Yeil Aan Kaawu)
Naa S'aaxw (Leader of All)
Ravens Hat))
_____)

**Alaska State Museum's Memorandum
in Defense of Its Right of Possession to the Teeyhittaaan Hat**

DATED this 15th day of October, 2010.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: *Stephen C. Slotnick* for:
Stephen C. Slotnick
Assistant Attorney General
Alaska Bar No. 9011113

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Argument 17

- A. The answers to the questions raised by Mr. Tarler affirm that this Committee should decline to repatriate the Teeyhittaana to Sealaska 17
- B. William Paul had authority to place the Teeyhittaana Hat in the permanent collection of the Museum while reserving the Clan's interest in the Clan's at.óow 20
- C. On this record, it is more likely than not that William Paul complied with all requirements of Tlingit law 26
- D. Tlingit law requires that all persons respect the decisions made by elders and ancestors to the maximum extent possible 32
- E. The evidence indicates that the Teeyhittaana Clan most likely had no Clan Council in 1969 33
- F. Sealaska has no standing because it is not a tribe..... 34
- G. The Museum objects to these proceedings on the basis that the committee chair, Dr. Worl, has an incurable conflict of interest 35

Conclusion 37

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3 **Introduction**

4 On March 10, 1969, William Paul, the Chief of the Teeyhittaan Clan,
5 donated to the Alaska State Museum a striking crest hat carved out of cedar (the
6 "Teeyhittaan Hat"). William Paul is among the most respected and honored of
7 Tlingit Elders. His Tlingit name was **Shkooni-da-ti-yi-kah**, which means "**Too-**
8 **Proud-to-Do-Anything-Dishonorable-and-So-Won't.**" He fought tirelessly his entire
9 life to promote the civil rights of Native Alaskans and protect Tlingit culture. In
10 donating the Hat to the Museum, Mr. Paul retained the Clan's interest in the artifact –
11 the crest, and the right to use the Hat. The gift of the right to possess and protect the
12 Hat was acknowledged by the Governor of Alaska, described in several newspapers,
13 and celebrated with Native dance in a well-attended public celebration at the Museum.
14
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16 Now, over forty years later, a for-profit corporation, Sealaska, Inc., claims
17 that Paul did not have authority to make the donation. It seeks return of the gift,
18 claiming that Paul acted out of self-interest and ignored Tlingit law and traditions. They
19 argue that because no signature but that of Paul appears on the donation form, this
20 committee has no choice but to dishonor Paul and shame the Clan by finding that Paul's
21 actions were never approved by the Clan.
22

23 Sealaska, however, is wrong. Mr. Paul acted consistently with Tlingit law
24 and tradition. His actions were consistent with the duties of Clan leaders and custodians
25 of artifacts as prescribed by traditional Tlingit law: to secure and preserve the Clan's
26 property and ensure its accessibility to Clan members. The Clan's retained interest in

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Clan sacred property has never been extinguished. That interest continues today, and will continue as long as the Clan exists. This committee should act to affirm the actions of a Tlingit ancestor and a Chief. Honoring elders and leaders, past and present, is one of the highest dictates of Tlingit tradition and Tlingit law. The Alaska State Museum asks this committee to honor William Paul and the Teeyhitta Clan, and find that the Museum has a right of possession to the Teeyhitta Hat, while acknowledging that the Clan custodian retains all rights to the ceremonial use and spiritual manifestations of the Teeyhitta Hat.

FACTS

A. Facts regarding William Paul, Sr.



William Paul with the Leader of All Ravens Hat at the museum, 1969. Museum photo.

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3 William Paul was born on May 7, 1885, in Fort Simpson,
4 British Columbia, the closest hospital to his mother's home in the small village of
5 Tongass, in the southern part of the Alaska panhandle. He was a Tlingit Indian of the
6 Teeyhittaaan Clan (sometimes spelled "Tee-Hit-Ton") of the Raven Moiety. He left
7 home at 14 to pursue his education at a high school in Oregon. He graduated from
8 Whitworth College in Tacoma, Washington, in 1909, and obtained his law degree and
9 was admitted to the Alaska Bar in 1920.
10

11 Throughout his career, Mr. Paul was a stunningly successful and vigorous
12 advocate for Native rights. He was the first Alaska Native elected to Alaska's territorial
13 legislature and he began the legal proceedings that ultimately resulted in the United
14 States Supreme Court case, *Tee-Hit-Ton Indians v. United States*.¹ In a short
15 autobiography, written on the occasion of his receipt of an honorary doctorate of law
16 degree from Whitworth College in 1972, Mr. Paul described his civil rights
17 accomplishments as follows:
18

19 1) I integrated the public schools of Alaska; 2) through me the
20 natives got their voting right exercised; 3) also got the
21 discriminating words in public assistance laws removed; 4) got the
22 first appropriation for direct relief distribution; 5) prompted the
23 advent of the Bureau of Indian Affairs from congress; 6)
24 successfully lobbied extension of the Indian reorganization act; 7) I
25 organized the legislative fight for equal rights in public service
26 corporations , thus ending segregation in restaurants , theaters,
transportation and schools; 8) I made the "Alaska Native
Brotherhood" a powerful political organization through which

¹ 348 U.S. 272 (1955).

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many beneficial laws were enacted by candidates supported by Indians; 9) I got federal appropriations for schools in Angoon, Hoonah, Ketchikan, Yakutat and Wrangell Institute; 10) I procured voting precincts Metlakatla, Kalwock, Hydaburg and Saxman.² In this autobiography, Mr. Paul also referred to what he calls the "cultural phase of my work."³ He noted that before his involvement "various national museums were gathering the artifacts of Indian culture" when Alaska Natives did not have the ability to do so. He recounted how he authored an amendment to the charter of the Alaska Native Brotherhood to make clear that Alaska Natives were dedicated "to preserve their history, lore, art and virtues."⁴ Before Mr. Paul took this action, the Alaska Native Brotherhood favored assimilation into the nonnative culture. Mr. Paul's wrote that he "put my tribal chieftain's hat [in the Territorial Museum] as an example which I hope others will follow."⁵

Mr. Paul has been acknowledged as an expert in Tlingit law and as an individual devoted to abiding by and honoring Tlingit traditions. It was on the basis of his knowledge of Tlingit culture and law that his clan selected him as its leader and

² William Lewis Paul, *William Lewis Paul* (Sept. 1970 Whitwords, Whitworth College, Spokane, Washington) at 1. From William Lewis Paul papers, 1885-7, box 1, folder 1, University of Washington Libraries, Special Collections.

³ *Id.*

⁴ William Lewis Paul, "Dr. Drucker's Book on the Native Brotherhoods of the Northwest Coast" at 5 (1959) from William Lewis Paul papers, 1885-007, box 3, folder 52, University of Washington Libraries, Special Collections

⁵ *Id.*

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3 custodian of the Hat. His articles, and letters, as well as his draft of a major book on
4 Tlingit culture, testify to his high level of expertise. Sealaska's own Dr. Rosita Worl
5 has described Mr. Paul as a Tlingit with great "historical knowledge," who had an
6 "arrogant belief in cultural pride."⁶ She stated in a public document that Mr. Paul is
7 "our heritage,"⁷ meaning that he, and the actions he took, have now been incorporated
8 as the heritage of Tlingit traditions. Dr. Worl told Mr. Paul that "You cannot deny us
9 that heritage," and she decried that he "may not have always been repaid with honor and
10 respect."⁸ It is indeed ironic that Sealaska and Dr. Worl are now conspiring to dishonor
11 the memory and disrespect the actions of William Paul.
12

13
14 Mr. Paul's writings make clear that he understood when Clan decisions
15 were made by Clan leadership, not by the individual chief.⁹ For example, in a 1954
16

17 ⁶ Rosita Worl, Letter to Perry Watkins, Whitworth College (July 26, 1971).
18 William Lewis Paul papers, 1885-007, box 1, folder 22, University of Washington
19 Libraries, Special Collections.

20 ⁷ *Id.*

21 ⁸ Rosita Worl, Letter to William L. Paul Sr. (July 20, 1971). William Lewis
22 Paul papers, 1885-007, box 1, folder 22, University of Washington Libraries, Special
23 Collections.

24 ⁹ See Appendix A at 14-18. Under Tlingit law, the authority of the Clan
25 chief was limited. In large clans, important Clan decisions, even if made by the chief,
26 were affirmed by the Clan Council. Even in small clans, the chief could operate only as
long as he maintained the respect of the clan members. This is explained further in a
later section of this Memorandum. The important point here is that the facts show that
Mr. Paul understood Tlingit law and understood the limitations on the authority of the
chief.

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3 letter to Richard Rinehart, Sr., Mr. Paul discussed the fact that the *tribe* would select the
4 next leader.¹⁰ He advised that he would “enjoin on [the new leaders] the duty of
5 carrying out the traditions of our tribe.”¹¹ Thus, Mr. Paul indicated his dedication to the
6 traditional clan decision-making process. He also indicated his dedication to carrying
7 out Tlingit traditions.
8

9 In sum, William Paul was a great leader. As a lawyer, he knew the laws
10 of the state, and as a Clan Chief and a Tlingit elder, he knew the laws of Tlingit
11 tradition. He was loyal to Tlingit culture and traditions. He was uniquely qualified for
12 his position, and knew better than any other “expert” (or self-proclaimed expert) what
13 his authority as chief allowed him to do and not do on behalf of the Clan.
14

15 **B. Facts regarding the Teeyhíttaan Hat**

16 Sealaska describes the origin of the Teeyhíttaan Hat, the original version
17 of which came to the Teeyhíttaan Clan from the Tsimshian tribe as an offering of peace
18 and recompense for the death of a Teeyhíttaan chief. The Museum agrees that these
19 facts establish that the Hat is an object of cultural patrimony for the Teeyhíttaan Clan.

20 Sealaska’s history leaves out, however, facts that show that until William Paul gave the
21

22
23 ¹⁰ Letter from William Paul Sr. to Richard Rinehart, Sr. (July 21, 1954);
24 contained in Sealaska’s Appendix H at 2.

25 ¹¹ *Id.* Note that Mr. Paul, in keeping with his view that the clan was the
26 highest level of social, political, and economic organization of the Tlingit people,
consistently favored “tribe” instead of “clan”, as is more consistently used today.

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3 Museum physical possession of the Hat, the Clan was in constant danger of losing the
4 Hat forever.

5
6 The original hat was destroyed in a fire, which the Clan Chief admitted
7 was caused by his drunkenness. A replica of it was created and brought out as Clan
8 *at.óow*, a sacred, communally-owned object.¹² That replica is the artifact that is at issue
9 in these proceedings, and the facts show that it continually faced peril when in the
10 physical custody of those unable to care for its preservation. For example, early in the
11 20th Century, when the Hat was in the custody of the caretaker who preceded
12 William Paul, Mr. Paul's mother was walking through downtown Wrangell one day and
13 found the Teeyhittaan Hat for sale in the window of a curio shop. She traded it back for
14 a racing canoe she had. The previous caretaker had "gone the whiskey route" and sold
15 the hat to the dealer.¹³ Mrs. Paul kept the Hat for awhile, then William Paul was
16 installed as the next caretaker, and custody passed to him.
17

18 Even after Mr. Paul became caretaker, he quickly learned that he, too,
19 could not provide protection for the Hat. In 1939, while he was busily engaged in
20 business with the Alaska Native Brotherhood and various legal cases, the Hat was
21 nearly destroyed in a fire in the Goldstein Apartment building in downtown Juneau, into
22 which Mr. Paul had recently moved. The only reason the Hat was not burned was that
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24 ¹² See Appendix A at 2.

25 ¹³ Frances L. Paul, *Autobiography* (circa 1970). William Lewis Paul papers,
26 1885-007, box 23, folder 46, University of Washington Libraries, Special Collections.

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3 during Mr. Paul's move, unbeknownst to him, his mother had packed the Hat away in a
4 barrel with odds and ends – a blanket, pillow, and frying pan – and placed it in storage
5 in a different building.¹⁴ The careless treatment of the Hat during the move, and the
6 narrow escape from a second fire, were both issues that concerned Mr. Paul. In 1944,
7 following a series of devastating fires in Alaska, Paul proposed a resolution at the
8 convention of the Alaska Native Brotherhood and Sisterhood that would “...urge our
9 people, families and clans in possession of these arti[facts] to make the Territorial
10 Museum ‘Custodian of the Material’ with the understanding that they be displayed and
11 kept in a fireproof building and afforded protection against fire, loss and theft, and also
12 that they may remove those objects at will.” The resolution was recommended for
13 passage by another noted Native Civil Rights advocate, Elizabeth Peratrovich, who is
14 honored by the State of Alaska with a state holiday bearing her name in recognition of
15 the work she and others engaged in to ensure the passage of Alaska's Anti-
16 Discrimination Act in 1945.¹⁵

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19 Shortly thereafter, in 1947, Mr. Paul—following his own advice, and
20 living up to his responsibility to neutralize threats to his clan's *at.óow*—gave physical

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24 ¹⁴ *Id.*

25 ¹⁵ Alaska Native Brotherhood and Sisterhood, Resolution 14 (1944).
26 William Lewis Paul papers, 1885-007, box 1, folder 37, University of Washington
Libraries, Special Collections.

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3 custody of the Hat to the Territorial Museum by loaning it to the Museum.¹⁶ Later, in
4 1969, after Alaska became a state, Mr. Paul signed the donation form that gave the
5 Museum a right to possess – and an obligation to protect – the Teeyhittaan Hat.
6

7 **C. Facts regarding the donation**

8 Sealaska's version of the facts glosses over one of the most important
9 facts in this record. William Paul originally placed the Teeyhittaan Hat with Museum
10 as a *loan*. He later took the step of changing the loan to a *donation*. Mr. Paul took this
11 action deliberately, and there is nothing ambiguous about the fact that he intended to
12 donate to the Museum the right to possess the Hat. If we are to respect the actions taken
13 by the acknowledged leader of the Teeyhittaan Clan, we must give effect to the intent of
14 Mr. Paul in taking this action.
15

16 The donation form signed by Mr. Paul is of critical importance in these
17 proceedings, and therefore is reproduced in this Memorandum below:
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25 ¹⁶ Memorandum of Loan, Alaska Historical Library and Museum
26 (September 22, 1947); contained in Sealaska's Appendix H at 1.

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NUMBER: 47-113
Log #

ALASKA STATE MUSEUM
Pouch FM, Subport
Juneau, Alaska 99801

DATE 10 March 1969

RECEIVED FROM William Paul, Sr.
ADDRESS 1521 16th Avenue East
Seattle, Washington 98102

ITEM	DESCRIPTION OF OBJECTS
1	<p>Crest hat of the Tee-hit-ton tribe of Wrangell, Raven phratry. For additional information see Frances Paul's description in her book of paintings of hats.</p> <p>In Mrs. Paul's description the locale referred to is Lake Day (Yuh-klah-ab, which means "this is the place".) Mr. William Paul will send information on names of the two chiefs referred to.</p> <p>It is agreed that the Museum will make every effort to have woven at least three rings of spruce root basketry to be placed on the hat.</p> <p>It is further agreed that the current custodians name shall be displayed with the hat; at this time he is William Lewis Paul, whose Tlingit names are Shquindy and Ka-xwan (Jack Frost). The next custodian will be Richard Einehart, Tlingit name Yuh-koog, if he survives me, otherwise a male person to be designated. The name "Shquindy" is shortened from Shkooni-da-ti-yi-kah means "Too proud to do anything dishonorable and so want.</p> <p>My sister's son William Paul Sheppard is closer to me as an heir if he had an interest. Marjorie Klingman (R. 1, box 273) of Anacortes, Wn. is Will Paul's 1st cousin and so her son could be a successor to the hat if something happened to Einehart. Marjorie's mother was a sister of Kah-lyudt (Matilda Paul-Tamaree.</p>

Conditions regarding Gifts

It is hereby agreed that the above items are donated to the Alaska State Museum as free and unrestricted gifts, offered without limiting conditions unless specifically stated herein.

Donor William Paul, Sr.

Accepted by James Yellon

ACCESSIONED _____ 9

William Paul signed the hat over to the museum using the standard donation form, reading: "Conditions regarding Gifts: It is hereby agreed that the above

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

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3 items are donated to the Alaska State Museum as free and unrestricted gifts, offered
4 without limiting conditions unless specifically stated herein." On the museum's copy of
5 this form, William Paul lined out "offered without limiting conditions unless
6 specifically stated herein" and wrote in "except as noted"—referring to two conditions
7 that he added to the form under "Description of Objects."

8
9 One condition was that the museum would "make every effort to have
10 woven at least three rings of spruce root basketry to be placed on the hat." Hand-
11 written after this typed condition was "within a reasonable time all things considered,"
12 which appears to be in Mr. Paul's handwriting. The basketry rings were completed in
13 1973 when the museum commissioned Ida Kadashan of Hoonah to weave a set of four
14 rings to replace the missing originals. The other condition stated that:

15
16 ...the current custodian's name shall be displayed with the hat; at
17 this time he is William Lewis Paul, whose Tlingit names are
18 Skquindy and Ka-xwan (Jack Frost). The next custodian will be
19 Richard Rinehart, Tlingit name Yuh-koog', if he survives me,
20 otherwise a male person to be designated.¹⁷

21 Several aspects of this document stand out:

- 22 • There are three versions of the donation form in the record, each with additional
23 information added by Mr. Paul as he contemplated this donation. Even the final
24 version has hand-written changes, showing the care with which Mr. Paul took
25 this action.
- 26 • The entire document evinces an absolute and total loyalty to Tlingit traditions
and law. The donation was contingent upon a restoration of the hat to its
traditional Tlingit form by replacing the woven basketry rings. The donation

¹⁷ See Appendix H to Sealaska's Memorandum of Law at 9.

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3 lists Tlingit names of people and objects. It lists the custodian of the Hat in the
4 Tlingit tradition, and ensures that a successor custodian will be in place. These
5 actions all show that foremost in Mr. Paul's mind when he made the donation
6 was a need to adhere to Tlingit tradition.

- 7 • Mr. Paul placed right into the donation form the English translation of his full
8 Tlingit name, Shkooni-da-ti-yi-kaḥ: "Too Proud to Do Anything Dishonorable
9 and So Won't." This was a message to the Museum, and to future generations of
10 Tlingits, that he was acting honorably and within Tlingit law by making this
11 donation and he expected the Museum and his people to respect his action and
12 his intent.
- 13 • Mr. Paul described the donated Hat as the "Crest hat of the Tee-hit-ton tribe."
14 Thus, the Hat remains the Clan's crest hat, even though it is in the permanent
15 collection of the Museum. These two conditions are not mutually exclusive. We
16 can harmonize them by acknowledging that the Clan owns the crest and all other
17 intangible and spiritual aspects of the Hat, and retains a right to use the Hat for
18 Clan purposes.
- 19 • He required that the Museum acknowledge that the Clan was the custodian of the
20 Hat. A custodian is a person who has rights and control over an object. Again,
21 we can harmonize the fact that Mr. Paul placed the Hat in the permanent
22 collection of the Museum and the fact that he remained the custodian. The Clan
23 custodian has the right to use the Hat, and control all use of the crest, image,
24 spirit, and other intangible Clan property. The Museum has a right to display,
25 curate, protect, and educate the public about the Hat.

26
27 Three additional facts regarding the donation are important. First, the
28 Governor of Alaska wrote a letter to William Paul, thanking him for the donation. This
29 was an acknowledgement that the gift of the Teeyhittaan Hat was a gift to the sovereign,
30 the State of Alaska.¹⁸ Second, the donation of the Hat was widely reported in
31 newspapers, including newspapers in Southeast Alaska, where the Clan was located,
32 and a newspaper called the "Tundra Times," which was a statewide newspaper

¹⁸ Exhibit 1.

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3 published by Alaska Natives for Alaska Natives.¹⁹ Third, a celebration was held at the
4 Museum to commemorate the donation of the Hat to the Museum, attended by over
5 400 guests, both Tlingit and non-Tlingit.²⁰ In Tlingit Culture, a celebration is held to
6 commemorate major events, and Tlingit dancing is always a significant part of the
7 celebration. Here, the record reveals that Tlingit dancers did, indeed dance at the
8 celebration and commemorate the transfer of the Teeyhittaana Hat to the Museum. As
9 the newspaper photograph shows, one of the dancers who performed was named Rosita
10 Rodrigues.²¹ Ms. Rodrigues is now known by her married name: Dr. Rosita Worl.

11
12 **D. The Museum interprets William Paul's gift to the Museum to retain**
13 **the Clan's interest in its *at.óow***

14 An important matter in these proceedings is the interpretation of the
15 donation form used by Mr. Paul. The Museum interprets William Paul's donation form
16 to retain an interest in the Teeyhittaana Hat for the Teeyhittaana Clan. The Hat was given
17 to the Museum "free and unrestricted" except that the Museum was required to replace
18 the missing baskets and acknowledge the role of the Clan Custodian. The Museum
19 interprets these restrictions to mean that the Clan has (1) placed the Hat in the
20 permanent collection of the Museum; and (2) retained the Clan's interest in the Clan's
21

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23 _____
24 ¹⁹ See Appendix H to Sealaska's Memorandum of Law at 12-14.

25 ²⁰ *Id.* at 12; See also Exhibit 2.

26 ²¹ See Exhibit 2, "A Lively Evening at the Museum," in Southeast Alaska
Empire, Weekend Edition (Aug. 10, 1969) at 8.

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3 *at.óow* – that is to say, the intangible and spiritual aspects of the Hat, including the crest,
4 and the image.

5 Thus, the Museum has a right of possession of the Hat, although that right
6 does not extinguish the right of the Clan to use the Hat for Clan purposes. With its right
7 of possession, the Museum also has a duty to care for and protect the Hat. When the
8 Museum has the Hat in its possession, it may publically display the Hat for educational
9 purposes. This is what the Clan, through William Paul, gave to the Museum.

10
11 Based on the reserved rights of the Clan, however, there are many things
12 the Museum cannot do. It cannot sell the Hat or dispose of the Hat. It cannot take any
13 action with regard to the Hat that would harm the spiritual value of the Hat to the Clan.
14 In short, the Teeyhittaán Hat remains the *at.óow* of the Clan, and the Museum must
15 respect that.
16

17 The Museum acknowledges that William Paul's donation form does not
18 provide a precise definition of the Museum's rights and the Clan's retained rights. For
19 example, the current Clan custodian, Richard Rinehart, Sr., has requested that the Hat be
20 displayed in the town of Wrangell, where he lives and which is close to the historic
21 home of the Teeyhittaán Clan. The donation form does not shed light on how a request
22 like this is to be handled, but the Museum believes that Mr. Paul expected the Museum
23 and the Clan caretaker to be reasonable and reach consensus about all matters. The
24 Museum had no trouble concluding that Mr. Rinehart's request was appropriate, and has
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made arrangements with the City Museum of Wrangell, where the Hat is currently on display.

Another issue to be considered is the Clan's use of its Teeyhíttaan Hat for Clan purposes. The Museum has worked hard to facilitate Clan use of the Hat, while still ensuring that the Hat is protected from risk of harm. Attached to this Memorandum as Exhibit 4 is a draft agreement that the Museum and Mr. Rinehart worked out together. The purpose of this agreement is to ensure that Mr. Rinehart has access to the Hat when he wishes to use the Hat for Clan purposes. This agreement is still under negotiation as this Memorandum is being written.

In these proceedings, this Committee should assist the Clan and the Museum in this endeavor. This Committee should review the documents in the record, and help the Clan and the Museum understand how they can honor the intent of William Paul, and ensure that the Clan has all of the rights that it retained when the donation was made to the Museum in 1969.

The Museum's interpretation of the donation is fully consistent with Tlingit property law. In pre-contact Tlingit society, the concepts of corporeal and non-corporeal property operated within a very specific cultural milieu and context that has changed significantly since European and Euro-American contact. Although there were many similarities in how intellectual and physical property rights were handled, the specifics often varied from village to village.

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3 In pre-contact Tlingit societies, the most important aspect of a Clan's
4 intellectual property was the various *crests* that were claimed by a specific Clan. These
5 crests served *as a deed or title* to all of the other prerogatives that clans laid claim to,
6 including names, stories, songs, and land.²² In this context, *it was the crest* that was to
7 be protected from potential enemies and competitors. When crests were lost to other
8 clans in the aftermath of warfare or socio-political disputes, any physical objects that
9 were alienated to the enemy and/or competitor *were simply physical representations of*
10 *the non-physical prerogatives* being transferred under duress. When disputes arose in
11 pre-contact Tlingit society over crests being used on another Clan's physical property
12 (totem poles, hats, etc.), the dispute *was not over the physical object, but over the*
13 *ownership of the crest itself.*
14
15

16 In the current situation with the Raven Hat at the Alaska State Museum, it
17 would be disingenuous to claim that anything resembling a pre-contact dispute over the
18 Teeyhitta'an's Clan crests is being attempted or claimed. The Alaska State Museum has
19 repeatedly stated that it lays *no claim* to the Teeyhitta'an Raven crest or any of the
20 Clan's sacred prerogatives. The Alaska State Museum is not a potential enemy or
21 competitor, and it is the Museum's understanding that William Paul, as Chief of the
22 Teeyhitta'an, named a successor caretaker to protect the clan's non-corporeal sacred
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²² Nora and Richard Dauenhauer, *Haa Tuwunaagu Yis, for Healing Our Spirit* at 14-20 (1990 edition; University of Washington Press).

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prerogatives, while, at the same time, ensuring that the physical object itself would be cared for in the highest possible professional manner by the Alaska State Museum.

ARGUMENT

The Museum will first address the questions posed by Mr. Tarler. The Museum will then provide further argument that supports its answers, and refutes the arguments made by Sealaska.

A. The answers to the questions raised by Mr. Tarler affirm that this Committee should decline to repatriate the Teeyhíttaan to Sealaska

In a September 7, 2010, letter to Robert Banghart, David Tarler, the designated federal official for NAGPRA, asked that the Museum address four specific questions in this brief. Those questions, and the Museum's responses, are as follows:

Question #1: Did the conveyor of the Hat consent to transfer possession of the Hat to the Alaska State Museum?

Answer: Yes. The Museum has proven that the conveyor of the Teeyhíttaan Hat, William Paul, consented to the transfer of the Hat. Mr. Paul took the deliberate step of changing a loan to a donation. He was a lawyer who certainly understood the difference between a loan and a donation. Although he retained an interest for the Clan, he gave physical possession to the Museum. Had he intended any other result, he would have kept the Hat in loan status.

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3 **Question #2: Was Mr. Paul's consent to transfer the Teeyhíttaan Hat**
4 **to the Museum voluntary?**

5 **Answer: Yes.** Mr. Paul voluntarily filled out the donation form, made
6 handwritten changes on the donation form to clarify his intent, and attended a
7 celebration that commemorated the transfer of the Teeyhíttaan Hat.
8

9 **Question #3: Did the tribe culturally affiliated with the Teeyhíttaan**
10 **Hat authorize Mr. Paul to "separate the Hat from tribe"?**

11 **Answer: Yes.** There are several considerations that support this answer.

- 12 1. Sealaska did not exist in 1969 and is not a tribe. Therefore, this question
13 cannot refer to Sealaska.
- 14 2. There were no tribes in Alaska in 1969. Alaska did not have tribes until
15 the 1993 Solicitor General's report recognized tribes. Therefore, the
16 question is unanswerable and has no legal effect.
- 17 3. Assuming that the Teeyhíttaan Clan is considered an analog for a tribe for
18 purposes of this question, the evidence is clear that the Clan consented to
19 Mr. Paul's grant of a right of possession to the Alaska State Museum.
- 20 4. In granting a right of possession to the Museum, Mr. Paul retained an
21 interest in all intangible qualities of the Hat for the Clan. The Clan
22 retained the crest and the Hat remains its *at.óow*. Therefore, in that sense,
23 the Clan has never been separated from the Hat. Further, because Mr.
24 Paul never separated the Clan from its crest or its *at.óow*, he had authority
25 to make the limited transfer to the Museum.
- 26 5. Mr. Paul retained a right for the Clan to use the Hat for Clan purposes.
Therefore, in that sense, the Clan has never been separated from its Hat.
Further, because Mr. Paul never separated the Clan from its right to use
the Hat, he had authority to make the limited transfer to the Museum.

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- 3 6. In granting a right of possession to the Museum, Mr. Paul took action that
- 4 would protect the Hat from harm for generations to come. That action
- 5 was within the authority of the Clan Chief.
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- 7 7. In granting a right of possession to the Museum, Mr. Paul gave a gift of
- 8 value to a sovereign entity. He did not, however, separate the Clan from
- 9 its crest or its *at.óow*. A gift of this nature to a sovereign – much like
- 10 giving a gift to another Clan or another tribe (e.g., Haida or Tsimshian), as
- 11 is a common element in the history of many Clan crest objects – was
- 12 within the authority delegated the Clan Chief.
- 13
- 14 8. In a small clan like the Teeyhittaán Clan, the chief had authority to take
- 15 action on behalf of the Clan, provided that he acted honorably for the
- 16 benefit of the Clan, in public, and not for personal gain. Here, Mr. Paul
- 17 did not personally profit from the donation, and it was an honorable act
- 18 for the good of the Clan, and for the good of Tlingit culture generally.
- 19 Therefore, it was within Mr. Paul's authority.
- 20
- 21 9. In traditional Tlingit culture, although there was considerable variation,
- 22 the general ruling structure of Clans was that a Clan Council would
- 23 review issues and make decisions by majority rule, giving the opinion of
- 24 the chief great weight. In small clans, the chief had greater authority. The
- 25 Teeyhittaán Clan was very small, its members scattered around Alaska
- 26 and the lower 48, and in 1969, it may not have had a Clan Council or any
- elders other than Mr. Paul. Therefore, the Chief, Mr. Paul, had authority
- to make important decisions regarding Clan cultural patrimony.
10. Mr. Paul cared deeply about following Tlingit law and traditions. If he
- were making a decision that required consultation with the Clan Council,
- and the Teeyhittaán had a Clan Council (or even some respected elders)
- with whom he could consult, the circumstantial evidence proves that he
- would have consulted with the Council or elders. He knew that to violate
- a major tenant of Tlingit law so late in his life would severely damage his
- legacy as a civil rights lawyer and expert in traditional culture. Therefore,
- it is more likely than not that he either had authority, or he obtained
- authority by consultation with others, or both.
11. Under Tlingit law, a major event or decision is celebrated with a public
- ceremony. Here a celebration was held following the gift of a right to
- possession of the Hat to the Museum. That proves that the Clan consented
- to the transfer.

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12. Under Tlingit law, a decision of an elder is entitled to respect, and Clan members are forbidden from bringing shame on the Clan by dishonoring the actions of their ancestors. Therefore, under Tlingit law, Sealaska cannot undo the decision of William Paul.

13. Even though Mr. Paul's grant of a right of possession to the Hat was widely publicized, no Clan member protested or objected to the transfer of the Hat. This supports a conclusion that it is more likely than not that Mr. Paul had authority to grant a right of possession to the Museum, while retaining rights for the Clan.

Question #4: Did the Indian tribe culturally affiliated with the Hat intend to give Mr. Paul the authority to "separate the Hat from the tribe"?

Answer: Yes. See the discussion in response to Question #3. These answers are further explained in the argument below.

B. William Paul had authority to place the Teeyhíttaan Hat in the permanent collection of the Museum while reserving the Clan's interest in the Clan's *at.óow*

At the time of the donation of the Hat to the Museum in 1969, the Teeyhíttaan Clan was the owner of the Teeyhíttaan Hat. William Paul was the acknowledged leader of the Teeyhíttaan Clan, and the issue here is whether Mr. Paul had authority to make the donation of the Hat that belonged to the Teeyhíttaan Clan. What matters for purposes of determining the answer are the laws, rules, and customs of the Teeyhíttaan Clan, as they existed in 1969.

Determining general Tlingit laws and traditions sheds some light on this issue. There is no authority, however, for the assumption that "Tlingit Property Law," as it existed in days before contact with Europeans was a structured, monolithic,

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3 unchanging, body of law. As William Paul explained, "[e]ach member of the tribe
4 [clan] is controlled by unwritten law and failure to do so is to lose face."²³ That
5 unwritten law controlled the actions of Clan members, but the nature of the law
6 depended upon the circumstances.
7

8 The Museum and Sealaska agree that under Tlingit traditions, the Clan
9 was the primary determinate of social structure. The Clan owned property and objects,
10 and, the Clan made decisions regarding war, peace, slaves, and other governmental
11 functions. In its original filing, however, Sealaska made the preposterous argument that
12 in traditional Tlingit culture all decisions regarding Clan property had to be made by
13 unanimous vote of all Clan members.²⁴ There is absolutely no support for that
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16 ²³ William Lewis Paul, Sr., Introduction, *Statement Regarding Aboriginal*
17 *Rights of the Teehitaan Tribe* (1948), William Lewis Paul papers, 1885-7, box 10,
18 folder 23, page 30, University of Washington Special Collections

19 ²⁴ See Appendix E to Sealaska's Memorandum of Law at 10. The following
20 description of Tlingit decision-making shows that unanimity was not required and that
21 the house leader had considerable influence:

22 Councils were not assembled at fixed times, but were called by the
23 chiefs when the occasion required. They were presided over by
24 him, and were attended by the subchiefs and other household heads
25 in his clan. After discussing the subject and agreeing upon a course
26 to pursue, a general meeting of all the adult males of the clan was
called and the proposition stated. Every person present had an
equal right to speak, and the sentiment of the majority was
followed, but generally the prior decision of the house heads was
accepted.

George T. Emmons, *The Tlingit Indians* at 40 (1991 edition; edited with additions by
Frederica de Laguna, U.Wash. Press).

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proposition, and Sealaska has abandoned that claim in its current briefing.²⁵ The truth, as Sealaska now acknowledges, is that early Tlingit society was highly stratified and major decisions were made by the ruling elite.

In a large Clan, with several "Houses," the Clan leader had authority to make some decisions, but major decisions were made by the Clan Council – a council of male elders from the elite ruling families of the Clan.²⁶ Usually, each House would be represented on the Council. If a Clan were to take major action, that decision would be presented to the ruling elite in the Clan Council.

Yet, even in a large clan with many Houses, a Tlingit chief, and a custodian of sacred Clan property clearly had some autonomous authority. The evidence indicates that dissension among the elders on the Council was not favored, and that the Clan Council would often support the decision of the Chief.²⁷ Moreover, the custodian of sacred property was charged with the obligation to protect the property, and to preserve the Clan's interest in the property. How the custodian undertook to discharge this duty was a matter that would traditionally have been the custodian's responsibility and decision.²⁸

²⁵ Sealaska's Memorandum of Law at 22-23.

²⁶ See Appendix A at 14-16.

²⁷ George T. Emmons, *The Tlingit Indians* at 40 (1991 edition; edited with additions by Frederica de Laguna, U. Wash. Press).

²⁸ See Appendix A at 16-19.

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3 This discussion describes the authority structure for a large Clan with
4 several Houses. The record establishes, however, that as Clans shrank in size, the role
5 of the leader increased, and the leader had more authority to take action on behalf of the
6 Clan. As Mr. Paul explained,

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8 Large tribes will have several houses, each such house will have its
9 leader. The leader will have more power, often approaching the
10 absolute, over his household than the "A shady hun" (one who
11 stands at the head) but this is because, his household stands closer
12 to him, most of them being the children of his sisters of first
13 cousins as ties are reckoned by the white people. So as to his
14 nephews, he could give an order under compulsion of death."²⁹

15 The Teeyhitta Clan was, and is, a very small clan, numbering around 50 in the mid-
16 twentieth century, most of whom were a generation or two younger and not in an elite
17 lineage.³⁰ It consisted of only one House – indeed, the name "Teeyhitta" translates to
18 "Cedar Bark House People."

19 William Paul's writings reveal that he was an expert in understanding the
20 authority of the Clan leader. His numerous writings on Tlingit law and government
21 acknowledge that the Clan leader's authority was limited, but, contrary to Sealaska's
22 conjecture, the limit was **not** enforced through the mechanism of a vote or election. In

23 ²⁹ William Lewis Paul, Sr., Introduction, *Statement Regarding Aboriginal*
24 *Rights of the Teehitaan Tribe* (1948), William Lewis Paul papers, 1885-7, box 10,
25 folder 23, page 31-32, University of Washington Libraries, Special Collections.

26 ³⁰ Anonymous (circa 1955), William Lewis Paul papers, 1885-007, box 1,
27 folder 26 at 1, University of Washington Libraries, Special Collections.

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3 the Teeyhittaam Clan, the limit on the Chief's authority was enforced only by the
4 mechanism of shame:

5 The authority of the tribe was in the chief who was an autocrat. He
6 inherited his position from his mother's brother. The position did
7 not of necessity descend to the oldest brother. It went to the strong
8 man. His rule could be called a "tyranny" in the original sense of
9 that word, because his rule was circumscribed by the shame that
10 would be heaped on him by all others if he did not conduct himself
11 honorably. That is why formal election as known today is
12 something new and not a part of our common law."³¹

13 Other documentations of Tlingit law and heritage emphasize the duty of the caretaker to
14 avoid personal gain. The Lukaax̄.adi Clan has stated "The transfer is only honorable if
15 it is not undertaken for the purpose of monetary gain for any member(s) of the house
16 group or its mother clan."³² As noted Tlingit ethnohistorians Nora and Richard
17 Dauenhauer have explained, "A general responsibility [of a caretaker of *at.óow*] is to
18 ensure that the *at.óow* not be lost or sold for personal gain or to resolve personal or clan
19 debt."³³ It follows that the leader of the Teeyhittaam Clan, William Paul, had
20 considerable authority to act on behalf of the Clan, but his authority was always limited
21 by the requirement that he act honorably on behalf of the Clan.

22 ³¹ William Lewis Paul, Letter to James Peacock (1951), Washington DC.
23 William Lewis Paul papers, 1885-7, box 1, folder 26, University of Washington
24 Libraries, Special Collections.

25 ³² Excerpt from Lukaax̄.adi Clan Trust (1986). (Copy on file at Alaska State
26 Museum).

³³ Nora and Richard Dauenhauer, *Haa Tuwunaagu Yis, for Healing Our Spirit* at 22 (1990 edition; University of Washington Press).

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3 No analog for the situation of William Paul in 1969 exists in traditional
4 Tlingit custom. Here, the evidence shows that Mr. Paul knew that in modern
5 conditions, the Hat would be in constant danger if a permanent safe home for it could
6 not be found. In addition to fire or theft, the danger of unauthorized sale was increasing
7 in the 1960s. Native art dealers from the lower 48 visited Tlingit villages annually with
8 cash available for those Clan members who would part with their "old curios." These
9 dealers even offered to produce exact replicas of major pieces to enable the seller to
10 secretly swap the copy for the original. He knew that he had to retain the Clan's interest
11 in the Hat for future Clan members, but he was uncertain about the future for his Clan
12 and its traditions. He knew that he, as chief, had authority to protect the Hat from harm,
13 and that is what he did. He did not go beyond his authority, because he retained the
14 Clan's interest in the intangible qualities of the Teeyhittaana Hat. Therefore, his action
15 in giving the Alaska State Museum a right of possession for the Teeyhittaana Hat was
16 authorized, and Sealaska cannot undo what William Paul did.
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19 The Museum asks this Committee to remember that the Museum's burden
20 of proof is a *preponderance* of the evidence. This means that to prevail on this point, all
21 the Museum has to do is to produce evidence that it is *more likely than not* that the
22 internal laws of the Teeyhittaana Clan, as they existed in 1969, would have permitted
23 William Paul to make the limited donation without obtaining permission from the Clan
24 Council (or, in Sealaska's original view, every single Clan member). Tlingit law is not
25 something that is memorialized in a Constitution. Like other laws, Tlingit law does not
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3 address every possible fact situation, and a person who is complying with Tlingit law,
4 such as William Paul, must determine how best to apply that law when faced with a new
5 fact situation that was not a matter that ancient Tlingit customs dealt with or established
6 precedent for. Under these facts, it is more likely than not that Tlingit law permitted
7 William Paul to donate the Teeyhittaan Hat to the Museum, while reserving rights for
8 the Clan.
9

10 **C. On this record, it is more likely than not that William Paul complied**
11 **with all requirements of Tlingit law**

12 Above, the Museum has established that William Paul did not need
13 permission from a Clan Council (which may not have existed) to take action to protect
14 the Hat, as long as he reserved for the Clan all of the Clan's interest in its crest and its
15 ancestral and spiritual property that was resident in the Teeyhittaan Hat. Here, the
16 Museum will establish that it is more likely than not that William Paul obeyed Tlingit
17 law when he changed the status of the Hat from an object on loan to the Museum to an
18 object that was in the Museum's permanent collection.
19

20 Sealaska argues that unless the Museum can produce direct proof that
21 Clan members consented to the donation, the Museum cannot prevail. This is nonsense.
22 On a record like this, we would never expect to see direct proof. Tlingit custom did not
23 require a formalized vote of the Clan Council with a enrolled legislative record of all
24 who vote yea and all who vote nay. Tlingit custom was an oral tradition, and matters
25 were decided orally with *no* recorded or written documentation. The challenge for this
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3 Committee is to examine the circumstances, and determine whether under these
4 circumstances it is more likely than not that Mr. Paul would have obeyed Tlingit law –
5 including a consultation with Clan elders, if that was required.
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7 The best way to approach this issue is to look at the two examples that
8 Sealaska asserts are identical to the issue here – the sale of the Klukwan Whale House
9 artifacts to a Seattle art dealer in 1984, and the sale of the Kaagwaantaan Wolf House
10 Tunic to the Museum. If this Committee finds that those two examples cannot be
11 distinguished from Mr. Paul's donation, then the Committee would be justified in
12 declaring that Mr. Paul acted illegally. Yet, if the circumstance are different, and the
13 circumstantial evidence indicates that Mr. Paul would more likely than not have obeyed
14 Tlingit law, then the Committee must find that the Museum has proven that it has a right
15 of possession.
16

17 Starting with the issue of the Whale House artifacts, Sealaska has included
18 in the record several documents relating to this case.³⁴ The facts in these documents
19 reveal that over a period of many years, a Seattle art dealer made several attempts to
20 purchase the artifacts from Clan members, but was always foiled because prominent
21 members of the Clan and the village were deeply opposed to the sale.³⁵ One close call,
22 for example, was thwarted when villagers blocked the exit to the village with village-
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24 ³⁴ See Exhibit 1 to Sealaska's Memorandum of Law (*Chilkat Indian Village*
25 *IRA v. Johnson*).

26 ³⁵ *Id.* at 6.

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3 owned vehicles.³⁶ Finally, after several attempts, the art dealer sneaked moving vans
4 into the village under the cover of darkness and, with the assistance of certain Clan
5 members who were to be paid a million dollars for the artifacts, loaded up the artifacts,
6 and left with them before other Clan members and villagers were aware of the
7 absconding.³⁷ Immediately after the theft was discovered, non-participating Clan
8 members and villagers voiced their violent objection to the sale, and began legal
9 proceedings to have the sale revoked and the artifacts returned.³⁸ Eventually, the legal
10 proceedings were successful – not because of a ruling that the Clan members who sold
11 the artifacts lacked authority to do so, but because the village had in a place a village
12 ordinance that prohibited transfer of sacred objects out of the village without village
13 authority.³⁹ During the course of the legal proceedings, the villagers who had assisted
14 in making the sale changed their minds, and determined that the sale and transfer was
15 not authorized.⁴⁰ In sum, under the facts related to the sale of the Whale House artifacts
16 to the Seattle art dealer, we would conclude that the evidence establishes that it is more
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21 36 *Id.*
22 37 *Id.* at 13-14.
23 38 *Id.* at 21-22.
24 39 *Id.* at 2-3.
25 40 *Id.* at 14, 21.
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likely than not that the Clan members who made the transfer did not have authority to make the sale.

Now let us compare the facts related to the transfer to the Museum of the Teeyhittaan Hat with the facts of the transfer of the Whale House artifacts to the art dealer.

1. **William Paul's donation of the Teeyhittaan Hat to the Museum was a public act. It occurred during the day, with Alaska-wide media coverage, with documentation that was carefully and deliberately contemplated by the leader of the Clan and the custodian of the Hat.**
2. **The Clan leader who made the transfer was an acknowledged expert in Tlingit law and American law, and a person with a deep and profound devotion to the preservation of Tlingit traditions and culture. He knew that he would bring dishonor and lose his legacy as a civil rights leader and cultural expert if he violated a major tenant of Tlingit law.**
3. **The donation of the Teeyhittaan Hat was to a sovereign government. The sale of the Whale House artifacts, on the other hand, was to an art dealer for profit.**
4. **William Paul received no personal recompense for making the donation, unlike the parties involved in the sale of the Whale House artifacts.**
5. **Unlike the sale of the Whale House artifacts, the donation ensured that the Teeyhittaan Hat would forever be protected from harm so that for future Clan members could appreciate and use the Clan sacred property.**
6. **The donation ensured that the Hat would remain in Southeast Alaska. In contrast, the sale of the Whale House artifacts ensured the opposite: that sacred clan property would be transferred out of the state, and scattered to the four corners of the earth where Clan member would never see them again and have no opportunity appreciate their heritage and use their *at.óow*.**

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7. **Unlike the sale of the Whale House artifacts, the Clan custodian retained an interest in the Hat for the Clan when he bestowed a right of possession upon the Museum.**
8. **The transfer of the Hat was widely reported in the media, and was featured on exhibit in the Museum as an object in its collection for nearly four decades, during which time it was seen by hundreds of thousands of Tlingit and non-Tlingit visitors.**
9. **The transfer of the Hat was celebrated by Tlingit Indians, including Dr. Rosita Worl, who danced at a celebration commemorating the granting of the right of possession.**
10. **Most important, no Clan members objected or questioned the donation of the Hat to Museum until recent times when these proceedings were initiated.**

In sum, the circumstantial evidence regarding the 1969 donation of the Teeyhíttaan Hat to the Museum reveals that the circumstances were nothing like the circumstance of the sale of the Whale House artifacts to the art dealer. Sealaska implies that Mr. Paul acted dishonorably and ignored Tlingit law. Nothing could be farther from the truth. Mr. Paul knew as much or more about Tlingit traditions and customs than any other person of his generation, and probably of subsequent generations, and he occupied the unique position of an expert in both the Tlingit and Western legal traditions. He cared deeply about acting honorably. It would be a travesty if this Committee followed Sealaska's bidding and dishonored William Paul, and shamed and humiliated the Clan and its ancestor.

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3 Turning next to the other case in the record that Sealaska claims as a
4 precedent – the Wolf Tunic that the Museum repatriated to the Kaagwaantaan Clan⁴¹ –
5 the Wolf Tunic case is also nothing like the case of William Paul. In that case, the
6 record revealed that the tunic was sold – not donated – by a person (the widow of the
7 Kaagwaantaan caretaker of the artifact) who was not a member of the Clan, much less a
8 Clan Chief who was an expert in Tlingit law and for whom acting honorably in accord
9 with Tlingit traditions was his highest priority.⁴² While the museum may have argued
10 that Tlingit custom sometimes allowed the widow to inherit property of her husband's
11 Clan, it instead returned the object to the Kaagwaantaan. Again, the comparison that
12 Sealaska makes with the Wolf Tunic case proves the opposite of what Sealaska intends.
13 By raising this case as a precedent, Sealaska is asserting that William Paul was a thief,
14 no different from a non-clan member who essentially stole clan property and sold it for
15 personal benefit.
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18 This Committee does not have to accept Sealaska's invitation to bring
19 shame on the memory of William Paul and on the Teeyhíttaan Clan. This Committee
20 must determine which is more likely – Is it more likely that Paul was no better than a
21 thief – a person who deliberately violated Tlingit law – as Sealaska maintains? Or,
22 given that he was a leader who knew that he had a duty to obey Tlingit law, and who
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25 ⁴¹ See Sealaska Appendix D.

26 ⁴² *Id.* at 2-3.

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3 considered acting honorably in accordance with that law to be his supreme obligation. is
4 it more likely that he followed the requirements of Tlingit law when donating a right of
5 possession to the Museum?
6

7 **D. Tlingit law requires that all persons respect the decisions made by**
8 **elders and ancestors to the maximum extent possible**

9 One of the highest tenets of Tlingit law is a requirement of respect and
10 honor for the actions of Tlingit ancestors. For example, as Mr. Paul explained, "I am
11 the son of the Tongass tribe and by Tlingit tradition the people will do nothing to hold
12 me up to ridicule."⁴³ Dr. Rosita Worl herself was living up to this code when she wrote:
13 "Mr. Paul gave me immeasurable support and advice.... Whatever Mr. Paul is judged in
14 time and history, he is our heritage. Since I was fourteen years old Mr. Paul unselfishly
15 spent hours sharing his knowledge with me. Who would have thought that such a busy
16 and important man would take the time to sit on docks at the waterfronts telling me
17 stories of the past."⁴⁴ This Committee has before it now an opportunity to forge a
18 resolution of this matter that both honors William Paul and protects all of the interests
19 of the Clan. This Committee can establish that the Teeyhittaan Hat is the Clan's *at.oow*
20 and is in the permanent collection of the Museum. This Committee can help establish
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23 ⁴³ William Lewis Paul, *William Lewis Paul* (Sept. 1970 Whitwords,
24 Whitworth College, Spokane, Washington) at 3. From William Lewis Paul papers,
1885-7, box 1, folder 1, University of Washington Special Collections.

25 ⁴⁴ Rosita Worl, Letter to Perry Watkins, Whitworth College (July 26, 1971).
26 William Lewis Paul papers, 1885-007, box 1, folder 22, University of Washington
Libraries, Special Collections.

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3 protocols that ensure that the Museum will have the ability to use its expertise to curate
4 the Hat and protect the Hat from harm while, at the same time, ensuring that the Clan
5 has the ability to use the Hat, to control how the image and stories of the Hat are used
6 and displayed, and to otherwise establish that the Clan still owns all of the important
7 Clan values connected with the Hat. This solution is elegant, it is consistent with the
8 letter and the spirit of NAGPRA, and it honors the memory of William Paul.

10 **E. The evidence indicates that the Teeyhitta Clan most likely had no**
11 **Clan Council in 1969**

12 Above, the Museum has established that if any elders of the Teeyhitta
13 Clan other than William Paul were alive in 1969, it is more likely than not that William
14 Paul consulted them about his decision to donate the Teeyhitta Hat. Indeed, if Tlingit
15 law, as it applied to the Teeyhitta Clan, required Mr. Paul to consult with Teeyhitta
16 elders, and if there were any ranking elders, then it is almost a certainty that he did so
17 because he was faithful to his duty to follow Tlingit law.

18 Yet, the evidence indicates that no Teeyhitta elders may have been alive
19 at the time that William Paul made the donation. In 1967, in a letter to the BIA, Mr.
20 Paul stated that "I am about the last person of my generation alive and so I can obtain no
21 affidavits of any one confirming my birth."⁴⁵ There were no other houses of the Clan—
22 so there were no other house leaders—and although younger Clan members were
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25 ⁴⁵ Letter from William Lewis Paul to Bureau of Indian Affairs (May 25,
26 1967). William Lewis Paul papers, 1885-001, box 1, folder 2, University of
Washington Special Collections.

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3 present in 1969. they had obtained neither the status of elders nor the expertise required,
4 and so it would not have been appropriate for William Paul to consult with them.
5 Accordingly, Mr. Paul was unable to consult with a Clan Council, and he had authority
6 to take action to protect the Teeyhittaan Hat for future generations. The absence of any
7 Teeyhittaan elders is further proof that he was not required to consult with any person
8 before he placed the Hat in the permanent collection of the Museum. His authority was
9 only limited by a requirement that he act honorably for the benefit of the Clan. He
10 fulfilled that responsibility, and so his action was authorized.
11

12 **F. Sealaska has no standing because it is not a tribe**

13 Congress has determined that only tribes, lineal descendants, or Native
14 Hawaiian organizations can bring actions under NAGPRA.⁴⁶ Here, this action was
15 initiated by Sealaska, Inc. Sealaska is not a tribe. Sealaska is a for-profit corporation.
16 It was not recognized as a tribe in the 1993 Solicitor General's report that identified
17 tribes in Alaska,⁴⁷ and it is not identified on NAGPRA's list of identified tribes.⁴⁸ In a
18 recent report on NAGPRA, the Government Accounting Office questioned the
19 Department of the Interior's practice of allowing Alaska Native Corporations to bring
20 NAGPRA claims, when other agencies do not recognize Alaska Native Corporations as
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23 ⁴⁶ 25 U.S.C. § 3005.

24 ⁴⁷ Op. Sol. Int. M-36975 (Jan. 11, 1993).

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26 http://www.nps.gov/history/nagpra/DOCUMENTS/Tribes_List_original.pdf

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federally recognized tribes.⁴⁹ It is inappropriate for a for-profit corporation to seek repatriation of cultural artifact. Thus, these proceedings should not go forward because they were initiated by a party with no standing to raise a claim under the law.⁵⁰

G. The Museum objects to these proceedings on the basis that the committee chair, Dr. Worl, has an incurable conflict of interest

These proceedings are tainted because an employee of Sealaska, and a fierce advocate for the repatriation of the Teeyhíttaan Hat, Dr. Worl, serves on the committee as its chair. Although Dr. Worl has ostensibly recused herself from deliberations, before she withdrew, she was directly involved in the consultations between the museum and the Clan, then promoted this matter to the Committee as a dispute, and asked for the matter to be put on the Committee's agenda at a time favorable to Sealaska's witness, and only then recused herself. Her recusal does not cure the taint because she retains influence over the other members of the committee. In a committee like this one, the give-and-take of the decision-making process depends on

⁴⁹ See GAO 10-768, United States Government Accountability Office Report to Congressional Requesters, *NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act* (July 2010) at 14-16.

⁵⁰ The State of Alaska reserves the right to raise additional *legal* arguments regarding NAGPRA if this matter is litigated before a court or other judicial body, including the right to argue that NAGPRA violates the United States Constitution.

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3 relationships, and the remaining committee members will be influenced by Dr. Worl's
4 obvious bias in this matter.⁵¹

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6 Moreover, to compound the taint, Dr. Worl appears in this record as if she
7 were an expert. Sealaska has asked this Committee to consider documents written by
8 Dr. Worl,⁵² and other documents that cite to Dr. Worl.⁵³ There can be no doubt that
9 even the most careful of committee members would tend to give weight to the testimony
10 and writings of a fellow committee member, particularly one who serves as the
11 committee chair, and especially in a matter in which the testifying member is personally
12 involved. It follows that these proceedings cannot be fair to the Museum, and an
13 independent adjudicator or dispute resolution process should be appointed.

14
15 Moreover, the GAO Report also criticized NAGPRA for its failure to
16 ensure impartial proceedings and the perception that NAGPRA proceedings favor tribal
17 interests.⁵⁴ Here, this conflict of interest precludes any further consideration of this
18 matter by the Committee.

19
20 ⁵¹ See Sealaska Appendix H at 92 (email from Rosita Worl to David Tarler
21 and Dan Monroe asking for this matter to be placed on the agenda). This email, which
22 begins "Dear David and Dan" shows the obvious problem with having committee
23 members who have access to the committee serve as advocates for one side or the other.
24 This conflict of interest creates an unfair advantage that is not cured by recusal.

25 ⁵² See, e.g., Sealaska's Appendix B, which attaches a paper called "Tlingit
26 Property Law" by Dr. Rosita Worl.

⁵³ See, e.g., Sealaska's Appendix D at 1.

⁵⁴ GAO 10-768 at 36.

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Conclusion

In conclusion, the Museum has proven that it has a right of possession of the Teeyhittaaan Hat. The Hat was voluntarily and knowingly donated by a Clan leader with the authority under Tlingit law to make the donation acting on behalf of and/or authorized by the owning Clan. He carefully limited the donation so that it was clear that he was reserving for the Clan all of its rights to the communally-owned spiritual aspects of the Hat. He gave to a sovereign government a gift that allowed the Museum to consider the Hat part of its permanent collection, which he knew would protect the Hat from harm or neglect so that future Clan members could have full enjoyment of their rights to Clan *at.óow*. This Committee should honor and respect William Paul, his Clan, and his decision, and decline to recommend repatriation of the Teeyhittaaan Hat as requested by Sealaska, Inc.

DATED this 15th day of October, 2010.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:  For:
Stephen C. Slotnick
Assistant Attorney General
Alaska Bar No. 9011113

ATTORNEY GENERAL, STATE OF ALASKA
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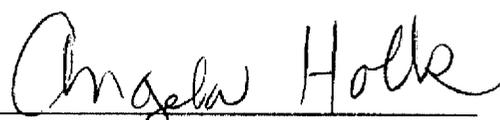
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Certificate of Service

I certify that on October 15, 2010, a copy of the foregoing document,
Alaska State Museum's Memorandum in Defense of Its Right of Possession to the
Teeyhittaaan Hat was mailed via USPS first class mail postage prepaid addressed to:

Walter Echo-Hawk
P.O. Box 254
Yale, OK 74085

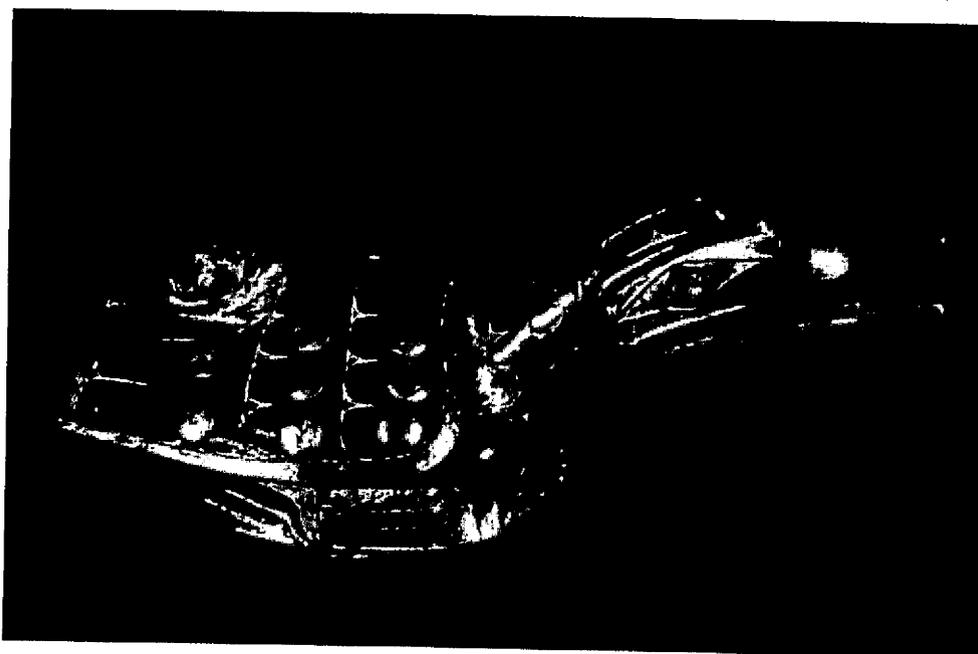


Angela Hobbs, Law Office Assistant



**Assessment of a Repatriation Claim for the *Yéil Aan Kaawu Naa s'aaxw*,
Leader of All Ravens Hat (II-B-809) in the Collection of the Alaska
State Museum, Filed on Behalf of the Teeyhíttaan clan of Wrangell by
the Sealaska Corporation, August 13, 2008**

Alaska State Museum
395 Whittier Street
Juneau AK 99801-1718
March 3, 2009



The *Yéil Aan Kaawu Naa s'aaxw* (Leader of All Ravens Hat), identified by the Alaska State Museum catalog number II-B-809, is the subject of a claim presented to the museum by the Sealaska Corporation, dated August 13, 2008, under the terms of the Native American Graves Protection and Repatriation Act. The claim, authorized by leader of the Teeyhíttaan Clan of Wrangell, identifies the hat as an Object of Cultural Patrimony and Sacred Object, and requests repatriation under the terms of the act.

HISTORY

The repatriation claim submitted by the Sealaska Corporation documents the Teeyhíttaan clan's history of the hat, which corresponds to information in museum files obtained from William L. Paul, former clan custodian of the hat, who first loaned and then donated the hat on behalf of his clan. The accounts in the museum, however, add some additional historical details not included in the claim. Frances Paul, wife of William Paul, made

several drawings of the hat which are labeled with notes about the history of the hat. One of the descriptions reads:

Crest hat of the Tee-hit-ton tribe of Wrangell, Raven Phratry. It remains the property of the original owners, is now on loan to the Alaska Historical Museum. It is ornamented with native copper disks and abalone shell and has seven tufts of hair from slaves either freed or killed at the hat's dedication feast. It replaces an earlier hat badly burned in a fire. This hat is named "In place of Town Prince Raven Hat." The first hat was originally owned by a Tsimshian chief who killed a Tee-hit-ton chief while hunting on Prince of Wales Island on property owned by the Tee-hit-ton tribe. In an attempt to settle the trouble peacefully the Tsimshian chief placed his ceremonial hat on a raft with eagle down and floated it up with the tide to the Tee-hit-tons at the upper lake. The Tee-hit-ton understood the significance of the act and accepted it as a peace offering (F. Paul n.d.).

The other description states:

This hat is named Yehlh-An-kow-oo, or Chief-of-all-Ravens. This particular one is about 70 years old ["1939"]. It is a copy of a former one which was partially destroyed by fire. The original one had abalone shell where this one has copper discs. It was a great disgrace that the hat should have been destroyed, so the fact was hidden and a new [one] was carved in secret by a nephew of Gush, the head-chief. When it was finished a feast was given and the substitution made. Ordinarily such work was done by a member of the opposite phratry, but due to the wish for secrecy, a member of their own family did the carving (F. Paul ca 1939).

Another reference to the hat, written by William Paul himself, states that the first hat, the one destroyed by fire, was named "Ahn-yuddy-yeil-gowx", the replacement hat as carved by Nah-gun-nah-aht, and the new hat was named "Uh-ity-gowx", meaning "in Place of." The hair attached to the head of the raven was obtained from manumitted slaves (presumably released when the hat was dedicated and bought out as clan *at.óow*) (Paul 1995:40).

As is typical of Tlingit clans, the Teeyhíttaan appointed a custodian (also referred to as a caretaker or steward) to oversee the preservation and use of clan *at.óow* (communally-owned historical artifacts and crest objects). The responsibility of custodianship usually falls to the *hit s'aati* ("house master"), the head of the clan house, and their duties include guarding against the loss or sale of the *at.óow* for personal gain, and ensuring proper use and protocol of the *at.óow* during ceremonies. A custodian's final duty is to identify and train a qualified and responsible successor (Lukaax̄.adi Clan 1986:19, Dauenhauer and Dauenhauer 1994:23).

In the 20th century, the Teeyhíttaan clan selected as caretaker a clan member who rose to prominence in government and tribal affairs: William L. Paul (1885-1977). Paul was a

seminal figure in the Alaska Native civil rights movement, and as a mediator between the Tlingit tribe and the government. In 1920, Paul became the first Native admitted to practice law in Alaska, and for the next two decades, became one of the most important leaders of the Alaska Native Brotherhood—the oldest Native American civil rights organization in the United States. Paul was also the first Alaska Native elected to the Territorial House of Representatives, and served two terms (1925 and 1927).

With the help of his brother Louis, he “molded the ANB into a potent political and social force, a focal point for Alaska Native concerns and interests, and an effective body advocating and securing recognition of Alaska Native equality and rights” (Haycox 1994:502). Through the ANB, the Paul brothers helped achieve Native voting rights, successfully arguing against rules that prohibited Natives from voting unless they proved



William Paul with the Leader of All Ravens Hat, circa 1945, William Paul collection

they were leading “a civilized life.” In the 1930s, they organized the Native vote to counter, among other things, the ruinous commercial exploitation of salmon by powerful commercial interests. William Paul helped initiate the land claims suit against the federal government, and fought for the rights of clans to enter into the suit in a case settled by the US Supreme Court, *Tee-Hit-Ton v. US* (1959). In the later years of his life, William continued activity with the ANB into the 1970s, and devoted time to writing a book on Tlingit history (Paul 1995) and an article on the famous Tlingit totem pole with a likeness of Abraham Lincoln (Paul 1971). Paul “remained an important and respected Native leader throughout the post-war period and the land claims struggle in Alaska....[and] ended his life widely honored and revered, a modern tribal elder among his people, and a major figure in modern Alaska history” (ibid 505).

By around 1942, Paul assumed the role of a leader of the Teeyhíttaan clan and custodian of the hat. According to Paul (1995:170), he was formally introduced into that position by Julia Yowdat (Kuh-daysh-kuh-hadt), a Naa Tlaa (clan mother). The setting was atypical: on the floor of the Wrangell courthouse during a hearing of *Tee-hit-ton v US*. Paul recounted that the incident “...was not understood by the U.S. Attorney, but that [it] marked the passing of one ‘chief’ and the ‘elevation of another’” Yowdat, described by Paul as “a sort of ‘mother-in-Israel’,” was a powerful force in the clan who had helped install William Paul’s predecessor, a man called Gush-X, who replaced his uncle in the position of leader around 1882 (Paul 1995:170).

The hat came into the possession of the Alaska Historical Library and Museum (now Alaska State Museum) in 1947 as a loan from William L. Paul. A letter to the file, signed by museum assistant Josephine White (1947), reads:

William L. Paul loaned to the Territorial Museum an old Tee-hit-ton Crest, raven, copper disks and abalone eyes. This hat belonged to William Paul's ancestors and has been handed down to him, who is now the Custodian of the Crest hat. He was given a receipt for the hat with the assurance that the hat would have the same care in the museum as is given to other exhibits, and that it will be returned to him on application.

It is likely that William Paul was motivated to place the hat at the museum due to the risk of loss or damage due to fire. At the time, towns in Alaska were filled with old, wooden-framed buildings heated by wood or coal. Fire had already consumed the original hat, and it was Paul's responsibility to protect the replacement hat from a similar fate. In 1939, the hat was miraculously spared when the Paul family home in the Goldstein Apartments burned to the ground. In 1944, the Tlingit town of Hoonah was destroyed, causing the loss of many sacred clan artifacts. The museum was located in the Federal and Territorial building, a modern office building of steel and concrete that was likely the most secure building in Juneau at that time. It is clear that William Paul regarded the museum as a safe and secure repository for the hat.



Aftermath of the Hoonah fire, 1944. Photo by Trevor Davis. Alaska State Library PCA 97-867

While the hat was physically relocated to the museum, Paul ensured that his clan would maintain access to it in the future. Thinking into the future, he wanted to make sure that

the museum had instructions as to who would succeed him as a custodian. In 1954, he wrote to Richard Rinehart Sr., a clan member, stating that he would "...make some worthy member of the tribe its custodian (I think you are the one to keep our name respectable and provide the formal leadership)—I am not sure if I have the right son of Jessie's in mind, but you will know if you are worthy." (William Paul 1954:1)

However, in 1962, Paul added a notation to the museum's catalog card for the hat, stating that "...William Paul Sr. directed that his son, Frederick Paul of 6810 31 N.E. Seattle, Washington be listed as custodian of the hat after the death of William Paul Sr." Under normal conditions, custodians were selected from the clan membership—and Fred Paul was not of the Teeyhitta clan. Perhaps, due to declining clan membership or their relative youth, Paul felt that no clan member at the time could meet the responsibility required of a clan custodian. Succession was and continues to be a problem in many cases for custodians of *at.óow*, and sometimes the only solutions have no precedent in Tlingit traditional law, which assumes stability and not assimilation.

Within two years, William Paul decided that Richard Rinehart Sr. had proven himself a suitable successor from within his clan—and his selection would be more in keeping with traditional practice. He wrote a memo to the museum stating that "Upon the death of William Paul Sr, the crest hat "Yethl-Ankow-oo" of the Tee-hit-ton Clan shall become the property of Richard Rinehart, whose Tlingit name is "Ya-Koog" of Wrangell, Alaska" (William Paul 1964). This change indicates that Richard Reinhart Sr., a clan member in good standing, had by then proven himself worthy of appointment. Frances Paul DeGermain, daughter of William Paul, later wrote about her father's selection of Mr. Reinhart:

My brother Fred was very upset, he had expected to inherit the hat. But William didn't think that was right although Fred was his heir white man style. But sons do not inherit Indian style, nephews do. Besides which, Fred was Nahn-ya-ahyi, not Tee-hit-ton (DeGermain 1997).

In 1969, William Paul contacted the museum and asked to change the loan to a gift to the museum. In a letter to Mr. and Mrs. Paul, Alaska Governor Keith Miller acknowledged the gift:

I am deeply pleased that this hat, one of the most outstanding pieces in the Museum collection, will now as a result of your donation remain as a permanent addition to the historical and cultural treasures which so eloquently tell the story of Alaska. (Miller 1969).

William Paul signed the hat over to the museum using the standard donation form, reading: "Conditions regarding Gifts: It is hereby agreed that the above items are donated to the Alaska State Museum as free and unrestricted gifts, offered without limiting conditions unless specifically stated herein." On the museum's copy of this form, William Paul lined out "offered without limiting conditions unless specifically stated

herein” and wrote in “except as noted”—referring to two conditions that he added to form under “Description of Objects.”

One condition was that the museum would “...make every effort to have woven at least three rings of spruce root basketry to be placed on the hat (within a reasonable time all things considered)” (this was completed in 1973 when the museum commissioned Ida Kadashan of Hoonah to weave a set of four rings to replace the missing original). The other condition stated that:

...the current custodian’s name shall be displayed with the hat; at this time he is William Lewis Paul, whose Tlingit names are Skquindy and Ka-xwan (Jack Frost). The next custodian will be Richard Rinehart, Tlingit name Yuh-koog’, if he survives me, otherwise a male person to be designated.



William Paul with the Leader of All Ravens Hat at the museum, 1969. Museum photo.

DeGermain (1977), again recounting her father’s actions, wrote:

You see, my Father, William Louis [sic] Paul, deposited the hat in the Alaska State Museum, at first, only on loan. Then, as he got older he worried about who should have it, who was left, who had the powers of leadership, who had character, who could be trusted to cherish the hat, and he decided to make it a gift, which he did in a letter.

In the 1960s and 70s, art dealers from the lower 48 states frequently traveled through Alaska Native villages and offered to pay cash for artifacts. This resulted in many pieces of clan-owned *at.óow* being sold for personal gain by individuals who had access to the

objects but who lacked the authority under traditional law to sell. William Paul was undoubtedly aware of the monetary value of the hat within the art market, and likely became concerned that if the clan continued to suffer from low numbers and inactivity in cultural affairs, sooner or later the hat would be sold. By donating that hat to the museum, Paul knew that it would be protected from damage, deterioration, as well as improper sale. Given Mr. Paul's longstanding knowledge of tradition and support of the clan structure, it seems understandable that he would appoint a clan custodian caretaker to ensure the clan would have some knowledge of and access to the hat.

With the death of William Paul in 1977, Richard Rinehart Sr. became the custodian of record for the hat. There is no record of contact between the museum and Rinehart until about 1992, when he stopped by the museum and introduced himself as the hat's custodian. In 1996, he left a note at the museum stating that his uncle William Paul had left him in charge of the hat, and further, in a letter in his possession, his uncle appointed him "the head and spokesperson for the Teeyhitta tribe after he is gone, and also in charge of the crest hat" (Rinehart Sr. 1996:1). In reply to Rinehart Sr.'s 1996 note, Steve Henrikson, Curator of Collections, stated that the museum recognized Rinehart as caretaker, and that the museum wanted to formalize an agreement with the clan that outlined the mechanisms whereby authorized clan members could take the hat out of the museum for ceremonial use. (Henrikson 1996:1-2)

In 1997, Richard Rinehart Sr., in a letter published in the *Sealaska Shareholder* newsletter, wrote that as caretaker of the hat he was struggling to find a successor custodian: "There are very few Teeyhittaans alive today, and I don't know any Teeyhittaans with the qualities of leadership, knowledge of tribal and clan history, and responsibility to take over custodianship when I am gone" (Rinehart Sr. 1997:2). These are some of the same problems faced by William Paul in identifying a successor twenty five years earlier—and Mr. Rinehart's decision mirrors Paul's initial response—to appoint his son, a member of another clan, as caretaker of the Teeyhitta hat. Rinehart reasons that his son, Richard Rinehart Jr., is from a clan that is ancestral to the Teeyhitta, and that he is very knowledgeable in Tlingit history and customs, and a good and responsible leader.

As it is generally accepted that under traditional Tlingit custom, a caretaker must be a member of the clan that owns the artifact, this public announcement was met with some opposition from within the clan. Responding to the notice of Rinehart's appointment, Frances Paul DeGermain wrote to Richard Rinehart Jr. stating that because he was not Teeyhitta, he had no right to serve as caretaker (DeGermain 1997:1). Rinehart Jr. replied that he would "try to explain to you how the old ways have not, could not and should not be used in this case, and I am going to prove to you that under the new ways what my father did was and is proper." (Rinehart Jr. 1997:1). Rinehart continued:

When he [William Paul Sr.] was getting up in his years he needed to find a successor custodian, and he chose my father—his tribal nephew. He did not pass along the title of chief to my father, nor did they pass custodianship by way of a potlatch. If things had been done in the old

ways there would have been a potlatch, a new ring would have been added to the hat, and many important leaders would have been invited to the ceremony to witness the succession. So you see, although Charlie Yakook was Wm. L. Paul's uncle, and Mr. Paul was my father's tribal uncle the old customs still had not been followed in the old ways of succession.

In the old ways, titles and custodianship were passed from uncles to their sister's son. My father's sisters have no sons. He has no tribal nephews to bestow custodianship of the Teey-Hi't-Taan clan crest hat. He doesn't even know of any Teey-Hi't-Taan that were either born or raised in Wrangell, where he has lived his whole life, who he can pass on the custodianship. Unfortunately, because of the small pox epidemic there are very few Teey-Hi't-Taan alive today....Therefore, as you can see the old ways of succession could not be followed (ibid 1997:1).

Rinehart further explained:

Now I want to tell you why these old ways should not be followed today. My father has no tribal nephews. If there is no custodian for the Teey-Hi't-Taan clan crest hat, Ye'il-Aanka'awu, the Alaska State museum will have full control of the hat. The clan, the Stikine quon and the Tlingit people will lose control of another part of their heritage. The atu' [at.óow] of the Teey-Hi't-Taan clan could be lost forever. (ibid 1997:2)

In the same correspondence, Rinehart Jr. states that he intends to accept the position of caretaker:

Because there is no one we know of who can meet these requirements, and because we believe it would be a big mistake to let the hat go on without an appointed custodian my father passed the right on to me, and for those same reasons I accepted the responsibility. I will be the next custodian of the hat. I am not nor do I claim to be the 'chief' of the Teey-Hi't-Taan....as you know the old ways are gone forever. I will bear this responsibility until a worthier custodian comes along, or until I appoint a successor custodian some day (ibid 1997:3).

In 2003, Richard Rinehart Sr. wrote to the Alaska State Museum stating that the hat was a loan to the museum, and that as the hat was needed for a naming ceremony in Wrangell, he was releasing the museum from any responsibility for the hat, and asked the museum to release it to Albert Reinhart. Steve Henrikson, Curator of Collections, informed Mr. Reinhart that while the hat was initially loaned to the museum in 1947, it had been donated to the museum in 1969. Mr. Henrikson acknowledged that Mr. Reinhart was named on the donation form as the next custodian, but the form did not outline in detail the responsibilities or authorities of either party. Henrikson invited Mr. Rinehart to work with the museum to clarify the relationship.

Since 1984, the museum, in partnership with several Tlingit tribes and the Kiks.ádi clan, has pioneered a ceremonial use program designed specifically for Tlingit *at.óow* under the ownership of the museum. The program features a procedure for clans to safely and securely remove their *at.óow* from the museum when needed for traditional ceremonies. When the clan is not using the *at.óow*, the objects remain in the museum. The program has been employed successfully for twenty five years, and has been refined over time. The museum is confident that such a mechanism could be used in the case of the Teeyhíttaan hat in a way that would seem to fulfill William Paul's original intent.

In 2004, completion of a new museum in Wrangell offered a safe place for the hat to be displayed and accessed by Richard Rinehart Sr. At its own expense, the Alaska State Museum staff removed the hat from display in Juneau and transported it by courier to Wrangell, and made arrangements to keep the hat on loan to the Wrangell Museum, where it has been ever since. Because the hat was moved to Wrangell, it was available for use by Mr. Rinehart and his clan at the dedication of the Wrangell Museum in 2004, and again in 2008 for a ceremony. In this way, honors what seems to be the intent of Mr. Paul's donation—that the museum protect and preserve the hat, while clan maintains ceremonial access to it.



Richard Rinehart Sr. (far right), wearing the Leader of All Ravens hat, stands with members of the Kiks.ádi clan at a ceremony in Wrangell, November 2008. The frog hat (middle) is part of the museum's ceremonial use program. Photo by S. Henrikson

In May 2007, Rosita Worl, President of the Sealaska Heritage Institute, inquired as to the status of Mr. Rinehart's request for the return of the loaned hat. Bruce Kato, Chief Curator, explained that the hat was not loaned, but had been donated in 1969 and listed since that time as property of the State of Alaska. While the museum could not release the hat to Mr. Rinehart (barring new information or a successful repatriation claim), the museum invited Mr. Rinehart and the clan to negotiate with the museum to work out the formal terms of the relationship concerning the preservation and ceremonial use of the hat. In August 2008, the Alaska State Museum received a claim for the hat from the Sealaska Corporation under the terms of the Native American Graves Protection and Repatriation Act of 1990.

ISSUES AND DISCUSSION:

Affiliation:

Federally recognized Indian Tribes or "other organized groups" may file claims under NAGPRA. While the Sealaska Corporation and other ANCSA corporations are not federally recognized Indian tribes, the NAGPRA regulations promulgated by the National Park Service makes Alaska Native corporations eligible to file claims. In this case, the Sealaska Corporation is acting on behalf of the Teeyhitta clan of Wrangell, as authorized by Richard Rinehart Sr., a clan leader who was named custodian of the hat by William L. Paul. Thus, the preponderance of evidence demonstrates that the object is culturally affiliated with the Teeyhitta clan as represented by the Sealaska Corporation.

NAGPRA Category:

The hat is claimed as an "Object of Cultural Patrimony" and "Sacred Object" as defined by NAGPRA.

Object of Cultural Patrimony: The law requires that a preponderance of evidence shows the object to have "...ongoing historical, traditional, or cultural importance central.." to the Native American group or culture. In other words, the object must have been of central importance in the past as well as in the present. Secondly, the object must be communally owned—not the property of an individual Native American that could be alienated, appropriated, or conveyed by any individual tribal member. Finally, the evidence must show that the object was considered inalienable by the group at the time it was alienated.

Tlingit clans maintain groups of objects called *at.óow* that generally speaking would fall within the definition of "Object of Cultural Patrimony." *At.óow* ("an owned or purchased thing") may include songs, stories, geographical features, names, ancestors, designs, spirits, and a variety of other things. *At.óow* may include both the tangible and intangible—an artifact, its design, and history. Through purchase by an ancestor, the object becomes owned by his or her descendants. The purchase in this case may come as

a result of sale, trade, collateral, peacemaking, through personal action or the loss of life (Dauenhauer and Dauenhauer 1990:14-15). While *at.óow* may include both tangible and intangible, NAGPRA is concerned primarily with human remains and tangible objects.

Several sources describe the attributes of *at.óow*, including Dauenhauer and Dauenhauer (1994), Kan (1989), de Laguna (1972), Littlefield and Littlefield (1980), Lukaax̄.ádi Clan (1986:14-15), and Worl (1998). The 1995 Statute Code of the Central Council of Tlingit and Haida Indian Tribes of Alaska (Chapter 3, Section 11.03.014) summarized the main elements of *at.óow* as criteria in determining if an object is communal property: *at.óow* must be a) made by the opposite moiety; b) publicly validated and named (“brought out”) before members of the opposite moiety; and c) paid for by sacrifice or through a ceremonial payment to those witnessing the validation. *At.óow* may be physically indistinguishable from property owned by individuals, but only *at.óow* would have ongoing historical significance that would be known to clan members.

Haa shagóon is a reference to past generations of ancestors who owned the *at.óow*. *At.óow* that was owned by an ancestor (*shagóon*) may also be referred to as *shagóon*—meaning that the ancestors or their spirits are embodied by the *at.óow* (Dauenhauer and Dauenhauer 1990:19). The traditional categories of *at.óow* and *shagóon* in Tlingit society mirror the NAGPRA category of are the closely aligned to the NAGPRA category of “Object of Cultural Patrimony.”

The claim presents evidence that the The *Yéil Aan Kaawu Naa s'aaxw* (Leader of All Ravens Hat) falls under the NAGPRA categories of “Object of Cultural Patrimony” and “Sacred Object,” in part by showing it is considered *at.óow* and *haa shagóon* by the Teeyhíttaan clan. The evidence shows that the hat exhibits attributes of *at.óow* and *shagóon*: traditional stories, songs, or personal names referring to the object; manufacture by the opposite moiety (or acquisition through war, trade, payment, or diplomacy from another clan or tribe); a formal name for the object; history of its dedication before members of the opposite moiety (or payment through death or sacrifice by a clan member); replacement of an older version of the object; and a history of being cared for by a clan or house leader on behalf of the group.

The hat seems to exhibit the major features of *at.óow* with one possible and important exception. One account of the hat's history (Frances Paul: ca 1939) states that the present version of the hat was made around 1870 by a member of the Teeyhíttaan clan in order to conceal that the original hat was partially destroyed by fire. Traditionally, *at.óow* must be commissioned of the opposite moiety in order for it to be properly paid for and validated (Lukaax̄.ádi Clan 1986:14-15). While the original hat was given by the Tsimshian tribe as restitution for a wrongful debt, the manufacture of later replicas made to replace the damaged original would have likely been done by the opposite moiety. As anthropologist Frederica de Laguna (1972:457-458) put it: “To have any value at all for expressing rank, a crest object had to be manufactured by a man's opposite...In addition, to validate the worth of this crest item, it had to be displayed at a potlatch in front of those opposites who manufactured it.” At the time of manufacture (ca 1870), this requirement was likely mandatory, but by the mid-1900s, manufacture of *at.óow* by the owning clan was

becoming more acceptable under certain circumstances (Dauenhauer and Dauenhauer 1994:17). Thus, due to culture change and the elasticity of Tlingit property law, the hat may have been acceptable as *at.óow* by the Tlingit culture by the time of its alienation.

Sacred Object: The claim also presents evidence that the hat is needed by a Native American religious leader for sacred ceremonies such as the *koo.éex* (memorial feast), and as a result is considered a Sacred Object under NAGPRA. This information is consistent with information contained in museum files, published sources, historical evidence and oral tradition. Thus, the preponderance of evidence shows that the hat is an object of cultural patrimony and sacred object under the terms of NAGPRA.

Right of Possession:

NAGPRA section 7(c) states "If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony...and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects."

Alienation of At.óow: Generally, NAGPRA describes cultural patrimony as inalienable by any individual who lacks the authority to alienate. Determining if a museum has a "right of possession" for an object under NAGPRA hinges on whether the person or persons who alienated the object had the authority to do so (Echo-Hawk 2002:124-5).

This claim contends that the museum cannot have a right of possession to the hat because Tlingit property law does not recognize the alienation of *at.óow* outside the Tlingit culture. The Sealaska Heritage Institute's Council of Traditional Scholars feels that "alienation" never existed in the Tlingit culture except in cases where *at.óow* was transferred from one clan to another to settle legal disputes or pay a debt, and that no other removal of clan property was possible. The document attached to the claim, entitled "Tlingit Clan Trust Property Laws and Dispute Resolution" also states that ownership of clan property can not be transferred outside of Tlingit society.

However, historical sources and case law clearly shows that Tlingit clan property of central importance, including *at.óow*, may be alienated outside the clan for many reasons, usually by voluntary consent but sometimes involuntarily through warfare. Property could also be alienated through sale, debt payment, compensation for injury or death, bride price, war trophy or peace settlement. The property might pass between clans, moieties, or even tribes (De Laguna 1990:213).

One clan, the Lukaax.ádi, has formally codified their standards and procedures relating to alienation of *at.óow*:

"Transfer of clan property by sale has been covertly practiced by self-interested Tlingits since European contact. This practice is not openly discussed among clan elders or hits'aati because it is commonly understood to be in direct violation of Tlingit property law. There are special circumstances where transfer or sale may legitimately occur. It must be undertaken for the purposes of non-monetary gain for any of the members of the house group or clan, must be decided upon publicly, and the decision must involve the elders of the clan. An example of such a sale is expressed in the decision of a house group to sell one piece of clan property in order to raise funds to restore a clan house. Covert or self-interested sale is in direct violation of Tlingit property law." (Lukaax.ádi Clan 1986:17)

Further, the clan states that all forms of transfer require three essential elements:

1. The transfer must be made in public.
2. The decision for the transfer involves the elders or hits'aati of the house groups of a given clan who claim ownership of the property; and
3. The transfer is only honorable if it is not undertaken for the purpose of monetary gain for any member(s) of the house group or its mother clan." (Lukaax.ádi Clan 1986:15-16)

Generally, the alienation of *at.óow* by a clan leader to museums outside the Tlingit culture is legal under tribal law. The Central Council of Tlingit and Haida Indian Tribes of Alaska has formalized various statutes and resolutions pertaining to some of the issues raised by this claim (CCTHITA 1995, and 2001). One resolution states that, referring to the removal of *at.óow* "with the exception of those clan objects which are held in museums with the express permission of clan leaders and trustees acting on behalf of their clan and house members, all such removals were illegal" (CCTHIA Feb 14, 2001:14).

Determining the legal standards in place within the community and clan at the time an object was separated from the group is important in deciding if an object was properly alienated. In tribal societies, writes anthropologist Bronislaw Malinowski (1961:xxlviii):

"...we find everywhere that rules of behavior and principles of law or call it custom if you like cannot be rigid, since they act rather as elastic forces of which the tension decreases or increases; they cannot be absolute since they have always qualifications, codicils and riders; they cannot be automatic, since non-compliance with one rule can usually be justified by another rule of tribal law."

After trade with non-Natives became prevalent among the Tlingit, a tremendous quantity of material was exchanged, including many items that were likely considered *at.óow*. There is no historical evidence that alienation of *at.óow* to non-Natives was not recognized by the Tlingit culture. The huge volume of material traded or sold during the

20th century suggests that the law was not uniformly followed or enforced across Tlingit country. Each clan governed its own affairs and imposed their own standards and customs that while similar to those of other clans often showed variability across clan, village, and regional lines.

Tlingit property law has, in the 19th and 20th century, exhibited a significant degree of elasticity that accelerated over time as Tlingit culture underwent significant changes due to the adoption of many non-Native concepts and practices. In the later 20th century, attempts have been made to solidify code and statute to protect Tlingit artifacts as their market value increased. Some clans may have adopted unanimous consent as a higher standard to protect *at.óow* from being removed. Also, the Chilkat Indian Village Artifacts Ordinance requires that the village must approve any sale of artifacts by Klukwan clans—this statute was upheld in tribal court in the case of *Chilkat Indian Tribe v. Johnson* (Chilkat Indian Village 1976). Such recent measures, while unprecedented under traditional Tlingit property law, have proven effective in stemming the sale of cultural objects—but they do not completely prohibit their transfer to outsiders.

Decisions by Council, Consensus, or Unanimous Consent: The historical literature refers to decision-making by councils made up of leaders and “high caste” members. Clan leaders were not powerless, and their influence over the council depended on wealth, status, ability, and personality. In the most detailed historical account, Emmons (1991:39-40), describes the relationship between the clan leader and clan councils”:

Councils were not assembled at fixed times, but were called by the chiefs when the occasion required. They were presided over by him, and were attended by the subchiefs and other household heads in his clan. After discussing the subject and agreeing upon a course to pursue, a general meeting of all the adult males of the clan was called and the proposition stated. Every person present had an equal right to speak, and the sentiment of the majority was followed, but generally the prior decision of the house heads was accepted.

Emmons (1991:40) states that only adult males took part in decisions, and Litke (1987:92) agrees that “Women are not admitted to any political gatherings; all plans and all arrangements of this kind are carefully concealed from them.” This is also confirmed by Kamenskii (1985:34):

To elect a clan *taion* all the elders of the village [clan?] gather for a council. Important councils among the Indians always take place in the dead of night. In these instances, noise and publicity are avoided. Neither women nor teenagers are allowed to attend.

The duties of the clan council included naming new leaders (Kamenskii 1985:34), settling internal disputes (Oberg 1973:43), and deciding the fate of slaves (Veniaminov 1984:423), protocols for using *at.óow* (Dauenhauer and Dauenhauer 194:23), and other matters of importance (Kan 1989:84).

Historical and anthropological sources also show that clan leaders represented their clans in trade, diplomacy, and other matters of importance. While the destruction or alienation of *at.óow* was among the most important matters a clan faced, there is no evidence from the early 20th century or before that this required the unanimous approval of the group members. There is little historical evidence describing the exact process in detail, but the absence of evidence cannot serve as evidence that Tlingit law and custom in place at that moment was not followed.

Tlingit leader William Wells' account of an 1877 potlatch in Sitka provides a rare account of the ceremonial destruction of a *tin.aa* (copper plate): "Two men took up the copper plate and started rubbing it on the foreheads of those receiving the honor. Altogether there were twenty of them standing in a row....Then the chief ordered it dropped into the deep sea....This is a sign of great respect and high honor" (Wells 1969:63). The leader ordered the destruction of a valuable piece of clan property, and it is assumed that the leader was following the consensus of the clan council—though no evidence of his compliance or noncompliance with Tlingit law is available.

Together, the historical and anthropological sources offer a rational model of decision-making among Tlingit clans: clan and house leaders had limited authority and could not make unilateral decisions on important matters without gaining consent. Leaders met with councils (made up of elders, house leaders and/or heads of households) to discuss issues and make decisions. The decision was announced to male clan members at large, and they were free to speak on the matter, "and the sentiment of the majority was followed, but generally the prior decision of the house heads was accepted" (Emmons 1991:40). Emmons (1991:22) also states that within the clan, an "...act of one is accepted by all...", and Dauenhauer and Dauenhauer (1994:22) agrees that "Once the decision is reached, all clan members are expected to be supportive..."

The claim asserts that "Property cannot be transferred, conveyed, or alienated unless all members of a clan agree. If any clan member should refuse to relinquish title to a clan object, then he or she cannot be deprived of his or her interest by an act of others, and the clan is required to maintain its ownership." There is no historical evidence showing that clan members had an equal voice in decisions, that unanimous approval of all members was required, or that this standard applied at the time the hat was alienated.

Clan and house leaders—then and now—represent their clans in negotiations (CCTHITA 2001:11). The Sealaska Heritage Foundation, Central Council of Tlingit and Haida Indian Tribes of Alaska, and village tribal councils often seek the counsel and participation of clan leaders as clan representatives. In some cases, clan leaders have signed contracts with governments and tribes as representatives of their clans. NAGPRA requires museums to consult with federally recognized tribes, but even prior to passage of the statute in 1990, the Alaska State Museum routinely worked with clan leaders whenever possible when clan-owned materials were being considered for acquisition.

Following the lead of the Native organizations, the museum recognizes the clan leader (who is usually custodian of *at.óow*) as a group representative. It is not possible or appropriate for the museum to directly observe clan business to ensure that leaders comply with traditional laws and codes of conduct, but there is a presumption of regularity unless clan members with some authority make overt efforts to halt a transaction or replace or otherwise punish their leaders. Today, as in the past, documentation of clan business is not accessible to outside clans or institutions, so detecting evidence of impropriety is next to impossible unless clan members step forward.

Moreover, the donation of this hat may be seen as a gift from the Clan to a sovereign, and when the gift was made, it was acknowledged by a letter to the Clan from Governor Keith Miller (Miller 1969). A review of the historical and anthropological record demonstrates that Tlingit culture permitted the alienation of *at.óow* to other sovereigns or among Clans. Too, given the documented existences of Tlingit class structure, there is little evidence that clan leaders of the nobility had to gain the unanimous consent of all clan members before making gifts to a sovereign or in the conduct of international diplomacy. The payment or exchange of *at.óow* between and among clans (as represented by their leaders), has been a part of Tlingit culture since time immemorial. The practice of giving of opulent gifts to establish and maintain diplomatic and trade relations extended to non-Natives beginning in the 1780s, as shown in the historical record. European officials, scientists, and traders carried gifts specifically for presentation to Alaska Native leaders. These gifts—garments, hats, medals, and other items—were given openly at a public event and subsequently worn and prominently displayed by the leaders (in some cases for many years after). Fine gifts of Native manufacture were given in return to the non-Native officials, and ultimately returned to the mother country and housed in the national museums.

Authority of William Paul to Alienate At.óow: The claim states that William Paul, clan leader and custodian of the hat "...could be faulted for acting without the involvement of the clan, in his own way he was trying to preserve the clan's *at.óow* by donating it to the museum....The evidence indicates that he acted on his own and did not do this with the knowledge and consent of the clan." Evidence that Paul acted alone, without the clan's knowledge or consent—is not provided in the claim. There no evidence that the clan punished Paul for alienating the object or that clan members contacted the museum to protest or halt the donation.

Some contemporary sources state that for an alienation to be considered legal by traditional Tlingit standards, *all* members of the group (house or clan) must unanimously agree, or that only that adult males and high-ranking females must agree. Some sources state that title to property is held in trust by the *Naa Shaadeiháni* (Clan Head) and/or the *Hit s'aati* (Housemaster), and that the leader acts as a trustee, property administrator or custodian on behalf of group members and cannot make independent decisions to dispose or alienate clan property (Goldschmidt and Haas 1946; Olson 1967). Many historical sources confirm that the power of leaders was limited (but not entirely absent), and some

sources characterize decision-making as governing through consent (Emmons 1991:39), but not necessary by unanimous consent.

The authority of leaders varied over time and according to his status and personality. Emmons (1991:39) states that in traditional times "...the chief exercised more authority than he did after the arrival of Europeans." Emmons (1991:27) states that, "While the house chief was accorded much respect and represented the communal body at all functions, his authority was very limited. His power depended more upon his personality and strength of character than on his own position." Krause (1956:77) agrees that:

The power of the chief is very limited and the direction which it takes depends on the personality of the individual. Only in cooperative undertakings and in council is he a leader; in everything else every family head is entirely free to do anything which is not counter to custom and which does not infringe on the rights of others.

Kan (1989:83) states that:

The wealth and status of a leader added to his authority. A social divide existed between the nobility and common members of a clan: clan and house leaders were from the noble class and wielded more influence in clan decisions.

At Sitka in 1827, Litke (1987:85) wrote that "the more descendants [the chief] has, the richer he is, the more slaves he owns and the more consideration he is accorded." Oberg (1973:41) states that:

This clan solidarity is more apparent than real, for the element of rank is so strong that out of it crystallizes definite classes, the *anyeti* or noble clan and the *xetaxua* or commoner class....These class lines fan across clan and phratry and form a unit probably stronger than the clan itself...A member of the *anyeti* often ignores a clansman of low rank and does not speak of him as a brother, but as a man of such-and-such house.

Oberg (1934:146) adds that some leaders used their power to decide legal issues to their advantage at the expense of lower-ranking clan members.

Emmons and other sources point out that while the leader may have limited powers, he represented his group in ceremonies, trading, and in negotiations with other clans as well as with non-Natives (Kan 1989:84, Emmons 1991:39). This responsibility extends to recent times: many clans are regularly represented by their leaders in meetings and ceremonies, and the leaders may sign agreements on behalf of their clans with outside organizations. The *Lukaax.adi* clan trust (1986:19), for example, states that the housemaster is "...bestowed with the honor and responsibility of care of the clan property of a house group, and who represented the house group on formal occasions (ritual, political, or economic)."

Certainly Tlingit leaders would discuss matters of importance with others in the group, but, prior to the mid 20th century, no sources confirm that important decisions must have unanimous consent, or that all members of the group, regardless of their social position, have an equal voice in decision making. Whatever process was used, the group leader presided and served as spokesman, following an example cited in Oberg (1973:81):

When the old house threatened to become uninhabitable, the old men of the house began to talk about building a new one. The matter was later fully discussed, not only by the people of the Frog house, but by the whole clan division of the village. When it was finally agreed that the resources of the Frog house people were sufficient to warrant a new house, the *yitsati* came out through the ceremonial opening in the screen before the back wall and announced to the gathered clansmen that a new house was to be built.

Given the rapid pace of culture change in the 20th century, caretakers may not have been able to strictly follow the traditional procedures when new conditions arose that went beyond what was codified in traditional laws and practices. For example, clan leaders may not have consulted every house leader or member if they were not knowledgeable in Tlingit traditions, were very young, few in number, or living far from Alaska. Using tradition as a starting point, leaders likely relied on reason and judgment to find new solutions as demanded by new circumstances. Since these new measures address new conditions beyond the realm of traditional laws, they are not expressly legal or illegal. Over time, however, they formed a body of Tlingit common law.

Some past clan leaders have unilaterally decided to be buried with the object to prevent clan members from fighting over the object, or if no one in the clan was considered worthy enough to inherit custodianship (de Laguna 1972:460, *State of Alaska v. George Jim et al.* case). Another possible solution to this dilemma was to transfer the object to a museum, to ensure its physical preservation and access by the public. In some cases, clan leaders sold the objects, and the funds generated returned to their clans. Wealth accumulated through the actions of leaders in trading or diplomacy was used by those leaders to sponsor feasts, which in turn transferred the wealth to the opposite side on behalf of their clan (Kan 1989:85).

Implications of Appointment of New Custodian in Donation Contract: The claim argues that the museum's instrument of donation did not convey legal title to the hat. While William Paul signed the museum's standard donation form, the claim implies that by appointing his successor in the donation document, Paul opened the door for the donation to be rescinded at any time by his successor.

William Paul's intent was for the hat to be preserved and secured in the museum, while guaranteeing that the clan could maintain a connection to it through their custodian. While Richard Rinehart Sr. is named, his responsibilities and duties relative to those of the museum are not specified. It is unlikely that William Paul intended for the new custodian to have the right to permanently remove the hat in the future, as there would

have been no point to the donation—Paul would have simply renewed his loan of the hat to the museum, as he had done several times since 1947.

As a lawyer, William Paul undoubtedly recognized that by signing the donation form with no explicit mechanism for the donation to be withdrawn, the hat would stay at the museum. He likely viewed the museum as a failsafe in the preservation of the hat in case the clan's population continued to diminish or if they no longer wished to participate in the traditional culture. Had Paul stated that his intention was for future custodians to withdraw the hat from the museum on demand, museum officials would have recognized that what he offered was not a donation but rather a loan.

There is no evidence that traditionally, decisions of importance made by a clan, as represented by its caretaker, were reversible by every succeeding generation of clan members. If such had been the case in the past, diplomacy would have practically impossible, yet Tlingit history is full of accounts of peacemaking and trade agreements among clans and between clans and non-Tlingits that lasted for generations. Today, clan leaders are routinely entrusted by tribes and governmental organizations to represent their clans in signing agreements and in consultations and business dealings.

The claim states that the museum acted unethically in "...claiming ownership to an item on the basis of clouded title, by accepting a gift from a donor who openly expressed that the responsibility of custodianship was retained by himself and was to be transferred in [the] future..." Museums may ethically accept gifts with significant restrictions—including partial ownership. Ideally, such restrictions are very explicit and are documented in a contract. By identifying himself as caretaker and naming a successor, Mr. Paul did augment the language printed on the museum's form, it does not cloud title or violate any applicable code of ethics.

The claim states that "it is only recently that the museum has claimed ownership of the item." The hat has been listed as state property in the public record since 1969 when it was donated on behalf of the clan by William Paul. The donation was publicly announced and reported, together with a photo of Mr. Paul holding the hat, in the *Southeast Alaska Empire* (July 31, August 10 and 21, 1969), the largest newspaper in southeast Alaska. The story was distributed by wire service and was also published in the *Tundra Times* (Sept 5, 1969), *Ketchikan Daily News* (August 21), and likely other Alaskan newspapers. The hat has been exhibited at the museum continually since 1969, and its label naming its donor and the current caretaker. The museum staff has consistently stated to clan members in contact (including Fred Paul and Richard Reinhart Sr.) that the hat was donated.

William Paul was the acknowledged spokesman of the clan, and over the course of several decades, established trust with the museum representatives. As an expert in both Tlingit and western law, he knew the legal implications of the donation, and designed a unique arrangement that would give the hat all the benefits of protection by the museum while allowing the clan continued access. While the structure of the donation was not defined in detail, its acceptance reflects an understanding by museum director Jane

Wallen of the special significance of *at.óow* and perhaps need for a new kind of relationship between clans and museums.

SUMMARY:

The museum finds by a preponderance of evidence that the Teeyhíttaan clan and Sealaska are affiliated with the hat, and that the hat is both an Object of Cultural Patrimony and a Sacred Object as defined by NAGPRA, and that the museum has a right of possession to the hat.

The requirements of Tlingit law that applied to William Paul in his alienation of the hat in 1969 can not be known with certainty. There are four possible alternatives:

- Paul had authority as custodian of the hat and clan leader to alienate the hat to the museum in the best interest of the clan, given their small and scattered membership, and due to the risk of sale for personal gain into the art market.
- Paul, as leader and custodian, could alienate the hat after consultation with the clan council unless the council vetoed the donation.
- Paul, as leader and custodian, could alienate the hat after consultation with the clan council and if the council was in consensus that the donation could occur.
- Paul, as leader and custodian, could alienate the hat only if the clan membership gave its unanimous approval.

After the close examination of reliable and available sources, we conclude that any of the first three alternatives listed above are plausible, and the last alternative is unlikely. The claim as presented does not provide evidence that Paul violated Tlingit law, while there is, rather, historical evidence suggesting that Paul was acting within his proper authority. Specifically, we do not know precisely what steps William Paul took to assure that he had authority to donate the hat, but we infer that he acted within the constraints of Tlingit law as practiced at the time of alienation. William Paul was a recognized expert in Tlingit law and conscientious about complying with it. Further, he was extremely careful and thoughtful regarding the terms of the loan and eventual donation of the hat, and is entitled to a presumption that he was acting within Tlingit law. The donation was well-publicized and no members of the clan raised any contemporaneous objection or alleged that Paul lacked the authority to alienate the hat.

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**Museum's Appendix B:
Additional Commentary on New Sources Pertinent to a
Repatriation Claim for the Yeil Aan Kaawu Naa s'aaxw, Leader of
All Ravens Hat (II-B-809), Filed by the Sealaska Corporation
October 15, 2010**

**A analysis of newly located documentation from the papers of William L. Paul,
and other historical and anthropological sources, to provide additional
evidence concerning the Leader of All Ravens Hat.**

ABSTRACT

The William L. Paul papers at the University of Washington Libraries have yielded new details pertinent to this claim. Drawing from over forty years of correspondence and legal records, this material contains information on the early history of the Raven Hat, the succession of Teeyhittaaan clan leaders, the nature and conduct of leadership among the clan and Tlingit people, and on various events that compelled William Paul's long interest in the preservation of Tlingit artifacts. Paul's commentary on the details of his life as a clan leader gives us an unprecedented insight into operations that are usually missing from other 20th century accounts.

The duties of the clan leader and caretaker included many significant tasks that required a great deal of authority and autonomy granted by clan members based on a combination of proven ability and membership in the nobility. William Paul possessed the qualities necessary to keep win respect and backing of his clan members over at least four decades. His long service as representative of his clan and his activities during his tenure, as outlined in the documentation, is in keeping with Tlingit law and custom as outlined by the historical and anthropological literature.

William Paul, an accomplished leader who represented his clan before the Supreme Court of the United States, a founding father of the Alaska Native civil rights movement, and architect of early land claims, who took an active interest in clan affairs and history. His involvement in preserving the physical and intellectual legacy of the Tlingit people, both for his own clan and for others as well, is part of a long tradition of clan leaders serving as the historians and curators of their clans.

HISTORY OF THE RAVEN HAT

The early history of the Yeil Aan Kaawu Naa s'aaxw (Leader of All Raven's Hat) has been previously outlined (see Museum's Appendix A, pp 1-5). The William Paul papers at the University of Washington Libraries has yielded new details pertinent to this case, starting with a series of quotes drawn from his letters on various aspects of the Hat's early history:

"The chief of the tribe takes care of the symbols that belong to the office. In our case we have a Raven hat, which came to us some people say as long as 200 or 250 years ago. It was given to us as a satisfaction for refraining from war at a time when we had just cause, and since that time the Raven hat has been in the possession of the ruling chief. You might be interested to know the interpretation of this wording for the hat, which is called "The Raven, which is the prince of the realm." (Paul 1952:17).

"I went there, to Lake Bay, in 1904....That is where a British Columbia group, members of the Skeena tribe came up there to trade and through some accident one of our people was killed and because we did not retaliate immediately, I think about three days after the incident occurred, when the tide was running low, here came a raft about eight feet square covered with mink robes. On the top of that was a box and on top of that was another mink robe and on top of that was this hat, and it drifted up to the shore, and the chief said the people below wanted peace and he accepted that hat in place of what the law required, which was one death. Now that tradition has been handed down and I am certain we have been there for more than 300 years" (Paul 1951:44).

"Now then an old lady by the name of Julia, the English name of this woman, kept the hat for a long time and then turned it over to my mother because there was no man able to exercise the office of chief. Later on Gush came along and demanded the hat back because he was the chief and she surrendered it to him. Later on the hat was returned to my mother and when I took the office of chief the hat was given to me" (Paul 1952:17-18).

"The old chief died and there were no more men of near his age. We don't reckon a man an adult like the white man does when he is 21 years of age. We reckon he is adult when he shows he is a man in every respect and that does not come much before 35 years and on up. There was no man of corresponding age at the time Old Gush died, and so there were only young men left, so [68] the sister of Gush called a feast, and at the feast she made a speech and outline the situation, and she said: 'It looks to me as if this young man' --and she pointed to him--'is the best one qualified to take his place,

and so from now on he will be known as 'Gush' and he became our leader. Well, he died after a very short time and again we were in the situation where we had no chief and I mentioned this younger brother whose name was Nick. We had able women but no men. So they called another feast and the same woman made a speech and she bestowed the name of 'Gush' upon this next one (Paul 1952: 67-8).

"Up to very recent years our chief was a man called Mr. Cash....When he became unfit to be chief he was succeeded by a man by the name of William Lewis. That is the way I get my name....after William Lewis died I assumed the office of chief of the Tee-hit-ton Nah [tribe]." (Paul 1952:16)

The replacement of a clan leader, on the rare occasion that it is necessary, is a relatively simple matter, as William Paul explains:

"If the people followed him that man was the chieftain and continued strong but at any time the tribe could if they had cause for so doing, could refuse to obey the man who up to that time had been a hereditary chief, and so his prestige would be lost. That occurred with that man Gush, when Mr. William Lewis, a very forceful character drew the leadership and he was then looked upon as our leader and chief....There was an incident that occurred, in which the acknowledged chief, Gush, surrendered his leadership and his sister came forth and spoke on his behalf and told a number of us, and Chief Gush being present, that his health was such that he could no longer exercise the duties of his office and that they would be well satisfied if this young man, that I have referred to, could take his place." (Paul 1952:17)

It is quite likely that the "incident" referred to was as follows:

"One day, Will's mother saw the [Raven] hat in the window of Water's Curio Shop. She went in and exchanged for the hat a large racing canoe left to her by her relative Charlie Yacook who had carved it. The hat had evidently traveled the Whisky Route. She gave the hat to her son William. It is now safely in the Alaska Museum" (Frances Paul c. 1970).

After William Paul became clan leader and caretaker of the hat, he likely worried about the effect that low clan population may have on finding a responsible successor. The clan had never been numerous, and due to smallpox introduced by Russian fur traders, was confined to only one house in Wrangell (Emmons 1916:8,18; Paul 1952:13-14). Paul was undoubtedly aware that the extinction of a clan could result

"... in the taking over of their property by other groups. The only instance related in Angoon was the Tleneidi absorption of the Kelp people at Tyee where they also acquired the resources formerly belonging to them. Several

more recent instances were related at Kake where a related house group acquired the properties." (Garfield 1947:452)

In 1900, William Paul estimated the Teeyhittaaan to number no more than 65 (Paul 1952:13-14). Within ten years, "...we were down to one woman and we thought our tribe was going to be extinguished because she was not leading the right kind of life...." (Paul 1952:96). By 1940, Frances Paul (1995:244) reported that the "...the Nahn-ya-ahyi had been reduced to less than a dozen people and the other Wrangell tribes were equally decimated..." Twenty years later, William Paul wrote that "I am about the last person of my generation alive and so I can obtain no affidavits of any one confirming my birth." (Paul, William Lewis 1967:1) The elders passed away, one by one, and by the 1960s, there were few of his generation left alive. His closest advisors, Mother Matilda and brother Louis, passed away in the mid-1950s, and the younger generation tended to be disinterested in clan affairs and were scattered across Alaska and the lower 48. By the mid 50s, six women and girls had been born into the clan and their prospects had improved somewhat (Paul 1952:96).

The Teeyhittaaan people had a small number of artifacts, and their preservation and security was a challenge. Their original Raven Hat had burned in a fire, and their only totem pole, overlooking Wrangell Harbor had fallen into disrepair. The clan suffered from another loss when a grave of their last shaman was raided on Zarembo Island, near Wrangell:

"That is where my grand-uncle, whose name I inherited [squinny?], is buried and his grave was there and undisturbed. The valuable things that were buried with him were untouched until Coast and Geodetic Survey people decided to put a navigation light in there and their crew stole everything except a few trinkets which my mother was able to save..." (Paul 1952:22-23).

These losses weighed heavily on William Paul from the time he first became active in the leadership of the Alaska Native Brotherhood—which at the time encouraged Alaska Natives to give up their traditional customs and become "Competent Christian Citizens." Paul wrote:

"The opposition to 'old customs' was engendered by the missionaries who enlarged on the evils (poverty) thereof. And that is all our 'founders' could see. When I entered [the ANB], I emphasized the beauties of our ancient culture and the value we should place on our own artifacts and 'old things'....I persuaded the ANB to amend its constitutional 'Purpose' by including one to commemorate the fine qualities of the Natives of North America, to preserve their history, lore, art, and virtues in the (now) state museum, and I put my tribal chieftain's hat there as an example which I hope others will follow" (Paul 1959:5).

"...I set about to remove the impediment, namely, the constitution of the Alaska Native Brotherhood which was interpreted to be strongly against "old custom," a theme of all the up-lift zealots so successfully that some of our Indian communities even burned their totem poles [on purpose]. So I got the ANB to amend its constitution by adding the following:"

'to oppose, to discourage, and to overcome the narrow injustice of race, to commemorate the fine qualities of the native races of North America, to preserve their history, lore, art and virtues, to cultivate the morality, education, commerce, and civil government of Alaska, and to create a true respect for the constitution of the United States' (Paul 1970a:3).

In 1939, the Teeyhitta clan nearly lost the Raven Hat once again due to fire. The Goldstein Apartments in Juneau, where William and Frances Paul resided, burned to the ground. They lost nearly everything, including William's legal files, and a few items inadvertently left in storage after the move.

"We lived for several years in the Goldstein Building in Juneau....The bright star was the fact that stashed in Cash Cole's warehouse was a barrel. My mother had superintended our moving from Ketchikan and she said there was nothing but odds and ends in that barrel so we had left it in storage at his warehouse. The barrel contained a good white wool blanket, a feather pillow, the silver tray of my coffee service, a big iron skillet still in use, and best of all, the ceremonial dancing hat of the Tee hit tons which Will's mother [Matilda Kinnon Paul Tamaree] had put in his possession 'because he always took such good care of things' (Frances Paul c. 1970).

In 1940, during the rededication of the "Chief Shakes House" of the Naanya.aayí clan, a community-wide "Potlatch" was held openly in Wrangell for the first time in many years. This event marked the opening of the old house, which was a restoration project of the Civilian Conservation Corps. A number of other clans participated and took advantage of the rare event to conduct namings and adoptions. William Paul (1952) reported:

"We made Governor Gruening a member of my tribe and gave him the name of Gush Ashmet of Greenrock, and I put the hat on his head, and the Governor looked at the hat and wanted to keep it but I could not let him keep it and took it away somehow, so Governor Gruening is a chief of the Raven tribe" (Paul, William L 1952).

According to Mrs. Paul (1995:245), the Governor's naming was the conclusion of "a ceremonial begun in Juneau last Christmas." She added that

"At the ceremonial in Wrangell when the Tee-hit-ton hat was placed upon the Governor's head symbolically, there were calls in Tlingit from the spectators [sic], 'Do not give it to him!', not from any lack of respect for the Governor but

because of the high valuation placed upon the possession of the hat within the district and the fear that it might be removed" (Paul, Frances c1940).

The assembled crowd reacted instinctively to the Governor's interest, however they represented different clans, of all ages and classes, from Wrangell, Kake, and other villages, and as a matter of tradition most would not have had a say in the matter.

Following the Hoonah fire of 1944, which destroyed many clan houses and artifacts in that Tlingit community, the Alaska Native Brotherhood and Sisterhood took action to prevent further losses by passing a resolution encouraging clan's to place their at.oow in the Alaska Territorial Museum. Resolution 14, entitled "To preserve tribal ceremonial property," passed at the ANB/ANS annual convention in Kake, 1944, read as follows:

"Whereas One of the purposes of the ANB and ANS is to preserve the history, lore and art of the native races of North America; and

Whereas many articles of our past culture are being destroyed yearly for lack of proper care; and

Whereas it is only a question of time when nothing reminiscent of the art and culture of the natives of Alaska will be left to remind us of our past splendor and achievement; and

Whereas the displaying of these objects would be educational to our own descendants and people of other races,

Resolved by the Grand Camp of the Alaska Native Brotherhood in convention assembled to urge our people, families and clans in possession of these articles to make the Territorial Museum "Custodian of the Material" with the understanding that they be displayed and kept in a fireproof building and afforded protection against fire, loss and theft, and also that they may remove those objects at will.

The resolution was signed at the bottom as recommended to pass by several members of the organizations, including noted civil rights leader Mrs. Elizabeth Peratrovich (Alaska Native Brotherhood and Sisterhood 1944:1).

William Paul, chief architect of the resolution, then followed his own recommendation:

"I began to be worried about [the Raven Hat] being burned and so I turned it over to the Territorial Museum, by way of loan, and I have indicated in the document that I surrender it upon my death and I indicated who would succeed to the possession of the hat as the leader of the tribe. The next person to take care of the hat is my brother Lewis and after him is my sister's son, who of course would be my nephew" (Paul 1952:17-18).

In the early 1950s, the need for safe storage for at.óow was further underscored when a major section of downtown Wrangell burned, causing a loss of artifacts, including a large war canoe belonging to the Naanya.aayí clan.

By the late 60s, there was new interest in Alaska in preserving Tlingit artifacts in peril; a movement led by the Alaska Native Brotherhood included such ambitious projects as the retrieval of 19th century totem poles from Tlingit and Haida village sites in the southern southeast Alaska. When the original owners of certain totem poles could not be determined, the ANB and Alaska State Museum established a representative body of clan elders to speak on behalf of the other groups.

William Paul was an enthusiastic supporter of this approach to preservation, ensuring that important treasures would receive the best possible protection under the care of trained museum curators and conservators. In 1968, the Alaska State Museum moved into a new building with state of the art fire protection and security, and a trained staff, and he decided to change the loan of a hat to a gift on behalf of the Teeyhittan:

“This movement has gained momentum and to this I contributed by presenting the chief’s hat of my Tee-hit-ton tribe. In the exhibition at the Alaska State Museum, my wife...contributed 45 oil paintings of Tlingit ceremonial hats and put it all on exhibition to the great pleasure of more than 400 people who visited the Museum” (Paul 1970a:10).

Following statewide coverage by newspapers and at least one television station, the public donation ceremony at the museum drew a large crowd of both Natives and non-Natives. The Alaska Native Brotherhood and the Friends of the Alaska State Museum collaborated to host the event. The Marks Trail dancers, one of the first Tlingit dance groups in the modern style, performed at the event. Rosita Worl was among the dancers (Southeast Alaska Empire 1969:5).

What motivated William Paul to willfully convert his loan of the Raven Hat to a donation? Clearly, a fear of fire initially caused him to partner with the museum. Too, the Teeyhittaan clan’s history of losing artifacts through theft, and the near loss of the Raven hat itself, factored into the decision. His clan’s declining numbers, and a fear of finding appropriate clan leaders in the future, may have compelled him to seek an “insurance policy” to ensure that the hat was preserved forever.

THE ROLES AND AUTHORITY OF TLINGIT CLAN LEADERS AND CARETAKERS

Many historical and anthropological sources are seemingly contradictory: the authority of leaders is limited, but their duties require them to hold significant authority to act on behalf of the clan. It is likely that in many circumstances, leaders could not dictate orders to clan members, who could “opt out” if they did not want to

participate. The limits of their power are often emphasized today, to the point that some may suggest that no important decision could be made without a vote of all clan members. The key point is that the group delegates many important activities to their leaders, and they trust and stand behind the course of action that they take. The leader is the chief diplomat, trader, and administrator of clan business, and that their power varies depending on the aristocratic status, personality, determination, and leadership qualities.

A fundamental and important duty of the leader is "...to represent the clan at all functions... (Emmons 1991:39). Far more than a mere trustee, "clan leader served as the spokesperson in ceremonial activities and political actions" (Worl 1999:7). The "*Hit s'aati*" (house master) of the Lukaax.adi clan (1986:19) is "the traditional elder who is bestowed with the honor and responsibility of care of the clan property of a house group, and who represented the house group on formal occasions (ritual, political, or economic)." This duty alone required great autonomy, and certainly leaders were not required to take all decisions back to their clans for direction. Such micro-management would be hard to reconcile when the elite class of clan leaders stood apart from their fellow clansmen in almost every respect.

Clearly, the leaders assumed the backing of their clans, and without it, they ceased to be recognized, as William Paul recounted when the Teeyhittaans were forced to replace a leader who had lost the confidence of his people. Conversely, leaders could enhance their power of persuasion and moral authority through good works, amassing wealth, hosting expensive ceremonies, and commissioning new artwork.

"He presided over [clan members] in council and represented them in dealing with outsiders, but he governed only through their consent Character, wealth, and a large family following were factors that might greatly increase his power (Emmons 1991:39).

"While the house chief was accorded much respect and represented the communal body at all functions, his authority was very limited. His power depended upon his personality and strength of character than on his own position" (Emmons 1991:27).

"He does not have the right to command any but his own family [clan]. The more numerous his descendants, the richer he is, the more slaves he has, the more he is considered" (Litke 1835:194, quoted in Emmons 1991:40).

In the end, aristocracy, wealth, and personality increased the authority of certain leaders from clan to clan, and William Paul's many accomplishments, coupled with the clan's small size and lack of participating from surviving members, undoubtedly contributed greatly to his authority as Teeyhittaans leader.

Clan Leaders as Representatives

"This business of 'majority vote' is not for Tlingit."

--William Paul (1965:1)

The historical record is filled with evidence that clan leaders frequently served as representatives of their clans. These documents—peace treaties, contracts, court filings and other instruments—were signed by clan/house leaders while carrying out their routine duty to represent their groups in negotiations, and the agreements they entered into were considered binding by their clans. There is no evidence that such agreements had to be further ratified directly by the groups themselves, or that every generation had the right to undo what their predecessors had done. Examples include:

- 1878 Treaty of Peace between Clans at Klukwan and Wrangell, signed by clan leaders (original in possession of Klukwan Heritage Foundation)
- 1917 Formation of the City of Angoon, signed by clan leaders (DeLaguna 1960:192-3)
- 1919 Peace Treaty between Wrangell and Sitka clans, signed by leaders of two clans and witnesses (Alaska Native Brotherhood 1919)
- 1953 Petition of Yakutat clan leaders in favor of cancelling a contract. (Leaders of Yakutat 1953)
- 1963 Agreement between a Sitka Clan and the National Park Service concerning a loan of Kaagwaantaan clan artifacts, signed by clan leaders (Sitka National Historical Park 1963)

A relatively recent example of clan leaders representing their clan is the 1981 agreement between the Alaska State Museum, Central Council of Tlingit and Haida Indians of Alaska, Sealaska Corporation, and the Kiks.adi clan of Sitka (ASM 1981). These agreement allowed for the joint purchase the Kiks.adi clan's frog hat that was being sold at auction, and to establish a procedure for the hat to be placed in the Alaska State Museum collection while allowing the clan to remove the hat at will for ceremonial use. This agreement, clearly inspired by the 1969 gift of the Raven hat to the Alaska State Museum, similarly retained for the clan all rights to ceremonial use and to the intangible crest. This contract was accepted by both Tlingit and Haida and the Sealaska Corporation on the basis of the clan leader's signature alone.

Clan and house leaders—then and now—represent their clans in negotiations. For that reason, government agencies, federally-recognized tribes (such as the Central Council of Tlingit and Haida Indian Tribes of Alaska) and for-profit Alaska Native

Corporations (such as the Sealaska Corporation) continue to consult and make formal agreements with clan leaders as representatives of their clans.

Leaders as Preservers of Tlingit Culture
"The chiefs are the major adherents to and defenders of the ancient customs and laws."
--Fr. Anatolii Kamenskii (1985:38)

A major role of leaders was as preserver and perpetuator of the Tlingit culture. From a young age, Tlingit children of the nobility were schooled in the manners and language of the aristocracy, in the conduct of foreign relations, and in the protocol of the traditional ceremonies that they would in one day be expected to lead.

William Paul's own upbringing broke with tradition in an important way, as much of his formal education took place in boarding schools outside of Alaska. However, he spent his summers in Alaska and learned the art of fishing and hunting from his uncles and other Teeyhittaan members. He also "became a student of Tlingit [language] which I could not learn when I was a boy for we were told if we learned Tlingit we could not learn English, So I began to study the books available. I found very little written in the Tlingit language." (Paul 1951:57) He also began the process of learning clan history and Tlingit customs by consulting his elders:

"....I wanted to know the history of my tribe so I asked anybody who had information, everybody that knew anything of the older group of the Tee-hit-ton. The stories I tell you now are the result of having interviewed them." (Paul 1952:60).

A frequent traveler to Tlingit villages while on ANB business, Paul had the unique advantage of interacting with leaders from all across Tlingit country. He made copious notes on clan history, personal names, and the Tlingit language. Over the decades of accumulating this priceless information, he produced a manuscript on the culture that he hoped to publish:

"I have written a manuscript that has not been published, I think of about 100,000 words, in which I have titled the manuscript "Where did they come from?"I have written a number of articles on the traditions, stories and interpretations of totem poles" (Paul 1951:58).

Unfortunately, the work remains unpublished. William Paul's daughter, Frances Paul DeGermaine, is currently editing the work in hopes of making it available (Paul 1995).

Dr. B.K. Wilbur, a physician associated with the Sitka Industrial School, described Paul's approach to his work, and the level of trust and esteem he and his mother held:

"William Paul is especially well equipped to undertake and complete this project. He has been a leader of the Tlingit [sic] people for years. They consult him, trust him and follow his advice. He has fought against their exploitation by the large canning companies and unscrupulous white men and for their rights....In my opinion very few people today are in a position to gather the folklore of these remarkable Indians and to record it in an interesting and authoritative way. Of these few I am confident Mr. Paul is the best qualified to do this. Through her wide acquaintance in S.E. Alaska, especially with the older people, Mr. Paul's mother will be a great help in this work. She as well as her son will be welcome to every Tlingit home and the people will talk with them freely" (Wilbur c. 1940).

Paul had an appreciation for the artistry exhibited in clan at.oow, and felt that the Tlingit sense of design and workmanship should be preserved—especially the handful of pieces that remained in Alaska. He also knew that as wonderful as the art was, it was only the physical manifestation of crests—of the past, present, and future of clan. In addition to his documentation of Tlingit language, history, and way of life, William Paul encouraged the Tlingit people to begin working with museums in order to preserve their artifacts. He and the Alaska Native Brotherhood encouraged clans to place their artifacts on loan to fireproof museums, and worked to preserve deteriorating Tlingit totem poles, which are currently housed in the Totem Heritage Center in Ketchikan.

William Paul's involvement in preserving the physical and intellectual legacy of the Tlingit people, both in his own clan and in others as well, is part of a long tradition of clan leaders serving as the historians and curators of their clans.

The Authority of Tlingit Leaders

"Have you ever seen a flock of crows antic? Do they have a chief?
--William Paul (1974:1)

Numerous historical and anthropological accounts state that leaders have limited authority, but also list many significant duties of leaders that would be impossible to conduct without a significant level of empowerment and autonomy. Leaders have significant responsibility: represent the group at all functions, manage trade for the group, administer clan lands and other property and control the use thereof, serve as battle leaders, preside over councils and ceremonies, arbitrate disputes with the clan, and order the death of trespassers. Yet leaders cannot sell property (though can release it in a legal settlement with another group), and cannot restrict use of property by group members (DeArmond 1978:26, de Laguna 1990: 213, Emmons 1991:39, Goldschmidt and Haas 1998:16).

Many of the historical references from the 18th and 19th century represent the observations not of anthropologists but of traders who briefly observed clan operations from some distance. They were unable to see the inner workings of the

culture, given the language barrier, and their descriptions of Tlingit society are superficial. Later observers, such as George T. Emmons, learned the language and became immersed in the culture, but even here their descriptions of Tlingit clan government lack detail. Given that clan operations varied over space and time, depending on the clan and to the personality of its leaders, their comments may outline a range of practice and a flexible kind of common law. The William Paul papers provide an opportunity to check these sources against real-world applications.

Another problem with the historical literature is the language barrier—a problem that William Paul wrestled with throughout his career, as he tried to convey the intricacies of the Tlingit culture to government workers looking for simplicity and conformity: Paul (1974:1) wrote

“..we have no ‘chief’ as that word is understood by the whites. The leader does have a sort of chieftainship however but only that which comes with your respect for him (or her —rarely does a woman become a chief where the masculine quality is essential).”

“The Tlingit-speaking Natives were truly democratic. There were no wars of conquest as such, no elections; no chief as the white man knows that word. There were only leaders, or more literally, The-Man-Who-Stands-In-Front (uh shahdy hunk ah). He becomes as near a ‘chief’ as a person can be since his only authority is based on respect. In these later days, government is forcing Native groups to elect their leaders. Too often, these leaders do not have the respect that sustained the original ‘chiefs’” (Paul 1995:8).

This conforms to Olson (1967:49), who noted that:

“His was influence, not authority. His word carried weight. His speeches were listened to more than the opinions of others. Thus if he decided it would be best to move the village to a new location, his word would carry weight.”

At times, Paul had to be creative to convey the meanings he intended to government administrators:

“Have you ever seen a flock of crows antic? Do they have a chief? And yet they will all take flight as if somebody gave them a command. But notice nobody tells them in bird language that any one of them or most of them is free to be contrary. That is the Tlingit ‘tribe’ which really is not a tribe. THEY GOVERN THEMSELVES BY CONSENSUS.” (Paul 1974:1)

If a clan leader lost the respect of his clan by improper action, he could be ousted:

“We have a good deal of discussion among our people so that sometimes the effective leadership seems to be a sort of referendum all the time. If the

people followed him that man was the chieftain and continued strong but at any time the tribe [clan] could if they had cause for so doing, could refuse to obey the man who up to that time had been a hereditary chief, and so his prestige would be lost (Paul 1952:17).

Clans were autonomous political units, sharing a language with other clans, cooperating with them "government to government," and sharing many similarities based on ancient connections, borrowing, and independent invention. The evidence shows variability among the clans in terms of their governing practices, as leaders varied in the amount of "clout" they carried with clan members, over time and across regions that varied in their degree of acculturation, and it is therefore difficult to make assumptions about practices across clan lines.

In the case of the Teeyhittaan clan, the powers of the leader were limited. The authority given leaders, including William Paul, was based on respect, moral authority, good works, proven leadership, and at times "the benefit of the doubt." When proven worthy of trust, leaders were granted significant authority to act on behalf of the clan, and clan members were free to refuse to participate, or, under dire circumstances, recognize a new leader.

"A leader becomes such by the force of his personality evidenced by his wisdom, foresight, industry, power to inspire. When he dies, all the men of his tribe are eligible, but some are closer to him than others. Without formality, almost by instinct, the tribes will say one to another, "So-and-so will be our leader to take his place," and that is the way it is....However, leadership doesn't go to one person merely because another person of group of persons so declare it because there is no compulsion on the "rank and file" to yield obedience. He yields obedience if the "leader" is worthy. This explains why leadership might shift or at times has shifted. (Paul 1948:31-32)

Personality, Power, and Status

"A social divide existed between the nobility and common members of a clan: ...leaders were from the noble class and wielded more influence in clan decisions."
--Sergei Kan (1989:83)

The authority of leaders varied according to his status and personality. Emmons (1991:27) states that, "While the house chief was accorded much respect and represented the communal body at all functions, his authority was very limited. His power depended more upon his personality and strength of character than on his own position."

Krause (1956:77) agrees that the leader or "family head" is only a leader in cooperative undertakings and in council, but "in everything else every family head is entirely free to do anything which is not counter to custom and which does not

infringe on the rights of others." At Sitka in 1827, Litke (1987:85) wrote that "the more descendants [the chief] has, the richer he is, the more slaves he owns and the more consideration he is accorded."

For new leaders, a forceful personality was a requirement to even be considered for the position, according to Kamenskii (1985:34):

"Not infrequently there are claimants to clan chieftainship who belong to other baraboras [houses] and prevail over the heir, especially if he is young, inexperienced, and does not have a strong personality, while his rival, on the contrary is a man widely known and respected among the members of his clan."

William Paul (1952:67-68) recounted how a young man solidified his position as clan leader through bold action:

"Now this first chief had a nephew, and his name was Katlian, as the white people called him. He was in line to the chieftainship all right but he did not get his position because of that fact. He got it because he asserted his personality. For example, when he would come along to the place where the chiefs kept the hat-and by the way he was of the Raven group—why he would pick that hat up and put it on his head and then he would exhibit himself to the admiring young men who were around there and he looked like a chief until his leadership was a very natural thing to acknowledge, and in that way he became a chief" (Paul 1952: 67-8).

Paul himself assumed his leadership position in this way as well

"...we transferred our obedience to this uncle of mine whose name was William Lewis, and he became our chief, and naturally after he died I, by the force of my own personality, became chief" (Paul 1952: 8).

Clan leaders are drawn from the ranks of the aristocracy, sometimes referred to as *ankaua* or *anyeti*, giving them significant authority as leaders over the ranks of commoners within their own clan (Kaminskii 1985:34). Oberg (1973:41) states that

"This clan solidarity is more apparent than real, for the element of rank is so strong that out of it crystallizes definite classes, the *anyeti* or noble clan and the *xetaxua* or commoner class....These class lines fan across clan and phratry and form a unit probably stronger than the clan itself...A member of the *anyeti* often ignores a clansman of low rank and does not speak of him as a brother, but as a man of such-and-such house."

"Among the large clans potlatching became restricted to several of its most important house-groups. These houses claim to have the sole right to represent the clan. They call themselves the *anyeti*—a class of people

possessing considerable wealth and holding the honorific titles of the clan. They maintain that they are *anyeti* because their ancestors gave great potlatches in the past (Oberg 1973:125-126)."

De Laguna (1990:213) agrees that:

"Rank was important, the nobility being the chiefs (headmen of clans or lineages) and their immediate relatives. Commoners of lower rank were in theory their more distant relations in the lineage. Lineages within a clan were sometimes ranked, and certainly among clans there were those of great wealth and status, as well as others of little account. Only slaves were completely outside this social system.... "

Kan (1989:83) states that:

"The wealth and status of a leader added to his authority. A social divide existed between the nobility and common members of a clan: clan and house leaders were from the noble class and wielded more influence in clan decisions."

William Paul agrees that:

"We have, that is our Indian tribes have a caste system, and under ancient practices the members of a caste are required to marry into a like rank either in their own town or in some other town, and the higher up the scale you go the harder it is to find someone of equal rank; and so under our caste system we have relatives as far north as Yakutat and as far south as Etolin Island, and far west, even down among the [Aleutian] islands" (Paul 1952:60).

Olson (1967:68-9) reports that a very wealthy chief, who had inherited the right, might give a potlatch to ennoble his own children:

"....Only people who had been honored in this way as children could properly be called "noble" (*a.nyádi*, 'child of the town'), and those of highest rank would bear witness to eight potlatches in their honor by the four holes in each ear." (de Laguna 1990:220). Thus, from early in their lives, the noble clan members led a life apart from other clan members, enjoying many advantages based on their lineage, wealth, status, and abilities. Even "the life of a chief or a noble woman was worth that of several ordinary persons..." (De Laguna 1990:215).

Reviewing a book on the history of the Native Brotherhoods on the Northwest Coast, Paul alludes to rules of decorum maintained by members of the aristocracy, including himself:

"Dr. Drucker is right about the influence of "high rank" among us, but that is a matter he 'sees thru a glass darkly,' and about which we cannot speak. This reluctance is not 'a slightly defensive attitude.' It is the basis of belonging to the highest caste." (Paul 1959)

As for William Paul, an accomplished clan leader who represented his clan before the Supreme Court of the United States, a founding father of the Alaska Native civil rights movement, and architect of early land claims, who took an active interest in clan affairs, learned the language, consulted their elders, and preserved their history, represented his clan well for at least four decades, and his influence grew over time. He wrote:

The leader will have more power, often approaching the absolute, over his household than the "A shady hun" (one who stands at the head) but this is because, his household stands closer to him, most of them being the children of his sisters of first cousins as ties are reckoned by the white people. So as to his nephews, he could give an order under compulsion of death." (Paul 1948:31-32)

Following the deaths of his close family members who were also clan members and his closest advisors, his level of authority was unmatched by any other clan member. Yet, the power of a leader even of Paul's stature was only part of the equation: true authority started and ended with respect, a central tenet of Tlingit culture. Traditionally, the concepts of *shagoon* and *shuka*, referring to ancestors and *at.oow* of both the past and future, were to be cherished and treated with utmost respect. William Paul's mother, Matilda Kinnon Paul Tamaree, Teeyhitta, commented on the growing tendency of looking down on traditional Tlingit way:

"There was no disrespect for elders, in the 'old custom.' If you teach us to ridicule and to look down on all that our fathers revered, then you teach us to show disrespect to our fathers. How can I teach the loving fatherhood of God, the blessed sonship of Man, and with the same word preach a disrespect for all our human fathers mean to us?" (Davis 1931:266):

Thus, the removal of a clan leader involving the violation of trust on the part of the leader and the subsequent withdrawal of support en masse from clan members, represented a major break in traditional norms and was likely an infrequent occurrence.

Authority of Leaders

"The Tlingits have no 'chiefs' as that word is commonly used; nor is a 'chief' elected, nor does he have any authority based on force or compulsion..."

--William Paul (1969)

As noted above, Tlingit leaders were drawn from the ranks of the elite members of society, and were empowered by the members of the clan to engage in critical activities on their behalf. While the leader could increase his authority through able service to the group, the real authority of the leader was based on respect, which remains a key value in Tlingit society (Paul 1967:1). Walter Soboleff writes of the importance of respect:

“Respect is at the heart of Tlingit protocol. Well-defined codes of Tlingit ceremonial protocols and social interaction are dictated by ancient customs, traditions, and oral tradition. Tlingit parents, elders, grandparents, uncles, aunts, and clan leaders are historically taught these protocols” (Soboleff 2000:15).

If that respect was lost, the leader can lose his position:

“The authority of the tribe was in the chief who was an autocrat. He inherited his position from his mother’s brother. The position did not of necessity descend to the oldest brother. It went to the strong man. His rule could be called a “tyranny” in the original sense of that word, because his rule was circumscribed by the shame that would be heaped on him by all others if he did not conduct himself honorably. That is why formal election as known today is something new and not a part of our common law.” (Paul 1951)

Time changed the nature of Tlingit leaders in other respects:

“At present, as was stated earlier, the status of the taions [leaders] has changed. Not many people are still frightened by the voices. Today, almost every Indian fancies himself an aatlein aankaawu...the power of the chiefs is still so strong that it has to be reckoned with, especially in places far removed from the influence of civilization. Nowadays, the chiefs are the major adherents to and defenders of the ancient customs and laws” (Kamenskii 1985:38).

“I believe that in primitive days the chief exercised more authority than he did after the arrival of Europeans. Today, with the passing of the old customs, the office has come to receive only social recognition” (Emmons 1991:39).

Certainly Tlingit leaders would discuss matters of importance with others in the group, but, prior to the mid 20th century, there are no sources available that confirm that any decision must have unanimous consent from all clan members.

Confidantes, Councils, and Consensus

“...the effective leadership seems to be a sort of referendum all the time.”

--William Paul (1952:17)

The oldest and most detailed general account of decision making by Tlingit clans in the late 19th century is Emmons (1991:39-40), who indicates that one of the duties of the leader was to "to preside over its councils":

Councils were not assembled at fixed times, but were called by the chiefs when the occasion required. They were presided over by him, and were attended by the subchiefs and other household heads in his clan. After discussing the subject and agreeing upon a course to pursue, a general meeting of all the adult males of the clan was called and the proposition stated. Every person present had an equal right to speak, and the sentiment of the majority was followed, but generally the prior decision of the house heads was accepted.

Oberg (1973:81) brings up an example of a clan council in action:

"When the old house threatened to become uninhabitable, the old men of the house began to talk about building a new one. The matter was later fully discussed, not only by the people of the Frog house, but by the whole clan division of the village. When it was finally agreed that the resources of the Frog house people were sufficient to warrant a new house, the *yitsati* came out through the ceremonial opening in the screen before the back wall and announced to the gathered clansmen that a new house was to be built."

Other sources state that councils were called upon to name new leaders (Kamenskii 1985:34), settle internal disputes (Oberg 1973:43), decide the fate of slaves (Veniaminov 1984:423), decide protocols for using *at.óow* (Dauenhauer and Dauenhauer 1994:23), and other important decisions (Kan 1989:84). Emmons (1991:40) states that only adult males took part, and Litke (1987:92) agrees that "Women are not admitted to any political gatherings; all plans and all arrangements of this kind are carefully concealed from them." This is also confirmed by Kamenskii (1985:34):

To elect a clan *taion* all the elders of the village [clan?] gather for a council. Important councils among the Indians always take place in the dead of night. In these instances, noise and publicity are avoided. Neither women nor teenagers are allowed to attend.

Together, the historical and anthropological sources offer a rational model of decision-making among Tlingit clans: clan and house leaders had limited authority because if they violated the trust of their groups they would lose their position. To make the best decisions possible, leaders met with councils (made up of elders, house leaders and/or heads of households) to discuss the issues and reach consensus. The decision was announced to male clan members at large, and they were free to speak on the matter, "and the sentiment of the majority was followed, but generally the prior decision of the house heads was accepted" (Emmons 1991:40). Emmons (1991:22) also states that within the clan, an "...act of one is

accepted by all...", and Dauenhauer and Dauenhauer (1994:22) agrees that "Once the decision is reached, all clan members are expected to be supportive..."

Many sources suggest that the authority of leaders was limited—not by the necessity for clan members to ratify their decisions, but rather by their ability to keep the respect and backing of their people. Leaders had a vested interest in successfully guiding their clans, using the power of persuasion rather than force, knowing that a significant misstep could result in an embarrassing loss of status for both himself and his group. In the history of the Teeyhittaan, the loss of the original Raven hat was concealed by the clan leader, who commissioned an artist from his own clan (a departure from the standard practice) to keep other clans from finding out (Frances Paul c. 1939).

Some clans, such as the Teeyhittaan, were never numerous in number, and their population was confined to one house. Many clans had multiple houses, and the leader of each house sat on the clan council, presided over by the leader of the most prestigious house who had the personal qualities required for the job. In single-house clans, the leader would confer with clan elders and peers from his elite lineage. According to William Paul:

Most of the time power is asserted not by positive action but by negative action. If we disagree with a plan that is accepted by a group in the Tribe [clan] in the village why we will say so. We do not consult a council. The Chief may talk to his leading men. We have a word for that. We call that, and you interpret it to mean "Big shots" and we call it "Big Tlingit" and they are all known. We know who all the big shots are and who the common people are but the word is pronounced by the acknowledged leader. However, if some concerted action is desired my chief, for instance, if he does not agree with it, he just sits and does not do anything. That means he is out of it" (Paul 1952:68-69).

For William Paul, his immediate family members in the clan, most particularly his mother, Matilda Kinnon Paul Tamaree, and brother: "My brother Louis is also a very well respected member and his opinion would have a very great deal of weight and usually he and I stand together in promoting things we think are beneficial for the tribe." (Paul 1952:16) According to Paul, a decision coming out of such consultation would generally hold:

Q: Do I understand from your testimony that the chiefs exert absolute authority with the advice, but only the advice of the big shots?

A: Yes, he has absolute authority. The only thing that others may do would be to give him advice. The Chief acts.

Q: If [the chief] takes some action would most of the members of the Tribe agree to it?

A: Oh, they all agree to it. There is no such thing as rebellion. We do not know that word. (Paul 1952:69-70)

This is not to say that decisions were always popular, but if the decision was backed by the elite of the clan—the elders and leaders—the more likely the decision would be upheld and followed. All the while, the leader knew that the support of their people was not to be taken for granted: the authority of the nobility must constantly be redeemed through good decision making: “We have a good deal of discussion among our people so that sometimes the effective leadership seems to be a sort of referendum all the time” (Paul 1952:17).

One relatively contemporary example of a decision by the elite and elderly advisors of a house involved the Dog Salmon house of the Angoon L'eineidi clan. A letter to clan members advises them of a course of action set by the leader's close advisors:

“To: Dog Salmon Clan of the Tlingit Nation
Subject: Totem Panel, Dog Salmon
From: Walter A Soboleff, Kah To Kahnux
Our Dog Salmon House Ahn X-akee Hitt was ceremoniously opened [in] 1914 or 1915, [and] those who built it are gone. In conference with our leaders over 7 years ago, Matthew Kookesh, deceased; Mrs. Annie Samato, deceased; and Paul James, presently in Angoon, it was agreed to have [made] a totemic painting of our emblem for display in the house in Angoon. I am glad to report an artist was engaged and the project was completed 11 May at a cost of \$600.00. You would agree this is the biggest and most beautiful Dog Salmon to come alive and probably an art show winner.” (Soboleff 1973:1)

Today, some clans let a small group of clan elders and members select a new clan leader, and their decision is then announced to and accepted by the membership at large—a process that mirrors the traditional pattern. This process depends, of course, on the esteem in which the leader is held. Today, some clans attempt to conduct business by voting among the entire membership, however, there is no historical evidence of voting among all clan members.

Compliance by Clan Members

“There is no such thing as rebellion. We do not know that word.”

--William Paul (1952:70)

Once a decision was made and announced to the clan by the elite leaders, clan members of the rank and file had to decide whether they would back the decision (however disappointed they might be), refuse to participate in the action, or actively work to reverse it. For a clan, the key to limiting the authority of the leader is to withhold obedience and respect if a given decision was deemed intolerable. William Paul wrote that “Each member of the tribe [clan] is controlled by unwritten law and failure to [heed the law] is to lose face” (Paul 1948). As for the leaders, they “...were not ‘chiefs’ in the American conception, but merely ‘leaders’ to those who chose to follow with no penalty for refusing” (Paul 1995:151).

For clan members, there was no penalty for refusing cooperation. Actively, or at least openly, working to negate a decision was probably out of the question for many clan members at large because they were not of the elite or recognized as leaders. For leaders making a bad decision without the support or consensus of the clan, they could lose their position if they violated their trust position. William Paul wrote that after his own clan recognized a new leader, "He did well for a time and was a credit to his station, but he 'fell from grace' so the people lost respect for him. After that, he merely had the name but not the leadership." (Paul 1948)

Paul continues that

"...leadership doesn't go to one person merely because another person or group of persons so declare it because there is no compulsion on the "rank and file" to yield obedience. He yields obedience if the "leader" is worthy. This explains why leadership might shift or at times has shifted. Sometimes two men will be so evenly matched that leadership will be in both. Large tribes will have several houses, each such house will have its leader. The leader will have more power, often approaching the absolute, over his household than the "A shady hun" (one who stands at the head) but this is because, his household stands closer to him, most of them being the children of his sisters or first cousins as ties are reckoned by the white people. So as to his nephews, he could give an order under compulsion of death" (Paul 1948:31-32).

In larger clans with multiple houses, individual house leaders who were in the aristocracy might "buck" decisions made by the head of their clan. For example:

"The Tluk'naxadi clan of Sitka have two Raven hats, one being the original, and the other hat made by one of the house-groups who grew to great power in historic times. There was an effort to prevent this house-group from getting too far ahead of the others by refusing to let it use the hat, but it was strong enough to defy the clan members and to make a hat of its own" (Oberg 1973:125).

Taken together, historical sources, coupled with William Paul's detailed accounts of clan administration, offer a logical model of decision-making among Tlingit clans: clan and house leaders had limited authority because they could be replaced if they made bad decisions. To make the best decisions possible, historical evidence shows that leaders met with councils of house leaders, or elders and close family members, to discuss issues and make decisions. The decision was announced to clan members at large, and they were free to speak on the matter, "and the sentiment of the majority was followed, but generally the prior decision of the house heads was accepted" (Emmons 1991:40). Emmons (1991:22) agrees that within the clan, an "...act of one is accepted by all...". This tendency is also noted in Dauenhauer and

Dauenhauer (1994:22): "Once the decision is reached, all clan members are expected to be supportive..."

There is no historical evidence showing that clan members had an equal voice in decisions, and that decisions required unanimously approval of all group members. In the late 20th century, some clans have adopted the standard of unanimous consent to protect *at.óow*, and the Village of Klukwan enacted an ordinance requiring its approval of the sale of artifacts by clans in the village. Such measures have proven effective in stemming the modern flow of cultural objects into the art market, but there is no evidence that they were a traditional part of Tlingit law.

The Clan Leader as Caretaker of Property

"Tribes should be wary of submitting claims that essentially accuse their own immediate ancestors of pilfering important items..."

--Roger Echo-Hawk (2002:130)

The clan leaders serves as trustee of clan property, and the issue at hand involves whether William Paul's 1969 transfer of a "right of possession" (or partial transfer, as it only involved the physical aspects of the *at.óow*) was legal under Tlingit law.

In Tlingit societies, the most important aspect of any clan's intellectual property was the various *at.óow* (crests) that it claimed. These crests served as deeds or titles to all of the other prerogatives that they claimed, including names, history, stories, songs, and even land. These intangible crests inspired the creation of a variety of physical manifestations, such as hat, robes, and other forms of regalia representing images of the *at.óow*. In this context, it was the crest that was to be protected from potential enemies and competitors. Physical property lost to other clans in warfare or in payment of a debt were only symbols, or physical representations, of the *at.óow*. In earlier times, the replacement of crest objects with new objects as they were lost or worn out was a relatively routine matter (as with the Teeyhittaan Raven hat). The loss of the physical crest has no bearing on the ownership of the intangible crests.

Some sources mention that leaders may not sell property (Goldschmidt and Haas 1998:16) but that clan property may be alienated under certain circumstances. As clan leaders represent the group in all dealings with outsiders, it follows that clan leaders would normally conduct transactions involving clan property. This reality is reflected in the "*Central Council of Tlingit and Haida Indian Tribes of Alaska Statute Code*" (1995), which states that the removal of *at.óow* was illegal "with the exception of those clan objects which are held in museums with the express permission of clan leaders and trustees acting on behalf of their clan and house members." In providing this exception for leaders active on behalf of their group, this Statute represents a formal codification of Tlingit law as practiced for many decades or centuries. While not formally embodied in the Statute Code of a federally

recognized tribe at the time of William Paul's donation of the Raven hat in 1969, this practice was already well established under Tlingit common law.

Evidence of whether a clan leader was properly representing his clan at the time an object was alienated is usually not available. Too, it is difficult to establish if a sale of *at.óow* was purely for personal gain, because the wealth accumulated through the actions of leaders in trading or diplomacy was often used later by the leaders to sponsor feasts on behalf of their clan (Kan 1989:85). Yet the absence of documentation is not proof that the law was violated. Circumstantial evidence—protests by the clan following the alienation, of the replacement of the leader—could be indications that the decision was at least unpopular, if not illegal.

Witness statements in the matter of *State of Alaska v George Jim et al* (1985)—a court case involving the sale of a Thunderbird Screen belonging to the Thunderbird House of the Wooshkeetaan Clan—provide a snapshot of the range of opinions, among the leaders and elders of different clans, surrounding the question of whether clan leaders could alienate clan property. Some witnesses testified that under certain circumstances, a clan leader could alienate artifacts (Brown 1985). These men, elders and leaders of different Tlingit clans, are highly regarded cultural experts, and their testimony provided evidence that practices varied between clans:

“Peter Williams was called by counsel for Fawcett and Jim. He is a 76-year-old member of the Raven phratry....Mr. Williams indicated that property could be alienated by the caretaker if its alienation was only for funeral expenses or to take care of a house....In this regard Mr. Williams said the Mr. Jim could sell the screen but he could not put the money into his own pocket. Mr. Williams indicated that the screen could not be sold to a non-Tlingit....”

“Patrick Paul Sr. was the next witness to be called, who indicated he was the caretaker for the Wolf House. Mr. Paul related the history of the Woosh-keetaan screen and indicated that it was owned by the house. He indicated that the caretaker had the right to sell the screen if members of the house forfeited their right to object by not providing for the caretaker....Mr. Paul testified that Mr. Jim could sell the screen under certain circumstances but could not keep the money for himself. “

“Mark Jacobs Sr., and Eagle from the Killer Whale House, testified that members of a house had an obligation to take care of their elders and if they did not, they forfeited their rights. The court made inquiries as to whether property could be destroyed at the death of an individual to which Mr. Jacobs said that property could be destroyed in such a manner but there was no instance, of which he was aware, in which it was done....

“Charlie Jim Sr. indicated that a person could sell an artifact if he was the last one remaining in the house.”

Leaders representing clans could also alienate clan artifacts as gifts: Archpriest Anatolii (1982:56) recounted a case in Sitka whereby a clan leader presented a Russian priest with an important artifact of his clan:

"...the staff was of no use to him, especially since he had no direct heirs in his family, which meant that when he died it would have been given to another house or to the head of the whole clan."

Some crests and crest objects themselves were obtained as gifts from one clan to another:

"For example, in this manner, the Ka-yash-ki-di-ton obtained the killer-whale-dorsal-fin-with-hole from the Duk-la-wady, by gift. Ever since that time, the Ka-yash-ki-di-ton has owned this historic emblem" (Paul 1948:30).

In another case, a Clan leader and caretaker presented a valuable artifact as a diplomatic exchange with the president of the United States. As a result of the exchange, the leader's status, and that of his clan, was increased. In 1908, the *Alaska Daily Record* reported:

"Some time ago Chief Ana-thla-hash through Mr. J.W. Dudley, register of the United States land office, sent President Roosevelt a Chilkat blanket, one of the finest ever woven in this country...The correspondence concerning the matter follows here:"

"April 20, 1908

President Theodore Roosevelt, Washington D.C.

Dear Sir: At the request of the donor, chief Ana-thla-hash, of the Taku tribe of Alaskan Indians, I am sending to you today, by express, a "Chilkat" blanket which he desires to present to you as an expression of amity and his appreciation of your interest in the welfare of his people and your efforts to improve the same. Chief Ana-thla-hash is a man about either years of age and exerts a considerable influence for good among many of the native tribes of southeastern Alaska.... A brief acknowledgement addressed to him and signed by you, and decorated with a seal as ornate as may be, would not only gratify the old chief himself but would emphasize and increase his authority among his own and other native peoples....the possession of a 'skookum paper' (a commendatory document or letter) written by an officer in authority of the 'white man's' government is considered by them to give weight to the counsels of the possessor. Very Respectfully, John W. Dudley."

[REPLY]

"The White House

Washington, May 11, 1908

Chief Ana-thla-hash: I thank you for the Chilkat blanket and appreciate it. I take a great concern in the welfare of all the people of Alaska, the red people just as much as the white people. I send you my photograph with this, and I

hope you and your tribe with prosper. Theodore Roosevelt" (seal of the President of the United States].

Chief Ana-thla-hash has many letters from noted men of office but he prizes this as the greatest of all, and in fact it is an honor that few white men could procure from President Roosevelt. The blanket is something that please a man like the president, who has made the natives a great study most all of his life"(anonymous 1908:1).

Thus, the transaction served the purposes of both sovereigns in the ancient art of diplomacy.

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FROM: WILLIAM LEWIS PAUL PAPERS UNIV OF WASHINGTON
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From Sept. 1970
Whitworts, Spokane,
Wn. Whitworth College
On Feb. 6, 1972, the de-
gree of LL.D. was be-
stowed on this alumnus

WILLIAM LEWIS PAUL

In response to your request that I write a "short" history of my life since graduating, I find that I will have to include previous events, for reasons that will appear. Some people will consider my narration long, but believe you me my life in Alaska has been so eventful that this story will indeed be "short" for I have left my mark on the history of Alaska.

I will be 85 years old on May 7, 1970. When my epitaph is written, it will include the following: The glamour of it is that I wrote and introduced the bill adopting the state flag of Alaska in language so beautiful that Marie Drake put it in poetic form. However, the work that had a direct impact on people follows: 1) I integrated the public schools of Alaska; 2) through me the natives got their voting rights recognized; 3) also got the discriminating words in public assistance laws removed; 4) got the first appropriation for direct relief of destitution of Indians from Congress; 5) promoted the advent of the Bureau of Indian Affairs to get its medical department to stop infant mortality; 6) successfully lobbied extension of the Indian Reorganization Act, bringing over \$20 million to Indian groups; 7) I organized the legislative fight for "equal rights" in public service corporations, thus ending segregation in restaurants, theaters, transportation and schools; 8) I made the "Alaska Native Brotherhood" a powerful political organization through which many beneficial laws were enacted by candidates supported by Indians; 9) I got Federal appropriations for schools in Angoon, Hoonah, Ketchikan, Yakutat and Wrangell Institute; 10) I procured voting precincts for several Indian villages, including Metlakatla, Kalwock, Hydaburg and Saxman.

In a story of this kind there is a conflict of "values" — my values and the public, so I try to parade both. Up till now, the greatest dollar value is the "Indian Reorganization Act" by which communities of Indians could incorporate under Federal laws on a selective basis (at least that was the theory virtually never allowed by the communistically minded managers of the Bureau of Indian Affairs) such as having a common bond of 1) association or 2) employment; or as an entire community having a common habitat — which is the form the BIA encouraged, uplifting the entire community measured by the Procrustean method. If one had outstanding leadership ability, he should lead, but prosper no more than the average — or else have his head chopped off. This preferred method failed notoriously because it had no incentive, although more than \$20 million has been poured into it.

We, the people from whom I sprung, speak the Tlingit language (here I include those who speak the Haida language) owned all of

Cape Fox and from the Canadian boundary to the Pacific Ocean, by "use and occupation," otherwise known as "Tlingit Indian Title." But the advent of the "whites" of all classes told us that we owned nothing because the United States bought Alaska from Russia and so gradually our ownership dwindled and we accepted it, which is the worst thing we could have done.

But along came a man who had been driven from his ancestral land in British Columbia in 1887 along with a group of people who spoke the Tsimshian language, but whose culture was like ours. His loss of land burned within him and being forbidden by our naturalization laws to become a citizen of the United States, he felt inhibited about inciting us to resist the encroachment of the Caucasians, and so in 1925, after I had been admitted to practice law in Alaska, he spoke to me and said, in part, "The land is yours. Why don't you fight for it."

That started me to examine the precedents dealing with aboriginal land rights and soon I discovered the "Bible" of such rights; namely, Johnson vs United States from which I wish to quote a short passage: "Indian possession or occupation was considered with reference to their habits and modes of life; their hunting grounds were as much in their actual possession as the cleared fields of the whites. . . . It is enough to consider (their rights) as a settled principle . . . as sacred as the fee-simple of the whites" pp. 745-747.

It took me four years to persuade my people to endorse my idea to sue the government for compensation for the land taken from us, but at the ANB convention at Haines, Alaska, the people sponsored such a suit. Judge James Wickersham wrote the bill but I marked out the operandi, viz., that the judgment fund should be distributed per capita at once and thus defeat or avoid the usual custodian process of the Bureau of Indian Affairs. After 1929, Judge Wickersham disconnected himself from the case because he became a candidate for Congress. In the campaign that followed, the Democratic candidate, a lawyer too, charged us with practicing a fraud upon the Indians, alleging there was no merit in our project. He won the election, and I had the job of persuading him to introduce my bill. He did, and helped greatly in promoting it. The bill was enacted and signed on June 19, 1935; but not before the BIA got in its licks, to wit, prohibiting per capita payments and requiring that our tribes make a roll of membership.

Because the current fight for legislative solution of the land rights of the "westward" natives, whose proponents discouraged an action in trespass available to owners of land everywhere, I have to recite the fact that our struggle did not begin in 1935, as is so often alleged, but in 1955, although our complaint was filed on October 1, 1947. In 1955, the Court of Claims cited the current firm of attorneys to explain why this case had made no progress. The attorney made his apologies and promised to work. The judgment on liability was rendered favorably on October 7, 1959, so the "fight" actually only lasted a little over four years.

In January of 1968, the court gave us a judgment of \$7.5 million dollars, totally inadequate but in keeping with the history of Federal — Indian land settlements, a token payment for our timber, easily worth \$600

Reverting to the cultural phase of my work, I was distressed by the fact that various national museums were gathering the artifacts of Indian culture, and yet when one of our own men, this one employed by the University of Pennsylvania, was unable to purchase or otherwise acquire any artifacts, I set about to remove the impediment; namely, the constitution of the Alaska Native Brotherhood which was interpreted to be strongly against "old custom," a theme of all the up-lift zealots so successful that some of our Indian communities burned their totem poles. So I got the ANB to amend its constitution by adding the following: "to oppose, to discourage, and to overcome the narrow injustice of race, to commemorate the fine qualities of the native races of North America, to preserve their history, lore, art and virtues, to cultivate the morality, education, commerce, and civil government of Alaska, and to create a true respect for the constitution of the of the United States."

On my 14th birthday, I left my home in Sitka and said goodbye to my mother, still sick in bed, with never a thought that I might never see her again, only looking forward to the great adventure at the famous Carlisle Indian School. There I came under the influence of one of the great men of his era, Captain (later General) Richard Henry Pratt, who had exchanged the prison of San Marco, Florida, for a school at the old Hessian prison at Carlisle, Pennsylvania, where he demonstrated that the Indian was, first of all, a human. At best, Carlisle was a tenth grade institution, but with General Pratt there to inspire us, it was truly a university wherein Indians of leadership quality got acquainted and blazed the way to a political solution of their troubles — which even now is accelerating what is called "Indian power." There I learned "It can be done."

I graduated in 1902, and with a football scholarship from that school, I planned to enter Dickinson College Law School; but my mother got sick again and asked me to come home. This I did and began a series of education and testing that would be useful later in the work for which God planned for me. At Wrangell, Alaska, I languished, 18 years old with no place to go, no winter employment, and no place to meet boys of my age, except in a saloon (now called tavern). So I fished with my tribal uncle and sold 5-pound salmon at 1c each. That fall I agreed to go trapping with my stepfather, but about October I got into an altercation with him and quit in a temper. Our church had a schism, and more than half our membership quit and to hold the native members, my mother had been sent there the year before. She and a noble woman named Mrs. "Col." Mason held the fort where I preached when we could not get anybody else.

When I look at the pages of history, I have an intellectual opinion that there is a Great Power who has a plan and that he raises up his agents to perform the work for which they are destined. But when one is pushed into a course that is not planned by oneself, one is, and should be, awed and so one becomes conscious of his agency. Thus was I led. When my father was drowned at the age of 28 years while on a mission for our church, my mother was transferred to Sitka Training School by Dr. Sheldon Jackson; and there she raised two of her three children. We had for playmates and schoolmates a wonderful set of boys who were to become the leaders of the next generation. They were my pals for

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Exhibit
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then and later.

Being now at the beginning of winter and without work, I went into the attic for something to read. There I found an old catalog, cover torn off, but the name was there, "Whitworth College," Tacoma, Washington. I went for a new catalog for "next year." About ten days I got an answer from Dr. Benard Kroezie, and it sounded as if he had been holding a room for me all this while and that I should hurry and get down there. I dug around and gathered up \$125 and started. My mother asked me "What are you going to do when you run out of money?" I did for me: answered, "Oh, I will get a job and when I have earned another \$75 I will go back to school."

When I got to Whitworth, I discovered that when one is there — doors open. And so they did for me; sweeping, cutting grass, milking cows, and finally bookkeeping for the college.

My background in education was very spotty because Indian schools taught only English, history, and arithmetic. One teacher told us that mathematics was going out of style and we would graduate even if we failed in algebra (and, of course I failed). So my first algebra was college algebra, and I jumped right into the third book of Caesar and took on geometry two months late. I went to my classes and sat by myself, digging away to catch up. Besides, I promptly got on the football team, then the basketball team, then the baseball team; helped edit the Whitworthian, helped start the literary society, and later made the debating team with George Rossman (later a Supreme Court Judge of Oregon), became the leading man in the senior class play (Tennyson's "Process"); kept books for the school, took a course in elocution and history; and what time I had left, I had a sweetheart, the finest girl in the world, whom I later married and have lived with for 59 years. She overlooked my many faults and stayed by me and with me through thick and thin, facing many political enemies so well that for her sake, many of the finest people in Juneau, Alaska, accepted me too, both in the Order of Eastern Star, where she became worthy Matron, and in the Masonic Lodge, where I was only a visitor from Sunnyside Lodge 163 of Portland, Oregon.

Mrs. Frances Lackey Paul, '10, who passed away this spring, contributed much to the development of Alaska: Her career spanned many years as a mother, public school teacher, director of the Tuberculosis Association and documentary painter of Tlingit and Haida Crest Hats, forty-six of which are on display at the Alaska Museum, Juneau.

I don't really count the fun I got out of football and athletics as an achievement, although my name was frequently mentioned as the "best" because there was only one other better. It was all just fun for me. It was glorious fun to go to the football field and drill, and drill, and drill, until our movements were automatic. I wish it were within the scope of this paper to tell you of how our little school climbed to unpredicted heights, winning games against such schools as the University of Oregon, Whitman, Willamette, and others, and so, please, pardon me if I mention only of the Oregon game.

The evening before the game, we went to the little theater in a group; and at the intermission, the manager brought out a big sign "may the best team" (Oregon, of course). The next day, with the score 16-12 in our favor, Oregon pushed us back in straight line bucks, from their 10-yard line to ours when

we held. Remembering my Carlisle days, I told Captain Thad Grosscup to call us into punting formation with Colbert 5 yards back of our goal — line, let him bluff a run for a safety which would give them 2 points, we would punt from our 20 — yard line to their 10 — yard line and Oregon could not score in the three minutes left in the game. I admired him when Thad struck his open fist as he exclaimed, "No, we'll fight 'em" and poor "Puss" with face almost white, we held 'em. After the game, I asked McQuillen, "How could you play with two broken ribs?" to which he answered, "we were winning."

When I graduated, I entered San Francisco Theological Seminary, San Anselmo, California, and had a glorious time with nothing to do but study. I planned to go back; but that summer I discovered that I couldn't sell magazines in a farm country, where they were repaving the streets; and so I got a job for that school year (I thought). That December I visited my fiancé and decided to get married. I quit my job in Ladd, Washington; we got married in March, 1911; and I went to Portland, Oregon, and entered the employment of Hartman and Thompson — bankers. About two years later, I went to San Francisco as assistant cashier of the Fidelity & Deposit Company of Maryland; then organized the office of the Ocean Accident & Guarantee Company of London, Ltd., and continued my work as field agent, specializing in Workmen's Compensation Insurance. This experience proved to be invaluable later.

As I look back over the years, here is the first clear evidence that God was pushing me into the path of what I now consider my life. I had all the evangelical qualities for preaching; and without knowing it, I was destined to be a lawyer — preacher to organize what many call my people. They didn't need another minister — they needed a lawyer who could organize them and speak for them — although, I was faced with the same problem our first missionaries had to face — not knowing the language and having to use an interpreter.

One incident will illustrate what I mean. The first Protestant church in Alaska was started by Dr. A. L. Lindsley in Wrangell. He decided to visit this mission field and when he arrived there, he found the people had turned out en masse. Of course, he preached the sermon on the subject of predestination, a subject that was in vogue then. My father's aunt was his interpreter. Her name was Mr. Sarah Dickinson, and she had learned her English from her trader husband. The next day the local pastor, Rev. S. Hall Young, asked her: "Sarah, did you understand that sermon?" To this she answered, "No, but I preached them a good sermon."

Fabulous sums were earned in the fish business of Alaska, so when my stepfather, invited me to join him in that business, I jumped at the chance. My wife and I planned that we would earn enough money to return to New York where I would study for the grand opera as a robusto tenor. We were counting our chickens!

That summer the fish didn't run and the rain didn't rain, so we didn't make enough money to get back to Seattle. There I was, with a family to support and no work. It so happened that several Indians, my early schoolmates, organized an association which they called the "Alaska Native Brotherhood" to "study how they could become citizens." This status having been denied them by everyone. For eight years (from 1912) these men

had been meeting in convention, talking about their troubles, without money to hire a lawyer, their children excluded from schools, themselves segregated, with infant mortality the highest, and this year of 1920 they had to come to Wrangell through inadvertence and me, through misfortune!

The last thing my wife said to me as I went to attend the first session of the ANB was, "Don't you let them elect you to any office for we are not going to stay in Alaska." I gave the usual reply, but when I returned to our home, I had to tell her that I was the new Grand Secretary of the ANB. Our convention lasted over Sunday so that we could spend the day in prayer and worship. I preached the sermon, using a text from Joshua 24: 15, "And if it seem evil unto you to serve the Lord, choose ye this day whom ye will serve; whether the gods which your fathers served that were on the other side of the flood, or the gods of the Amorites, in whose land ye dwell; but as for me and my house, we will serve the Lord."

You can imagine 10,000 of our Indian people in Southeastern Alaska, suffering under the handicaps imposed by the new people who had heard of the fabulous wealth in Alaska, staying and becoming the lawgivers of this land and so excluding those who might reduce their "lake." Language was the wall that excluded them. I was now their tongue.

I remember that I went to Juneau, the capital, and when a senator failed to call me to a committee hearing as he had promised, he said in anger, "Go back to the Indians where you belong."

I won the citizenship case in 1922, when my mother was indicted by a grand jury for interpreting the challenge oath, while our tribal chief was indicted for voting. I paid all the expenses except \$100 from the Sitka "Camp." This case is the one that assured the Indians' right to vote.

I spent 60 days as attorney for the Labor committee of the 1921 Legislature. Of the attorneys who aided the legislative committees, I was the only one not paid.

We were unable to get our news printed by the public press, and so I published a magazine and continued for six years when my brother took over as editor. To keep it alive, I contributed \$100 per month, but in 1931 I had to quit.

A bill was introduced in the legislature to exclude Indians from the public schools. This bill, written by the Commissioner of Education for Alaska, passed the Senate. I became the leader of this fight to defeat the bill and soon found that we had friends in the House. The bill was defeated by one vote.

By this time (1925) I had expanded the ANB into 22 working camps and I was elected to the House of Representatives. While there I got the old age pension law extended to cover natives and also got coverage of children and their mothers by aid to dependent children.

The defeat of the bill to require a literacy test for voters by a narrow vote, the author (a Democrat) got a congressman (a Republican) to introduce it in the United States Congress. It happened that I was an elder of the Ketchikan Presbyterian Church. The ANB had no money and yet I knew I had to get to Washington to fight that bill. When I found that it was the turn of the Ketchikan Church to select its commissioner to the General Assembly, I asked the Reverend Falconer to insist on our right so I might go to our

church's expense to Baltimore, Md., as a commissioner. He was successful.

When the Assembly was over, I went to Washington and was given time before the Committee. I urged that Congress had no right to deprive anybody, especially the Indians, of their right to vote; and I asked that the committee amend the law by excluding the test for those who had voted in the primary election of 1924 - that was all of them!

During this time, I was trying to get a test case to upset the decision in *Davis Children vs Sitka School Board* (1908) - "Dora and Tillie Davis (children of) parents legally married . . . and are of mixed blood. After the death of their father, their mother married Rudolph Walton, a full-blood Sitka Indian, who is the guardian ad litem of the children in this case. Walton owns a house in the native village lying on the outskirts of the town of Sitka. . . Walton conducts a store on the edge of the town of Sitka, in which he manufactures and sells Indian curios. He pays a license as a merchant under the laws of Alaska. He rented a box in the post office and worked out his road tax in the Sitka road district until warned out by the overseer. He and his family have adopted the white man's style of dress. He is an industrious, law-abiding, intelligent native. He conducts his business according to civilized methods, even to the installation of an expensive cash register in his store. He speaks, reads, and writes the English language. The Waltons are members of the Presbyterian Church. . . held that while the Davis children are of 'mixed blood' they do not 'lead a civilized life,' within the meaning of Section 7 of the Act of Congress of January 27, 1905 (33 Stat. 617, c. 277), as to entitle them to attend the public schools maintained for 'white children and children of mixed blood who lead a civilized life.'" The test applied by the court was "whether or not the persons in question have turned aside from old associations, former habits of life, and easier modes of existence; in other words, have exchanged the old barbaric, uncivilized environment for one changed, new, and so different as to indicate an advanced and improved condition of mind, which desires and reaches out for something altogether distinct from and unlike the old life."

This is the case that closed the doors of the public school, which we all knew was wrong. So I looked for a new test case with parents who would be willing to stay with the case until it reached our highest court.

In 1928 I got the case now reported in our books as *Irene Jones vs Ketchikan School Board*. Again this found the ANB "broke", and so I carried the case without fee and expense money. I got a favorable order from my mandatory injunction and this opened the door of the public schools and buried the decision of the prejudiced Federal judge from New York. This did not end the discrimination, but the white school boards could no longer tell us that by law our children could not enter public schools. This was years away from my graduation, but I had to be educated, too. I had never known discrimination, and so I saw virtually none until the Lord brought me into the midst of it.

We reached the discrimination in theaters in a different way. The occasion was when the owner of the three large theaters required Indians to sit in a segregated area. When our Grand Secretary was required to do this, we declared a boycott. This cut off the group

that spelled his profit, so that soon he was crying for help. Our Grand President told the owner, "You are the last man in the world who should discriminate."

I ran for membership in the House of Representatives on an issue of abolishment of fish traps and was elected. While I aroused a lot of controversy, the opposition principally the Fairbanks division and the banks, the steamship company and the mine owners and certain subservients who were looking for Federal jobs was too strong for fish-trap abolishment in 1925, 1927, and 1929. Our Objective was not accomplished until 1957, by executive order; and thus it was discovered that this talk about having to close down if traps were abolished was false.

Events that seem small to us now were important in 1928 - such as the first dinner dance ever given in the swell-club. Our ANB membership and the auxiliary pulled it off. There were some 60 of us there, many of them young people.

In the 1927 legislature I was the floor leader and was virtually responsible for every amendment made since 1925 to improve the Workmen's Compensation Act. Our bill to create a Department of Labor was defeated by one vote. Likewise, the Federal administrator, called the governor, and appointed by the Secretary of the Interior, was strong enough to defeat the bill to create a territorial governor (to administer the duties created by the legislature) - the argument being that I would be the governor. Word was sent me that the bill could pass the Senate if I promised that I would not be a candidate.

I noticed that many a poor man was unable to appeal a decision of the Justice Court because he didn't know how to draw up the appeal papers, the cost bond, appeal bond, notice of appeal, and how to serve them. So I got a bill enacted which allowed appeal merely by making this request noted in the record.

About this time, the American Legion got interested in saving the totem poles which had been deserted by the Indian owners of Tongass Island. Various efforts were made to get the consent of the Indian owners, with out success. When Joe told me about this failure, I told him that I could give him this permission. He asked me "Do you own these poles?" I said, "No"; then he said, "What right do you have to do this?" I answered, "None, but I can give you permission because I am the son of the Tongass tribe and by Tlingit tradition the people will do nothing to hold me up to ridicule." I gave this permission, and the priceless poles were transported to Ketchikan. This was the beginning of a movement to preserve our ancient culture, and the Alaska Native Brotherhood amended the preamble of its constitution.

This movement has gained momentum and to this I contributed by presenting the chief's hat of my Teechit-ton tribe. In the exhibition at the Alaska State Museum, my wife, the former Frances Lackey of the class of 1910, contributed 46 oil paintings of Tlingit ceremonial hats and put it all on exhibition to the great pleasure of more than 400 people who visited the Museum. It was a great occasion at which Mrs. Paul was the central figure.

In 1935 I saw that Alaska was not covered by the statute called "Indian Reorganization Act" which, in effect, allowed the constitution of various tribes to organize and thus borrow money at the lowest terms for business purposes. So I persuaded our ANB to petition for such an extension, and I was

directed to go to the congress and get it. I figured that our poverty-stricken Indian had everything for success except capital to operate a business, in which at least one man made a profit of over \$1 million in one summer. I left my wife, two children and mother-in-law at home the day before Christmas and was in Washington, D.C. for six months and was allowed "substance" of \$5 per day, payable on a show of receipts. I came back with a committee of senators and journeyed with them on a Coast Guard vessel. The hearing on Alaska matters opened in Ketchikan; and to my great surprise, I was the first witness called.

It was the era of the Great Depression which the government sought to solve by establishing aid through the CCC, by which the government gave relief needed; but in Alaska, the Forestry Service systematically excluded Indians. On several occasions "white" Indians got on the roll and, on discovery, were dismissed. On two occasions two students of Sheldon Jackson College applied for such employment but were refused because they were Indians. When I made this charge to the Senate Committee, the chief forester was transferred. Later, I went to Washington D.C., and got the government to increase the quota of Alaska by 200 jobs - all of which were for the Indian group. The principal employment was work on the totem poles and so again I had a part in what is now rated as "priceless."

I think I mentioned the IRA. The impact of this law was the sum of over \$20 million for canneries and fishing boats; the sole industry of our people. More spectacular, however, was the victory of the Tyonek Indians over the Bureau of Indian Affairs. The story of Tyonek is fabulous. It was a potential oil field. The BIA undertook to lease this 25,000-acre reservation to the oil industry without the approval of the people, who had by then organized under the Indian Reorganization Act, the enactment for which I am solely responsible. The Tyoneks enjoined the lease, asking the court to require the Indian Bureau to show cause why its proposed lease should not be enjoined. The BIA gave up, and the Tyoneks handled the lease and eventually got over \$15 million, twice the amount which the Indian Bureau was willing to accept.

At this time this law is the vehicle compelling the Federal government to obtain the consent of the natives for what is called the "pipe line" to tap the oil fields of the "North Slope." The sale of leases, which brought \$900 million, is of some 450,000 acres - all of which is within the area owned by "Indian title," a title that nobody denied till oil was discovered. I made the first filing on claims on this area and saved the loss of this land. There were two methods of securing the native claims: one is by direct action in trespass (the one I favored as being quicker and more effective in saving the entire claim); and the other is solution by congressional legislation, a struggle that was preferred by my clients due to their lack of capital for the trespass plan. My position is this: I have never known of Indians to negotiate with the government but what they came out with less.

The Indian School system greatly distressed me because the BIA management had no appropriation for the relief of Indian destitution and so diminished the inadequate school appropriation by 10 percent for such relief. When I went to Washington for some

other purpose, I asked our delegate, "Tony" Dimond, why he didn't put in for money for direct relief and put an end to the Bureau's "stealing" from the school fund. He said he already tried and had failed. Later, Senator Frazier outlined a plan for me. It required our delegate to offer an amendment on the floor of the House, which we figured would be defeated — but this would permit the Senate to offer the same amendment. To obtain instances of poverty and sickness for the Senate subcommittee's chairman, Senator Elmer Thomas, I asked the Indian Bureau to give me access to the report of its Alaska Field Office. This was refused. But, using my own experience in that area, I wrote the speech of Delegate Dimond, who delivered it — and Alaska got its first appropriation of \$25 thousand. This was the wedge that opened the later appropriation of \$700,000.

By getting voting precincts for Metlakatla, Hydaburg, Saxman, and Klukwan, I helped to break down the opposition to Indian participation in the Territory's elections.

During all this time Alaska had no trade school for Indians. I went with our delegate, Dan Sutherland, to the chairman of the Indian subcommittee, a Mr. Franch of Michigan; and he promised us that he would support an appropriation of \$500,000. The BIA refused to help me that time; but the next year it plugged for and got \$171,000, a totally inadequate appropriation for what I had in mind. However, I was a member of a committee that selected Wrangell as the site for this school. I got an expert boat-builder for the job of instructor (because this Indian did not have a college degree, the BIA would allow only \$5 per month). He could build a 45-foot boat in six months. But he got fired, and a man with a college degree replaced him. And so the shop that was designed to teach the Indians how to build boats for their business failed; and what remained was moved to Mount Edgecumbe, opposite Sitka, Alaska, where again it failed for the same reason — to wit, a white man who could not penetrate the minds of Indians, something that the Bureau of Indians never could understand.

One gets tired, even of praising oneself; and so I must sort of summarize:

Without being a member of the legislature, I organized the members of the House so that they defeated the bill designed to exclude Indians from the public schools. The trick was that all persons for whom a separate school system was available would be excluded from the public schools of Alaska.

The powerful taxpayers claimed they could not pay heavier taxes, and they stymied our plan to establish a home for our aged pioneers. Therefore I wrote and helped to enact a law establishing a building fund against the time when the fund would be large enough to build a suitable building. That building decorates the Sitka commons.

When I became convinced that the natives of Alaska owned their Indian title, I began to write letters to everybody and anybody who might inform these natives. I remember writing to the Eskimos of Barrow in 1940; and happily in 1968, I got a letter from the people of Barrow asking me to be their attorney to protect their ownership of what is now the North Slope Oil Fields. I agreed; and even without a fee, I filed a "blanket claim" to all the land from the Canadian border west and north of the Brooks Range. The area, comprising 450,000 acres of land, is where leases were sold for \$900 million.

No doubt oil would have been discovered without my filing those blanket-claims, but I was the agent who prevented the oil companies from taking it "for free" and started the billion-dollar North Slope oil fight.

It is interesting to Presbyterians to know that the center of the foregoing oil fight is in Barrow, better known as "Point Barrow," an outpost of our church and long serviced by the Sheldon Jackson School and Junior College.

Since your request arrived, I have had to go to Anchorage to attend the annual meeting of the Society of Tlingit and Haida Indians. This cut down my time for writing, but I hope the record is suitable.

LOUIS F. PAUL/WILLIAM L. PAUL

This is the story of two brothers four-square
Known to Alaskans everywhere
Born of Alaskan Tlingit stock

Who dared to stand against every shock
Sons of Kahthliudt, whose proud tradition
Inspired and confirmed her sons' erudition
These two sons of Kahthliudt
Contrived to lift their people up
By teaching the fundamentals of constitutional
government

Which shall stand forever as their monument
Not by the law of claw and fang
Instead of the war-songs which they sang
Instead of each family against all the others
To pool their resources and unite as
brothers

As a constituent element of a nation
To accomplish their purposes by organi-
zation

Hence the Alaska Native Brotherhood
Which fostered an economic livelihood
Each meeting was more than recreation
It was a parliamentary education
Then constantly repeated the demonstration
Precept upon precept by publication

For fifty years and more they stood
For justice, equality and eventual state-
hood

For the rights of their people to their homes
and lands
A tradition as sacred as the Almighty's
commands

They fought through the decades against
entrenched possession
In Alaska, in Congress, in the courts of
the nation

"In the land where your fathers walked as
free men

Brook no insult by tongue or pen
"You are admonished to persevere in your
pride

And demand every privilege which has been
denied

"For the right to attend free public schools
Although we are told it's against the rules

"Study to be worthy and able to decide
The problems of government — that we must
abide"

They urged responsibility and none could deny
them

No second-class citizenship could satisfy
them

They fought for full citizenship with the
voting right

And to establish the maxim that right
makes might

To strive for justice — that we surely must
But ignore the temptation to punish the
unjust

Stand firm against the barbs of greed and lust
Thrice armed is he who hath his quarrel
just

(As proof of the efficacy of such education
One fact is submitted for consideration:
In spite of a precedent of long duration
Established and accepted throughout the
nation

No Alaska group, tribe or "Nation"
Was ever consigned to a reservation.)

Conniving politicians combined to destroy
them

By every ruse to defeat or annoy them
Disparaged in ways that were most unkind

Libeled, vilified, abused, maligned
They were made the subject of racial hate

But stood their ground and faced their fate
No combination of lies and intrigue

No matter how dastardly, dirty or big
Could ever alter their steadfast intention

To promote their people through every
convention

Staunch, determined, steadfast and true
Unyielding despite aught their opponents
could do

When these men have gone where good men go
When the Eternal Reaper shall have laid
them low

We shall proudly remember the two brothers
Paul

Most valiant crusaders of them all
May your people remember though time betide

And speak your names with reverence and
pride

your years a goodly span have made
We shall remember you as men unafraid

Naught we can say will enhance your glory
But we can tell our children your proud
story

And if we should be inclined to flinch in a
pinch

Or turn tail and run if we haven't a
"clinch"

May your spirit then be near to suggest
The Slikine boatmen's rallying cry

When the unrelenting force of the weight of
the waters

Could almost overwhelm their puny canoes
This cry of the Te-hit-tahn, Koch-uddy,
Keeksady

"Never give in, YE GOOSH GWAN KLI-
NAD-DE!"

L' E N V O I

And now that Alaska has become a proud state
Destined to be one of the greatest of the
great

To become in truth a melting pot
For all the strains of humanity she's got

Let no man disparage or ever dispute
That Klinget, Hyda, Tsimpsean, Aleut

Instead of oblivion and annihilation
Instead of defeat and extermination

Are accepting the advent of industrialization
Absorbing the increase in population

And accomplishing an economic assimilation
They have accomplished in fifty years, if you
can believe

What it took Europeans ten centuries to
achieve

And thus be it ever throughout the ages
May their names illuminate history's pages

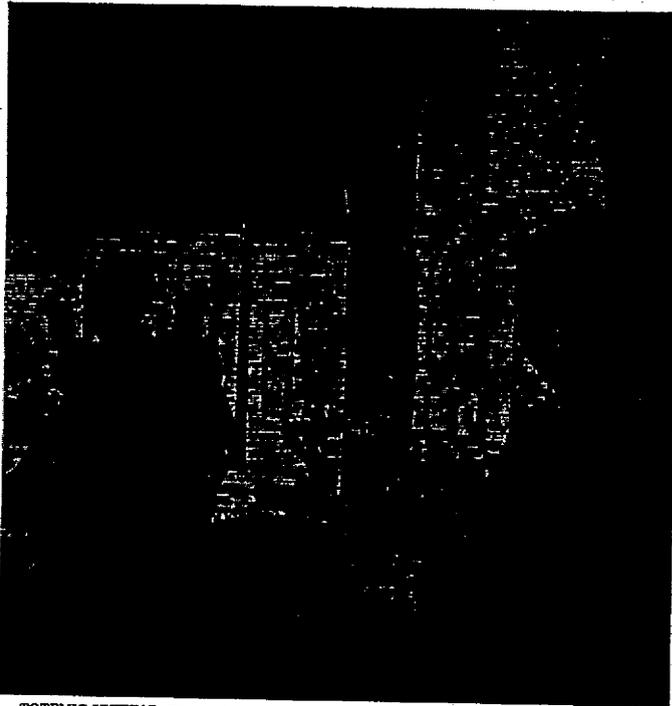
One life is given to every man
To do with it whatever he can

In the eternal balance call those men great
Who may leave a good mark upon our state

— Hah Yash II

C. O. PARKS
Petersburg, Alaska

A LIVELY EVENING AT THE MUSEUM



TOTEMIC SETTING—The crest hat paintings were complimented with Tlingit and Haida house posts as well as southeast Alaska greenery in a setting designed and executed by Museum staffer, Larry Matheny. (Empire Photo)

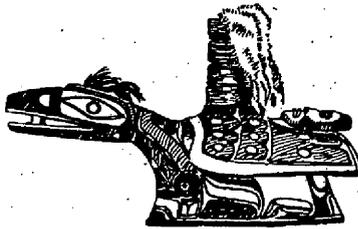
Opening nights are catching on! Each successive special exhibit has brought a larger attendance, with the most recent opening of the Frances Paul "Tlingit and Haida Crest Hat Paintings" bringing nearly 400 visitors and residents to the event.

On hand for the opening and reception was the guest of honor, Frances Paul, who with her husband William Paul, Sr. had flown to Juneau from their home in Seattle for the event. The Marks Trail Dancers, a group of local Tlingit Indians, danced and sang, and the Museum staff served punch and cookies.

The exhibit, which will continue through Sept. 14, is made up of 46 crest hat paintings donated to the Museum by the artist, as well as 8 crest hats belonging to the Museum. One of these, the Tee-Hit-Ton Crest Hat is an exquisite example of Tlingit

artistry and was donated to the Museum by William Paul, Sr. A contemporary exhibit of original wood-cut prints by Dale DeArmond of Juneau will follow the Paul exhibit. The

DeArmond show will include nearly all the prints the artist has made since she started working in that medium nine years ago, and is made up of 90 original works.



PUNCH AND COOKIES—Museum employed members of the Greater Juneau Borough Neighborhood Youth Corps, including 14-year old Marlene George, served reception refreshments. (Photo by John Poore)



ON TO OTHER EXHIBITS—Most guests at opening nights take the time to view other exhibits at the Museum too. These people are in the permanent Eskimo exhibit area examining a large umiak (walrus skin boat) frame. (Photo by John Poore)



TLINGIT PERFORMERS. Making last minute adjustments to their very colorful Tlingit dancing regalia are, from left: Eva Marks, Johnny Marks and Rosita

Rodrigues of the Marks Trail Dancers. (Photo by John Poore)

Case
Teeyhittaan Hat
Exhibit
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Handwritten initials and scribbles at the top left of the page.

June 16, 1969

Mr. and Mrs. William Paul, Sr.
1521 - 16th Avenue, East
Seattle, Washington 98102

Dear Mr. and Mrs. Paul:

I would like to express my sincere appreciation to you for your recent donations to the Alaska State Museum.

Mrs. Jane Wallen, the Museum Director, has told me of the Raven Crest Hat, which had been on loan to the Museum during recent past. I am deeply pleased that this hat, one of the most outstanding pieces in the Museum collection, will now as a result of your donation remain as a permanent addition to the historical and cultural treasures which so eloquently tell the story of Alaska.

Mrs. Paul's collection of paintings of crest hats constitutes a unique documentation of the way and ceremonies which were an integral aspect of traditional Alutik ceremonial life; they are thus uniquely significant not only as art, but also as a historical record.

I am pleased to tell you that Mrs. Paul's paintings will form the nucleus for an exhibit of Alutik and Inupiat ceremonial life which will be featured at our State Museum this summer. Mr. Paul's hat will be one of the principal pieces in that exhibit.

My sincere thanks for your donations and for your continuing interest in the Alaska State Museum.

Best personal regards,

Sincerely yours,

Keith H. Miller
Governor

cc: Mrs. Jane Wallen, Director
Alaska State Museum

MUSEUM:DL:eh

Case
Teeyhittan Hat

Exhibit
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STATE OF ALASKA
ALASKA STATE ARCHIVES } SS
I, the undersigned, certify under AS 40.21.030(a) that this is a true and full copy of a document on file in the Alaska State Archives.
Witness my hand and the seal of the State Archives this 13th day of Oct 20 1969 at Juneau, Alaska.

D. Dawson
Dean Dawson, State Archivist

STATE OF
Alaska
& Archives
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7 Museum

(yellow copy)





DRAFT 9-22-2010
Operating Agreement
Between the
Alaska State Museum, the Wrangell City Museum,
and Richard Rinehart, Sr.,
regarding the use of
***Yéil Aan Kaawu Naa s'aaxw*, Leader of All Ravens Hat**

The parties agree as follows:

1. This Agreement concerns the use of *Yéil Aan Kaawu Naa s'aaxw*, the "Leader of All Ravens Hat," a cedar crest hat of the Teeyhíttaan Clan. The Teeyhíttaan Hat is a sacred and living object of Tlingit culture. The Teeyhíttaan Hat is identified by the Alaska State Museum as catalog number **II-B-809**.
2. The only parties to this Agreement are Richard Rinehart, Senior, the Alaska State Museum, and the Wrangell City Museum. Richard Rinehart, Senior, is a leader of the Teeyhíttaan Clan, and is the Custodian of the Teeyhíttaan Hat (Custodian). The Alaska State Museum is a statutorily-created branch of the Alaska Department of Education and Early Development, located in Juneau, Alaska. The Wrangell City Museum is owned and operated by the City of Wrangell.
3. The Teeyhíttaan Hat is on display at the Wrangell City Museum, under the terms of a separate agreement regarding the display of the Hat.
4. Under this Operating Agreement, the Custodian of the Teeyhíttaan Hat has access to the Teeyhíttaan Hat to provide for ceremonial and educational uses of the Hat.
5. This Operating Agreement is premised upon the mutual respect and good will of the parties. The purpose of this Operating Agreement is for the parties to jointly establish an agreed-upon procedure they will follow when the Custodian of the Teeyhíttaan Hat takes, uses, and returns the Teeyhíttaan Hat.
6. To facilitate the Custodian of the Teeyhíttaan Hat's access to the Teeyhíttaan Hat, the Museum will establish a two-lock system, and provide the Custodian of the Teeyhíttaan Hat with a key to one of the locks. Here is

Case
Teeyhíttaan Hat

Exhibit
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how this system will work: Beginning ____, 2010, the Teeyhíttaan Hat will be displayed in a locked display box in the Wrangell Museum. The display box will be locked with two paddle locks, each with a separate key. The keys will be distributed as follows: The key to one lock will be retained by the director of the Wrangell Museum under the terms of a separate agreement; the key to the other lock will be provided to Richard Rinehart, Senior, the Custodian of the Teeyhíttaan Hat. The Wrangell Museum will not have possession of a duplicate of the key that is in the possession of the Custodian of the Teeyhíttaan Hat, and the Custodian of the Teeyhíttaan Hat will not have a duplicate of the key that is in possession of the Wrangell Museum. Both keys will be required to remove the Teeyhíttaan Hat from the box. For security purposes the Alaska State Museum will have a copy of both keys, but those keys will be kept in a locked box in Juneau by the Curator of the Museum.

7. When the Custodian of the Teeyhíttaan Hat needs access to the Hat, the following process will occur:

a. The Custodian of the Teeyhíttaan Hat will call or email the Chief Curator of the Alaska State Museum with as much advance notice as possible, before the custodian intends to remove the Teeyhíttaan Hat from the Wrangell Museum (Wrangell Museum would appreciate at least seven days notice);

b. When giving advance notice to the Chief Curator, the Custodian of the Teeyhíttaan Hat will provide the following information, to keep the hat secure and safe during its time outside the locked display

- i. the intended use of the Hat;
- ii. the names of the people who will have possession of the Hat;
- iii. whether the Hat will be transported out of Wrangell, and, if so, how the transportation will occur;
- iv. when the Hat will be returned;
- v. any special concerns that the Custodian of the Teeyhíttaan Hat may have regarding the Hat, including security, transportation, or physical strain on the Hat;

c. The State Museum will notify the Wrangell Museum of the pending removal;

d. The Custodian of the Teeyhíttaan Hat and the Wrangell Museum will set the time and date for removal of the Hat from the Wrangell Museum. On the appropriate day, the Custodian of the Teeyhíttaan Hat will take possession of the Hat by unlocking the display case with the key in his possession while the Wrangell Museum unlocks the other lock with the Museum's key;

e. The Custodian of the Teeyhíttaan Hat will fill out the Teeyhíttaan Hat Withdrawal Form [Addendum B; which is attached to this Agreement and is incorporated by reference into this Agreement], present the form to the Wrangell Museum, and take possession of the Hat for the term specified on the Withdraw Form. The Custodian of the Teeyhíttaan Hat will maintain physical possession of the key that provides access to the Hat;

f. At all times during the Hat's removal from the Wrangell Museum's display case, the Custodian of the Teeyhíttaan Hat will personally protect the Hat from damage or theft. The Hat will be returned to the Wrangell Museum in the same condition it was in when it was removed;

g. Upon return, the Hat will be put back in the display case and double-locked;

h. In the event of a deviation from the procedures described in this Agreement, the parties will confer and resolve the issue in a mutually acceptable manner.

8. If the Hat is to be transported out of Wrangell,

a. the State Museum will discuss the transportation with the Custodian of the Teeyhíttaan Hat;

b. the State Museum and the Custodian of the Teeyhíttaan Hat will agree on plan of transportation that minimizes the risk to the Hat, including minimizing

1. the amount of time that the Hat is removed from a climate-controlled environment; and

2. the security risks to which the Hat is exposed;

c. if necessary, the State Museum may provide personnel to transport the Hat;

d. the State Museum may, at its expense, construct a crate for the protection of the Hat while it is being transported, and the crate will be used whenever transporting the Hat;

e. the Custodian of the Teeyhíttaan Hat will pay the costs of the transportation that he might propose; however, if the parties agree to a different transportation plan as a result of a request from the State Museum, the State Museum will pay any additional transportation costs that are caused by the State Museum's request.

9. Any party to this Agreement may revoke or request an amendment to the agreement for any reason by providing thirty days written notice to the other parties. No other written or oral promises or commitments have been made apart from this Agreement.

10. The parties acknowledge that the Custodian of the Teeyhíttaan Hat will have a successor. The Custodian will provide notice to the State Museum and Wrangell Museum of the identity of the successor.

[Proposed Language: 11. The Alaska State Museum will consult with and receive agreement from the Custodian of the Teeyhíttaan Hat before transporting the Teeyhíttaan Hat out of Wrangell.]

12. Because this Operating Agreement is a limited-purpose agreement, and is premised upon the mutual respect and good will of the parties, this Agreement is not evidence of any enforceable contractual rights belonging to either party, and does not create any enforceable rights except as noted in this paragraph. Nothing in this Agreement may be construed to be direct or implied consent to the jurisdiction of any court or tribunal. This Agreement provides only that the Teeyhíttaan Hat may be released to the Custodian of the Teeyhíttaan Hat under the terms explained, and that the Custodian of the Teeyhíttaan Hat will return the Hat to the Museum. No other direct or implied enforceable promises, terms, or conditions of any kind are created.

The signers of this document approve this operating agreement with the understanding that the sole purpose of the agreement is to ensure that the

Custodian of the Teeyhíttaan Hat has access to the Teeyhíttaan Hat, and that this agreement does not determine the rights of the parties or create or constitute consent to jurisdiction in any court or tribunal

Accepted by the Alaska State Museum:

Dated: _____

By: _____
Robert Banghart
Chief Curator, Alaska State Museum

Approved by the Alaska Department of Law:

Dated: _____

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: _____
Stephen C. Slotnick
Assistant Attorney General

Accepted by Richard Rinehart, Senior:

Dated: _____

By: _____
Richard Rinehart, Senior

Accepted by the Wrangell City Museum:

Dated: _____

By: _____
Megan Clark
Director, Wrangell City Museum

Operating Agreement regarding the use of
Yéil Aan Kaawu Naa s'aaxw, Leader of All Ravens Hat

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October 13, 2010







United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

Steve

IN REPLY REFER TO.

Memorandum

To: Native American Graves Protection and Repatriation Review Committee Members

From: Carla Mattix *CM*
Division of Parks and Wildlife

Date: October 26, 2006

Subject: Questions related to "right of possession," "cultural patrimony," and "sacred object"

At your May 30-31, 2006 meeting in Juneau, AK, you asked for clarification of several issues related to the "right of possession" of "sacred objects" and "objects of cultural patrimony" as defined by the Native American Graves Protection and Repatriation Act (NAGPRA). Our response to the four questions posed by the Review Committee is limited to the statutory definition of "right of possession" and its specific usage within the Act.

"Right of possession" is defined at 25 U.S.C. 3001 (13) as:

... possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7 (c), result in a Fifth Amendment taking by the United States as determined by the United States Claims Court pursuant to 28 U.S.C. 1491 in which event the 'right of possession' shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

"Right of possession" is used in two sections of the Act.

STANDARD OF REPATRIATION – If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects [25 U.S.C. 3005 (c)].

Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both [18 U.S.C. 1170 (a)].

Our response to the four questions posed by the Review Committee was developed in consultation with the Office of the Solicitor, Division of Indian Affairs.

- 1) Is it possible for a museum to have right of possession to a sacred object?

"Sacred objects" are defined as "specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents" [25 U.S.C. 3001 (3)(C)]. Inalienability is not an inherent element of the statutory definition of sacred objects. Further, the statutory definition of right of possession states that original acquisition of a Native American ... sacred object ... from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object. The Act does not preclude a museum from having right of possession to a sacred object.

- 2) Is it possible for a museum to have right of possession to an object of cultural patrimony?

"Cultural patrimony" is defined as an "object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group" [25 U.S.C. 3001 (3)(D)]. Original acquisition of an object of cultural patrimony from any individual would seem to be inconsistent with the statutory definition of right of possession, since the definition of object of cultural patrimony assumes that no individual had the right to alienate such object at the time the object was separated from the group. However, the definition of "right of possession" suggests that original acquisition of an object of cultural patrimony with the voluntary consent of a group with authority to alienate such an object would give right of possession to that object [See 25 U.S.C. 3001 (13)]. Whether a group can be said to have the authority to alienate an object of cultural patrimony is not established in NAGPRA. The existence of such authority is likely to be determined under other applicable law (tribal, state, or Federal).