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**Volume IV**  
**Pages 290-415**  
**Transcript Of Proceedings**  
**Alaska Native Review Commission**  
**ANCSA Institutions And Legal Regimes**  
**March 01, 1984**  
**Anchorage, Alaska**

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VOLUME IV

PAGES 290 - 415

TRANSCRIPT OF PROCEEDINGS

ALASKA NATIVE REVIEW COMMISSION

ANCSA INSTITUTIONS AND LEGAL REGIMES

MARCH 01, 1984

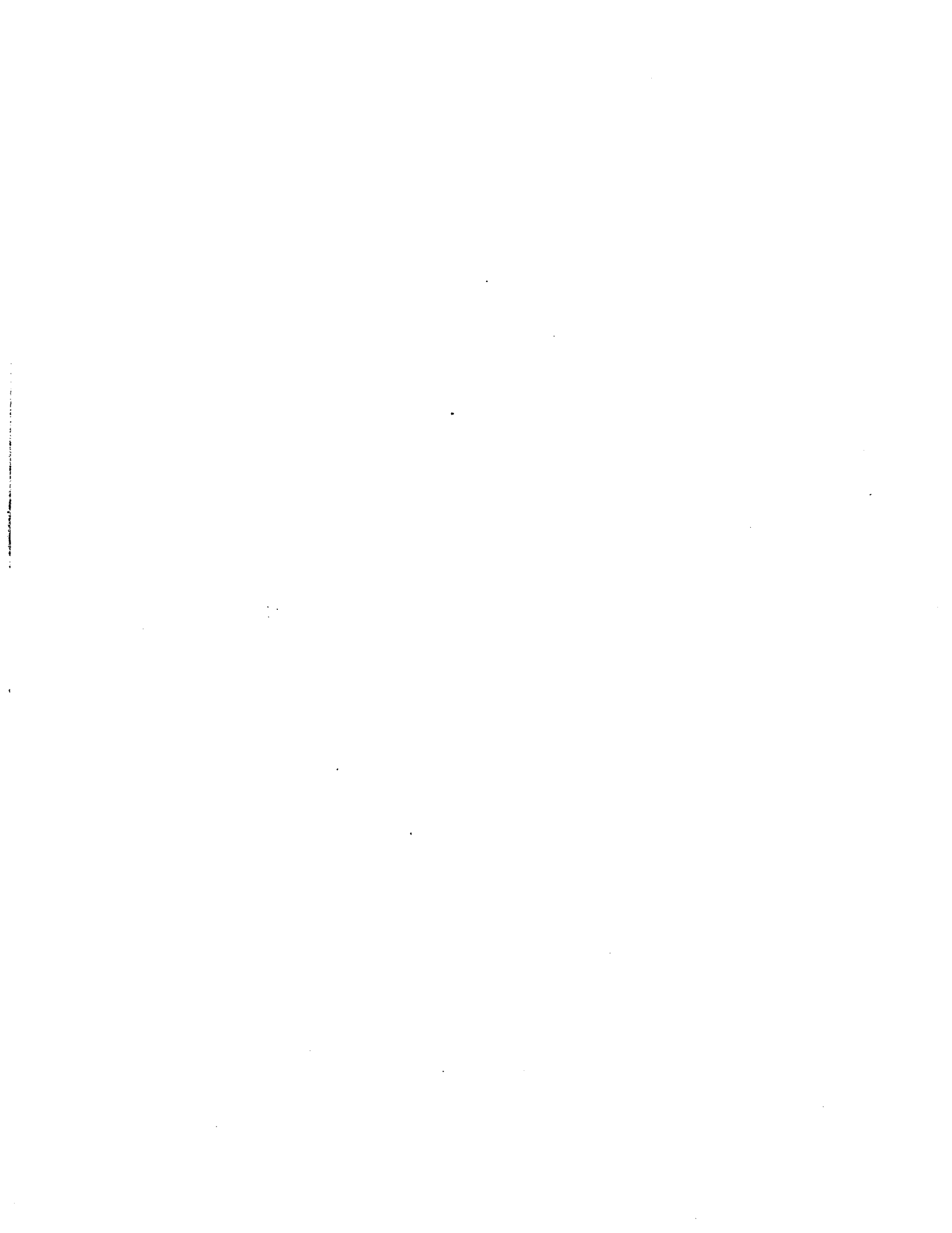
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ACKNOWLEDGEMENT

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8 Served as a Director of Cook Inlet Native Association in  
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10 of Natives prior to ANCSA. Was later a senior BIA official,  
11 and is currently serving the village corporation of St.  
12 George.

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President of the Alaska Federation of Natives during final  
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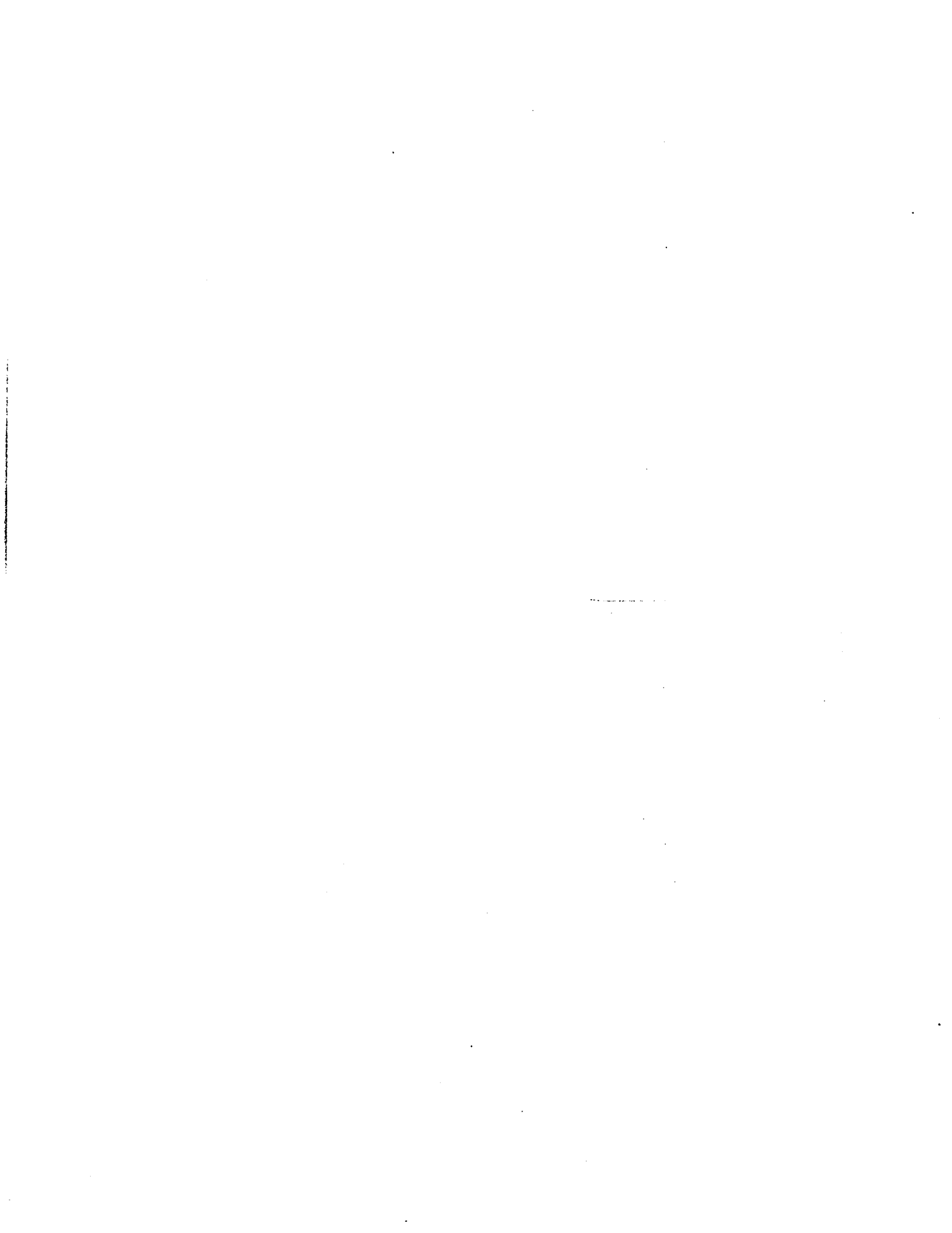
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1 (MARCH 1, 1984)

2 (TAPE 13, SIDE A)

3 MR. BERGER: Well, maybe we  
4 could begin to assemble.

5 (LONG PAUSE)

6 MR. BERGER: Please sit wherever  
7 you wish but take your name tag with you because this is  
8 being televised and it would be a shame if your remarks appeared  
9 under someone else's name.

10 (LONG PAUSE)

11 MR. BERGER: Well, ladies and  
12 gentlemen, let me welcome you to this morning's session of the  
13 Alaska Native Review Commission. My name is Tom Berger and I  
14 have been appointed by the Inuit Circumpolar Conference and the  
15 World Council of Indigenous People to conduct this review.

16 The proceedings this morning are being televised by  
17 Learn Alaska and the Alaska Independent Television Network and  
18 the North Slope Borough television network, if that's what it  
19 is. That's why we have the name cards and it means that, as we  
20 proceed, we will... we will want to make sure that the name cards  
21 are in place.

22 The proceedings are also being recorded by the commission  
23 so that a transcript can be prepared and so that there will be a  
24 permanent record of what is said. For that reason, I may take  
25 the liberty of mentioning your name before you speak. If you  
would do so yourselves, that would be very, very helpful so  
that when the typist comes to... to make her transcript, she will  
have the benefit of knowing who it is who is speaking as we  
move along.

And I should say, for the benefit of the audio and the  
television and the typist, that a reference was made yesterday  
to Julius Brecht that I described at the time as inappropriate  
and I'm directing that that remark, which had nothing to do with



1 the proceedings at the time, be stricken from the record and that  
2 it not be typed and that it not appear on television or on audio.

3 That, I may say, is to protect all, and I do mean all,  
4 concerned.

5 We began these overview roundtable discussions on Monday  
6 of this week and Ann Fienup-Riordan, an anthropologist here at  
7 the university, presented a paper on what she called the "Spirit  
8 of the Alaska Native Claims Settlement Act of 1971" and she went  
9 through the testimony given at congressional hearings held back  
10 in the late '60s and tried to extract the basic themes that  
11 emerged from consideration of those materials. And we have, with  
12 some of those who represented Alaska Natives at the time, discussed  
13 what it was Alaska Natives were trying to achieve in those days.  
14 I think everyone agreed that Ann's... Ann Riordan's paper had  
15 fairly highlighted what it was Alaska Natives were trying to  
16 achieve. That is, to protect and preserve ancestral lands so  
17 that they could continue in use and occupation of those lands,  
18 to acquire cash compensation for economic development, to resolve  
19 past social ills and full participation in the future of Alaska,  
20 the achievement of self-sufficiency and self-determination, and  
21 continuity in cultural integrity.

22 I mention those things... During the discussion it  
23 was suggested by a number of those who had represented Alaska  
24 Natives at the time that self rule, or sovereignty, had not  
25 been addressed in those days. It was also suggested that  
the right of Alaska Natives to... exploit the waters of Alaska  
and of offshore Alaska had not been addressed by the claims act.  
Some of those who spoke suggested there were flaws in the claims  
act.

It was acknowledged that the claims act was a landmark  
achievement, that it served as a means of holding and consoli-  
dating 44 million acres of Native lands. The village and regional  
corporations served, as well, as the means for assembling and

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1 disposing of and investing the 962.5 million dollars that were  
2 received under the settlement and it was acknowledged, I think,  
3 that the corporations had given Alaska Natives economic influence  
4 and, flowing out of that, political influence in the state  
unprecedented before ANCSA.

5 The speakers did suggest there were flaws in the act.  
6 The question of transferability of shares, of course, leads to  
7 the possibility of loss of control of the corporations by  
8 Native shareholders and thereby a loss of ancestral lands held  
9 by the corporations. It was felt by many that the liability of  
10 the land to taxation by the state 20 years after conveyance could  
turn out to be a very, very serious impediment to Native people  
retaining their ancestral lands.

11 I can tell you that, in the villages of Emmonak and  
12 Tununak, where I began the village meetings last week, the opinion  
13 was virtually unanimous, as it was around this table earlier in  
14 the week, that the act was flawed in that Native persons born  
15 since 1971 do not share in the settlement. Certainly they do  
16 not share as shareholders, but only by inheritance of their  
17 parents' shares. Those features of the act are well known and  
18 have been very much the subject of discussion, in any event.

19 It was suggested, I think, that the goals of Alaska  
20 Natives have not changed remarkably over the last 12 years and  
21 there is, I think, a feeling in Alaska, certainly among Alaska  
22 Natives today, that the time is appropriate to review what was  
23 achieved in 1971 and to consider in what directions Alaska  
24 Natives might proceed now.

25 Well, that doesn't do justice to the discussion of the  
last three days, but it's the best I could do at the moment to  
bring those of you up to date who were not able to be with us.

Today we are... Walter Parker is going to open the  
proceedings with "A Commentary on Institutions and Legal Regimes  
Arising from the Alaska Native Claims Settlement Act and the

1 Alaska National Interst Land and Conservation Act." Might I  
2 introduce Mr. Parker and say a word about the rest of you, if  
3 you will forgive me, for the benefit of those others present  
4 so that I don't have to go into a long introduction each time  
5 we come to one of you.

6 Walter Parker is an historian-economist, served on  
7 the staff of the Federal Field Commission, served as commissioner  
8 of transportation in the Alaska state government and was state  
9 co-chairman of the Federal-State Land Use Planning Commission.

10 David Hickok was on the staff of the Federal Field  
11 Commission and serves today as director of the Arctic Environmenta  
12 Information and Data Center at the University of Alaska.

13 John Havelock is an attorney, was attorney general of  
14 Alaska during the Egan administration, is now professor of justice  
15 at the School of Justice, University of Alaska, Anchorage.

16 Mr. Roy Huhndorf... Roy Huhndorf, whom I hope will be  
17 joining us later, is president of the Cook Inlet Regional Corpora-  
18 tion.

19 Mr. Charles Johnson, whom I hope will be joining us  
20 later, is president of the Bering Straits Regional Corporation  
21 and chairman of the Alaska Federation of Natives.

22 Mr. Doug Jones was an economist with the Federal Field  
23 Commission, is now professor, School of Public Administration,  
24 Ohio State University.

25 Mr. Guy Martin is an attorney, served as legislative  
assistant to Congressman Begich at the time of ANCSA, served  
as commissioner of natural resources here in Alaska and served  
during the Carter administration as an assistant secretary,  
Department of Interior.

Mr. William van Ness is an attorney in Washington,  
D.C., was at the time of ANCSA counsel for the Senate Interior  
Committee and has served as counsel to the North Slope Borough  
and the Arctic Slope Regional Corporation.

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1 Mr. Byron Mallott was mayor of Yakutat and served as  
2 executive director of a Rural Community Action Program,  
3 commissioner of regional and community affairs here in Alaska and  
4 is, today, the president of Sealaska Corporation.

5 Mr. John Borbridge was, at the time of ANCSA, president  
6 of the Tlingit and Haida Central Council. He has served as  
7 president of Sealaska Corporation and he is working now on a  
8 book on the land claims movement in Alaska.

9 Mr. Roy Ewan was active in the land claims movement  
10 and he is from the Ahtna Region.

11 Mr. Frank Peterson, of Kodiak, has had a long involve-  
12 ment in the land claims movement.

13 Mr. Alfred Starr, of Nenana, who was with us the last  
14 three days has been active in the land claims movement perhaps  
15 for a longer time than any person in Alaska and he... His  
16 experience is, perhaps, without equal.

17 Mr. Joe Upicksoun, who will, I think, be joining us  
18 later, was president of Arctic Slope Native Association at the  
19 time of ANCSA.

20 Mr. Don Wright, who has been with us the last three  
21 days and will, I think, be joining us again, was president of  
22 the Alaska Federation of Natives at the time of ANCSA.

23 Mr. Fred Paul, who has been with us these last three  
24 days and will, I think, be joining us again, followed his father  
25 in the cause of Native land claims and served as legal advisor  
to a number of the organizations that pursued their claims in  
the late '60s and early '70s.

So, having disposed, I think, of all of the preliminaries,  
perhaps, Walt, I could ask you, Mr. Walter Parker, to begin  
with the discussion that we're going to have.

MR. PARKER: Thank you, Mr.  
Chairman.

It seems strange, after all these years, to be back in



1 this familiar setting, sitting with my back to the audience  
2 facing the panel, but I'm sure after a few moments it will seem  
3 like I had never left.

4 The point that I tried to make in the paper, which I  
5 won't even begin to try to cover all the points that I handled  
6 in the paper... But the main thing was to try to establish a  
7 very general and, as I said, make some tentative observations  
8 about the scope of what was done in ANCSA and in the lands act,  
9 ANILCA, to affect the future of Alaska Natives in their relation-  
10 ships with the state of Alaska and with the United States.

11 And I think the main thing that I was trying to focus  
12 on and kept coming back to is that, in using the conveyance of  
13 land and the conveyance of monies through any institutions,  
14 whether through the corporate institutions as we did in the  
15 claims settlement, or any others, you're only affecting a part of  
16 a person's relationships with the governments that he lives with  
17 throughout his life in trying to define whether the existing  
18 institutions can continue to play the major role that many  
19 thought they were going to play in defining the future, or  
20 whether we need to think about any future institutional develop-  
21 ments by the Congress or the state of Alaska.

22 I have not attempted in any way to expand beyond the  
23 federal-state framework, because I think that's going to come  
24 much later in this inquiry, any developments that may come up  
25 in that regard.

It's... I'm going to skip all of the preliminary bit  
dealing with how the lands were allocated and so forth. If any-  
body has any questions on those, we can come back to them. But  
in approaching this, I tried to approach it from a very different  
perception than that I had had when I was acting as either a  
state or a federal official in dealing with these matters, and  
went back to my own long-term relationships with many Alaska  
Native families throughout the state and how I had, over the

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1 past 37 years, and how I had viewed their particular priorities  
 2 just as they had developed in our personal relationships together.  
 3 And so the list of priorities, as I developed them, on page five,  
 4 I think, is very similar to the ones that were in Ms. Riordan's  
 5 previous paper but stated in a different manner, then taking  
 6 those priorities and relating the institutions that served those  
 7 priorities in the rest of the paper as best I could in a fairly  
 8 limited paper.

9 As all of us who dealt with these two acts long since  
 10 realized, it is very difficult to take something as extremely  
 11 complex as what is represented within the geographical limits of  
 12 Alaska and very diverse peoples who live there and compress them  
 13 within a single act. That's why, of course, the lands act wound  
 14 up to be such a voluminous and controverted and extremely  
 15 legalistic piece of legislation, one which we're still working  
 16 our way through as we're, indeed, working our way through ANILCA.

17 That points out the fact that we will be dealing with  
 18 the results of these two acts in a very intensive manner, at  
 19 least until the turn of the century, and certainly, hopefully,  
 20 in a less intensive manner from then on. But the implementation  
 21 of what was generated by both ANCSA and ANILCA is not going to  
 22 be accomplished overnight and needs that were hoped to be  
 23 satisfied there are continuing needs that are going to have to  
 24 be satisfied on a continuing basis, and the desires that were  
 25 created are not going to be satisfied overnight because the  
 federal and state government are going to have to act as they  
 have done in the past in some kind of comprehensive manner to  
 meet those desires as long as they have the governmental respon-  
 sibility for satisfying those.

Now, that's also important to, therefore, pay very  
 real attention as to how those two governments are going to  
 satisfy those local institutions that are set up to satisfy  
 those desires, whether those be local governments or whether those

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1 be the corporations or whatever new institutions.

2 In any case, as I viewed the priorities, and I'll  
3 briefly review them here, I've always viewed, from the many  
4 Alaska Natives who I've known through the years, that the family  
5 and village stability and protection were the primary priority  
6 as they are, indeed, for any rational individual. And that these  
7 ... the difference being that village stability, for those who  
8 leave and live in the urban environment, is no longer something  
9 to which they can relate, unless they're lucky enough to live in  
10 a very stable community or very stable neighborhood. But it was  
11 a great advantage the Alaska Natives had, is that the villages  
12 still existed and could still be related to as a primary insti-  
13 tution.

14 So the next priority was the education of the young.  
15 Once again, it is very different from... little different from  
16 most people in dealing with their lives.

17 Next one, cultural rights, there is a somewhat of a  
18 diversion in that those of us who live within the framework of  
19 what is loosely termed the majority, or the... accept our  
20 cultural rights for granted. It's only when you're in the minority  
21 that you don't accept them for granted and have to make them a  
22 priority, and during the involvement of the two acts, of course,  
23 subsistence and everything that relates became developed as a  
24 major need and desire that had to be satisfied over the long  
25 term.

26 I separated land ownership and economic development from  
27 village stability because that was simply recognizing that land  
28 ownership is only one of the ways in which we achieve stability  
29 in our lives and economic development is only one of the ways.  
30 And, indeed, land ownership and economic development... I put  
31 them together because, in the context of Western society and  
32 Western law, they do go together.

33 The education of adults, which includes educating adults

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1 to a wider range of jobs, I listed as the next priority.

2 And the last, political participation in the state and  
3 national government, and the caveat I inserted was that the  
4 above desires in the village were a seamless web and there was  
5 no conscious ranking, and the reason they needed to be ranked  
6 eventually was because of the requirements of Western society and  
7 Western law, which, because of the adversarial relationships  
8 in which the legal system is cast and the necessity of legisla-  
9 tures and the Congress to create budgets requires a system of  
10 prioritization. And so I'd like those things that I listed to  
11 be viewed in that, that the prioritization is imposed and not  
12 something that is desired.

13 I won't go into the federal and state record particu-  
14 larly, except to point out that, in the past when the two  
15 governments have operated best, they have been reasonable coopera-  
16 tive despite all of the surface furor and bickering which went  
17 on during the settlement act. There was a good deal of behind  
18 the scenes cooperation which most people in this room had some  
19 sense of and that it's necessary to retain that, and, you know,  
20 stop the shifting of responsibilities back and forth, which are  
21 always a part of the federal-state relationship in this country  
22 but which seem to become more intensive when you get down to  
23 dealing with the needs of individuals.

24 I think the most important point there is that, in  
25 the passage of ANCSA, the long-term applications of the fact  
that the corporation and the land ownership by the corporations  
were institutions that were governed primarily by state sovereignty  
and contol, did not receive a great deal of discussion throughout  
the state at that time, and the implications for that since, of  
course, have become very clear to everybody who has to deal with  
it, and nobody knows better than Alaska Natives how the ongoing  
attitudes and workings of the state bureaucracy can influence  
their abilities to implement what was hoped for in ANCSA and in

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1 the ANILCA amendments.

2 And, in viewing the future, the immediate future of  
3 the critical years after 1991 and the long-term future of the  
4 next 50 years or more, there's a way in which I would hope that  
5 most administrators and policy makers would view these. However,  
6 neither the federal nor state institutions well lend themselves  
7 to taking this particular view of policy development and if you  
8 don't have a senior member in the senate who can... in the U.S.  
9 Senate or in the state Senate... who can stay with you for a  
10 long, long term, or a senior member in the lower bodies, in the  
11 House... either the state House or the federal House... why, it  
12 is very difficult to do it within the bureaucracy, because the  
13 bureaucracies, of course, in most cases react to their four  
14 year cycles. And if you don't find that that bureaucracy which  
15 is supposed to provide continuity between administrations is work-  
16 ing satisfactorily, why you probably should think of creating a  
17 new one or trying very hard to remake the old one in a better  
18 mold, and the federal bureaucracies will be, in their relation-  
19 ship to American Indians, and Alaska Natives will be discussed  
20 very intensively later. But the role of the state bureaucracies  
21 is something that, because it is very new and in which there is  
22 not an intensive written history and not a great deal of documen-  
23 tion of an analysis of how well the state of Alaska is doing it's  
24 job in this respect.

19 In going through the priorities I probably missed some  
20 of the institutions which I viewed as affecting and, hopefully,  
21 supporting the priorities as I layed them out. In family and  
22 village stability and protection, why the state offers certain  
23 options in the first and second class cities and the boroughs,  
24 which have been avail... which many villages have availed them-  
25 selves of. And the federal chartered governments and organiza-  
tions, the traditional council, the IRA council, are other op-  
tions that have been used intensively and, in many cases,

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1 simultaneously with the state options. And in achieving a  
2 satisfactory relationship between those two and the senior  
3 bureaucracies which are supposed to support them, is the key  
4 to a lot of successful resolution of the day-to-day problems  
5 of Alaska Natives, or any citizen of the United States or the  
6 state of Alaska. And I think that it pays not to lose sight of  
7 that as we get into long-term developments, not to make any  
8 step rapidly which is going to cut off major support in education,  
9 health, or any other place or any other area. And I think that  
10 kind of care is being taken in most cases. But I think it's an  
11 area where we can concentrate a great deal more, in which it is  
12 possible to make substantial improvements in the way we do  
13 business without getting into major confrontation, certainly  
14 between the federal and state government, and... or in requiring  
15 either major legislative action by either the Congress or the  
16 state legislature.

17 In the education of the young, I think, you know, it's  
18 one of the more exciting areas in Alaska at the moment, especially  
19 in the rural areas. There are so many things going on out in the  
20 REAAs and the other school districts in the rural areas that it  
21 is very difficult to keep track of them. The education of  
22 Alaska Native youth in the urban areas is very much in a state  
23 of flux at the moment, but I think that some of the things that  
24 have been done by the state of Alaska in this area have been  
25 meritorious, obviously some things have not been. But I would  
hope that nothing that happens in the future would, in effect,  
turn off the support that was evinced for rural education in  
the past and which, hopefully, will develop. I mean, you know,  
in something that is new, as what is going on in rural education  
in Alaska where the teacher corps, the long-term teacher corps  
that will, hopefully, serve it has not even been developed yet,  
substantially, is something that we simply need to maintain our  
past priorities on and enhance them.



1 I think the... In comparing it as we have done in the  
2 past to the education of Alaska Natives to that of Greenlanders,  
3 Lapps, Canadian Inuit Indians and others, why maybe we can learn  
4 a great deal from what has happened in those countries about how  
5 educational institutions can operate in a separate cultural  
6 context without being outside the mainstream of the educational  
7 system in whatever country they operate. And there is an area  
8 that I think the University of Alaska and everybody concerned  
9 with education in Alaska could pay a good deal more attention to  
10 than they have in the past, not that they haven't paid attention  
11 to it in the past but it's an area where a good deal more needs  
12 to be paid.

13 Cultural rights, including subsistence... In working  
14 out that over the long-term future and tying it to the future  
15 of Alaska wildlife, Alaska fisheries, something that simply both  
16 the federal and state government, if subsistence is going to  
17 have any meaning, they will have to make it a true priority and  
18 the acceptance of subsistence by the mobile urban populations  
19 in Alaska is not going to be achieved easily. We all know that.  
20 But the fact that there has been, as reflected in the action in  
21 our... at the last election, has been some reasonable acceptance  
22 in some urban areas is, to me, a harbinger of some hope for the  
23 future, that this particular element can be worked out so that  
24 the utilization and regulation of fish and game in Alaska is  
25 supportive of the cultural desires of Alaska Natives for the  
long-term future. And it was, without doubt, the most difficult  
thing to deal with in the lands act. If we had tried to deal  
with it, of course, in the claims settlement, we'd probably still  
be trying to work it out. But it was possible to achieve some  
legislation during the lands act at both the state and federal  
level, and taking that legislation and fine-tuning it and making  
it a living body of law is something that I hope will be much  
more... continue to be much more of a political expression rather

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1 than getting mired down in narrow legalisms, because I don't think  
2 that Alaskan wildlife or Alaskan Natives can live with a narrowly  
3 legalistic system over the long term as far as the control of  
4 the wildlife. Usually, where that has happened in other locations,  
5 why simply the wildlife and those who live closest to it have  
6 suffered.

7 In land ownership, the only point I tried to make there  
8 is that land ownership within the Western context simply gives  
9 you rights to use of the land which are exclusive to yourself  
10 and that the ultimate sovereignty and actual ownership of the  
11 land does the rest in the United States with either the state or  
12 federal government. And, of course, we do have a good deal of  
13 protection in that the government can't take it away from us  
14 without going through due course, but the government's legal  
15 rights to the land when they want to use it are pretty clearly  
16 expressed. And certainly in Alaska, the dialogue between all  
17 citizens and the federal and state government over what the rights  
18 of the private land owner are have been somewhat hectic and will  
19 continue to be, whether the rights of the private land owner are  
20 those of Sohio and ARCO or whether they're the rights of an  
21 allotment owner of a five acre or 160 acre allotment. The only  
22 advantage being that he who can hire the largest legal staff in  
23 our system usually has his land rights most clearly expressed,  
24 and that's the way it works in the United States and, indeed,  
25 throughout everywhere that... where the system is based on the  
English common law concepts of land ownership which we largely  
transferred in the United States. I don't want to make that  
too simplistic. There's major differences between Canada and  
the U.K. and the United States but, still, the basic concepts are  
much the same.

In... Try to make a few points on land speculation, which  
I don't view as being a problem for many corporations but which,  
of course, for those who have close relationships with the urban

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1 area, how they will handle land speculation in the future will  
 2 certainly be critical to how their traditional lifestyle is  
 3 developed. At the U.N. conference on habitat, why land specula-  
 4 tion was identified as the greatest threat to cultural survival  
 5 in urban and urban fringe areas throughout the non-developed  
 world and will probably work the same in Alaska.

6 But I did make the point that Alaska Natives, in most  
 7 cases, are well-buffered from those forces at the moment. For  
 8 how long remains to be seen. If the state is true in its newest  
 9 population analysis that we have, indeed, acquired another 56,000  
 people in the past year, why those buffers may be eroded rapidly.

10 The education of adults is something that we've tried  
 11 in the past several years to give a good deal of attention to.  
 12 Several elements in the university, several elements in the  
 13 Department of Education, many of the non-profit corporations  
 14 have put enormous effort into the education of adults in Alaska  
 15 and all I can say in that is, you know, we need to continue it  
 16 and a great deal more remains to be done and we need to develop  
 17 means and institution which will make it as easy as possible for  
 all adult Alaska Natives, and, indeed, all adult Alaskans, who  
 need continuing education to get it, whether it's by direct  
 tutoring or telecommunications or any other means.

18 Finally, political participation in the state and  
 19 local government, that is something that is pretty clear cut. If  
 20 Anchorage, you know, they've got most of those 56,000 people that  
 21 came to Alaska, which they probably did, why that means that  
 22 they will continue to gain a House seat just about on a one-per-  
 23 year basis and, well, it will start declining because the per-  
 24 centages will change, and get a Senate seat every four years  
 25 and that, of course, for those who's major interests in the  
 legislature are rural interests, does not bode well for the  
 future. But that is a driving force in policy in Alaska which  
 cannot be eliminated or looked around. The in-migration into

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1 Alaska, we do keep some statistics on it. I think the most  
2 critical area is to just accept that the state of Alaska is  
3 probably going to be a very attractive goal and that in-migration  
4 is going to continue, and sensitizing new Alaskans to what has  
5 gone on here in the past, why the state operates the way it does,  
6 and sensitizing them to the needs of Alaska Natives and to the  
7 rights of Alaska Natives, both those expressed legal rights and  
8 historic rights, which we've found difficult if not impossible  
9 to express in legislation, getting back to the rights of sub-  
10 sistence and so forth... sensitizing them to that through the  
11 media, through our educational system, through every other means  
12 of delivering information that's possible is, to me, one of the  
13 keys in working out a successful social future for the state of  
14 Alaska.

15 And working out the relationship between conservatism  
16 and liberalism, I don't think that's near as important as simply  
17 working out a true sensitivity between the urban and rural areas  
18 in this state. And if I had it all to do over again, I would  
19 begin working on that much earlier in the game than we began it.

20 So, in summation, it's my belief that, you know, the  
21 state of Alaska is more of a key in the future than federal action  
22 in working out the political and economic options for the future  
23 of Alaska Natives. Part of this is due to the fact that the  
24 state is simply going to have more financial resources available  
25 to it than the federal government is going to do to devote to  
Alaska's specific problems. And the other is simply that Alaskan  
priorities, over the long term, will get lost in Washington as  
they have in the past, and that it was a particular fortuitous  
circumstance of history that the priorities came together as well  
as they did in the period between 1965 and 1981.... Well, I  
should say '66, when the land freeze was implemented, and in  
'81, when the lands act was passed.

I think that the United States is probably going to



1 have itself occupied with a good deal of things that are much  
 2 closer to the seat of government in the next 20 years and it  
 3 would be far better served to impose institutions which we can  
 4 handle it without asking the Congress for too much relief or,  
 5 if we do, why, making it easy for the Congress to act by having  
 6 our act better together at home, certainly, than we had it in  
 the past in dealing with the major legislation of the past.

And I think that's about all I would like to cover at  
 this time, having covered just about everything I can think of.

(TAPE 13, SIDE B)

MR. BERGER: Well, thank you,  
 Mr. Parker.

When I was introducing you all, I introduced those who  
 we were expecting, and Mr. Johnson, chairman of Bering Straits  
 Regional Corporation and chairman of the Alaska Federation of  
 Natives, has arrived. And, Mr. Hope, I apologize. When I was  
 introducing everybody, I had become so used to seeing you there  
 that I neglected to introduce you and forgive me. Mr. Hope is  
 well known to you all, president of the Tlingit and Haida  
 Central Council and co-chairman of the Alaska Federation of  
 Natives. And Rosita Worl and Chuck Smythe are working with the  
 commission, and David Case will be arriving later. He teaches  
 at the University of Fairbanks and is giving legal advice to the  
 commission.

I've told Byron Mallott and Guy Martin that I would  
 ask them to follow Walter Parker, and before they do, might I  
 just ask you to consider some questions that have arisen in  
 my mind, and I'm not suggesting you should address these but  
 you might want to say something about them later on.

I know that some of you were engaged in writing ANCSA  
 or ANILCA or advising those who were writing ANCSA and ANILCA,  
 and you might comment on what Walter Parker said in his paper  
 about choosing fee simple as the form of holding land tenure and

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1 the institution of the corporation. Mr. Parker says that these  
2 are the two principal institutions of Western capitalism. He  
3 let the matter drop there. Is there anything further anyone  
4 would like to say about what that may express regarding Congress's  
intentions at the time?

5 I wonder if you might also consider... When we began  
6 this morning, I indicated what the strengths of ANCSA clearly  
7 were and what the weaknesses as with the advantages of hindsight  
8 people now see them. That is, the transferability of shares...  
9 I'm not suggesting that is a weakness. That was a deliberate  
choice made back in 1971 but it is a matter of great objection  
in the villages, as far as I can tell.

10 The liability to state income tax... state property  
11 tax 20 years after conveyance... At the time, what was the purpose  
12 of making the shares transferable after 20 years? Perhaps you  
13 might also indicate whether the possibility of a state property  
14 tax being levied 20 years after conveyance is a real possibility.  
15 Does that really constitute a threat to the continued possession  
of these lands, assuming they're not by the land banking arrange-  
ments or some other means immunized from tax.

16 What were the advantages as then perceived of these  
17 features and how are they viewed now? And you might also comment  
18 on the fact that the only persons entitled to issuance of shares  
19 and to be enrolled in the corporations were the persons living,  
I think, at December 18th, 1971. That, as I told you earlier,  
20 is a subject of great concern in the villages and was a subject  
21 of great concern to all who sat around this table the first three  
22 days of the week. Why was that done? What were the advantages  
as then seen?

23 I appreciate that many of these things occurred as a  
24 result of compromises that were felt to be... to be altogether  
25 appropriate, and no one is suggesting that they were not. Some  
people must have thought, "Well, this is a good idea. Let's do it

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1 this way," and why was that?

2 And the other point that Walter made... Walter Parker  
3 made, and I was startled by that figure in the paper last night  
4 about 56,000 people coming to Alaska in 1983, which means the  
5 Native population, even though it's growing, becomes a smaller  
6 and smaller factor, and what are the implications of that.

7 Well, perhaps, Mr. Mallott, we could turn now to you and  
8 have your thoughts?

9 MR. MALLOTT: Thank you, Mr.  
10 Chairman.

11 I appreciated reading Mr. Parker's paper, having had  
12 the opportunity and the honor to have worked with him on a  
13 number of issues like these in the past. The issue of dealing  
14 with the institutions of the claims settlement act is critical  
15 to any consideration of what the act is and what it means and  
16 where it is at at the current time.

17 If I could characterize it, at this moment, first  
18 backing up by saying that, for all of it's difficulties and for  
19 all the problems and flaws that we see, that ANCSA is very much  
20 an opportunity for Native people still and that it is our  
21 task, as Native people, to create or seize the moral imperative  
22 to deal with those issues and develop the responses and the  
23 mitigation and the opportunities ultimately ourselves, and that  
24 there must be the assistance and the acquiescence and the par-  
25 ticipation of other institutions in order for us to achieve that.  
26 But the important point is that we have done it before and I  
27 think that we can do it again. But I think that what we must  
28 get back to is being able to recognize our obligations in the  
29 sense of a moral imperative as opposed to some fix-it of a  
30 piece of legislation that we have lived with for these many  
31 years.

32 Looking at the federal versus state obligation, if  
33 you could characterize ANCSA as a group of people sitting around

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1 a table with a deck of cards and people on one side of the table  
2 having been told, "Here is your opportunity to create something  
3 for yourselves and to control your own destiny and the way we  
4 achieve it is by playing this game," and Native people on one  
5 side of the table and Uncle Sam was on the other, well, in my  
6 judgment, we have unfinished business with the federal government  
because Uncle Sam slipped the winning ace up his sleeve.

7 In Walt Parker's paper, in his summation, he mentions  
8 that, for example, referring to the people of Tununak who are  
9 one of the most remote groups and villages in Alaska, "The sole  
10 assurance is in the relationship of that small band of people  
11 to that piece of earth they have made so uniquely their own." Well,  
12 I submit that, under the current corporate circumstances, that  
13 land is not their own, that, as a matter of fact, they do not  
14 have ownership of that land. The ownership of that land is  
15 vested in corporations and the obligations and the function of  
16 the corporation, ultimately, is to use that land for different  
17 purposes fundamentally from the purposes that the people of  
18 Tununak ultimately acquiesced in the corporation acquiring that  
19 land. And I think that that is something that we have to deal  
20 with.

21 In the institutions of ANCSA, the corporations, and  
22 the question of sovereignty, we have mentioned several times, or,  
23 it has been a recurring theme thus far, that sovereignty was not  
24 an issue that was dealt with. And while ANCSA, in the preamble,  
25 speaks quite clearly to such issues as not desiring to create  
continuing perpetual racial institutions, and ANCSA was clearly  
meant to propell Native people into the mainstream, and to use  
mainstream-kind of institutions in order to exercise self-  
sufficiency and control over their own destinies, as I said, I  
think Uncle Sam slipped an ace up his sleeve.

And here's where I think it happened. The institution  
was the corporation and the corporation comes with a lot of

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1 baggage. It also comes with incredible opportunity, and I want  
 2 to emphasize that because, when we get into conversations like  
 3 that, we usually spend a whole lot of time emphasizing the nega-  
 4 tive. But if, ultimately, Native people are to achieve the  
 5 status that they aspire to, they must have economic strength in  
 6 some form or another and they must exercise that on an institu-  
 7 tional as well as an individual basis. And in ANCSA, we have a  
 8 very unique opportunity to do that, in my judgment.

9 However, at the time of ANCSA, as we've discussed before,  
 10 there were created expectations which have proven clearly to have  
 11 been beyond the capability of any single institution to be  
 12 meaningfully responsive to. In addition, because those expecta-  
 13 tions flowed from ANCSA, the institutions that were created by  
 14 ANCSA became the focus and the measure by which the aspirations  
 15 of Native people were viewed against. And, of course, no single  
 16 institution can do and be responsive to that level of expectation.

17 The expectation was created and then the opportunity  
 18 to meet the expectation through the institutions was thwarted in  
 19 several major respects, and for mostly very good reasons, to  
 20 achieve democracy, to allow Native people at the most remote  
 21 level to participate in the claims settlement act. But that  
 22 billion dollars and that 44 million acres of land was spread  
 23 among more than 60,000 people on a per capita basis, partially.  
 24 It was spread among over 200 corporations and, ultimately, on  
 25 an individual basis it made any near-term opportunity to meet  
 the expectations virtually impossible.

The business of sovereignty, to get back to it just  
 for a moment... The issue was left on the table, but with the  
 institutions that were created, and I guess, speaking for  
 myself, I did not see it clearly at the time, but while sovereignty  
 was essentially left and not addressed in any four square sort  
 of way except by the references that I'd made earlier to trying  
 to develop and utilize these kinds of institutions... If, at 1991,

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1 these institutions don't do what Native people want them to do,  
2 we will have lost sovereignty as a practical effect of ANCSA.  
3 That is, we may still exist as Indian people, we may still have  
4 the values, we may still have aspirations, we may still maintain  
5 a unique identity, but the institutions that were created and  
6 the monetary and land settlements that was established will have  
7 reached a point wherein Native people will have lost a very  
8 incredible kind of opportunity and, in my judgment, that would  
9 be a very, very severe blow to the aspirations of Native people  
10 as far as sovereignty... may have levers and power to really  
11 manifest itself and to be meaningful over a long period of time.

12 And to get back to the Tununak ownership of land, people  
13 who reside on the land may feel that that land is buffered,  
14 to use Walt's phrase, and it is and it has been. And I think  
15 that that has been one of the glowing successes of the claims  
16 settlement act, is that from day one, corporations have had the  
17 opportunity, and in many instances the economic imperative, to  
18 divest themselves of that land and they have not. And these  
19 many years after the implementation or after the passage of  
20 the claims settlement act, virtually all Native lands that were  
21 conveyed and are still being conveyed under ANCSA are still in  
22 the possession and ownership of Native people; but in an insti-  
23 tutional sense, those Native people who feel that that land is  
24 theirs and that the corporations are merely stewards, to use a  
25 phrase that Mr. Borbridge used yesterday, and that our obligation  
is not to liquidate, our obligation is not to create burdens upon  
the land from economic use, what the corporations are and what  
they must do if we continue on our course is very much different  
from that. And those people in Tununak, while they will have  
some opportunity to make a judgment at 1991 if nothing is changed  
between now and then, on the surface estate of their land, will  
have no say, at least will not be able to have the ultimate say,  
in what happens to the subsurface estate of their land.

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1           And as I said yesterday, Mr. Chairman, if we proceed  
2 as we are to 1991 with Native people and minority people, generally  
3 being in a position where, again from my own perspective, public  
4 policy is creating a circumstance wherein minority and economically  
5 disadvantaged people are being presented with fewer opportunities  
6 in terms of broad public policy for advancement than was the  
7 case in the mid 1960s and that we cannot expect the kind of  
8 significant social and economic advancement that we have seen  
9 during that period of time and, to some degree, subsequently,  
10 that 1991 is not really a choice because the people do not have  
11 economic freedom. They cannot make a free economic choice.  
12 And I think that that is a very major difficulty with the  
13 institutions of ANCSA as we look at 1991.

14           The question of what these institutions are and what  
15 they can be and where they've been and what... most importantly,  
16 what we expected of them at the time, is also, in my judgment,  
17 very different from our expectations at the time of ANCSA.  
18 And, again, I speak only from my personal feelings and sense  
19 at the time, and those were that we had the opportunity, and if  
20 you'll recall, those of you who were there, ANCSA at the time  
21 and subsequently, has been characterized as a major social and  
22 economic experiment, unique in the annals of U.S. history. I  
23 bought that concept and I thought that the corporate vehicle,  
24 the legal corporate structure, could be used to do more than  
25 traditionally it had done, that it could be more than just an  
economic institution, that it could influence by our having  
control of the institution, political and social and other issues  
beyond just the economic. And, at least my experience subse-  
quently has been, that is very difficult to do. Corporations  
demand an incredible sense of discipline and economic focus in  
order to be competitive on the business side. And the utiliza-  
tion of corporate assets require that almost all of those assets  
be employed in some sort of economic kind of activity, and

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1 the demands upon the management and the policy-makers of those  
 2 institutions are so much demanding of continuing in almost pure  
 3 focus on economic and business kinds of activities, that, over  
 4 time, other priorities and other obligations, if you're not  
 5 careful, begin to fade. And, in my judgment also, that is a  
 difficulty that we face as a people.

6 However, I would once again qualify, or at least present  
 7 the caveat, Mr. Chairman, that the corporate institution is not  
 8 the answer to our problems and, if we do it right, it can be a  
 9 very, very incredible option and opportunity for Native people  
 10 in the future to obtain economic strength. But so long as the  
 11 land... which most Native people at the time felt was given  
 12 to the corporations as stewards for some long-term, Native-  
 13 oriented, subsistence-oriented, tribal-oriented, culturally-  
 14 oriented purpose, is retained in ownership of the corporations,  
 15 I think we have a major difficulty because at 1991, as I mentioned  
 16 before, if you sell your stock, you sell your land. And I can  
 17 recall, you know, one of the battle cries in the days of land  
 18 claims was, "Take our land, take our life," and if you can  
 19 move that into the future, you might be able to, at this point,  
 20 say, "Take our stock, take our land, take our life," and I think  
 21 that that is one of the dilemmas that Native people are facing  
 22 at this point as we look at continuing implementation of ANCSA.

23 But having said that, Mr. Chairman, I think that it's  
 24 important to point out, as I did, that the corporations, for all  
 25 of the pressures upon them, for economic success, have retained  
 ownership of the land, and they've done it because of the strong  
 sense that they are stewards. But the question becomes, how  
 long can that be maintained with the business and legal impera-  
 tives and obligations that corporations, as institutions, have  
 upon them?

The question of whether the state or the federal  
 government is, ultimately, the proper form or the... the political

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1 institution for the most significant relationship for the future  
 2 of Native peoples is, I think, very much an open one still  
 3 because, you know, we are faced with, in this decade, declining  
 4 state revenues. Unless we find other sources of revenues of a  
 5 very substantial nature... and I'm not talking about the need  
 6 for state funding for the sorts of purposes that a lot of people  
 7 quickly assume when Native people begin talking about government  
 8 and it's obligations to Native people. I'm looking at it in  
 9 broader public policy terms because what has happened at the  
 10 federal governmental level in the past several years with the  
 11 major reprioritization of federal spending, could very well happen  
 12 in this state. And as we look to issues like subsistence, as  
 13 we look to governmental issues such as Mr. Parker raised, and  
 14 we juxtapose what might result from state public policy in the  
 15 next decade... when we juxtapose that against the aspirations of  
 16 Native people, I think that it gives us... or, it should give  
 17 us pretty substantial pause.

18 The thought that Native people might be asking for  
 19 something outside the purview of ANCSA through the work of this  
 20 commission, the work that the Alaska Federation of Natives has  
 21 undertaken for the past three years and is continuing on looking  
 22 at 1991, the efforts that corporations, themselves, are involved  
 23 with trying to come to grips with the issue of 1991, that these  
 24 efforts are somehow outside the scope of the game, that, "You  
 25 people got what you got and what do you want further?" is not  
 appropriate and, as a matter of fact, is also outside the  
 spirit of ANCSA. Because built into ANCSA, itself, were several  
 opportunities for adjustment to the legislation as it affected  
 Native people in its implementation. There was the 2(c) study,  
 there was the 1985 study, and the clear intent was that we  
 would look at ANCSA at certain periods and see whether it was  
 doing what it was meant to do and what the Native people wanted  
 it to do.

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1           And, of course, Mr. Chairman, as I mentioned yesterday  
 2 and was pointed out by others, was that a lot of doors had shut  
 3 from 1966, when this began, to 1972, when the 2(c) study was done,  
 4 and I think will be shut again when we look at the 1985 study,  
 5 in terms of public attitudes, in terms of public policy, in terms  
 6 of governmental priorities. And I think that that makes it all  
 7 the more incumbent upon us, as Native people, to spend a lot of  
 8 time looking at these institutions that ANCSA has created and  
 9 with which we have lived, and in the spirit of a moral imperative,  
 10 as I say, and in the spirit of unity, look to how we can make it  
 11 more able to deal with the aspirations and needs of Native people,  
 12 and to do that in the time frame that allows us to respond posi-  
 13 tively and in our own terms to what otherwise could be a very  
 14 significant difficulty if the choices have to be made in 1991.

Thank you.

MR. BERGER: Thank you, Mr.

Mallott.

15           Might I just suggest that, in that very thoughtful  
 16 presentations arise, but two of them occur to me and since this  
 17 may come up again over the next three days, I take the liberty  
 18 of mentioning it now. Mr. Mallott suggested that the corpora-  
 19 tions may not be the appropriate vehicle for holding and managing  
 20 ancestral lands. That is, lands that Native people want used  
 21 and dedicated to subsistence uses. If they are not, then what  
 22 sort of vehicle is?

23           During the first three days here, it will not come as  
 24 any surprise to anyone, the suggestion that IRA councils or  
 25 traditional councils should be the vehicles for holding the land  
 came up. I suggest that that, no doubt, deserves some investiga-  
 tion. But it also deserves every good look to make sure that,  
 as Mr. Mallott said yesterday, you're not exchanging one set of  
 problems for another set. And we have Native leaders and  
 scholars from the Lower 48 coming here next Tuesday for four days

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1 to talk about their experience in the Lower 48 with IRAs.

2 Mr. Paul, who has extensive experience in these matters,  
3 made an appeal for IRAs and I'd like those of you who wish to  
4 do so to tell us the disadvantages you see in that kind of arrange-  
5 ment. You might also tell us what other possibilities there may  
6 be, if you accept Mr. Mallott's premise.

7 The other point that Mr. Mallott's presentation gives  
8 rise to is that, if the corporations are shorn, so to speak, and  
9 divested of some of their land and it is turned over to some other  
10 entity, traditional council, IRAs, whatever, then that, presumably,  
11 weakens their economic position and the political influence that  
12 flows from that. And that's a consideration. There's all kinds  
13 of questions bound up in that but perhaps you'd park it in the  
14 back of your heads and we might be able to address it a little  
15 later.

16 I'm going to ask Mr. Guy Martin to follow. Yes, you're  
17 over there now.

18 MR. MARTIN: Thank you, Judge.  
19 I'm not sure that it's the best idea that I follow Byron because  
20 I felt like he was reading from my sheet there for a little while.  
21 I know we share a good number of these ideas and let me just  
22 first say, because this is my first day here, how nice it is to  
23 be back and be associated with this whole issue again and with  
24 some awfully good people, some of whom I haven't seen for a long  
25 time.

26 Rather than try to go over some of the remarks that  
27 Byron made with which I agree, let me try to supplement them in  
28 some ways.

29 The thing that came to my mind first of all when I  
30 started thinking about your mission, Judge Berger, and the mission  
31 of this commission was to try to put the settlement act in some  
32 perspective in this year, you know, standing as it does several  
33 years away from what everyone regards as the next major event in

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1 the development of the law. And although it's an obvious thing  
2 to say, it seems to me it's important to realize that the settle-  
3 ment act has escaped the fate that many other Indian laws have not  
4 escaped, and that is that it has never been a static law. And  
5 for those who work with the Indian law regularly, and I'm really  
6 not one of those, but those who do know that they are among the  
7 most difficult to process in Congress, the most contentious,  
8 the most likely to break down and stalemate. Yet, from the very  
9 beginning, the Alaska Native Claims Settlement Act has never  
10 become such a law, and I think it can be said with absolute  
11 certainty that there were those at the time... I'm sure that  
12 everyone is probably mulling over the name of Wayne Aspinall in  
13 the back of their mind when I say that... absolutely intended  
14 that the settlement act be passed and never raised again, that  
15 it would create a set of immutable rules for the future of Alaska  
16 Natives and it would not be revisited except in the most serious  
17 of circumstances.

18 So what happened at the time is that some people  
19 walked away from that law, I think, believing that it was locked  
20 in time, it was a statute that essentially set the ground rules  
21 out and that would be the conditions under which Alaska Natives  
22 would make or break their future. What we found, obviously,  
23 is that the later amendments, and there have been several, have  
24 been absolutely critical in not necessarily disclosing flaws in  
25 the act, but simply addressing problems that were not easy to  
fully understand at the time the law was passed, and while there  
has been a change each time the law has been amended, that the  
Natives are coming in and changing the rules or someone else is  
coming in and changing the rules.

In fact, the problems that have been addressed by and  
large have been serious issues that have been discovered through  
experience in intervening years and things like the land bank  
and the subsistence provision are fine examples of addressing



1 those kinds of issues. In the future, we look out there and we  
2 have to deal with the taxation issue, submerged lands issue, the  
3 stock alienation issue and all the others that many of you know  
so well,

4 The important thing to say is that, while those are  
5 tough issues, all of those we're discussing, they're very much  
6 on the agenda. They're live issues and they're capable of being  
7 solved, and I think the people who consciously sought to make the  
8 settlement act an open, dynamic, living law ought to be commended  
9 for doing so. And there were some people who took a particularly  
active role in pressing that point particularly.

10 I might say that the same kind of logic is clearly  
11 going to attempt to be applied to the Alaska Lands Act, which  
12 deals with the conservation units in Alaska and all of us will  
probably have to face up to the issue of whether or not we try  
to lock that act in time or not.

13 In terms of the issues that have been raised and the  
14 change over the years, I would just observe that many of the  
15 issues which we now regard as the serious make-or-break issues  
16 for the Alaska Natives were certainly not discussed in detail  
17 at the time the initial act was passed and some of them, at  
18 least in my recollection, which was sort of a junior gatekeeper  
19 for one member of the delegation, were really never raised in any  
20 serious way. And I suspect that by and large those issues were  
21 not raised because they really weren't understood and weren't  
22 known. I've tried fairly hard, but on my best day I find it  
23 very difficult to construct any kind of a conspiratorial theory  
24 with regard to the corporate form that's used in the act, or  
25 any of the other major ingredients of the structure which was  
established. There are stories that many of us know as to how  
some of these provisions got in the act or how we think they  
were affected in the act and I'm sure we can tell some of those  
during our sessions. But I cannot create any evidence that makes

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1 me believe that there was anything more serious than a lack of  
2 knowledge or foresight in creating that structure.

3 The best example of the issues that were not well known  
4 or not well thought through and, certainly, not well discussed  
5 as far as I'm concerned are all the issues that relate to village  
6 power and the place in which the vil... the place the role that  
7 the villages would play in the future of this new structure that  
8 was being created under the terms of the settlement. And I've  
9 told this story before and it's only the personal recognition of  
10 one person working in a reasonably good vantage point for one  
11 member of our delegation, and it was that in terms of your  
12 questions with regard to how fee simple in the corporate form  
13 was adopted and some of the other structural aspects of the act,  
14 the issue of regions versus villages and the issue of fee versus  
15 trust land, for instance, was simply not raised very much in any  
16 of the hearings... It was probably raised at... It was probably  
17 raised to some extent because I think there were witnesses that  
18 talked about it, but it was not raised in a high profile way  
19 in any of the hearings or major discussions of the act so far as  
20 I recall in 1970 and '71. Now, I feel confident, not too much  
21 before that.

22 At the very end of the consideration of the act in '71,  
23 as it sort of wound down to this climactic enactment, there was,  
24 I perceived, a very pronounced growth in attention to the village  
25 issues and a very pronounced growth in advocacy of the trust land  
issues and a pronounced growth in the intensity of village  
advocacy in Congress, and by that I mean people just started  
showing up in greater numbers wanting to talk about those issues  
and they were not a part of the representative hierarchy of the  
AFN at that time, nor were they really felt to be, you know,  
sort of dastardly interlopers. They were simply there, talking  
about, asking about and advocating village issues. And that  
discussion, essentially, was snuffed out. Now I mean that not

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1 perjuratively in the least. It was essentially ended by passage  
2 of the act. And the act passed, really, as that discussion was  
3 starting to develop in a much more significant way.

4 Had the act not passed and, in some respects as many of  
5 you know, there were many, many chances for it not to pass in  
6 1971... Had it not passed that year, I suspect that, had we all  
7 been dealing with it in '72 and '73, that the issues of the  
8 village role and the issue of trust ownership of land would play  
9 a significantly greater part in the passage of the settlement  
act. And I'd be very interested to hear if other people had a  
similar or completely different experience.

10 The other issue that's been discussed and it was on  
11 my agenda to mention, although it was certain to come up, is  
12 this issue of the corporate structure. When I look back over this  
13 same terrain that Byron described to try to appreciate what's  
14 happened with the act over all these years, the most striking  
15 feature of the entire experience to me is the perfection with  
16 which the corporate structure has been established, not only as  
17 a management form but as a kind of mentality, a kind of identity  
18 that has been infused into the settlement and the way in which  
19 the settlement's been realized. Again, this is where it's most  
tempting to try to devise some kind of a conspiratorial theory  
that someone thought that this form would somehow be good for  
unquestioned and unfettered Alaska development in the future by  
essentially tying the Natives to a series of corporate forms.

20 But as I say, I don't think there's any case to be made  
21 to that. To the contrary, I think that what happened, Judge  
22 Berger, in answer to your question, is that, among several forms  
23 which were considered at the time, that was considered the major  
24 and best alternative to others, many of which were not discussed  
25 in great detail. But the major form, which was certainly on  
view as the alternative, was the experience of the Lower 48  
reservations and trust relationship with the federal government.

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1 And so people sort of internalized their feelings about that, had  
2 views about it, many of which were not discussed in detail in  
3 the hearings, and decided that as the best alternative, the  
4 corporate structure was the alternative to choose.

5 It's probably also important to say, and certainly all  
6 the people in this room know the dynamics of the time, that what  
7 you had in 1968 or '69 or before was a claim, a massive claim,  
8 which was certainly being perfected, not only in terms of  
9 developing a legal case for the claim, but it was being perfected  
10 in the sense that a growing body of public knowledge of the  
11 claim, public acceptance of the claim and sort of general  
12 momentum was being gathered, particularly during the latter part  
13 of the '60s. There's no telling when that claim might have  
14 been settled absent other external developments. Certainly, it  
15 would have been pressed and it would have been moved forward,  
16 but there's no doubt, as everyone knows, that the discovery of  
17 oil and the potential of building the Alaska pipeline and the  
18 land freeze and all of the elements that went into forcing that  
19 choice created a situation in which a bargain could be struck.  
20 And as I see it, that bargain was one essentially in which the  
21 Natives were presented with a series of alternatives to settle,  
22 most of which revolved around the central idea of changing their  
23 claims, which were non-productive resources in the present sense,  
24 into productive resources. That is, land owned in fee simple  
25 and money to develop that land and a structure which permitted  
them to develop it.

And looking at the movement of non-productive,  
economically productive claims, into productive ownerships of  
various types and structures of various types, the corporate  
fee simple model, which Walt correctly says is sort of the  
foundations of Western capitalism, were chosen simply because  
they were the foundations of Western capitalism, and that's a  
real good reason if what you're doing is trying to create

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1 productivity.

2           Having said that, I join with Byron in lamenting the  
3 baggage that comes with that and sort of admiring the perfection  
4 with which that corporate structure has created not only what  
5 it should have done, that is, an efficient way to manage resources  
6 and develop them and, hopefully, return a fair return on capital  
7 to the holders of the resources, but it, I think, has infused,  
8 in many cases, the entire community, an awareness of the community  
9 with an identity which is not simply a secondary or complimentary  
10 identity, but in many cases a dominant and in some cases sort  
11 of an exclusive identity for dealing with issues that may be  
12 Native issues.

13           And I know that, from time to time, Byron and a number  
14 of others from the Native community have spoken out on this and  
15 spent time trying to think through how you deal with that and  
16 maintain the central values of being a Native at the same time  
17 you're doing what corporations are supposed to do. And I think  
18 you're right in identifying the fact that, in corporations, non-  
19 economic actions are certainly permissible but they are always  
20 second priority. I think that's the best way to see it. You  
21 can't make them first priority and succeed. Even ARCO quits  
22 giving money to the arts when oil prices go down, and they're  
23 very honest about why they do it. They don't have any extra  
24 money to do it. They'd rather use it in their drilling program.  
25 It's just that simple.

          To mention two last things in brief, one of my passions  
over the years, as many people here know, has been the Outer  
Continental Shelf leasing program which, as I see it, is essen-  
tially an issue in which the federal government is pressing a  
relatively aggressive leasing program in the state, basically in  
response to an industry which wants, and understandably wants,  
acreage for drilling. And they will press for as much acreage  
as they can get. That's their job. They're corporations.

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1 in your paper is very valuable for us to keep in mind, and that  
2 is that, even with the difficulties of the corporate structure,  
3 I'm obviously saying it's going to be a hard one to move away  
4 from and, maybe, not even an appropriate one to move away from.

5 I think you've done a good job in your paper pointing  
6 out the options that are still available within that structure.  
7 That is, in something as important as the land management issues,  
8 there are a wide range of trust arrangements possible which could  
9 accomplish exactly the kinds of objectives that people say they  
10 want from the reorganization under the IRA.

11 There's a possibility of making, you know, making  
12 changes in Congress or in state law which allow Native corpora-  
13 tions do to a whole host of creative things with their land  
14 which would solve many of the problems of alienability and  
15 speculation that you mentioned. And they, obviously, have the  
16 primary choice whether to keep or sell the land, as Byron  
17 points out has been exercised well and responsibly.

18 The issue, of course, is whether or not they will do  
19 that or whether or not they have... They speaking of the Natives  
20 cumulatively... have a one-shot opportunity to go to Congress or  
21 somewhere else and in one moment of unity among the corporations  
22 to create a new approach to this whole thing, or whether or not  
23 they can, over the years, develop a... we can, together, develop  
24 ... they can develop and gain support for, maybe is a better way  
25 to say it, a series of actions which corporations can take which  
accomplish all those same ends. And I think your paper does a  
nice job of saying that, in many respects, they have most of  
the power in their hands to do that right now.

The question is, with this corporate identity which  
seems to be pronounced, they will do it or can do it.

MR. BERGER: Thank you, Mr.  
Martin.

Mr. Dave Hickok, maybe you could give us your views?

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1 MR. HICKOK: Thank you, Mr.  
2 Chairman.

3 You know, we all look through different windows on  
4 history and, indeed, every people from the Chinese on down have  
5 tried to rewrite history, some with various success and some  
6 with none.

7 I liked many of the comments that Guy made in placing  
8 a perspective on what's happened here. And I'd like to add a  
9 couple of more points of perspective, if I may, as an introduc-  
10 tion.

11 First, the institutional and legal regimes that we're  
12 talking about here do have a foundation in our history. It was  
13 Justice Marshall, in the 1790s, who really set the framework for  
14 how the United States would deal with indigenous peoples in the  
15 westward expansion of the country, and those were only by three  
16 things, by war, treaty, by purchase or compensation.

17 Now, as the United States swept westward and northward  
18 to Alaska, three forces were in effect. One was the force of  
19 westward expansion, economic growth, dominion, progress, greed,  
20 if you will, certainly development of resources and et cetera.

21 The second was the rising acknowledgment across the  
22 country, that culminated here in Alaska, finally, with ANCSA,  
23 but which actually did not culminate because some of the results  
24 here have gone back East to deal with the Passamaquoddy and  
25 the Shoshone and so on, but, nevertheless, that aboriginal  
rights would be resolved.

And the third was the force of science and conserva-  
tion. These three forces north finally came into very close  
interaction here in the past 25 years. Statehood was certainly  
the culmination of westward expansion. Aboriginal rights and  
indigenous peoples rights in ANCSA came shortly thereafter and,  
followed by that, were the resolution of those scientific and  
conservation interests that had also begun in the 19th century,

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1 and all three of these forces came together in the past 25 years  
2 in a trilon of interaction and activity.

3 Now, given that interaction of those forces, I think  
4 it's important to say, on the basis of some of the comments of  
5 the past few days, that no individual over the whole period of  
6 the development of ANCSA was involved with every phase, not a  
7 single man, living or dead, or woman either. There were seven  
8 phases of ANCSA, as I see it. One was in the 1940s and '50s when  
9 there were a few bills introduced. The other was that brief  
10 flurry of activity in '62 to '64 when the folks in Fairbanks were  
11 creating the... Al Ketzler and the rest were working on bringing  
12 people together and Howard Rock was beginning his activities.

13 And then the most significant thing of all happened.  
14 There was an earthquake in this state. That earthquake was the  
15 turning point of the Native land claim movement, whether people  
16 realize it or not. Arising from the earthquake there was the  
17 most... a very unique report to the president of the United  
18 States. It is very, very little-known and, indeed, a very rare  
19 document to this day. In that report, one of the authors who's  
20 here today, Joe Fitzgerald and Doug Jones, wrote a report to the  
21 president on the economic prospects for Alaska. That report said  
22 in part, there can be no economic progress in Alaska without  
23 the settlement of aboriginal claims, and that was a turning point,  
24 without any question, in historic terms.

25 Now, as that happened, another very unique and historic  
event took place. For the first time in American history, a  
chairman, a very important chairman, Chairman Jackson of the  
United States Senate, Secretary Udall of the Department of Interior  
and Joe Fitzgerald, who was the chairman of an independent  
commission who reported not in any bureaucracy, but rather to  
the full cabinet-at-large, made an agreement and it's only about  
two paragraphs long.

It basically says that the Federal Field Committee would

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1 do the study, Interior would pay for it, and the Congress would  
2 act upon it. And no other time, in my recollection in national  
3 history, has that ever taken place.

4 From 1964 then, particularly October of 1964 when the  
5 Field Committee came in being, until 1969, there was an activity  
6 where most of the substantive work on Native land claims centered  
7 in that committee, and in the dialogue with the Native community  
8 and in the Congress that was created. Following the passage of  
9 ... I think this... Bill van Ness might correct me... I think it  
10 was the second version of ANCSA in the Senate, the House dialogue  
11 heated up in 1970 and 1971. And that was really a period of  
12 negotiation.

13 Then, from '70... basically, January '72... to '76 was  
14 the first period of implementation on ANCSA and '76 to '84 a  
15 second wave of implementation. I point again, in those seven  
16 periods, not a single soul, living or dead, worked in all of  
17 those phases and all of those activities, so that the perspectives,  
18 the windows from which all of us look, are colored by what we  
19 worked on, and then they were manipulated and massaged by others  
20 who followed. And that really is the evolutionary effort, the  
21 evolutionary process, that shaped ANCSA entirely.

22 Now, the one thing that I think needs... another bit  
23 of perspective that needs emphasis, the Native land claims act  
24 was and is an act of compensation. It is true that there were  
25 social and economic aspects as corollaries, but it is primarily  
an act of compensation for lands taken by the United States.  
This was the redress made to the people... Native people of  
Alaska in money and in land returned.

Now, I think it's important to realize that the insti-  
tutions of the act were not only social and economic devices,  
but they were also the recipients of the compensation. They  
were created to receive the compensation. The... Many other  
recipients of the compensation were considered.



1           There was, for example, as others point out, the Lower  
 2 48 experience of reservations. There was also considered  
 3 termination, which was a process of the times, in the Menominee and  
 4 in the Klamath termination. There was also considered the IRAs,  
 5 despite all the conventional wisdom around here that IRAs were  
 6 not considered. They were considered and they were rejected  
 7 primarily on the basis of the trusteeship relationship to IRAs.  
 8 Native people, at the time in the early '60s, wanted the BIA and  
 9 the federal government out of their affairs, and so there was  
 10 consideration. There were only nine IRA corporations in Alaska  
 11 in 1966, and since then, there's been a slew of them created.

12           Now, I'd like to raise one other point in these terms  
 13 of reference. There is nothing in this statute that prevents  
 14 the Native people from realigning, themselves, their institutional  
 15 structure of their assets once they've received their assets.  
 16 Think about that, some of you attorneys, because once the cor-  
 17 porate assets... the transfer of the federal compensation has  
 18 taken place to any corporation, that corporation can realign its  
 19 assets in whatever way it wants to.

20           Now, there has been talk also of the word sovereignty  
 21 and that that was not addressed. Sovereignty certainly was  
 22 addressed. Now, sovereignty is a much ill-used word in this  
 23 dialogue. Sovereignty... There is only one sovereign in the  
 24 United States and that is the federal government. When folks  
 25 talk about sovereignty in the terms of Indian reservations, all  
 of the powers of the federal government are not delegated to  
 Indian reservations. There is a trusteeship, there are all kinds  
 of hooks on the three forms of jurisdiction that make up  
 sovereignty, which are proprietary jurisdiction, legislative  
 jurisdiction and judicial jurisdiction.

          Now, while it may be true that parts of these packages  
 are given in terms of reservations or other historic arrangements  
 with Native people, all of them are not, and the main dialogue in

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1 ANCSA about the question of sovereignty settled over the question  
2 of legislative jurisdiction. What would be the legislative  
3 jurisdiction of Native peoples, of the state of Alaska and of  
4 the federal government?

5 In great measure, the dialogue centered on fish and  
6 wildlife jurisdiction. In many of the pre-ANCSA executive  
7 orders and so on, there were statements... and you can look them  
8 up... that basically said that fish and wildlife are reserved  
9 to the local Native people. These were discussed at some lengths  
10 in the Federal Field Committee's study and also in the Congress.  
11 Indeed, three governors of Alaska, the reason they made statements  
12 before the Congress on the subsistence situation, was that they  
13 did not... the Congress was not about to grant legislative  
14 jurisdiction over fish and wildlife to indigenous people in  
15 Alaska because it would open up a can of worms throughout the  
16 whole western states on the control of fish and wildlife resources.  
17 And the Congress said, "No way are we going to open that one up."

18 So, in response to that, Governors Egan and Hickel and  
19 Miller all went on record as saying, "Hey, the state will take  
20 care of subsistence problems."

21 Similarly, someone mentioned that the offshore was not  
22 addressed. Again, you have to put this in the perspective that  
23 the package of lands and money was compensation. There was a  
24 consideration of offshore interests as part of the compensation  
25 in the Senate version of the bill, but that came out over the  
interaction period.

One last thought, and that has to do with the evolu-  
tion of the corporate idea. The corporate idea began as a quasi  
federal-state... federal-Native corporation very much like COMSAT.  
That was the original device. Gradually, this was changed into  
a statewide corporation for all Native peoples, and if you will  
look at the passage of first two... in the Senate of the first  
two bills that passed the Senate, you will see that the corporate

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1 version in those acts was a statewide system, an umbrella if you  
2 will, under which villages and local regional and village entities  
3 were involved. The corporation, in effect, was a big brother  
4 of their own. Now, the corporation on that scale would have  
5 meant that the Native land claim settlement to that corporation  
6 would have been the 11th largest corporation in the world, and  
7 Aspinall and others said, "Whoa, no way are we going to allow  
8 this power base to exist in Alaska."

9 So with that aspect of concern for the massiveness of  
10 this corporation, which had, by the way, both interests of non-  
11 profit and profit concerned with it. It was to be a funneling  
12 device for Native monies that would... Native compensation monies,  
13 that would go to the enhancement of village life. That was the  
14 main structure of the Senate version. It was, ironically enough,  
15 two of the greatest advocates of change in the Native community,  
16 Charlie Edwardson and Joe Upicksoun, who, before Congressman  
17 Aspinall, made the case for private corporations of profit.  
18 And that's on the record and somebody can look it up if they  
19 don't believe me.

20 So the change really towards economic development  
21 corporations came from the Native community, itself, not from  
22 any lawyers, advisors, what have you. And I think that's an  
23 interesting footnote to end what I have to say, Tom.

24 Thank you.

25 MR. BERGER: Thank you, Mr.

Hickok.

I think we might just continue in this way, if that's  
all right with the members of the roundtable, and later on get  
into some exchanges between one another. But I find all of this  
fascinating and... Might I take advantage, again, of my prerogative  
as chairman, to raise a couple of things. Dave Hickok said  
that there's only one sovereign... sovereignty in the United  
States. In Canada we study United States history and we were

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1 taught that you, as the inventors of federalism, invented the  
 2 idea of two sovereignties within a single state. We also, in  
 3 Canada, base the idea of Native claims and Native rights on  
 4 the judgments of Chief Justice Marshall handed down in the last  
 5 century where he described the Native people as constituting  
 6 domestic dependent nations, and I think he used the expression  
 7 "diminished sovereignty." They had a diminished sovereignty.  
 8 Well, we... This expression is yours. You invented it and it  
 9 has been adopted in Canada and virtually every other country  
 10 where there are indigenous minorities. And President Reagan,  
 11 in his statement on U.S. policy towards native Americans, in  
 12 January last year, reaffirmed in the most emphatic language  
 13 the notion of... Native sovereignty. I think he made it clear  
 14 that he was speaking of what he called "recognized IRA councils"  
 15 at the time, of which I think there are some in Alaska.

16 But that expression may be one that carries all kinds  
 17 of implications that, certainly, Chief Justice Marshall never  
 18 intended and, for all I know, President Reagan never intended.  
 19 But there it is, and I suppose we have to live with it.

20 MR. PARKER: But it's a  
 21 diminished --

22 MR. BERGER: Oh, yes. Oh,  
 23 yes. No (INDISCERNIBLE) (LAUGHTER)

24 MR. PARKER: Fortunately,  
 25 the accent has always been on diminished rather than sovereignty.

MR. BERGER: (LAUGHTER) Yes.  
 But could I just tell you that, when I held a meeting at  
 Tununak last week... at Emmonak, people said... people were  
 concerned about the land and about subsistence. At Tununak  
 they were concerned about the land and about subsistence and  
 concerned about what I think we could safely call self-rule.  
 I can't remember whether anyone used the expression sovereignty,  
 but they thought of themselves as people who ought to be able to



1 make laws governing the use of the lands they thought to be their  
2 own. And that raises the question of political institutions for  
3 Alaska Natives and I think it's on that perhaps later on you  
4 might want to consider.

4 Perhaps, also, you might tell me, if you feel like  
5 expressing an opinion, whether Dave Hickok's view about the  
6 complete freedom that the corporations have to realign their  
7 assets is something you agree with. That is, once all the land  
8 is conveyed, would they have the power to place it in the hands  
9 of an IRA or to some other form of trust or to some other entity,  
10 or if they divested themselves virtually altogether of their  
11 lands, would they be transforming themselves in a way that would  
12 give rise to minority shareholders' lawsuits? I mean, I'm  
13 sure lawsuits would accompany anything that happens in Alaska,  
14 but whether those lawsuits would be based on what you conceive  
15 to be sound principles.

13 The only other thing that occurred to me rising out of  
14 Dave Hickok's presentation was this business of this statewide  
15 corporation that would have been the 11th largest in the world.  
16 Well, I'm curious to know, if anybody wants to tell me, why  
17 that frightened everybody to death. If it had been a corporation  
18 in Texas that had no Native shareholders and was going to be  
19 the 11th largest in the world, would people have said we can't  
20 have that? I don't know.

19 Well, Charlie Johnson?

20 MR. JOHNSON: I'd like to kind of  
21 address the issue that you brought up about sovereignty and  
22 partly in relation to what David Hickok has said. Being from  
23 Western Alaska and from a village out there, I really think that  
24 what our people talk about or think about when they talk about  
25 is a freedom, and a freedom to kind of be left alone for awhile,  
or a freedom to choose, maybe not as individuals, but as a group  
of people, a course of action. I think that is a more relevant

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1 term for sovereignty for us than... or more relevant use of the  
2 term sovereign than the idea of a government capability of  
3 goverment-to-government relationship, or taxing authority, or  
4 whatever we assign sovereignty to mean. And if, in fact, that  
5 it's true with what Mr. Hickok has said about the freedom of  
6 realigning assets and the freedom of use of land in our Native  
7 corporations, and if we are interpreting, at least, maybe, I  
8 am interpreting right what I listen to when my people say really  
9 what they want to be is to be able to make that choice of how  
10 we use our land, keep our land, or whatever... Maybe, in fact,  
11 according to those types of definitions, we've achieved that  
12 type of sovereignty if, in fact, it means freedom.

13 Now, in relation to the use of the corporations, there's  
14 been no question that corporations are fraught with shortcomings,  
15 and when we talk about expectations, I know it's been brought up  
16 that some of our own people ask for corporations. When we look  
17 at the time lines that were given us, I think there were some  
18 expectations on the other side that we were expected, in one  
19 quantum leap of 20 years, to be full-fledged capitalists with a  
20 type of discipline that Byron Mallott talked about with the  
21 ability to totally use our assets for economic development or  
22 for whatever, that there were some expectations on the side of  
23 Congress that we do that. Also, I think that when you look at  
24 the opening up of the corporations to public or to other  
25 ownership, the sale of stock or the issuance of new stock, I'm  
wondering if an expectation was there that we would form some  
beneficial partnerships. Was that the thinking at the time that  
we would be skilfull enough or have the type of corporate abilities  
that major corporations have that do issue stock and control  
and utilize that incoming capital or utilize the skills of people  
that would come in with that sale of stock as a partnership in  
our Native corporations?

Now, going back to the sovereignty issue, and if, in

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1 fact, we are talking of freedom as... as a sovereign, as a  
 2 sovereignty, then we look at not the corporations as being the  
 3 deterioration of the freedom that we would have, because, cer-  
 4 tainly, the corporations give us a whole wide range of flexibility  
 5 ... The issue of IRA councils and trust relationship, you know,  
 6 must be talked about because had we taken that as the alternative,  
 7 there is no guarantee anymore that an IRA council will keep us  
 8 as unique or sovereign people than a corporation would. Because  
 9 certainly the history of that in the U.S. indicates that  
 10 because you are an IRA council is no guarantee of your survival  
 11 as a people.

12 The thing that really, I think, is deteriorating our  
 13 freedoms of choices is the imposition of state institutions over  
 14 the Native in Native Alaska. The state does not refer to us as  
 15 Natives. They refer to us, generally, as rural people, and when  
 16 we look at the state institutions that are being now developed,  
 17 we see a different layer of government that really limit the  
 18 ability of Native people and the use of Native-owned land.

19 And let me give you a great example of it, the Coastal  
 20 Zone Boards is a great example of that. Coastal Zone Boards  
 21 treat Native-owned land as public lands. They treat the use of  
 22 Native-owned lands as public lands. Now, some people have  
 23 championed the Coastal Zone Boards as our method, our local  
 24 method, of dealing with offshore oil and the giant oil companies  
 25 and all that. But there is nothing in the Coastal Zone management  
 law or the regulations that allows the private land owner a say  
 as a land owner and what happens on the regulations or the  
 authority, the zoning authority, of the Coastal Zone Boards.  
 The same could be true of, for example, the boroughs that the  
 state wants to develop in the rural areas. You know, we have  
 city councils. Now the state says, "You must have a city council.  
 We could have a traditional government but the state can come  
 in and say, "We don't care if that individual is your chief. We

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1 don't care unless you do it by a ballot box that the state  
2 verifies, we're not going to take your word or your traditional  
3 methods of electing," or acknowledge whatever method we always  
4 traditionally used to choose our leadership. And the leadership  
5 that sometimes develops out of these state institutions are not  
6 the leadership that would otherwise be developed when we do it  
7 either traditionally or without interference from rules put on us  
8 by the state.

9           So when we talk about sovereignty, I think that the use  
10 of IRAs or the placement of IRAs as a cure to some of our sovereign-  
11 ty issues is really fraught with a whole bunch of disadvantages  
12 that are not necessarily being talked about. One, with IRAs, we  
13 don't have the economic clout that we have with corporations.  
14 We don't have the ability to deal effectively with state govern-  
15 ment as an IRA council in the same method that we can deal with  
16 them as economic powers that we have with the corporations. There's  
17 only one way I think that could develop in that sense, is if  
18 there is some corporate or economic institution that would go  
19 with that IRA council, and if the IRA council... if, in fact,  
20 we're going to go back to IRAs, can develop an economic base  
21 like the corporations we now have.

22           So we have a real dilemma here of some imposition on  
23 us of state institutions at the same time that we're trying to  
24 express our own freedom or sovereignty, if you want to call it  
25 that. Because I really think that, in most of... at least, in  
my area in Western Alaska, that when we talk about sovereignty,  
we're really meaning freedom of choice, freedom of action.  
Whether or not that corporation totally gives us that, remains to  
be seen, and with the land issues and the protection that we're  
seeking for our land and the ability to use it as we choose  
without external pressures such as taxation or adverse possession,  
those questions need to be solved by us if we're going to  
continue that freedom of choice.

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1 MR. HICKOK: There's one other  
2 footnote on this corporation thing --

3 MR. BERGER: Mr. Hickok, sorry.

4 MR. HICKOK: -- and I think  
5 it's an important one. Most people think about corporations in  
6 capitalistic terms. It's really a very socialistic device.  
7 There is one vote for every unit of asset, and so the freedom  
8 of choice, I believe, is up to the various people right now.  
9 As soon as they receive their compensation, I believe that they  
10 can realign how they manage their... and protect their assets  
11 and futures.

12 MR. JOHNSON: You're bringing  
13 up a very good point about our corporations in that election of  
14 people in corporations is done... is a political process rather  
15 than a process that you would otherwise use in the election of  
16 directors or management in a normal United States corporation.

17 You take, for example, the corporate board of a bank.  
18 You bring in people either that own large blocks of shares or  
19 have the type of abilities that you are looking for for contri-  
20 bution to the effective management of that particular corporation.  
21 In our Native corporations, while that may be partly true,  
22 generally what has happened is that those with the most effective  
23 political skills, you know, are elected. We're trying to change  
24 it now in our region to where we have a broader political base  
25 and we have a representative from each village. But, you know,  
that process is a political one and the representation on the  
boards and the management of corporations is primarily a political  
process rather than an economic contribution-type process or a  
skill contribution they would find in a normal corporation.

26 One other comment about corporations in relation to  
27 your one giant corporation. If you look at, now, the reasons  
28 for particularly regional corporations' existence, what I see  
29 in them, and I don't know how widespread this is, but it seems like

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1 right now the primary function of the regional corporations is  
2 the distribution of wealth, the development of resources and  
3 the distribution of wealth. It kind of ties back to what you  
4 were talking about, the one giant corporation, but now we're tied  
5 in the same way by section 7(i) which dictates that we distribute  
6 70 percent of our net revenues, or our revenues to the pool.  
7 And when you look at the actual function of the regional corpora-  
8 tion as the development and the management of resources and the  
9 distribution of wealth.

10 MR. BERGER: Well, Mr. Hickok,  
11 the... Thank you, Mr. Johnson.

12 Mr. Hickok, the 7(i) provision that Mr. Johnson just  
13 referred to is certainly, I guess, a socialistic provision.  
14 That's the redistribution of wealth that Mr. Johnson referred to.

15 Perhaps later Mr. Mallott might comment on what Mr.  
16 Johnson said about the elections within the corporations being  
17 primarily political and to what extent that may be consistent or  
18 inconsistent with serving the profit-making objectives of the  
19 corporations. You know, I know that these institutions have  
20 served both economic and political purposes and I... Somebody  
21 referred earlier to the fight they waged on the subsistence  
22 referendum in 1982, a most important contribution to the Native  
23 cause. Perhaps we might come back to that later.

24 Mr. Havelock, maybe we could turn to you since you're  
25 writing a lot of notes there?

You can use this microphone.

MR. HAVELOCK: I'm sure, like  
everybody here, I've been dying to say something and I'm  
conscious of the fact that there are a variety of different  
communities here and I'm glad you spoke, Charlie, because I  
was thinking, you know, if we had another of these non-Native  
folks around here opinioning about it, I couldn't very well go  
on and follow in that train. We've got to alternate back and

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1 forth. As others have commented, it's kind of... in a lot of  
2 ways, it's a lot of fun to be back and see the people who were  
3 originally involved in putting this thing together. I don't  
4 know whether the program properly identifies everybody, you  
5 know, but, I mean, Bill van Ness over there was Jackson's person  
6 and Dave was speaking for the commission, as he said, that  
7 historically put the thing together, and Doug, here, was Gravel's  
8 person, and as Guy said, he was working for Begich, and my role  
9 was I was attorney general at the time and I was Egan's person,  
10 as I represented the institutional interests of the state,  
11 although prior to Egan's election, I'd been active in pushing for  
12 a Native claims settlement as a citizen.

13           The Native community was always something of a mystery  
14 to me. I knew there were tremendous political things going on  
15 but for their own strategic reasons, Native groups met by and  
16 large by themselves and then, you know, Don Wright would pop up  
17 with an opinion and you knew that there had been tremendous  
18 combat had gone on and the division of forces and Fred Paul, I  
19 know, had his two cents worth in, and they'd come out with a  
20 position but I never could tell the structure, other than to  
21 the extent of the conspicuous role of the North Slope, the way  
22 the rest of us, who were in some sense technicrats, who's roles  
23 were readily identifiable. So the table, actually, would have  
24 to be really, to have a hundred different sides, you know, and  
25 lurking in the back were the big oil companies that had their  
things.

          I want to get ahold of Bill Foster's memoirs some day.  
He was a principal lobbyist. I'm sure he doesn't like to do a  
whole lot of talking because he knows where a lot of bones were  
buried in relation to the industry. As I say, it would be a  
table with multiple sides if every interest was allowed to belly-  
up to this table, and I think all of us, as Dave remarked, had  
sort of a problem of holding onto a different piece of the elephant

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1 in describing ANCSA according to the particulars of our own  
2 institutional point of view.

3 I'm sure all of us saw, at that time and have greatly  
4 seen since, the imperfections in ANCSA and from my current  
5 perspective of a law professor, I'd like to say, to reassure  
6 everyone, that that's great. The nature of law is to be conserva-  
7 tive, to fall behind the times, and what we all thought... or,  
8 many of us thought was a great instrument at the time is more and  
9 more outdated by the needs of people today, never mind the  
10 historic aspirations, but just looking at where people are today  
11 and what they perceive as their needs. So I'm really delighted  
12 and I think it is highly appropriate for people to take a look  
13 at ANCSA and the institutions that have grown out of it and say,  
14 "Do we have an adequate legal structure today to support the  
15 aspirations of Native people in the American constitutional  
16 context and, for that matter, in the larger system of values  
17 which is worldwide?"

18 I'd like to emphasize some of the imperfections that  
19 became immediate after the settlement act just so... I know all  
20 of you are aware of them and some of you have touched on them  
21 but I haven't heard much of a list.

22 One was the total failure of ANCSA to get itself  
23 involved in any kind of serious educational effort. Whatever  
24 happened in education was ad hoc, after the fact. And here you  
25 were putting on, on the Native people, a complex system of  
corporate law and understandings in the commercial community which  
people were simply totally incapable of handling.

I teach business law now, you know. I teach corpora-  
tions that people who have spent their whole lives in Western  
civilizations don't understand how corporations work. And here  
we're dealing with people that were working, coming out of a  
subsistence culture, and somehow expecting some sort of magic  
to make this corporate structure work like it was ARCO or some-



1 thing.

2 The second thing that was built into it was, I think,  
3 an assumption that we were dealing, particularly from the  
4 congressional side, that we were dealing with economic... with  
5 the economic man, and despite a good deal of rhetoric, ultimately  
6 the ANCSA is an act which deals with economic man, not with a  
7 cultural or family man or other aspects of man and his aspirations.

8 Thirdly, clearly it seems to me now, a lack of ade-  
9 quate attention to the control of land and the alienation of land.  
10 I happen to be, since we are occasionally taking points of...  
11 heretical points here, I am much less concerned about the '91  
12 horizon with respect to stock alienation than I am with the  
13 capability which was given immediately to Native corporations  
14 to alienate land in every respect. In a sense, it's an aspect  
15 of what Dave was talking about earlier with respect to the power  
16 that is involved in corporations, the transfer of land, which  
17 he overstated but which is still a point well worth mentioning.

18 Despite what the state legislature was told last week,  
19 this is profoundly a federal question. I think it's a great  
20 mistake to think that this is simply a matter for the state to  
21 be concerned with and the Native community. The emphasis has been  
22 given here that this is both a problem and an opportunity of  
23 the United States. ANCSA did not amend the constitution, and  
24 the special relationship of Natives survives regardless of the  
25 acts that might be adopted by any particular Congress.

26 I'm sure, as Guy was pointing out, from the point of  
27 view of Congressman Aspinall, this amounted to, in many ways, a  
28 termination statute, that, you know, "Let's wash our hands of  
29 this project." I think that's unconstitutionally unsupportable.  
30 With respect to... Just to identify some of these responsi-  
31 bilities --

MR. BERGER: Mr. Havelock?

MR. HAVELOCK: Yes?

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MR. BERGER: Could you repeat

that?

MR. HAVELOCK: Sure.

MR. BERGER: You said it's constitutional or unconstitutionally unsupportable or --

MR. HAVELOCK: It's constitutionally unsupportable that ANCSA ends federal responsibility --

MR. BERGER: Oh, I see.

MR. HAVELOCK: -- for Native... the Native relations, the Indian relations, the special relationship of the federal government to the Indians of America, generally, and the Alaska Natives in particular.

What I see is, of course, that there are many powers at work that are still interested in making this into a termination statute and terminating the special relationship and Byron commented on that, in part, in talking about the movement of the federal government away from its responsibilities with respect to the special relationship. But it seems to me that we do have something of a problem here with self-fulfilling prophecies to the extent that we say that the feds can get off the hook on this thing. It seems to me that there are major responsibilities for the United States, maybe... hopefully, not the United Nations, with respect to cross-cultural education, for example, where there are substantial conflicts of interest that the state has, institutionally, which prevent it from doing a full job in the cross-cultural context. Even as an economic statute, it seems to me it should not be treated as a termination statute and I think it would be deplorable for the Congress of the United States to allow the alienation of lands through creditors' possessions, for example, which seems to me is a significant looming threat with respect to many Native assets.

(TAPE 14, SIDE B)

MR. HAVELOCK: To take...



1 Looking for institutional protection on that, I would suggest  
2 you look at, for example, the protections that are afforded to  
3 families and individuals with respect to the homestead exemption.  
4 It seems to me that we should have some kind of protection for  
5 Native land from execution from common judgment. You can't  
6 have a heritage, cultural heritage of a lifetime, being allowed  
7 to disappear because somebody got behind on a bill, on a debt.

8 With respect to... Knowing everybody here wants to talk,  
9 I'll just jump to some of the... it seems to me, some of the  
10 solutions.

11 MR. BERGER: Take your time,  
12 take your time.

13 MR. HAVELOCK: Okay... Well...  
14 (LAUGHTER) There are a lot of people that haven't spoke. I know  
15 John Borbridge is full of ideas and wants to... criticize what  
16 others of us have said, particularly those of us who represent  
17 state or federal interests.

18 (LAUGHTER)

19 MR. BERGER: Well, Mr. Borbridge  
20 has been here for three days and he's made a significant contri-  
21 bution, but you're a newcomer and we know that you've got a --

22 MR. HAVELOCK: Thank you.

23 MR. BERGER: -- lot to say,  
24 to us and to others.

25 MR. HAVELOCK: Thank you.

In terms of the solution area, or, that is, the  
exploration of alternative institutional arrangements, which it  
seems to me is what we're about here in these three days, one,  
it seems to me, is to look at the corporation in the larger  
context in which corporate law is being considered in this  
country generally. Some of you may be familiar with it and some  
not. There is nothing engraved in granite about how corpora-  
tions must be structured. It is, it seems to me, to give it a

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1 context here, corporate law is part of a delegation of sovereignty  
2 by a sovereign, a sovereign state, to allow individuals who choose  
3 so to pick up a law-making function. I mean, that is the nature  
4 of private law in our society, which is based on contractual  
5 foundations... is to give to people the power to make law. And  
6 the state sets the parameters of how people are going to be  
7 allowed to make law in the context of group activity, and that  
8 group activity, arranged with corporations or partnerships or  
9 joint stock, ventures, or whatever it is it's going to be.

10 One of the things going on now in corporation law is  
11 the general recognition that general corporate law is totally  
12 inadequate to address, for example, the needs of the... what is  
13 called the closely held corporation, the corporation that has a  
14 small number of shareholders and which, historically, has never  
15 done what the statute says it's supposed to do. In a closely  
16 held corporation, you don't have meetings of shareholders and  
17 you don't elect directors who then consider the policy. All that  
18 is rolled into one ball and one of the things that is going on  
19 now is a general revision in a number of states of corporate  
20 law to make the reality of the law conform with the reality of  
21 activity by creating special statutes for closely held corpora-  
22 tions. And it seems to me that one of the things that needs to  
23 be looked at is whether we want to take a look at creating a...  
24 changing the form of corporation, of ANCSA corporations, par-  
25 ticularly the village corporation, I may say, to reflect more  
of the reality of people's aspirations and the reality of what  
they do.

To give you one example of that, I know somebody once  
said that corporate democracy bears the relation to political  
democracy as martial music does to music. I think we ought to  
look at how shareholder arrangements are put together. The  
contemporary corporation is structured to put all power in  
management. It's, in many senses, not a profoundly, very lightly,

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1 democratic institution as anybody, if you study the structure of  
2 something like ARCO, you know, and you watch Mr. Anderson making  
3 11 billion dollar acquisitions of Gulf and things like this,  
4 you're seeing... You're not seeing democracy in action, you're  
5 seeing wheeling and dealing at the very highest level. And it  
6 seems to me that one needs to ask whether this kind of format  
7 is that in which village aspirations can be met.

8 Secondly, and this may be a second heresy for me, we  
9 are not living under an Anglo Saxon system of land tenure and  
10 haven't in half a century. The Anglo Saxon land tenure would,  
11 in fact, be more amenable to the kind of structure that would be  
12 liked and appreciated here because, under Anglo Saxon land tenure,  
13 land tenure was indivisible and was designed to hand down land  
14 from generation to generation. It followed out of a feudal  
15 system, sometimes given a bad name but which, in fact, recognized  
16 continuity in group interests.

17 With the rise of the commercial revolution, we started,  
18 in America and the U.K., treating land dislike any other form  
19 of property and it seems to me the most conspicuous aspect of  
20 land tenure today in its current system is its ultimate divisibility,  
21 that it is infinite divisibility into a system of rights and  
22 privileges and so on. And I think it would be desirable to  
23 recognize that in looking at the arrangements that might come out  
24 of a re-examination of ANCSA.

25 For example... Well, a couple of examples. One is, I  
am concerned about the degree to which, despite what Byron has  
said about the absence of any major alienation of land, the extent  
to which, in fact, interest in land in the division of property  
that I have described has allowed for major alienations of land  
with respect to rights in land through the contracts for the  
development of land, for example. And any contractual arrangement  
with respect to land in this concept of property, has a way of  
restricting the use of that land and restricting the access to it

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1 and restricting the ability of people to operate to do, let's  
2 say, what Dave Hickok was saying, of taking the assets that you  
3 have and moving them somewhere else. I think you'd find right  
4 away if you, in many of the corporate areas, if you started  
5 moving land that you'd find resistance from people that felt  
6 they had contractual rights in that land already.

7 On the other hand, it seems to me that there is something  
8 very useful here, perhaps, in the idea of separating out subsis-  
9 tence rights in land which, I think as Byron has indicated, are  
10 very difficult for a corporation to hold while still pursuing  
11 its profit motive, and to take those subsistence rights and to  
12 convey them to some other institutional setting which will be  
13 uniquely concerned with the preservation of those kind of rights.

14 The third kind of institutional setting that it seems  
15 to me you need to look at is state government. And when I say  
16 state government, I mean state local government, which is given  
17 several different forms in Alaska but we are still dealing with  
18 very immature forms with respect to how local government is  
19 ultimately going to be expressed in Alaska. We now have a system  
20 of, you know, something called the unorganized borough, whatever  
21 that is, which stands out there as... with having an undefined  
22 relationship, really, with the essential state government. We  
23 have the school districts out there which may form the basis of  
24 a borough sometime, and it seems to me that one of the things  
25 that we need to look at is whether the existing state law govern-  
ing local government provides adequate vehicle for the expression  
of the concerns of rural people. And I use that, Charlie... the  
phrase rural people because one of the reasons why the federal  
relationship must always be kept in mind is that the state is  
constitutionally disabled from dealing with people on an ethnic  
or national basis. So the state always is moving in terms of rural  
people or economic descriptions, so it seems to me that keeping your  
eye on that federal relationship is essential.

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1           On the other hand, there may be, for example, another  
 2 class of borough that needs to be created that could provide a  
 3 more adequate vehicle for Native aspiration and, perhaps, avoid  
 4 some of the problems that Charlie was talking about with respect  
 5 to the tendency, which I remember very well from the ANCSA days,  
 6 of non-indigenous people ending up dominating municipal corpora-  
 7 tions, for example, in the area and that scared off Native people  
 8 for a generation or more from the use of them until the North  
 9 Slope Borough started taking things in hand and really getting  
 10 going and showing what you can do with a form of local govern-  
 11 ment.

12           The federal IRA... Here, I guess, I'm with the conven-  
 13 tional wisdom in a way... although I think you need to look at the  
 14 federal relationship. It seems doubtful to me, not being an IRA  
 15 expert, and Dave Case ought to be here to talk about that... but  
 16 it seems doubtful to me that a statute that was set up to meet  
 17 the needs as perceived by the white community in the period  
 18 between the two world wars as a form for Native expression, would  
 19 meet the needs of a modern Alaska Native concerns.

20           On the other hand, it may be that some type of federal  
 21 corporate existence is one of the options that needs to be looked  
 22 at because of the special abilities of the federal government  
 23 to move with respect to the Native relationship. I am not  
 24 concerned about that as a non-Native person. After all, we  
 25 already have lots of federal laws that enable federal corpora-  
 tions to come into existence. In principle, there's not neces-  
 sarily a whole lot of difference between the United States  
 establishing a system of national banks, which it does, and  
 national bank corporations, and what they could do with respect  
 to creating the capability for organizations that are formed to  
 particularly fulfill the needs of Native people in Alaska or,  
 for that matter, in the rest of the country.

          As several of you remarked, it seems to me that the

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1 major overriding thing, which I rejoice in, is recognizing  
2 I can identify with, is the desire... I think it was Charlie  
3 that stated, in particular, the desire that everybody has,  
4 Native and non-Native, for control of their own destiny and  
5 bringing these kinds of things close to the people is what  
6 ANCSA, in many senses, is all about and it seems to me that  
7 ANCSA success or failure needs to be judged, in part, on  
8 whether it has managed to do it.

9           The thing that is different, and which I regret that  
10 I cannot in a very personal sense identify with but can only  
11 in historical terms, is that the nature of our society here in  
12 the Western society is to emphasize individualism at the expense  
13 of group interest. So Alaska Natives have a unique sense of  
14 community which is... those of us that are not Natives do not  
15 have the opportunity to share and that village identity which  
16 must be preserved, it seems to me, is a major aspect of what you  
17 do in whatever direction you turn in forming a... the new round  
18 of... the new legal framework, the adjusted legal framework,  
19 for Native aspirations.

20           I had a couple of footnotes, just from things that  
21 other people said. With respect to... With respect to what Guy  
22 was saying about the absence of discussion of some issues and  
23 Dave took a little crack at them here and there and some of the  
24 things that were discussed, it's all relative as to how much  
25 things were discussed. One... It seems to me that one also  
needs to look at the unconscious things that were going on and  
one of the unconscious things going on was the analogy to the  
formation of the American republic that was involved, which  
seems to me has been neglected in the literature on ANCSA.  
That is, there is, spotted throughout ANCSA, observations on  
relationships in which you can see that some people were moved  
one way or another by the idea that the regional corporation  
was going to stand as a super sovereign with relation to villages,

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1 which would stand like states do to the United States. And I  
 2 think that there's an unconscious adoption of this structure and,  
 3 in part, it seems to me one of the problems of ANCSA today is  
 4 the problem which the founding fathers of the republic had to  
 5 face which is the original constitution didn't work because it  
 6 allowed for too many islands of... and too much building of  
 7 walls between groups and between villages and there was too much  
 8 combat. So, in the constitution of 1787, the founding fathers  
 9 put together a new definition of sovereign relationships to take  
 10 care of that problem. We can see that, for example, in the  
 11 absence of... Some of these institutions were created, you know,  
 12 that were gaps, but had they adequately served the needs of  
 13 Native people generally...

14 For example, the Alaska Federation of Natives has no  
 15 standing within the structured settlement and it is, it seems to  
 16 me, weaker than it needs to be with respect to fulfilling Native  
 17 aspirations. The emphasis on the economic man in the formation  
 18 of the act meant that... and the absence of education meant that  
 19 lawyers dominated the beginnings of the fulfilling of the ANCSA  
 20 plan and little consideration was given, despite statutory  
 21 enablement, to the role that non-profit organizations might  
 22 play. Now, you've seen that grow up as a result of people's  
 23 recognition of that and we have a network of regional and other  
 24 non-profit corporations that have grown up. But I don't think,  
 25 from my mind, they are not as strong as they should be and they  
 don't get as much attention from Washington as they should with  
 respect to fulfilling the responsibility which, as I say,  
 constitutionally the federal government still has with respect  
 to health and education and these fundamental things which  
 were not addressed in the Native Claims Settlement Act.

One thing you mentioned, Charlie, sort of a footnote  
 to the act, you were talking about the problem of the condemna-  
 tion power. This is, maybe... Maybe it just tells a little bit

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1 about how legislation is made.

2 There was a concern when the act was being drafted that  
3 there would be... that condemnation power would be taken away  
4 from the state or, for that matter, from federal institutions  
5 with respect to the... with respect to the act. As it turned  
6 out, the condemnation power, although it's not been tested to  
7 the Supreme Court of the United States or anything yet, but I  
8 think by and large most legal opinion would be that the condemna-  
9 tion power is there. But there was always a possibility that  
10 somebody would slip something into the act at the last minute  
11 and that meant that the state insisted upon having much broader  
12 easement provisions than were really necessary, which caused us  
13 all kinds of headaches for the first decade under the act.

14 So you can see there was a tradeoff operated there and  
15 it seems to me much of the easement problem could have been  
16 avoided if you had a condemnation power, and if you... And it  
17 ended up with, you know, a compromise situation or with a  
18 situation that nobody really... fully anticipated.

19 I will comment on what you said, too, Judge, with  
20 respect to whether Dave is correct with respect to the opportunity  
21 to alienate land... the opportunity of the corporations to  
22 choose any form. I've already mentioned creditor interests,  
23 but there's quite a body of law with respect to minority interest  
24 which would prevent, at least on the global wave that he put it,  
25 on the transfer of lands to other entities, although it would  
be possible, it seems to me, particularly with state support  
and the amendment of... you know, one as I... talking about the  
corporate code, as it now stands, still says profit uberalis (ph)  
and when you have that built in as a statutory thing then,  
profit over all, then is going to be very hard... It lays a legal  
foundation for minorities to challenge transfers that are not  
related to that profit objective.

That's probably enough for my round. I feel a whole

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1 lot better having got that off my chest.

2 MR. BERGER: Well, thank you,  
3 Mr. Havelock.

4 I make this observation that Mr. Mallott pointed out  
5 that the corporations holding the land for 12 years now have  
6 not divested themselves of any of it. It's still in Native  
7 hands. Mr. Havelock said, "Well, they may be divested of it  
8 involuntarily through creditors' attachments," or execution or  
9 whatever it's called, and that is, seized and sold for debt.  
10 I think that is the colloquial way of putting it. And Mr.  
11 Havelock suggested that that should be barred by law. That is,  
12 Native corporate lands should be immune from seizure for debt.  
13 And then he suggested similar safeguards should be built in on  
14 heritage lines. Pretty soon, if you go that route, you've got  
15 a kind of immunity that resembles very closely the immunity that  
16 the trust lands in the Lower 48 have, and I just wonder if that  
17 doesn't weaken the economic clout that Mr. Johnson said the  
18 corporations have. If creditors know they can't attach your  
19 land, then sometimes they don't lend you money.

20 Well, per --

21 UNIDENTIFIED: The Alaska Rail-  
22 road and other public corporations do a fine job of moving  
23 economically although they are restricted with... on alienation  
24 of their lands in a number of way. That is, from creditors. You  
25 can't foreclose on the Alaska Railroad, for example.

MR. BERGER: Okay.

I wonder if we could do this, this afternoon, I'll  
take the liberty of calling on Mr. Jones and then giving the  
last word to Mr. van Ness, who has been described as Senator  
Jackson's right-hand man and, no doubt, it's appropriate we should  
call on him to conclude these opening statements. And then I'll  
ask Walt Parker and others seated opposite us if they would  
like to make observations and ask questions and, perhaps, we

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1 could proceed from there.

2 So, could we come back at 1:30? Would that be all  
3 right?

(HEARING RECESSED)

(HEARING RESUMED)

(OVERLAP TAPE 4, SIDE A)

4  
5  
6 MR. BERGER: Well, maybe we  
could... Maybe we could start again.

7 And we'll hear from Doug Jones and William van Ness, and  
8 then from Walt Parker again and any others seated at the table  
9 where Walt is who want to make observations or ask questions.

10 We've been joined this afternoon again by David Case,  
11 who is the legal advisor to the commission and who's absence  
12 was deplored by one or two members of the panel this morning  
who thought he could have answered some tough questions.

13 I should say, Mr. Havelock, that Bill duBay, the  
14 publisher of the "Arctic Policy Review", told me that when the  
15 Emperor Constantine legalized Christianity back in the third  
16 century or the fourth century, he consulted the bishops about  
17 what legal instruments should be set up to hold church land,  
18 and the emperor suggested corporations. And the bishops were  
19 concerned that the corporate model might not be suited to  
20 Christianity, that it might, in some ways, work to the  
21 disadvantage of Christian tendencies. But, as we know, they  
22 adopted... That was the corporation's soul, I think. But he  
23 reached back even farther than you when you took us back to  
24 the Articles of Confederation in the constitution.

25 Well, Mr. Jones, please proceed.

MR. JONES: Thank you, Mr.  
Chairman.

I, too, am very pleased to have been invited to join  
in the panel both personally, because it is fun to be with  
colleagues again who shared a good bit of that particular event



1 that does gather us, but also because it's a very, very useful  
2 and commendable thing to do. Government, itself, typically does  
3 not look backwards and ask itself what did it think it was trying  
4 to do when it did something. There's a great deficiency, I  
5 think, in the so-called feedback mechanisms about what government  
6 had in mind when it passed particular legislation. So it's a  
7 very, very useful thing to do and I think this particular panel,  
8 placed in between the aspirations session and then the U.S. national  
9 policy session, is a very useful one to have, because it is  
10 worthwhile to inquire what were the pitfalls we thought we  
11 were trying to avoid and what were the goals we were trying to  
12 accomplish, what implementing concepts did we choose and why did  
13 we choose those as opposed to some others?

14 Now, my own recollections of the time, just to position  
15 my own comments and remarks and participation in the matter,  
16 because I think it does help when each of us does that...  
17 Among other things, it allows you to apply whatever discount  
18 factor you want to apply for our history, each individual's  
19 history, in it. But my recollections are clearest, I think,  
20 on the matter what were we doing, '66, '67, and '68, in the  
21 case of the Federal Field Committee where I served as chief  
22 economist for those years, and then what were we doing... did  
23 we think we were doing as professional staffers, technical  
24 staffers, in the United States Senate when we actually passed  
25 the bill? So it's very helpful for me to be able to have that  
relatively narrow though eventful time to make my comments about  
and not really have anything necessarily very useful to say  
about how has it been working out and how do you go repair it  
if the thing needs repair.

Now, in some sense, it's probably... My own remarks  
are probably a little more appropriate to the aspirations session  
or, maybe, the U.S. national policy session that follows next  
week. But I think there would be agreement that the matters of

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1 aspirations and then the mechanisms in the land law... settlement,  
2 claims settlement, and then the matter of U.S. national policy,  
3 in a way, flow together so much that whatever your participation,  
4 you're going to be talking, often times, about the same thing.

5 Now, a couple other remarks in positioning what I have  
6 to say is it's important, probably, for each of us that par-  
7 ticipated at that time to try hard to avoid the mentality of  
8 vindication. You know, how was it we were as smart as we really  
9 were is probably not a terribly useful approach to it. But,  
10 also, it's equally useful not to take self-deprecation stands on  
11 this, "Gee, how did we miss that point," "How did we miss some  
12 others," "How is it that the legislation turned out to be,  
13 perhaps, imperfect?"

14 But also I think it's probably helpful to each of us  
15 to avoid the "I was there" phenomena as best you can because I  
16 think it's probably more helpful to the review commission if  
17 there's a... if all commentary and remarks are not of the  
18 story-telling variety. On the other hand, one shouldn't be  
19 too harsh about anecdotal history because an awful lot of things  
20 that happened there with respect to this land claims settlement  
21 were not anecdotal in just a story-telling way, but that's how  
22 certain concepts were born, that's how certain propositions  
23 came about, that's how the kind of pushing and hauling and the  
24 malleability of the land claims settlement really came about.  
25 So I would not be too harsh on the matter of anecdotal history  
and so maybe, if the panelists once in awhile indulge in that,  
it's not too bad.

Another reason for that, I think, is that, recall that  
this was not kind of an adjudicatory matter. This was not  
the traditional, if there are such things, court of claims, or  
Indian court of claims, activity, but it really was a political  
settlement in the best sense of small P political, by which I  
always mean policy settlement. It was a policy settlement. I'm



1 not talking about smokefilled rooms and "What did Nick say to  
2 Mike and Ted..." and so on. But I'm talking about political  
3 settlement in the public policy sense. So that small corner  
4 of it that I recall is what I want to talk about.

5 One other caveat, if you will, if it doesn't sound too  
6 defensive, I think that it's probably also useful to try not to  
7 ... not to unduly embellish these histories and person's roles  
8 in it. But remember, too, that if you worry about that, you  
9 should also worry about the fact that person's recollections  
10 about something 14, 15 years ago, equally much may lose on the  
11 forgetting great gaps side as it may be added to by improper  
12 embellishment. After all, it was an extremely complicated piece  
13 of public policy, at least in the three years that I worked in  
14 the United States Senate as a staffer and then the five more  
15 years at the Congressional Research Service, the Library of  
16 Congress. I never saw a piece of legislation more complicated,  
17 in the sense of technically, not politically, but technically  
18 complicated piece of legislation in defense matters, in public  
19 health matters... I never saw one as tough in my small world  
20 as this one.

21 Now, my own vantage point, then, is one of having been  
22 a coauthor of that important, really, important document,  
23 "Alaska Natives and the Land," as Dave Hickok generously mentioned  
24 this morning, at the Federal Field Committee. The thing that  
25 makes it a little bit more unusual, and I don't claim that it  
makes for perfect insight, but what made it a little more unusual  
was that, having worked on the Federal Field Committee, as we  
cast out "Alaska Natives and the Land" and the outlines of a  
proposal of what might be Congress might want to do, is that  
a couple of years after that I went to work in the United States  
Senate as legislative assistant to Senator Gravel. So from '69  
to '72, when I was his LA, was the exact time that we were being  
consumed, consumed as in office, by passage of the Alaska Native

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1 Land Claims Act. So my point there is that I saw it, for  
2 whatever the vantage point is worth, from two vantage points,  
3 once from the executive branch, really, as we crafted the  
4 Federal Field Committee position, and then from the legislative  
5 branch as we crafted the legislation, itself. And be aware,  
6 naturally, when I talk about we, this is a collective we that  
7 I mean, mostly professional staffers in the Senate and the  
8 House. But allow me to use we as a shorthand and not a matter  
9 of immodesty or something, talking about we in that sense.

10 There is, perhaps, another small advantage, Mr.  
11 Chairman, that I have in that I have not followed the matter  
12 since '72, not had anything to do with it, didn't look back on  
13 it, had no occasion to... Didn't lose interest in it, just that  
14 it wasn't what I was up to. So I have a reasonably uncluttered  
15 recollection of it and I'm not representing any particular posi-  
16 tion about it. It's just as best I can setting out what I  
17 thought we were up to. So mine is kind of a Rip Van Winkle  
18 stance here of coming back to it, invited back to it, some  
19 years later. Whether or not that allows more cleanliness of  
20 interest in it or something, I don't know. My interest in it  
21 is now, I suppose, trying to be accurate about what we were  
22 up to but also, what always fascinated me about it as an  
23 economist, and political economist, I guess, as opposed to a  
24 ... the more current mathematicians masquerading as an economist,  
25 was that the public administration aspects of it, the public  
policy aspects of it... of the settlement were of high interest  
to me.

So when the commission asked me about my participation  
today, I did the usual things. I reviewed some of the source  
documents that we worked with over the period, went back to bill,  
itself, which isn't a bad start, and some of the accompanying  
history... looked again at our "Alaska Natives and the Land,"  
the giant document that is hard to find now, actually. It's a

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1 great big document that John and others will remember and served  
 2 a very, very important function because, as I recall in a  
 3 crucial moment, Ambassador Goldberg was able to say to the  
 4 United States Senate, with his hand on the "Alaska Natives and  
 5 the Land," a 35 pound document or whatever it was, the analytical  
 6 and informational work has been done, it's time to settle. And  
 7 I always thought that whatever arrangements you had with  
 8 Ambassador Goldberg, that that was worthwhile, that one sentence  
 9 from him, in helping the United States Senate get prepared to  
 10 ... prepared to do it.

11 I also looked, of course, at the old Field Committee  
 12 proposals to Senator Jackson, which Senator Jackson had asked  
 13 us to do on the outlines of the possible... possible legislation.  
 14 And then, finally, looked at a few documents that... or,  
 15 articles that I subsequently wrote or published somewhere else.

16 Now, in reading the background material that the  
 17 commission sent me, the documents I looked at, of course, is  
 18 the Walt Parker paper, since that's the one that is supposed  
 19 to be the springboard of our discussion and we'll use it that  
 20 way. I also looked at the Fienup-Riordan paper that was given  
 21 on opening day, and then I looked at the little backgrounder  
 22 that the commission sent all of us as participants and had a  
 23 point or two to make about that. Then I just thought about it  
 24 for four days and came up, and hope that that's adequate prepara-  
 25 tion for three days of being together and talking about this.

26 Now, a remark on the... on the Fienup-Riordan paper  
 27 on Native aspirations with respect to the claims act, I think  
 28 it's worth making a point or two about other people's aspira-  
 29 tions, just to key on that word for a moment, that helped  
 30 surround what it was that was going on and helped determine what  
 31 the outcome of the act was. Now, obviously, it's of central  
 32 importance to go have a paper on what were the aspirations of  
 33 Natives as they... as they came to the Native land claims

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1 settlement. I'm not talking about that. But I wanted to make  
 2 the point that there were other aspirations of other very  
 3 legitimate parties to the settlement. And let me tick off, if  
 4 you will, a few of what I think were those aspirations in the  
 5 parties at the time. Of course, they included industry, as has  
 6 been mentioned, including different parts of industry. Environ-  
 7 mental groups were parties to it in various, I think, constructive  
 8 ways. Non-Native Alaskans, obviously, were other persons with  
 9 aspirations about the settlement, and other Indians around the  
 10 United States, we were well aware, had interest in and aspira-  
 11 tions about the settlement. Certainly, the state of Alaska did,  
 12 as government, the governor and, of course, John Havelock as  
 13 attorney general, and the national administration had aspirations  
 14 about the settlement at the time, and I mean the White House  
 15 when I say national administration at this point, because, as  
 16 many will remember, Mr. Agnew became party to it at one point,  
 17 not to mention the cabinet offices who, kind of obviously,  
 18 would be party to it, like secretaries of the Interior.  
 19 Also, other persons with aspirations about the Native land claims  
 20 settlement included other members in the House and Senate. Guy  
 21 mentioned Congressman Aspinall but, of course, there were others.  
 22 Senator Kennedy comes to mind, so does Senator Harris, persons  
 23 who played particular roles in shaping the outcome.

24 Another set of persons that had aspirations about the  
 25 settlement act were professional staffers, themselves, of the  
 committees and of the delegation, that is, the Alaska delegation.  
 And by aspirations, here, I'm not talking about career aspira-  
 tions and I'm not talking about something in it for the staff.  
 But I mean aspirations in the sense of all of us acting qua  
 professional staff. You know, how do you... how do you behave in  
 trying to participate in, as a member of a House or Senate office,  
 in shaping this legislation. So that aspiration was a very,  
 very important part of it as well.

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1           So I think it is especially good that John Havelock,  
2 Bill van Ness and Guy Martin and myself... I'd like to have  
3 seen John Katz, because he was Senator Steven's LA during this  
4 time, a very, very important participant from the point of  
5 view of professional staff aspirations about the settlement.

6           And I think a knowledge and some recollection of all  
7 these aspirations is probably usefull for you, in session three,  
8 anyway, on U.S. national policy, and maybe now as you look to  
9 these 1991 dates and so on that is to be worried about. So...  
10 My remarks center almost entirely on the professional staffer's  
11 reflections on this... and the legitimacy of those varying  
12 interests. It was legitimate that all these parties that I  
13 mentioned would be here.

14           Now, a point about professional staff. Recall that  
15 immodesty is required in any policy making, really, unless you  
16 believe that what the policy maker is to do is just be a reactor  
17 to how many battalions can this group muster and how many  
18 battalions can that group muster. If you think policy makers  
19 only should just kind of be pulled and hauled and stumble through  
20 to an outcome entirely in the responsive mold, then that is,  
21 of course, one view of policy making. That isn't mine. Mine is  
22 that policy making, call it whatever it is, is not a matter of  
23 just following but it does involve a certain immodesty and the  
24 immodesty, frankly stated, is that you know better, that what  
25 you're up to, and with good will and good intentions, and as  
well informed and smart as you can be, that in a sense, you know  
better or maybe even best.

          Another part of technical staff, though, is just  
that, technical. The thought was that you're supposed to be  
fairly expert about these matters and, certainly, the attorneys  
participating from the committee staffs, the most distinguished  
one being Bill van Ness, I would say, on the Senate side, clearly,  
and Guy Martin and John. They were very, very professional as

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1 technical staff acting as experts in the design of this thing.

2 But staff also act, not just as experts, but also  
3 as concensus builders because as... and you'd be annoyed if it  
4 was any other way, certainly. One can't always see the principal.  
5 One can't always see the senator or the congressman. Sometimes  
6 you deal with the rest of us during that period, and so we were in  
7 not only a form in a conduit, if you will recall, but... and  
8 we certainly weren't totally passive... We were also... not  
9 brokers, I don't want to make it too harsh... But we were concensus  
10 builders in a way, having to do, for purposes of this discussion,  
11 with the various components that became the Alaska Native Land  
12 Claims Act.

13 Now let me turn a moment... a remark or two on the  
14 background description of the overview hearings, the piece that  
15 I received, that we all received, from the commission, itself.  
16 A couple of points there... In that little write-up, it's a  
17 very good write-up, but there is a sentence that says very early  
18 on, that talks about the principles of freedom and diversity and  
19 the rule of just law. And the write-up says, "that were said  
20 to underlie the Alaska Native Land Claims Act" and then goes on  
21 to talk about de Toqueville, unease and worry and so on. I  
22 may be too defensive on that, but it seemed to me that word  
23 choice "said to underlie freedom, diversity, just law," "said to  
24 underlie" the claims act, was a little bit... suggestive of  
25 that maybe it really doesn't underlie. And I think that, again  
without being too defensive about it, I feel entirely sure that  
freedom, diversity and the rule of just law, in fact, are the  
principles that underlie that legislation. And I would say the  
uneasiness that is talked about in the write-up has more to do  
with the taxation and the stock transfer matter and the various  
possible changes in what could be described as preferential  
treatment, is what really is the basis of the unease and not  
whether the... it was a just and freedom rule.

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1           After all, when you're facing major decisions, as the  
 2 next years require, it's always unpleasant, it's always uncer-  
 3 tain, it's always tension-ridden. Its choice-making always is  
 4 difficult and, of course, it's something that one would rather  
 5 not do in personal life or in public life much of the time, and  
 6 yet that's exactly what was contemplated, I would argue, in  
 7 the design of the settlement, itself... Anxiety-inducing,  
 8 stressful period of making hard choices about what you wanted to  
 9 do is just what, in my view, was intended and always contemplated.  
 10 Because risk and opportunity always are stressful things.

11           Because what we were trying to do there was consciously  
 12 avoid a womb approach of endless trusts, of substituting a  
 13 law firm wardship or a consulting firm wardship for a BIA  
 14 wardship or a federal wardship, was what we were trying to avoid.  
 15 Those histories aren't all that admirable of the other kind and  
 16 so we were trying to, and I'll make this point several times  
 17 in different ways, we were trying to get away from that.

18           So the special tax avoidance matter that was written  
 19 into the bill... and that's all right, you know, we have...  
 20 Society is riddled with subsidized arrangements and preferential  
 21 treatments. Okay, that's all right. But we didn't have in mind  
 22 that it would be a forever special preferential treatment, this  
 23 kind of tax avoidance.

24           So what you face, I think, is a very, very healthy  
 25 prospect and ought to be viewed that way, despite the acknowledged  
 26 painfulness that is associated with it. Now, another point on

27           Now, another point on that write-up... There is a phrase  
 28 that talks about... and it's reciting concerns that people have.  
 29 It's not taking a stance in this little write-up, but it says,  
 30 "Native land..." "There's a worry that Native land resources...  
 31 of falling into non-Native hands." Well... You know, I suppose  
 32 that there are ways to worry about that and it may be a proper  
 33 worry, but this is a worry, of course, that's talked about when

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1 the assets become tradeable and transferable. Well, you know,  
2 this smacks slightly, in my view, of, you know, losing China  
3 to the Communists or Lebanon to the... the Christians lost  
4 Lebanon to the Moslems. I mean, what are we talking about?  
5 We're talking about, of course, land might and resources might  
6 fall into non-Native hands. It seems to me that phrase, depending  
7 on what's behind it, is not a... is an alarmists phrase that  
8 isn't all that helpful because the write-up goes on to say,  
9 "These concerns are not unfounded." So it seems to take a stance  
10 there. It seemed to me that that belies a very different view  
11 of the settlement than some of us had in mind when the idea of  
12 the possibility of alienating, as the attorney's say, assets into  
13 non-Native hands was exactly the possibility that we had in  
14 mind.

15 That possibility would be rooted on something that  
16 could be variously described, and one is normalcy... normal  
17 commercial behavior, a movement toward business as usual, a  
18 movement toward providing a sameness for the Native population  
19 in terms of the legal recognition and treatment that it had.  
20 That is, being like everybody else. It's got nothing to do with,  
21 I don't think, cultural traditions and this and that, but in  
22 part of one's life, it's important to be like everyone else.  
23 And the part that is important to be like everybody else, it  
24 seems to me, is the legal entitlement part and the recognition  
25 of that stature. So what I'm calling, in as neutral a term as  
I can, kind of normalcy, business as usual, in my view is one  
of the goals of what we were trying to do.

Another phrase in that little write-up that we had  
talks about the loss of Alaska Native control over their land,  
and that's all right. That's a proper description, but one  
should remember that the other side of that, properly done, in  
the transaction is a gain of income or money or value received  
for the loss of Native control over some land. So I think it's

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1 a... maybe a trite point, but it's important to recall that  
2 transactions are two-sided when they're properly and willingly  
3 entered into and so a transaction consummated is inherently  
4 two-sided and the loss of Native land control, whatever the  
5 grim implications of all that may be, is countered by a gain of  
6 something, presumably money, income, other kinds of assets.

6 Now there were also some quotes from former Congressman  
7 Meeds and his role with the Indian... Policy Review Commission  
8 and he describes American policy as "laws were piled upon laws  
9 without regard to the effect of one upon the other." Well,  
10 I don't think that accurately describes what we were up to,  
11 anyway, in crafting the Alaska Native Land Claims Act. We were  
12 very, very sensitive to not piling laws upon laws and not  
13 looking broadly at what it was that we were doing and what  
14 some of the implications might be, indeed worried a great deal  
15 about implications, knowing that there would be some for Maine,  
16 as there subsequently has been, and for Oklahoma, and, indeed,  
17 for Canada and whatever the other places are that I've since  
18 lost track of where the Alaska Native Land Claims Settlement  
19 has been a force. So we were well aware that this wasn't just  
20 a little item between Senator Jackson and the Alaska Native  
21 community. It was a great big thing that had wide, wide  
22 implications that we knew about.

19 We knew we were doing precedential... not presidential,  
20 but precedential... things, certainly within the U.S. and even  
21 internationally. We were very conscious of past settlements  
22 and their often bad and even sad outcomes. So Meeds description  
23 of U.S. Native relationships as "never been implemented by  
24 consistent, coherent policy" was what we were trying not to do.  
25 I think that, again without making it sound like a celebration  
of the beauty of the Alaska Native Land Claims Act... because  
don't charge me with that... But I just say that I do not think  
that it's fair to say that it was inconsistent and didn't have

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1 a coherent policy throughout it and certainly underpinning it.  
2 So I think the former congressman's assertions there were not  
3 fair. As you see, I'm using some of these points as a  
4 springboard to make a point or two.

5 Now, on to the Parker paper because... Academics, as  
6 others I guess, when you get a paper and you're asked to be  
7 a discussent, you read the paper carefully and you avoid telling  
8 the writer the good things he said or she said, and then you  
9 kind of zero in on the ones you want to whack at a bit. An  
10 important one, remark, in the Parker paper is that land tenure  
11 and resource control was the focus of the land claims bill,  
12 which, indeed, it was, at the expense of something Walt seems  
13 to describe as other aspects of Natives functioning in the  
14 society, really kind of implying that the legislation finessed,  
15 or attempted to finesse all these other aspects. And all these  
16 other aspects, I gather from some of our conversations of this  
17 morning of other panelists, include things like what we'd call  
18 the social dimensions, probably health and services and education  
19 and so on. And I think that that may be slightly unfair. You  
20 can quarrel about, you know, how much emphasis was there on this  
21 or that, but I think that's slightly unfair. It ignored the  
22 other aspects. Because, after all, remember what we're trying  
23 to do. We were trying to extinguish a claim and we devised a  
24 notion to do it with a combination of land and money, and the  
25 implication of that was that good things would subsequently  
happen because good things generally do happen with abundant  
land and money. Now, I notice the Fienup-Riordan paper makes  
the point that suicides and educational attrition and some of  
these bad statistics have, perhaps, not changed unduly but she  
also fairly makes the point that that isn't... that wasn't  
central to the Alaska land claims act. I mean, how much do you  
ask of public policy when you're trying to settle that kind of  
claim.

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1           On the other hand, I think that the Parker assertion  
2 there that it was at the expense of other aspects is still only  
3 partly true because those mechanisms that we chose, of how the  
4 land was allotted and the money provided were really rooted,  
5 themselves, in what I think we were trying to accomplish in a  
6 social engineering way. Byron mentioned a synonomous phrase  
7 earlier today, a social experiment, and that's right, but we  
8 were really doing some social engineering, I would say, as well.  
9 Because we were trying to accomplish some things socially.  
10 We were trying to accomplish some things individually. That is,  
11 for individual Natives and not just collectively, and that's  
12 why we had a mix of things that had to do with individuals and  
13 things that had to do with collectivism.

14           The reason we did things statewide in certain propor-  
15 tions was so that one community wouldn't unduly gain a windfall  
16 by happening to fall into it in some fashion with respect to  
17 resources. So there's a whole lot of things, devices, that were  
18 crafted in that act that I think, Walt, could fairly be described  
19 as pointed toward a social individual and attitudinal changes.  
20 Now, I'm thinking of the private corporation matter and the  
21 financial experiences matter have to do with attitudinal changes  
22 that we were hoping to accomplish, maybe even some cultural ones.  
23 After all, if you look at the land arrangements with respect to  
24 villages, and then when we put on that land selection for  
25 economic potential, and then we said, "Well, what about hardship?"  
"Yeah, let's have one in there for hardships selection," then,  
"Gee, what about subsistence use?" "Right." and we worked one  
in for subsistence use. I think that that is, surely it's  
land-oriented and money-oriented but I think was trying to get  
at some other things.

          And I would mention the ratios. I can't remember if  
it stuck in the final bill, but recall that we had a ballooning  
feature, I believe, where monies flowing into the compensation

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1 side would go in in a fashion that allowed them to be placed in  
2 particular ratios and in early time so that people presently  
3 living had access to some goodies from the settlement and so  
4 on, legitimate arrangements. Also the stock shares matter and  
5 health and services, and recall that on, specifically if that's  
6 what we're talking about, Walt, on health and services, I think  
7 it is so that there were some amendments lying around that had  
8 to do with changing the relationship of Public Health Service  
9 and the BIA to Alaska Natives in the course of this settlement  
10 and I remember, I think, that that was a raging controversy at  
11 that moment and if you look at... as I reread the legislative  
12 history, the write-up seems to go to great lengths in saying,  
13 "Now, this is... be aware that whatever we do here is not to  
14 be conceived of as a backing-away by the feds." This is... The  
15 term, maybe even used for the first time then, was bugging-out  
16 by the federal government, I recall, by writing in whether or  
17 not there might be some changes on the... on the relationship  
18 of the Public Health Service and BIA to the Natives, and it had  
19 to do, at least our motivation, it had nothing to do with  
20 bugging-out. It had to do with wondering if it was worth  
21 reopening the question of whether a racially-based health  
22 service and dentistry and so on, is the best way to do it  
23 forever. And that was fought back, as I recall it, and the  
24 legislation quite often says, "Now, we don't... No one's bugging-  
25 out" and I notice that my good friend and colleague, John  
Havelock, today made, to me, a startlingly strong statement  
about how he feels that the federal participation and obligation  
continues to be as much as before and, I don't know, maybe more.

Now, even though we said throughout the legislation  
that nothing in this was to change and so on, there was certainly  
true that there was some relation between the settlement of money  
and land and what the presumption was about the necessary long-  
term federal concern for Alaska Natives. The idea was that, you

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1 know, if you put up 500 million, initially, and 500 million more  
2 in royalties and revenue, and land... You know, unless it's a  
3 terrible ill-luck of the draw, some good things are going to  
4 happen, and those good things that are going to happen could,  
5 could, mean that the need for longer term federal relationship  
6 and participation might be a little bit less, with good luck,  
7 than it would otherwise be. In fact, some of the support... the  
8 arguments for support for the legislation had to do with  
9 convincing senators and congressmen that this was a cost effective  
10 way of attending to legitimate social and economic needs of  
11 Alaska Natives, and it was a better way, in fact, to do it  
12 this fashion than it was to forever get bogged down into annual  
13 BIA appropriations and health service appropriations for this  
14 and that. I remember a good bit of the argument getting outside  
15 support for the argument turned on that.

16 And, recall that the settlement didn't have to be land  
17 and dollars. You know, one always starts with whatever it is  
18 that worked out and that's the base. But it didn't have to be  
19 that. It might have been just land and, in my view, the reason  
20 it was dollars also was that we wanted to get a fairly quick  
21 chance at some improvements, some better things happening, in  
22 addition to paying off for what was a legitimate claim settled  
23 in a political fashion.

24 There even was, I think, some views among the staff  
25 that land and dollars were somehow substitutable over some  
range. We probably misjudged the fierceness with which the  
Native community cared about the land portion of the settlement  
being as much as it could be, and the... not lack of interest  
in the dollars, but I think we probably misjudged a bit that  
the, as best you can talk collectively about Native community,  
and I know all the difficulties with that generalization, but  
still we probably misguessed that land was quite as central and  
not very substitutable for dollars as we maybe thought they might

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1 be.

2 Recall, at the times, and different of my colleagues  
3 here have mentioned it and it isn't just a rhetorical point,  
4 that the times here were times of the '60s where upward mobility  
5 was the theme, economic development was the rampant national  
6 theme. It was the theme that was used throughout this legisla-  
7 tion... the passage of the legislation, and the... I think the  
8 Walt Parker article, paper, as well as the Riordan paper, makes  
9 this same point, that those were very much uppermost on person's  
10 minds of upward mobility, reducing barriers to upward mobility  
11 for minorities of all kind, and it was in that tradition that  
12 an awful lot of this took place. It was not just a matter of  
13 "Gee, commercial development would be held up for Sohio or  
14 somebody." That was vastly overplayed, in my view, as the  
15 occasion for settlement.

16 So the other side of that is that that time doesn't  
17 come too often where you have that confluence of forces where  
18 it's right to go do something in a major, major way as the  
19 settlement did. Indeed, as a lot of you and certainly most of  
20 us, worried about was the thing could have unravelled pretty  
21 fast if it had not been able to be moved through when it was  
22 because not everyone still believes in all of that and Alaska  
23 can't always be in front of the Congress with what is viewed by  
24 others as special pleading.

25 Now, Walt Parker writes that the Natives thought that  
the settlement involved sovereignty from the feds to themselves  
and didn't really realize that the sovereignty switch was from  
the feds to the state. Again, maybe... maybe a small quarrel  
at the margin, but I would say if that wasn't realized, that  
would be a bit strange because the state of Alaska was central  
to so much of the settlement that it would be... it seems to  
me a bit odd if one didn't notice that one of the concepts  
involved was to move this relationship out of the federal

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1 arrangement, into something that's closer to and more recognizable  
2 to most of the citizenry, and that is state government. And so  
3 the institutions that were talked about were fee simple and  
4 private corporations. Right, that's right. That's just as  
5 we had in mind, using institutions that were common and recog-  
6 nizable, with long histories and understandable, like those  
7 two, complicated, as John Havelock properly points out they,  
8 to teach corporations and maybe even fee simple. Still, we  
9 wanted easily identifiable, readily understandable institutions  
10 having to do with the state. And also, the state of Alaska, I  
11 believe, was among other compromises it made in the course of  
12 that settlement, the state was aware that it was quite likely  
13 that most of the second 500 million was to come from the state  
14 of Alaska and not from some other place. So the state has, in  
15 my view, a proper and legitimate role in the sovereignty  
16 matter. As an opinion, I would, myself, not like to see people  
17 searching for new sovereignty arrangements, especially of the  
18 tribal variety, as an opinion.

15 Walt Parker says in his paper, with respect to the  
16 fee simple ownership and the private corporation form of  
17 institutional arrangement, that this was "happenstance and lack  
18 of better alternatives." I thought that was a curious word  
19 choice. I would say it was mostly because of lack of better  
20 alternatives... that is, these were the best alternatives, and  
21 that it wasn't happenstance at all. I mean, happenstance, to  
22 me, means something a lot more casual than the agonizing we  
23 did over dreaming up something that was, I think, as inventive  
24 as the one that we did.

22 Now, both of these institutions did, that is, fee  
23 simple and private corporations, did place the state at center  
24 stage in this and that is, again, something that I think we had  
25 in mind.

Walt says, also, in his paper, and this is maybe one I

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1 should just pass over, but you talk about... You describe the  
2 problem of Congress being hoisted on its perennial petard  
3 because what is done in one state, as seen by the Congress, has  
4 to apply to all. Now I don't think that is being raised on one's  
5 petard. That's the way you do it. That's the point of the  
6 system and, indeed, I would argue... unless it's a word choice  
7 matter that we're quarreling about... that it would be an awful  
8 arrangement if there wasn't uniformity and standardization of  
9 this sort.

10 Now let me elaborate on that. I think that... there  
11 was a very widespread feeling in '69 to '72 that it was time  
12 for Alaska, not Alaska Natives, but Alaska to back away a bit  
13 from what was seen by many as an undue number and amount of  
14 special pleadings. The uniqueness argument, which has been so  
15 skillfully used by Alaska and political people in Alaska see  
16 to the flow of monies from the U.S. Treasury and various programs  
17 and all, very adroit and skilled thing, but you have to be aware  
18 that you come in with a land claims settlement and someone starts  
19 talking about 500 million to start with and 500 million more and  
20 other assets, like 44 million in land, that some legitimate  
21 parties to the matter wonder. This is not a pork barrel matter.  
22 They wonder if maybe the numbers and the frequencies of the  
23 special case for Alaska gets to be counterproductive and, maybe,  
24 hurtful.

25 Now when the settlement finished up, my recollection of  
some of the executive sessions there in the United States Senate,  
and not to breach those sessions, but my recollection was that  
most senators around the table basically felt that, while it  
wasn't quite a one-shot thing, that as a practical matter they  
weren't keen on hearing many more great big proposals that come  
in from the state of Alaska, and I say that, as I mentioned, as  
a legislative assistant to one of the senators at that time  
and there was, I think, widespread understanding that that was the

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1 notion.

2 Now, I'm aware that senators change and they surely do  
3 in Alaska, and that the personnel around committees and so on  
4 change and so maybe that isn't an encumbrance anymore, especially  
5 after 20 years. Maybe it's Alaska's turn again, but I mention  
6 it as a part of it.

7 My own thought was, on the special case matter, just  
8 one other whack at that, is that when I was with the Federal  
9 Field Committee and subsequently, was that good public policy for  
10 the nation is to have Alaska, as soon as possible, be just another  
11 sister state, and the differentness notion changed to a sameness  
12 notion. We're not talking about beauty and all that, but on the  
13 matter of how it's viewed and how it gets treated in a macro  
14 policy sense, it's a much better goal, nationally, to have Alaska  
15 take its place as just another state and not everything that has  
16 to do with the Congress and the executive branch with respect  
17 to Alaska be a great emergency or viewed as a special pleading.  
18 I always thought that was an important goal.

19 Now Walt mentions in his paper, a little more specificall-  
20 ly here, about this tricky problem of whether to alter the  
21 current arrangement as you get toward the tradeability of assets  
22 and transferability of assets, and I really am not up on what  
23 the current arguments within the state are on that. I suspect  
24 there are more than two sides in talking about this. I certainly  
25 agree it's a great big subject proper for discussion and vigorous  
debate. And Walt mentions in his paper what seemed to me to be  
some notion that maybe a refederalizing would be a good idea.  
Now if refederalizing means anything like I think it means, I  
think it's a bad idea. I think that would be unfortunate if  
you... if we came this far in moving toward normalcy... what I'm  
calling normalcy... and in a way that is helpful to get the  
federal involvement to be less... It seems to me it would be a  
major setback if persons chose to so-call refederalize through

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1 (TAPE 15, SIDE B)

2 MR. JONES: -- some arrangement.

3 I notice Walt uses a phrase, "federal communities" in his paper.  
4 Well, I suspect federal communities must be awfully close to  
5 reservations and it seems to me that's one of the few mistakes  
6 we didn't make in public policy in Alaska, to use widespread use  
7 of federal communities arrangements, and Walt uses a very  
8 interesting phrase, "relatively irrevocable" in talking about a  
9 trust. Maybe attorneys have a definition of what a relatively  
10 irrevocable trust is, but it seems to me that's an unhealthy  
11 way to go.

12 Now, if it's true that what we teach in economics and  
13 finance courses at universities and what I suspect is taught at  
14 the Chamber of Commerce in Anchorage, that shareholders really  
15 control corporations, something that's, of course, not all that  
16 obvious... But if, under the present circumstances, there is a  
17 small D democracy to shareholders and how shareholders make  
18 corporations behave and control is really there, if that is  
19 correct then the task that he talks about of getting hundreds  
20 and maybe thousands of persons to go agree on something is just  
21 the right task. That's it. That's what you do is to go do that  
22 and decide whether something is to be extended and changed or  
23 altered. So I don't find that... It's pretty frightening, I  
24 suppose, and it could be pretty painful, but the notion of  
25 shareholders behaving as shareholders, presumably freely and  
willingly, is, I think, again a concept that we had in mind  
playing out when this feature of the 1985s and the 1991s come  
due.

I think Walt gets to it correctly, especially at the  
end of his paper when he says the major protection for the future  
are institutions which benefit all Alaskans irrespective of  
location or race and that this is the way to get political  
support for something as citizens of a state, and that that is

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1 a broad-based... that that will be a broad-based political  
2 support and that is the genius of political support, is to  
3 make it broad-based and that that is the right direction to  
4 pursue, and that state sovereignty, of the private variety,  
5 offers the very best range of options and opportunities for  
6 Natives, is the sentence in Walt's paper. And I think that's  
7 entirely on target as an opinion and I think there should be  
8 a rejection of the tri... as I understand, the tribal arrange-  
9 ments or federal arrangements. After all, what you don't  
10 need, in my view, is more factions or fractions of the Native  
11 community. We don't need to replay the succession of Quebec  
12 from the Canadian circumstance. I think that, for Canada also,  
13 was just the wrong way to go. We don't need more factions and  
14 fractions.

15 Walt says that the best feature of the claims act is  
16 the flexibility it offers in... for succeeding generations of  
17 Natives to shape the future. I think that's right. I don't  
18 think that's just Fourth of July rhetoric. That's just right  
19 on target in my view.

20 He mentions the other side of the coin is the hazard,  
21 and that's right. Opportunities most always involve hazards  
22 and that, I think, brings us full circle to the thrust of the  
23 Native land claims settlement, the underlying concept of the  
24 act that I think was there. That was to settle up, in a sense,  
25 once and for all, certainly with respect to those claims, to  
compensate for the past takings, to allow time to prepare to  
transition to other arrangements, to enjoy some good happenings  
in the meantime, like early dividend distributions, and so that  
everybody has a chance, anyway, an opportunity to take their  
place, not separate and not different, if they choose to be  
fully enfranchised in the way that term is not used in the  
sense of voting in politics, but fully enfranchised in the  
sense of participation.

1           A couple... Mr. Chairman, a couple remarks or two that  
2 have come up from the morning session, as I know Bill and I are  
3 the last two participants. I think Rosita may be the last...  
4 the third participant... that come to mind were these, just a  
5 remark or two.

6           The subsistence use matter, complicated, emotional,  
7 important... For good or ill, for good or ill, I think that most  
8 of the view at the time of passage of the land claims settlement  
9 of the subsistence use item was that it was... maybe one-third  
10 legitimate argument on the merit and two-thirds a method for  
11 extending the size of the land portion of the settlement. I  
12 say for good or ill, a view about it... My, and I'd be interested  
13 if Bill or others have a vastly different recollection, that  
14 once you'd done the going from ten million acres and going to  
15 44 million acres and then the selection for the land potential  
16 and hardship and to that, and then the subsistence and land use  
17 portion, which was not included in the Field Committee's original  
18 proposal as I recall it, it left it to the state of Alaska,  
19 state administration, to see to the fair handling of those  
20 issues that would arise... that I would say there was some worry  
21 by a lot of outside participants, not so much the Alaska group,  
22 that that was a... adroit vehicle for substantial additions to  
23 the land portion of the settlement.

24           The final point, I think that while it's not a major  
25 part of it, if you care about analysis and your job and world  
has always been with analysis and information provision and  
caring about policy preparation and so on, I think we might at  
least record that part of the Alaska Native Land Claims Settle-  
ment Act was a little amendment that created the Joint Federal-  
State Land Use Planning Commission which served Alaska well, I  
think, until about... I think I have its last report, final  
report, 1979, and that that was a very appropriate place to  
put this Land Use Planning Commission because it was just crucial



1 that when you launch this thing, that you have a good attention  
2 to kind of the hard analytical work about land use planning in  
3 Alaska.

4 And the small anecdote to that was that one day I  
5 visited Attorney General Havelock in Juneau with a little draft  
6 of that idea and, in an afternoon, we whipped that out and got  
7 the governor's agreement and got back and got Senator Jackson's  
8 agreement and the Federal-State Land Use Planning Commission was  
9 allowed. And an important part of that allowance is, to me,  
10 back to the point of co-equality, that while you may not think  
11 of it a lot on the front of your mind, because Alaska's pretty  
12 lively and assertive as a state, but it was always a question of  
13 how to get Alaska, as a state government, to really see itself  
14 as co-equal to the federal government in the sense of federal-  
15 state relations. So there was always, I thought, a useful way  
16 to construct the mechanism. I'm thinking of the Federal Field  
17 Committee, itself, where the governor was the co-director of  
18 the Federal Field Committee. It was an idea to get... ma...  
19 not make the state, not coerce and not cajole, but to get the  
20 state to think of itself as a full and fair participant on  
21 these matters. And so the follow-on group, the Joint Federal-  
22 State Land Use Planning Commission, where, in fact, the state  
23 became very, very participatory, was meeting one of the goals  
24 that I think we had in mind, that act with respect to state  
25 government and the federal government.

Thank you, Mr. Chairman.

MR. BERGER: Well, thank you,  
Mr. Jones, for, I think, a spirited defense of a view of ANCSA  
based on mid-20th century notions of liberal democracy, and  
notions widely shared in the United States and in Alaska, and  
in Canada, as well.

May I, as a footnote to your paper, just say a word  
about Quebec --

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(LAUGHTER)

MR. BERGER: Well --

MR. JONES: That was gratuitous.

MR. BERGER: It is only fair, since the Prime Minister of Canada has resigned. Well, I'd be willing to do so but then I'd have to translate, I think.

Canada adopted a new constitution in 1982 and French-speaking Canadians, that is because they have a language of their own, have certain rights throughout Canada. They have rights as French-speaking Canadians. It's a characteristic that attaches to your language. They have the right to public assistance for their own... for education in their own language, wherever they live in Canada, and these are rights shared by English-speaking Canadians, wherever they live, and especially in Quebec because we have an Anglo minority of one million in Quebec and Francophone (ph), that is French-speaking, minorities in every other province, so that our constitution actually enshrines all of the notions that are in your Bill of Rights as it was enacted back in 1791 and yet we have included, as well, certain specific provisions that recognize two official languages, recognize that the country is bilingual and bicultural and which, as well, give certain rights. This is not in keeping with the notions of liberal democracy that I think you espoused. It gives certain rights to people who speak English or French and those rights are exercisable anywhere in the country, the idea being that the country is the homeland of both English and French-speaking Canadians. Our constitution also enshrines certain rights of aboriginal peoples and, in that sense, is... perhaps goes beyond, if that's a neutral expression, the constitutional arrangements that you made or adopted in 1791.

Forgive me, but we're... This is an international look at these things and will become clearly so week after next and the beauty of this sort of discourse on my part is that, apart

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1 from my wife, I don't think there's anybody else in the room  
2 who can argue with me on it.

(LAUGHTER)

3 Well, Mr. van Ness, we said you would have the last  
4 word of these opening statements.

5 MR. VAN NESS: (INDISCERNIBLE)  
6 you of that last notion, too, before we're through.

7 Thank you, Mr. Chairman. I appreciate the opportunity  
8 to have been invited to participate in what I consider a very  
9 important, a very healthy kind of midcourse review of the Native  
10 claims settlement act, where you are with it now, what positive  
11 things have flown from it and what problems there are still with  
12 it.

13 At the outset, I do want to make clear that the views  
14 I'm going to express here today are my own and not attributable  
15 to any past or present clients. And, secondly, I have to sadly  
16 report that this distinguished panel has plowed this ground at  
17 least twice from two different angles and there's very, very  
18 little left to say that's new in terms of contributing here.

19 Just very generally, though, it's my view that ANCSA  
20 has been a very, very successful piece of legislation measured  
21 against other federal legislation that is also precedent setting,  
22 unique, dealing with socially complex, historically and legally  
23 complex problems, at least by all of the measures that I see in  
24 Washington, D.C., and when I'm up here two or three times a year  
25 and when I gauge back to the way it was when we had the initial  
hearings in February '68 here in Anchorage. In general, it's  
been a very, very successful thing.

It was, as a number of the panelists have noted,  
a very radical effort at social engineering and it was done on  
a very, very calculated basis. And I think that most of the  
participants understood that there were massive risks that they  
were undertaking here, the question of the fact that many of the





1 people, most of the people who wound up in positions of top  
2 leadership in the regional corporations and the village corpora-  
3 tions knew very, very little about the corporation, very, very  
4 little about the cash economy in some cases, very, very unso-  
5 phisticated. They had access to varying grades of competence  
6 and consultants and investment advisors and attorneys, and they  
7 made a lot of mistakes in some instances. But even recognizing  
8 those mistakes and looking back on it, they did terrifically  
9 well in my judgment.

10 And one of the reasons, I think, was that there was a  
11 total new challenge here, that the Native leadership and their  
12 advisors, people they turned to, had a once in a lifetime challenge.  
13 They rose to the occasion, that the human spirit reached to the  
14 depths and brought out the best leadership and competence in  
15 everybody that was involved. That's got a bad side to it, too,  
16 that I see about the experience and that is that most of these  
17 people, like Byron Mallott and others, they're still in the same  
18 leadership position and you've got the younger people coming up  
19 behind them and there really aren't enough leadership roles.  
20 There's kind of a vaccuum there, that there are so many of you  
21 that are young, exceedingly competent, and now well-experienced.

22 But I think one of the problems you're going to see  
23 here in the villages, Mr. Chairman, is that there need to be  
24 new institutional opportunities, new institutions, perhaps, for  
25 these younger folk to exercise their leadership skills at a  
different point in time and bring their different values, different  
perspectives, different assessments as to what is important about  
this culture and new ways to define the relationship to the land  
in the context of a world that's changed greatly from what it  
was in '68, or '72, or when your first aspirations about  
settling this land problem were and they go back to well before  
'68, obviously. They were raised in statehood, they were raised  
before then.

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1 That's a problem, and I think one that needs to be  
2 addressed and I think it needs to be addressed very carefully  
3 and I suspect, from my point of view, somewhat conservatively.

4 Switching to another point, there's some blame to be  
5 passed around here, I guess. There's a great deal of credit to  
6 be taken, and it's my judgment that by and large the Alaska  
7 Native people wrote ANCSA, that they won, in general, the councils  
8 of war that none of us saw that were held in the hotels in D.C.  
9 when they got together and had to make the tough decisions about  
10 were they going to compromise with Wayne Aspinall or Scoop  
11 Jackson or Gordon Allott on an issue. But in the end, you look  
12 at it, they won 95 percent of those compromises. It's their  
13 bill. They wanted 12 ethnic regional corporations that followed  
14 the lines that they'd agreed upon and organized on. The Senate  
15 wanted seven, they said some were too small, too weak, lacked  
16 resources, too remote, they ought to be stronger. The Senate  
17 wanted to have an overall institutional investment advisory  
18 corporation with a big mutual fund. They took half the assets  
19 and ran it in there and had cautious, conservative, blue-chip  
20 Wall Street investments that were the best and the safest that  
21 could be made, and that was the part for the benefit, really,  
22 of the afterborn, that there would be something there for later  
23 generations even if the economy went bad and things didn't work  
24 out and it was a bust otherwise. There was still going to be  
25 something there. But the young, aggressive, competent Native  
leadership of Alaska didn't want that. They didn't want one  
big corporation. They wanted to make their own decisions. That  
is, the individuals and the individual regions, they wanted to  
exercise their judgment on behalf of their particular needs as  
they understood them on behalf of their people. And they won  
on that.

On the question that John raises about the whole  
question of, well, there should be a social welfare institution,

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1 a corporation, a Native foundation to look after the social  
 2 welfare side. Again, the Native people by and large didn't want  
 3 it and as a result, didn't get it. In this case they were able  
 4 to couple with many who feared statewide institutions that were  
 5 massive, large, politically powerful, had the potential of  
 6 controlling the economy of the state. So it was a marriage of  
 7 convenience in that sense. But, again, the Native community  
 8 and the Native leadership won on that issue and, I guess, time  
 9 will tell whether they were right on it but, again, the arguments  
 10 they brought to bear were good, that for their region and their  
 11 culture and their people, they were in the best position to be  
 12 making the day to day decisions about investments, about social  
 13 welfare, about land tenure, and about culture.

14 Next point is a question that John and others have  
 15 touched on here and that is the limitations of the modern  
 16 business-for-profit corporation. I don't share John's concern,  
 17 John Havelock's concern, that the corporation is too limited to  
 18 be responsive, because the corporation, throughout American life,  
 19 has turned out to be a very creative, very, very responsive,  
 20 very, very dynamic institution able to adapt itself to doing  
 21 everything that gets done in this country, practically, that  
 22 the government doesn't do per se. And the government, very often,  
 23 gets those things done by replicating that pattern, through a  
 24 COMSAT (ph) and through a variety of other federal corporations  
 25 that are... and banking institutions... that are patterned after  
 the private corporations. I think the problem is somewhat  
 different here. I think you can amend state law to have small  
 corporations, smaller village corporations, profit or nonprofit,  
 that are somewhat closely held, that are designed to enlarge  
 control of the land and for those people and fit their circum-  
 stances.

By the same token, you could do the same thing at the  
 state level. I think it's a serious, serious mistake to think

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1 that you can or should launch an effort to, or that the effort,  
2 if it's successful, would be good for you to have a federal  
3 corporation, whether you're talking about the federal IRA pattern,  
4 which I think is terribly wrong. It's a creature of the '30s.  
5 It's a different time for a different sense of problems. It has  
6 been by and large a tragic thing, in my judgment, because nothing  
7 has come of it, for the most part, except misery, grief, an  
8 awful lot of problems and not much opportunity. Part of that's  
9 because the federal government's involved, extensively involved  
10 ... it's wardship, it's trusteeship, it's the Bureau of Indian  
11 Affairs in all its worse aspects and it's nothing in the way of  
12 opportunity, in my judgment.

13 By the same token, a pattern of federal corporations  
14 after COMSAT, after the national banking system, is not good.  
15 The Alaska Native people got the attention of Congress once, once,  
16 and that was because of oil. It was after Prudhoe Bay. That's  
17 the only reason you got their attention. I mean, you sent down  
18 delegations of five to 15 of your most competent people and a  
19 few attorneys to town, but you had their attention. It was  
20 riveting. You had a great story to tell. You told it well,  
21 You played it right. You won every tradeoff and the amount of  
22 land went up and up, the dollars went up and up and, in my  
23 judgment, you closed the deal at the right time because if you'd  
24 have waited another week, it would have been gone.

25 But the point is that whatever kind of new corporate  
creation you get, you want something other than the IRA. It's  
going to be full of mistakes. It's going to have to be revisited  
time after time after time to make it even work, and you're back  
to trying something all new that, basically, is a new institution  
with new problems and it's going to be years before you get right  
back down to where you have the opportunity to be now, which is  
solving substantive problems, problems of land, land and culture,  
social problems, using tried instruments and institutions that...

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1 They're not perfect but you know how to use them. They're  
2 cost effective. The dollars that are passing through your  
3 corporations as a function of consultant time and lawyer time  
4 are going down. You less and less need the consultants, you  
5 less and less need the lawyers. If you go into new institutional  
6 arrangements, you're rediscovering the wheel and you're going to  
7 come up with something, in my judgment, that's not going to be  
8 really any better.

9 Touching on the point of oil, you had a little window  
10 that opened up in connection with the D(2) lands bill. You had  
11 the environmental community, the desire of federal land agencies  
12 to fight this out and find out what the Forest Service was going  
13 to get and so forth, so you got in there, you had their attention.  
14 And as a lawyer who, at that time, was representing one of the  
15 regional corporations, we layered in page after page of amend-  
16 ments to ANCSA in opening up new opportunities because that was  
17 the only opportunity to come along since the adoption of the  
18 Native Land Claims Settlement Act. And I don't see any real  
19 other opportunities. You've got an '85 or an '86 report coming  
20 out of the statute. I don't think that's going to be a legisla-  
21 tive opportunity. I think that's going to be a lot of shouting  
22 and screaming and recriminations, and it's not going to get  
23 anybody's attention to the point of reserving five days for  
24 hearings, field hearings, getting people lined up on legislation  
25 and then taking eight or ten days of the two jurisdictional  
committees to mark it up. It's not going to happen. You may  
have a little window of an opportunity in connection with the '86  
report on the ANWR, the Alaska... the wildlife refuge up on the  
slope, because the oil companies, again, are going to be in that  
one. It's going to be a big one, it's going to get people's  
attention. You're going to be poised to do some amending to  
take care of some of the smaller problems, midcourse directions,  
without stopping and rethinking this whole issue, trying to go

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1 back and educate people on its historical antecedents, in effect  
2 replicating the Native claims settlement act, look at that  
3 opportunity. There may be a chance to get the 30 or 40 pages  
4 of amendments and opportunities that you're capable of doing.  
5 But it's not even clear if that's going to go.

6 If that isn't it, you're really off to 1991 and making  
7 a heck of a good case to get people's attention. One of the  
8 real problems you've got is, the people that were there in '68  
9 and '70 and '72 are gone. Scoop Jackson died September first.  
10 Outside of Ted Stevens, you look at that Senate and there's nobody  
11 there. They don't know who you are, for the most part. They  
12 don't know the history of this. They don't know the social and  
13 legal injustice that lead to the adoption of ANCSA. You're  
14 starting from scratch. You're dealing with people that by and  
15 large have other priorities.

16 Talking about resources and people problems, it's  
17 acid rain. That's what the people that you have to deal with  
18 are concerned about. So the opportunities aren't great so I  
19 wouldn't try to be too ambitious in terms of what you go after,  
20 in terms of reorganizing the institutional arrangements. I  
21 would try to make the ones you've got work and work better. I'd  
22 try to open up some new opportunities and I'd do it only to the  
23 extent that you win, which means that one of the things you  
24 ought to strive for up here is concensus, and political concensus  
25 among the Native group because you can't win at all, you can't  
even get a hearing, unless you've got some concensus when you  
go down there. So you've got big problems to thrash out up  
here.

26 On that point, I think that you've got to be specific  
27 and I think one of my concerns about being here today, one of  
28 the concerns about the papers I read, have read coming in, and,  
29 specifically, the overview... short overview paper on these  
30 hearings, is that it lacks specificness. It's dealing in

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1 philosophy. It's dealing in ethical questions. It's local but  
2 it's also international in scope. It's dealing with culture.  
3 It's dealing with social welfare relationships between business  
4 corporations and the land. And these are important things to  
5 think about, to discuss. It's important that you have philoso-  
6 phical bearings and are able to make the relationships and think  
7 about them and understand them between land management and  
8 cultural aspirations and social welfare concerns and the opera-  
9 tion of business corporations. But that's a lot to swallow and  
10 nobody's ever going to agree on it.

11 These are the kinds of questions that people at the  
12 margin are always still in disagreement. So I think you've got  
13 to look at some specific things, have some specific objectives,  
14 find some specific agreement on things. And these are the tax  
15 questions, obviously, the problem of the afterborn, questions of  
16 alienability. Look for new opportunities as opposed to taking  
17 apart something that doesn't work quite 100 percent perfect and  
18 spending all your energies trying to get it back together with  
19 the knowledge you probably won't get it back together as good  
20 as it was.

21 Think about some opportunities you can get when that  
22 legislative opportunity opens up. And opportunities are things,  
23 from your point of view, that Congress doesn't have a point of  
24 view on. Present them a new something and by and large you've got  
25 tremendous goodwill there. The Alaska Native people and their  
leadership are the most competent group of legislators and  
lobbyists I've ever seen in my life. They can get in any door,  
doors that people that are in the lobbyist business as a profes-  
sion... To some extent, I do a little bit of that. It's tough  
to get in doors. You take an Alaska Native person, especially  
one in traditional garb down there, and you can get them into  
any door, sell damn near any story, as long as somebody isn't  
around to contradict it.

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1           So you've got great opportunities. I would... I would  
 2 keep it practical, pragmatic, and go after some of those oppor-  
 3 tunities. And on that score, Mr. Chairman, either under the  
 4 aegis of this commission, under the federal '85 study that's  
 5 being done, or under something that the Native corporations,  
 6 themselves, ought to commission and see that gets done, is that  
 7 we need a baseline, and we need it right now within the next  
 8 year to measure the question that we're talking about here. Has  
 9 there been any progress?

10           I haven't seen anything to compare with the "Alaska  
 11 Natives and the Land," any one book that brings together the data  
 12 that would let me judge whether this ANCSA experience was worth  
 13 a damn. What progress has there been? Is housing better in the  
 14 villages and for your people now than it was in '72? Is their  
 15 level of educational attainment better? Is the delivery of  
 16 medical services better? Is the incidence of alcoholism down?  
 17 Are families steadfast in maintaining a nuclear family unit?  
 18 Is that up since '72? And I suspect the answers to these  
 19 questions are that they're mixed. Probably alcoholism and  
 20 suicide and some of these things may be about the same as they  
 21 were then. Maybe they're higher. But don't let that back you  
 22 off in terms of going and getting the data and publishing it  
 23 and comparing it, because that's what happens when people are  
 24 given cash, when there's a lot of inflow of population, when  
 25 there's a lot of opportunity. Look at Wyoming, coal development  
 there 15 years ago. It used to be a state where divorce was  
 unheard of, alcohol wasn't a problem. Hell, after coal and the  
 money started pouring in there and the new people, off the  
 scale in terms of the na... nation, lead the nation in all those  
 things.

          On the other hand, these questions about housing,  
 average family income levels, less quantitative things such as  
 opportunity to get university education if they want it for a





1 village kid, these are important statistics. These are statistics  
2 that people can understand and you can make some judgment.  
3 Have you made progress since '82? They're also very important  
4 in terms of selling your case.

5 Now when you go back to Congress, Congress is going to  
6 say... and a lot of these guys are going to say, 40 million acres  
7 and a billion bucks? "I want to see what the progress is before  
8 you come in and ask me to 'Hey, change the institutions' or help  
9 you out in some other way in terms of some more land or even  
10 doing land exchanges and consolidations," and I highly recommend  
11 land exchanges because they don't cost anything net. It's a  
12 trade with the federal government. It's improving land use  
13 management. It's also a great opportunity for your villages,  
14 for your corporations, to get something that may be exceedingly  
15 more valuable than that icy mountain that's in their back yard.  
16 It may be an opportunity to go after land as an economic unit,  
17 land that has hardrock mineral potential, has oil and gas poten-  
18 tial or timber, tourism potential, residential. I agree with  
19 Doug, this is your land and your land is your life, but it's  
20 also your asset. You made tradeoffs and you got 40 million  
21 acres and there are units of that that can be used. It doesn't  
22 mean, necessarily, giving it up, that a lot of the land in Native  
23 ownership in Alaska is emburdened. It's in your ownership but  
24 it's subject to long-term leases, and those leases are very,  
25 very valuable. Millions and millions of dollars are paid for  
them. And hopefully, hopefully, there will be millions and  
millions of dollars of royalty and income coming out of those  
that you'll all benefit from because of 7(i) and so forth.

So there are two sides to these transactions. They  
do both need to be looked at carefully. Don't get stamped  
into only looking at one side of the transaction because there's  
political rhetoric or arguments that can be made about the  
sacredness of the land or so forth. Weigh them, evaluate them,

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1 look at the other side of the question and make rational decisions  
2 that are rational economically but are also rational from a  
3 cultural, social, historical point of view in terms of where  
4 you're going or where your people are going or where that par-  
5 ticular village wants to go and what tradeoffs they want to make.  
6 And it's got to get down to localized levels in terms of a lot  
7 of those decisions and I think the leadership in most of the  
8 regional corporations recognize that. And it makes it more  
9 difficult.

10 One other point I wanted to make. There was a lot of  
11 discussion earlier about the difficulty of the regional corpora-  
12 tion or the village corporation doing things because it's a  
13 politicized process. It's kind of like running the municipi-  
14 tality, there's real electioneering to get on the board of  
15 directors... people are running slates, they're out campaigning.  
16 It is true that relatively little of that happens with the modern-  
17 day business corporation per se, but it does happen. There are  
18 fights to get... proxy fights to get people on the board of  
19 directors. There are hostile takeover attempts and tender  
20 offers. Look at Boone-Pickens and Mace Petroleum going after  
21 Gulf right now. That's a political process. They've got public  
22 relations people, they've got lobbyists. So that's not alien  
23 to the corporate world. You get it differently, though, because  
24 your corporations... and by your choice, you made them not only  
25 business-for-profit corporations, as Byron was saying, measured  
by a very, very tough standard. And that is, generating profit,  
being lean, mean and hard, having no excess baggage. By and large,  
you aren't doing it that way. You want to make profit. Most of  
them do make profit but you also made conscious decisions that  
you're going to be a social welfare organization that's going to  
fill in behind the feds, behind the state and behind local  
government and you're going to employ so many of your region's  
people... as a... decision that has nothing to do with economics.

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1 It's to train people, train them to leadership positions. It's  
2 to pump money into local economies, and you're making conscious  
3 decisions like that. Now that makes it harder to run a corpora-  
4 tion and be profitable and have the kind of bottom line that  
5 you'd all like, or at least that your managers would like. But  
6 you're performing a governmental kind of function here that is  
7 not being backed into, I don't think. It's an outright political  
8 choice that you're making. In many cases, I think it's the  
9 right choice. It's tough to do when the economy is hard and  
10 interest rates are 20 percent, as they have been recently. It's  
11 terribly tough to do but part of your culture, your spirit,  
12 your caring about one another, or at least that's the way I  
13 read it, and I don't think it's wrong per se. I wouldn't run  
14 away from it because it's accomplishing other objectives that  
15 just don't flow to the bottom line in Arthur Anderson's report.

16 But you can see the results when you look around some  
17 of the communities, some of the corporations, and what they mean.

18 Finally, I'd go into this commission proceedings and  
19 everything else you do over the next couple of years with a  
20 heavy, heavy sense of political realism about what it's going to  
21 be possible to get done in your legislature and the federal  
22 Congress. And I wouldn't create any expectations that are too  
23 large because if you do, those of you with village and regional  
24 corporations, you're going to have real, real problems. I  
25 wouldn't... Obviously you're way to smart to over promise, but  
this whole question of creating the expectation, especially  
among the less sophisticated people in the village, less sophisti-  
cated in the sense that they don't understand the institutions  
on a day to day basis, you're going to create a problem that I  
don't know how you're going to cure. Because I just don't see  
too terrible much being delivered over the next four to five  
years in terms of fundamental change and new institutions and  
tapping of new money and giving back some of these parks and

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1 refuges that were established a couple of years ago, to either  
2 the state or to the Native people.

3 As I said earlier, I think concensus is very, very  
4 important. I think timing is also very, very important. So  
5 I'd try to get together on that concensus business as soon as  
6 possible because, even once you get it together, you may not have  
7 the right timing and you may have to sit on it for awhile. And  
8 I think the proceedings of this commission, the involvement of  
9 the people in the villages, the distinguished panel you have here  
10 and the many others that will be heard from, I think, can be  
11 very, very important but I would keep it politically realistic,  
12 focus on the practical... and when you're not focusing on the  
13 practical, make clear that everybody in the audience understands  
14 that you're now operating at a different level. We're going to  
15 talk philosophy, we're going to talk ethics, we're going to talk  
16 about the ideal world and make sure that some distinctions are  
17 being made here. Again, this problem of creating expectations  
18 that cannot or probably cannot be fulfilled is a very, very...  
19 very, very important one.

20 Thank you, Mr. Chairman.

21 MR. BERGER: Thank you, Mr.  
22 van Ness. The point you made about the data base, that is,  
23 statistics comparing the position of Alaska Natives from the  
24 point of view of health, housing, education, welfare and so on,  
25 I believe that that is a job being undertaken by the Secretary's  
1985 study, the Secretary of the Interior's 1985 study. I think  
that's what that study is about and I think those statistics  
will be made available.

MR. VAN NESS: Mr. Chairman,  
I'd like to point out though that part of the interesting history  
about the Native claims settlement act is that in 1968, when the  
Congress, the Senate, had the first hearings on the question, we  
had the Department of Interior up to ask them, "Well, who are these

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1 Native people? Where do they live? How many of them are there?  
 2 What are their social welfare conditions? What's their educa-  
 3 tion?" And I must say it was the most miserable, embarrassing  
 4 situation of my life that they couldn't answer... even begin to  
 5 answer any of those questions. Further, they said they didn't  
 6 have the capacity to go out and find any of the answers, which  
 7 lead Senator Jackson to say, well, he was going to go out and  
 8 take Senate money and hire Rand Institute or Battell Memorial Lab  
 9 to go out and search the data files and find that information.  
 10 And Senator Bartlett said, "No, I won't agree to that. We've  
 11 got a little thing in Alaska called the Federal Field Committee  
 that came out of the Alaska earthquake and I'll have Joe Fitz-  
 gerald come and see you," and he did and they did the study for,  
 I think, four hundred thousand dollars and --

MR. HICKOK: It was 55 thousand.

MR. VAN NESS: Was it 55?

Well, we were piggybacking some other money, at any event.

MR. HICKOK: That's all

the field committee spent, anyway.

MR. VAN NESS: In any event,

they may be the appropriate people to do it now, but I'd have  
 more confidence, I think, if it were done by some institution  
 like that or a state institution or by the Native community,  
 itself.

MR. MARTIN: Judge, if I could

just say... I'd like to say one thing, not really a comment.  
 But I think that last point, in answer to your question, is an  
 important one. I don't have all the details of what the  
 Interior Department is doing for that study but, totally aside  
 from their record in the past, I would be amazed, based on what  
 I know now about the way they're proceeding, that they will  
 produce a report with the requisite sensitivity and continuity  
 from the earlier report that it would give anybody what they need.



1 I think they're doing it and I think what they do will be  
2 useful, but absent some fairly independent recitation and  
3 disciplined study, I don't think you'll get answers to this  
4 whole chain of questions Bill asked about whether things  
have really gotten better over the past few years.

5 MR. JONES: Maybe we should  
6 ask Joe Fitzgerald to come out of retirement in Montana and  
gather the team one more time.

7 MR. BERGER: Mr. Hickok?

8 MR. HICKOK: Let me comment.  
9 As one who operates a information and data base in Alaska and  
10 probably has as much of this information handy as anybody, I  
11 can assure you that the 1985 study has not made any contacts  
12 with those who have the information. And I find that incredibly  
13 crazy.

14 MR. BERGER: I'm sorry that  
15 you brought it up.

16 (LAUGHTER)

17 MR. BERGER: Mr. Johnson?

18 MR. JOHNSON: I would like to  
19 make just one brief comment, Mr. van Ness, about what you refer  
20 to about the use of the corporations and the fact that we have  
21 consciously, in some cases, taken on some un... what might be  
22 called unbusinesslike or social type of activities. The problem  
23 that we have when we're faced with a corporation or this type  
24 of thing is that we're graded by two differing standards and  
25 sometimes contradictory standards. At one point we're graded  
by a social welfare-type... how well we do that type of thing.  
On the other hand, we're graded on how well we make a profit.  
And those are contradictory and difficult things for us to be  
graded upon and have both of those successes be simultaneous,  
that we have to meet them both. And it's impossible to do.

MR. VAN NESS: Well, my comment



1 on that is I agree with you a hundred percent --

2 MR. BERGER: Mr. van Ness.

3 MR. VAN NESS: You're walking  
4 a tightrope in terms of doing that by comparison with every other  
5 corporate manager that only has to look to the bottom line and  
6 be graded there, because your annual meeting is going to grade  
7 you on your social welfare contribution as well has hold you to  
8 an austere standard of profitablility. And that's... tough and  
9 impossible but I think it's a high compliment to many of you  
10 that you have performed so well in carrying that out. But maybe  
11 that is a thing that you people need to address, and I don't  
12 know what the answer to it is. Maybe it's running community  
13 colleges or vocational training or something. I don't know, but  
14 as a stop-gap basis, I think you've done a very admirable job.

15 MR. JOHNSON: Can I quote your  
16 compliment in my annual report?

17 (LAUGHTER)

18 MR. BERGER: Forgive me, the  
19 only reason I interrupt these exchanges by mentioning your name  
20 is just so it's on the record.

21 Well, I think that we should allow Walter Parker to  
22 get back into this thing now, and then some of the people sitting  
23 at Mr. Parker's table might want to make an observation or ask  
24 a question and I welcome Mr. Joe Upicksoun, who was with us  
25 earlier in the week and I'm glad to say has joined us again.

So, Mr. Parker, would you go ahead?

MR. PARKER: Yes, thank you.

I was very happy Byron Mallott opened the discussion  
in speaking of developing a moral imperative. I skirted around  
this somewhat in the paper and it was what I was addressing  
somewhat in creating a sensitivity through the educational  
process and other means in developing an overall reasonable  
consensus on what the future of Alaska is going to consist of.

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1           Certainly, there has never been a claim settlement  
2 without that moral imperative had not been developed once and  
3 it certainly can be done again, maintaining it and sustaining  
4 such a thing for the long period... I view as one of the major  
5 roles of major institutions in the state of Alaska, the university.  
6 Elements of the state government need to... have been charged  
7 with doing this sort of thing and need to continue to do it.

8           But as... In following your lead, Mr. Chairman, and  
9 going back a bit, why certainly Western capitalism shaped the  
10 Protestant Reformation to suit its need and provide it with  
11 the moral imperative that it needed for development. And no  
12 ongoing, major social development of any scale, and viewing our  
13 own social development here as a major scale, to us at least --

(TAPE 16, SIDE A)

14           MR. PARKER: -- can proceed  
15 without this happening. And in Alaska, the problem has always  
16 been in that we get a good, short burst of energy underway and  
17 then it becomes very difficult to sustain because there is no  
18 particular Protestant Reformation to sustain it, but certainly  
19 we can certainly create something. Government is a most imper-  
20 fect vehicle for the long term, too, but it does need to be  
21 done. It's probably going to be the primary responsibility of  
22 the people who live in Alaska generation after generation to  
23 insure that a solid group of them try to create that type of  
24 moral imperative which is going to make these things go forward.

25           As Guy Martin pointed out, it is a living law. It has  
been from the first and it, as I said in the paper, you have  
to view it in the context from right now of developing it over  
the next 50 years, the next two generations. One thing they  
didn't mention that I got into in the paper which I didn't  
mention in the summation was the effect of the act on the  
population patterns of Alaska. I really believe that one effect  
of the act is going to be generally to fix the villages in place

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1 for a much longer time than they would have been without the  
 2 act, and the role of the state government is to recognize this  
 3 and base its policies for the long term that the villages will  
 4 be there. Whether they are the most efficient place to deliver  
 5 services in the crudest type of analysis is not really the issue  
 6 because both governments have said, through the act, that the  
 7 villages will be there, in place and they are that kind of  
 8 framework on which you can build a future moral imperative  
 9 that, in the future, as a social makeup of Alaska.

10 I think that, looking at... Dave Hickok brought up some  
 11 of the original Marshall decisions and those things. I think  
 12 we have to, you know, really spring forward from everything  
 13 that has been developed in North America that has sprung from  
 14 those. When I studied constitutional law, Justice Marshall was  
 15 not one of my favorite sources because I disagreed with a great  
 16 deal of what he did and I still do. I think that the United  
 17 States is living with some fundamental mistakes that Justice  
 18 Marshall made that we... in not only dealing with American  
 19 Indians, but in federal-state relationships and everything else.  
 20 So, I don't... I think, you know, it's the time to think broadly  
 21 as far as developing new concepts in this as the staffers did  
 22 who wrote ANCSA. I think that nothing I have written I would  
 23 want to take away from what the people who were providing input  
 24 to that were doing in trying to change federal-state relation-  
 25 ships to meet new needs.

Bill van Ness summed up admirably at the end on that.  
 And Charlie Johnson's remarks on the state-imposed things, I  
 ... state impositions, I've... think that the state bureaucracy  
 is an absolutely key element in the successful implementation  
 of this act and, because it is close to home and more easily  
 controlled, we have a better chance of making that state  
 bureaucracy an extremely positive force that it is in some  
 areas, but unfortunately not in others. And the... It's... One

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1 of the key groups of people who are going to determine whether  
2 the villages, as social units, whether the villages, as  
3 corporations, succeed over the long term. So having state  
4 bureaucracies which are motivated to do the right thing, the  
5 right thing as we're talking about here that carries over from  
6 administration to administration, is something that I think all  
7 of us who are concerned with this need to devote a good deal  
8 of attention to.

9 I was happy in John Havelock's remarks that he got in  
10 some depth into what, you know, the true rights of the land owner  
11 have been for the last 50 years, an extremely complex subject.  
12 But as I said in the paper, I do not believe that Alaska Natives  
13 truly understood what their rights would be as land owners in  
14 the new world after ANCSA. There wasn't particular time to  
15 provide the in-depth explanations. The Native leadership  
16 certainly didn't have the financial ability to do that job at  
17 that time. I regarded it as the role of the state, primarily.  
18 The state was strapped for resources at that time. It did have  
19 enough to do it if it chose to, it just didn't choose to make it  
20 a real priority in explaining, you know, how the state was going  
21 to handle these new corporations which were creatures of the  
22 state and so forth. And I'd stand by the statement that Alaska  
23 Natives did not understand what the change to state sovereignty  
24 was going to be in all of its aspects.

25 The... Other points that John made, and it hasn't  
been Anglo Saxon land tenure for half a century. I wouldn't  
disagree with a bit, and, of course, the changing role of the  
corporation is the key element to all this. But it points out  
that, because these are rapidly evolving situations, the  
flexibility is there to create locally the kind of institutions  
that can provide a more successful resolution without going to  
Congress and, in some cases, without even approaching the state  
legislature.

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1 In... separating out the subsistence right of one  
2 of the points Doug Jones and John Havelock both brought up,  
3 Doug in pointing out where I referred to the land... the claims  
4 settlement substituted land tenure and money for satisfying  
5 other aspects. I was thinking more strongly of subsistence there.  
6 I mean, my... At that time, subsistence was important to a lot of  
7 us but not nearly as important as it became in the next ten  
8 years. So my view of it is very much colored by what went on  
9 in subsistence in the '70s, which you heard a lot about but which  
10 was not, before the tradeoff was definitely made, in order to  
11 get the bill you couldn't open up that whole raft of legal argu-  
12 ments that exist in the United States on the control of living  
13 resources. And I think the decision was right to do it that  
14 way. I don't disagree with that particular decision because  
15 it would have certainly brought in a whole new raft of dissident  
16 voices on the bill. So it's something that needs to be covered,  
17 as I said earlier, over the long term.

18 And the other point John made, individualism at the  
19 expense of group interests, I think that, going back to the  
20 villages, that we have established by saving the villages for  
21 the immediate and, hopefully, the distant future as viable  
22 social institutions, that we have established the framework  
23 where that kind of communality can continue to exist within  
24 the social framework of Alaska, irrespective of how much individu-  
25 alism pertains in the urban areas and how much of a dog-eat-dog  
situation pertains there. Hopefully, the urban areas will  
change and become more communal in their outlooks on life as  
time goes by.

I think I've... covered most of the points that  
Doug brought up. A few... Happenstance was probably a bad  
choice of words, but I used it in the sense that everyone  
involved in developing the claims settlement were, you know,  
creatures of their legal environment at that time. We were



1 working within the federal-state relationship and so, not having  
2 the time to or the political power to broaden that relationship,  
3 that's how I inserted that. But bad choice.

4 Congress and its petard I'll defend. It... Congress  
5 is... I used that in the sense that since Congress is the  
6 parent of the constitution, why it has developed the petards  
7 upon which it hangs itself, whether it's in handling discrimination  
8 between states or anything else. And I agree with you, I wouldn't  
9 particularly want a Congress which was able to discriminate  
10 strongly between the states. I don't think... Most of us would  
11 have some problems dealing with that and, indeed, in Alaska we  
12 sometimes feel that Congress discriminates against us in certain  
13 areas. If not Congress, at least the administration does.

14 On federalizing, I didn't mean that... and I went back  
15 and reread that and I don't... didn't really mean that we should  
16 seriously consider getting into refederalizing anything. It's  
17 one of the options that's been discussed strongly. But I think  
18 Bill van Ness covered that in about the same manner I would have.  
19 If I'd emphasized the point, I do believe the IRAs were for the  
20 1930s and we can certainly do better now without getting into  
21 major legislative initiatives.

22 On the point of a relatively irrevocable trust, I  
23 simply meant by that that legislative bodies have the means by  
24 which you can revoke trusts and, if the courts uphold them, why  
25 then, of course, the trust is not irrevocable. Even a very strong,  
enduring trust like the Bishop Trust in Hawaii is constantly  
subject to a tax on one means or another. But I think that  
strong trusts are a means of establishing enduring land patterns  
in Alaska in the Alaskan situation and many areas, if that's  
the desire of the land owners.

On the LUPC, I appreciated the kind words but the  
problem with the LUPC, Land Use Planning Commission, as the  
commissioners debated at greath length whether to continue the

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1 commission and the general concensus was at that time the  
2 special commission should have a finite life, and that it was  
3 the job of the existing governments, the state and federal  
4 governments, to resume their obliga... any obligations which  
5 the commission was undertaking. And those recommendations were  
6 made to both and I don't see any signs of institutional develop-  
7 ment on the state's side which is going to take the role of  
8 the commission yet in not resolving federal-state disputes,  
9 but in resolving disputes between state agencies which, as  
10 Charlie pointed out, are... probably affect most of the village  
11 corporations or any state land owner more than federal agencies,  
12 in most cases.

13 Finally, I, like Bill van Ness, have a very positive  
14 outlook on what's possible within the state. That certainly  
15 doesn't mean it's not going to... it's going to happen without  
16 a great deal of hard work, but I don't believe that anything has  
17 happened up to now that would keep us from working out a satis-  
18 factory future. And I still, after listening to my colleagues  
19 around the table, think the major responsibility is on the  
20 state government and state-created institutions to maintain  
21 that positivism and to maintain the relationships between  
22 all Alaskans to make things work out.

23 And I think, on that, I will close, Mr. Chairman.

24 MR. BERGER: Mr. Parker, could  
25 I just ask you one question? Mr. Jones said that subsistence  
was regarded by Congress in 1970-71 as not altogether a genuine  
plea for land to allow people to pursue traditional subsistence  
activities. He said it was one-third genuine and two-thirds...  
this was the view of congressmen... two-thirds a ruse to get  
more money. In the course of the Mackenzie Valley Pipeline  
Inquiry, we had the same difficulty. That is, a refusal to  
take subsistence seriously, a refusal to believe that there  
really are people out there in rural Alaska or northern Canada,

1 wherever it is, who go out and obtain their food from the land.  
2 And, of course, it's a subject where it's a little difficult to  
3 get statistics that everybody accepts. It's often difficult to  
4 get any statistics, but you mentioned that subsistence had become  
5 a special concern of yours in the '70s.

6 Do you have any observation to make on what Mr. Jones  
7 said... Mr. Jones didn't say that this was his view, but he  
8 attributed it to Congress... and what public attitudes are towards  
9 subsistence activities on the part of Alaska Natives? Not the  
10 kind of broad view of subsistence that I gather prevailed in 1982,  
11 but in that more limited sense.

12 MR. PARKER: The view of  
13 Alaskans in 1970 are --

14 MR. BERGER: Well, then and  
15 now, if you are able to...

16 MR. PARKER: I think the  
17 problem is simply that... the Land Use Planning Commission,  
18 of course, had to handle subsistence as a major concern through-  
19 out its existence, and in its first public hearings was where it  
20 began to be established as an absolute major priority. Before  
21 then, the hearing record was certainly very eloquent on the needs  
22 of Alaska Natives for wildlife, not simply for consumption but  
23 for cultural maintenance and "Alaska Natives and the Land" stated  
24 that very eloquently. So the material was there.

25 What was missing is that the... all those with interests  
in the commonwealth, legal commonwealth at that time, of Alaska  
fisheries and Alaska wildlife, were simply taking adamant  
positions and going out across the country and, of course,  
recruiting their colleagues. And I mean by that, people who  
were interested in fish and game management regarded subsistence  
at that time as anathema, and many of them still do. We've made  
some imprint there on the attitude of fish and game managers,  
but generally, you would have expected to hear from that

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1 particular group. Guides, of course, regarded it as a threat  
 2 in large, and then the urban hunting. And, you know, it's all...  
 3 The record is such a detailed one and nobody was willing to take  
 4 the time to sit down as "Alaska Natives and the Land" did and  
 5 from then on, and go through it piece by piece, area by area.  
 6 But that's the way, of course, we do fish and game regulations  
 7 in Alaska, is one small piece of the state at a time.

8 And the Congress, you know, it would have taken a great  
 9 deal of time to totally educate the Congress on this particular  
 10 issue, which not just because of the use of the consumption,  
 11 which is very real, but also because of the relationship of  
 12 wildlife to Alaska Native cultures and traditions, which we're  
 13 all familiar with now. These things were not as widely known  
 14 as they are in 1970, of course. But still, that's what I was  
 15 getting at when I said we have to continue to develop sensitivity  
 16 and linkages to get the true understanding of the importance  
 17 of this to villages, like Tununak, Point Hope, even the larger  
 18 communities, Barrow, Bethel, all of them. You know, they... It  
 19 is the understanding of the urban peoples, is still not there  
 20 as strongly as it should be. And, you know, that is a critical  
 21 education job which I regard the state as having some responsibility  
 22 for.

23 MR. HICKOK: I'd like to comment  
 24 on this. I think there are lots of memories on this subject  
 25 and everyone looks at it a little differently. But there's a  
 grain of truth in just about what everyone has said here, from  
 my memory. And I did, in 1966-67, a statewide study involving  
 hundreds of Native Alaskans on the subsistence issue and I came  
 up, and in "Alaska Natives and the Land", with 60 million acres  
 of subsistence land. And you'll recall, and as 1830, the Senate  
 version, there was a classification system for subsistence. In  
 other words, all public lands that would remain in the federal  
 government's terms would be classified with a subsistence priority

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1 around each village.

2 Now that... When that got into the dialogue between the  
3 House and the Senate, that fell out, and I think, in that context,  
4 Doug's comment about the relative importance may be right on  
5 from the Washington perspective.

6 In addition, I remember one Sunday morning getting a  
7 call, very early morning on Sunday, from Willie Hensley. I said,  
8 "My God, those guys have not gone to bed yet," and AFN was  
9 meeting on a Sunday morning and they asked me to come down. They  
10 were going down to Washington in a couple of days on some further  
11 hearings and so on, and they were in this throes of changing  
12 from the 20 million to the 40 million, if my memory is correct  
13 on that. And I said, "For God sakes, if you're going to base  
14 any of this on subsistence, go for 60," and, of course, it never  
15 got really articulated that that was the real, or as close as  
16 anybody had been able to figure it, land base of actual use and  
17 occupancy.

18 It would be... It has not been done in this state on  
19 any statewide basis, any real appraisal of what subsistence  
20 lands are needed. We've done bits and pieces of it. In the  
21 Arctic villages, Arctic Slope Regional Corporation, there's a  
22 very finite inventory that took place in the planning process  
23 over four years... Joe, wasn't it?... of village meeting after  
24 village meeting over a period of four years in which all the  
25 elders and all the folks involved put down in detail where the  
hell their sled tracks were. And that has not been done in...  
as widely across the state as it would be necessary to really  
examine the subsistence issue closely again. But I think there  
was a big slippage in the House-Senate compromise when the  
subsistence classification around villages was allowed to go by.

MR. BERGER: Yes, Mr. Parker?

MR. PARKER: Just to follow up  
a little bit on that, you know, when I was on the Board of Fish

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1 and Game, why, at that time, you know, the issue was before us  
 2 all the time in the early '70s and the boards of that period  
 3 were adamant that they wouldn't even consider a concept such  
 4 as subsistent... subsistence areas. And after I left the board  
 5 and was with the commission, I had two commissioners to work  
 6 with and I wasn't able to move either one of those even an  
 7 inch towards really, even though after we got the state's  
 8 subsistence legislation passed and got a subsistence division  
 9 created, getting that simple concept that, you know, of a  
 10 subsistence area created has run into extremely strong opposition.  
 11 And that's why I keep emphasizing that, you know, building  
 12 sensitivity to the reality of this as local needs and the rights  
 13 of local protection is not something that's going to be achieved  
 14 easily. But I think we have made some headway. I think that  
 15 attitudes in major urban areas, while they wouldn't appear to  
 16 have changed, if you listen to some spokesmen, if you were to  
 17 get into some reasonable surveys, there would have been changes  
 18 since the early '70s. So it's one of the reasons why I'm some-  
 19 what more positive than others, maybe, on these things.

MR. BERGER: Yes...

16 MR. HICKOK: If you want to  
 17 recognize someone else, that's okay.

18 MR. BERGER: Yes, I will, then.  
 19 Mr. Peterson, then, Frank Peterson.

20 MR. PETERSON: Thank you,  
 21 Mr. Chairman.

22 First of all, I guess I need to say, as I'm sure has  
 23 been said before as you started this conference, that I'd like  
 24 to express the appreciation to the Inuit Circumpolar Conference  
 25 group and the World Council of Indigenous People in sponsoring  
 this conference, these hearings.

Individually, I serve as the president of our village  
 corporation called Ayakulik right now. I'm a current director

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1 of our regional corporation in Koniag. I also have served as a  
2 tribal president for one of our villages.

3 As I've been listening to a lot of these comments here,  
4 many questions have been coming out and I'm trying to understand  
5 the purpose of this Alaska Native Review Commission and as you  
6 state, to do an independent assessment of what's happening in  
7 Alaska to indigenous people. It's an international effort to  
8 to assess the affects of ANCSA, what has happened since 1971,  
9 recommendations will be made for the future of Alaska Natives,  
10 et cetera.

11 Now, I do have some strong feelings about what has  
12 transpired to date since 1971. I have served in Washington  
13 along with Guy Martin in Congressman Begich's office as an  
14 intern so I was able to observe the activities pertaining to the  
15 claims act during that time.

16 Just a note here before I forget it, it was very  
17 interesting to hear all of these comments, people like van Ness  
18 who have been directly involved, Doug Jones and Guy Martin, John  
19 Havelock. But I would hope and urge the commission that, as you  
20 travel to the villages, that you pay as much attention to the  
21 comments that they will be making out there as you have here. I  
22 know that you have professionally-done papers here that are going  
23 to have an impact, I'm sure, on the results of this study and  
24 the conclusions that you're going to be drawing based on these  
25 kinds of comments, as they compare to the comments you're going to  
receive from the villages.

As we started this hearing this morning, one of my  
first notations that I made was immediate reaction, ANCSA as it  
pertains to Alaska Natives is a farce, you know, because as I  
look back, how much land has the Native communities or Native  
people actually gotten to date? Okay, it was commented earlier  
that land is not accruing to individual Natives, that is true,  
very true. As to the amount of money that is being referred to

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1 as 962.5 million, I think I've added up a total of six thousand  
2 dollars, plus or minus, that individual Native people have  
3 accrued as a result of the claims act. So in that sense, it is  
4 a farce.

5 I've heard comments such as landmark achievements,  
6 heard comments about the claims act being... a very successful  
7 legislation, but in terms of the individual Native person, I  
8 would have to contradict that. I don't think it's been very  
9 successful. All one needs to do at present is look at the 200  
10 and some annual reports that are required to be submitted, take  
11 a look at the 12 regional annual reports. I think it was Mr.  
12 van Ness who said that there's no documentation now similar to  
13 the "Alaska Natives and the Land" that would indicate any progress  
14 as a result of the claims act. Well, take a look at some of  
15 the annual reports. And I think in the Western society, as far  
16 as profitability, one looks for the bottom line, profit or loss.  
17 I think if you look at the status of each of these 200 or so  
18 corporations today, you will find a dismal failure in this  
19 concept and experiment called the Alaska Native Claims Settlement  
20 Act.

21 I need to say these things because they're bothering  
22 me. I'm sure they may be bothering a lot of people who may be  
23 listening or are going to be reviewing the results of this hearing.  
24 Like I said, there are a lot of questions that I have that are  
25 coming up. They're not properly formulated yet, but I think as  
the commission travels to the villages, you're going to be hearing  
some very strong comments about the pros and cons of the Alaska  
Native Claims Settlement Act.

One additional comment I'd like to make is with  
regard to what Mr. van Ness and Mr. Parker said about the IRA  
act being a product of the 1930s. You know, I grant you that.  
It is a piece of legislation that was written back then, but as  
far as the application of that law here in the state of Alaska,

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1 among our village communities to date, that law has not been  
 2 given the opportunity to work. People have not been given the  
 3 chance to make that law work. I think if we were to reassess  
 4 the practicality of the Indian Reorganization Act as it pertains  
 5 to Alaska, I think that may be the best possible way to implement  
 6 a piece of legislation similar to ANCSA because, in the first  
 7 place, it is a form of government which can provide services to  
 8 the people that we refer to in the claims act, in a certain  
 9 section of it, also as it pertains to the profi... profitability  
 of a corporation. It provides for a federal charter in that act  
 for village communities or tribes to get involved in profit  
 activities.

10 So I must disagree with your statements that the IRA  
 11 act is not workable in Alaska. All I.... I think I need to say  
 12 that it needs to be given a chance to work before it is completely  
 condemned.

13 Thank you.

14 MR. BERGER: Thank you, Mr.  
 15 Peterson.

16 Well, that certainly gives us two views of the claims  
 17 act here today. Mr. Havelock and then Mr... Oh, Mr. Havelock,  
 you wanted --

18 MR. HAVELOCK: Thank you.

19 Some of these things tend to get lost. I know you've  
 20 got other speakers you want to get on, but I would not remember  
 21 some of these things later on. I guess whether it's a dismal  
 22 failure, as Frank said, or whether it's a great success may  
 depend, in part, on whether you come from the village or whether  
 you come from Washington, D.C.

23 I wanted to let go... did not want to let go Doug's  
 24 remark that... which has been touched on by others that subsistence  
 25 was viewed as an adroit vehicle as... At least it certainly  
 wasn't some sort of a scheme on the part of Native interests and



1 certainly wasn't seen by those of us in state government as  
2 anything like that, nor was it seen that way by the commission,  
3 as Dave Hickok has pointed out. The 60 million... In fact, at  
4 some point, 90 million acres, as I remember, was talked about as  
5 the subsistence framework for Alaska Natives. Once that number  
6 was out, of course, it did become useful to use that and see  
7 what else you could get in terms of the economic settlement  
8 because the problem with the... with those larger numbers was  
9 that they, all they were going to do was give a trust... a  
10 trustees... or, pardon me, a trust beneficiary's interest in the  
11 land and you'd get, you know, the right to hunt and fish and  
12 gather on it but you weren't going to get a dime's worth of  
13 any other estate in it.

14 Bill commented, in beginning his remark... Mr. van  
15 Ness, that it, from... it was measured as radical social engineer-  
16 ing. It was a success, and that brought to mind immediately  
17 what Fred Paul had said over and over during the settlement and  
18 Joe Upicksoun and others, that... who insisted that this was to  
19 be a settlement of a legal claim and we should understand it as a  
20 settlement of a legal claim because they understood, from their  
21 past experience, that if it was started and treated and brought  
22 social legislation, that it was going to be, as has in some  
23 senses been implied in what's been said here, some kind of a  
24 termination act. That is, it would absolve the federal govern-  
25 ment of any further responsibility for the social and health and  
other purposes of Native peoples and other responsibilities.

Viewing it as a legal claim, though, did have its  
deficits in that it tended to bring more of a focus on the  
quantitative aspects of it. I mean, how many hours and days were  
spent talking about numbers of acres and numbers of dollars and,  
relative to that, the qualitative aspects of the settlement,  
including the system of corporations and so on, was relatively  
neglected, even though it was discussed.

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1           And it seems to me that Mr. Peterson's point with  
 2 respect to the failure comes home with respect to that social  
 3 engineering aspect which was inevitably in it. That is, from  
 4 the point of view of Alaska Natives, there was certainly a... a  
 5 settlement of the claim but from the point of view of the  
 6 Congress, the point of view of the Alaskan state institutional  
 7 interest, it was, indeed, some kind of a social settlement also.  
 8 And there was great concern on the part of the governor and the  
 9 part of others that the vehicle was going to deprive us of the...  
 10 of the... some of the major aspects of social justice, if you  
 11 will, that needed to be addressed. The background to the adop-  
 12 tion of the Alaska Native Claims Settlement Act was, in part,  
 13 the courageous and ultimately united push of the Alaska Natives  
 14 for their settlement, but the other part of it was the Congress,  
 15 which you may remember in that era was aroused by the picture  
 16 of poverty in rural Alaska, and by poverty, generally, in the  
 17 United States.

18           A corporate form didn't really address that and I think  
 19 that Mr. Peterson is quite correct in identifying the impact of  
 20 the settlement with respect to the average village dweller. Let's  
 21 face it, the corporate form is basically an institution for  
 22 trickle-down economics. It puts the major resources in the  
 23 hands of impersonal institutions whose major beneficiaries, and  
 24 I'm not knocking it, are, frankly, those that draw salaries,  
 25 those that are responsible for the administration of the act,  
 not the ultimate people who were supposed to be the beneficiaries,  
 the individuals that lived in the village. And what the act did  
 from a social engineering point, Mr. van Ness, was to take a  
 people who were in some senses united by their poverty and  
 spread them out over the spectrum of economic advantage which is  
 that which you find in the rest of the... of the economy.

          The last point I want to make, Bill made a point of  
 being politically realistic and I certainly agree with that and

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1 what Doug said that you don't... at least you shouldn't, go any  
2 further than you have to in addressing the structural issues.

3 But I would also say that political realism needs to  
4 be balanced with a valid assessment of your own actual needs and  
5 what you really need. Lowered expectation, which is, in some sense,  
6 what is being suggested, is a self-fulfilling prophesy. There  
7 would not have been an Alaska Native Claims Settlement Act if  
8 there had not been stimulated expectations among the Alaska  
9 Native people.

10 I think that there will be... Bill very, it seemed  
11 astutely, pointed out to me some of the congressional windows  
12 through which action can come. I'm a little apprehensive about  
13 the Arctic Wildlife Refuge one because you'd have to figure what  
14 the cost is with respect to if that legislation goes through  
15 there will be oil company objectives being fulfilled as well as  
16 Alaska Native ones and you're going to have to live with those.  
17 Certainly the '85 review, it seems to me, is a good window  
18 and when I think, as he says, about the changing guard in  
19 Washington, D.C., whether or not Ted Stevens is there in 1991,  
20 I remember who was there in 1969, 1968. Before the act, I don't  
21 remember him taking a terribly strong role but I do remember Ted  
22 ... Ted Kennedy taking a very strong leadership role. I don't  
23 think the act could have happened without the support of Kennedy.  
24 And I think, looking at it strictly on longevity tables, Ted  
25 Kennedy is going to be there and if you come in, as Bill says,  
with united positions, you're going to have an audience in Ted  
Kennedy and I doubt very much that he's going to be a nondescript  
sort of senator at that time.

MR. BERGER: Well, I said we had  
had two views of the claims act. I think Mr. Havelock has offered  
us a third, if I may say so.

Maybe we could invite one or two others in the time  
that we have left this afternoon. I was going to call on Mr.

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1 Borbridge who, by the way, Mr. Hickok... Don't let me detain you...  
2 But Mr. Borbridge made the point yesterday that you made, that  
3 the Senate version gave preference to subsistence and that got  
4 lost in the works.

UNIDENTIFIED: (INDISCERNIBLE)

5 MR. BERGER: (LAUGHTER) Yes,  
6 Mr. Borbridge.

7 MR. BORBRIDGE: Thank you,  
8 Mr. Chairman.

9 Mr. Hickok yielded the balance of his time to me.

(LAUGHTER)

10 MR. BORBRIDGE: Mr. Chairman,  
11 I want to hit some of the background of the settlement act just  
12 briefly because we have talked, I think, without a fuller dis-  
13 cussion of several matters that I think, from the viewpoint of  
14 the Native people, need a little more elaboration. I think, in  
15 my opinion, there has been confusion with respect to the term  
16 sovereignty because we have used it in two senses. We have  
17 talked about it in terms of who, which governmental entity  
18 exercises the supreme power which is the highest, the most  
19 powerful or the strongest. It really has not been discussed  
20 by people who were with government in terms of how it relates  
21 to the Indian or Native tribes.

22 Before doing that, I wanted to touch just briefly on  
23 this matter of the legal status of the Alaska Natives. The  
24 federal government owes the native Americans, of whom the Alaska  
25 Natives are a part, the obligation of its trusteeship, not  
because of our poverty or the government's wrongdoing in the  
past, but because within the federal system, the government's  
relationship with the native Americans are of the highest legal  
standing, established through solemn treaties and a series of  
judicial decisions and legislative actions. Thus, the treaties  
negotiated with Indian tribes in which the United States

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1 acquired vast areas of land in exchange for its solemn commit-  
2 ment to protect the members of the tribes and their properties  
3 from encroachment by U.S. citizens is one origin of this trust  
4 relationship.

5 Likewise, statutory enactment dating from the  
6 Continental Congress to the present, regulating transactions  
7 between U.S. citizens and members of the Indian tribes is, again,  
8 another place from which trusteeship was developed. Innumerable  
9 transactions in which, in the latter part of the 19th century,  
10 the United States imposed a complex and vast array of regulatory  
11 authority over Indians and their property, coincident with its  
12 assumption of control over the people and property of the Indian  
13 tribes.

14 It's not to get off on something that is totally dis-  
15 associated from what we are discussing, but I do want to emphasize  
16 that, again, the history of the Indian tribes, of which we  
17 Alaska Natives are definitely a part of this entire, not only  
18 United States, but we see ourselves as coming from the native  
19 Americans, the origin of those tribes preceded and antedated  
20 the formation of this country. And thus, when we talk from whence  
21 came the tribes, we must, likewise, look back to the same  
22 ancient beginnings when we asked, from whence is derived  
23 sovereignty, which is exercised by those tribes.

24 We all appreciate... Not being an attorney, I only try  
25 to go through a non-technical approach and appreciate that  
sovereignty is a characteristic of a body that is able to  
accomplish certain things and that, in our system of government,  
as we have different levels of government, so we have different  
levels and types of sovereignty that are exercised, but that  
those largely are types of sovereignty that are delegated.

With respect to the Indian tribes, their sovereignty  
is derived from their origin and their beginnings as Indian  
tribes when first they were dealt with as independent nations

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1 through treaties , and then, later, with the abandonment of  
2 treaties, beginning in 1871 with executive agreements, and,  
3 likewise in the law, with the change from independent sovereign  
nations to that status of dependent nations.

4 I state this because all of this, in a fashion that  
5 is beginning to emerge from rural Alaska in a much more meaningful  
6 less theoretical sense, has to be viewed as the background and  
7 is the context within which it appears we are going to be  
8 functioning as we come to consider some very practical, precise  
9 amendments or methods of improvement of the Alaska Native Claims  
Settlement Act. Thus, in a very broad-scoped way...

10 Firstly, I was very pleased with Mr. van Ness' comment  
11 because the claims settlement act and the thrust for a settlement,  
12 the assertion of the land rights of the Native people, began  
because the Native people --

(OVERLAP TAPE 4, SIDE A)

13 MR. BORBRIDGE: -- the place  
14 of the discovery of oil and the intrusion or the joining of  
15 other interests, those are matters that have been very well  
16 discussed. ANCSA, in effect was sort of a compromise between,  
17 on the one hand, ancient Native land rights whose origins are  
18 traced through the historic factors that I have mentioned and  
19 which land rights were spelled out in the use and occupancy  
of the land by the Natives since time immemorial, these rights  
collided with the institutionalized views of the members of --

(TAPE 16, SIDE B)

20 MR. BORBRIDGE: -- the members  
21 of Congress who had their perceptions of what land meant. In  
22 many instances, it meant something that was quantifiable. It  
23 was an economic asset. It had maximum or optimum value when  
24 disposed of on the marketplace at the right time as we follow  
25 the chart of how these things went. Well, all of this... All  
of this, the rights and the feelings of the Native people,

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1 came against and was considered within the institutionalized  
2 views of Congress seeing this in somewhat different terms, and  
3 plus the collision with the state that viewed the assertion of  
4 Native land rights as a threat to their selection rights under  
the state constitution.

5 The Natives recognized that Congress would ultimately  
6 determine the terms and shape of a land claims settlement. The  
7 Native people came to the negotiating table with their tribal  
8 identity and with their expectations, many of which were shaped  
9 by their culture. In negotiating, the Native representatives  
10 realized that they weren't able to get everything that they  
11 wanted. Sometimes it was necessary to compromise on something  
to get it through. And as Mr. van Ness indicated, we were  
successful in many of those efforts.

12 The Native people, when they first went to Washington,  
13 D.C., while we talk about some very sophisticated views that  
14 we advanced, began by explaining what Alaska Indians, Alaska  
15 Eskimos and Alaska Aleuts are, and where do we live, and are  
16 we all frozen and, forgive me, Joe, but, do we all live up on  
17 the North Slope, and do we always have snow there and how can  
18 you live on it... And so we, as we began to try to explain  
19 these things, we took this traditional form, we talked with our  
20 advisors and we began to realize from our attorneys that we had  
21 to translate this into Indian title so we could assert it as a  
right. We viewed it as a right because we were... through the  
people who were in the villages we were on the land. The land  
rights had not been extinguished.

22 And it was important to us as a matter of pride, not  
23 only for ourselves but those who would, likewise, enjoy whatever  
24 benefits might be derrived from ANCSA because, again, we wanted  
25 to be sure that all people, Alaskans as well as those in  
Congress, viewed this as an assertion of land rights and not  
our seeking of a handout. So these ancient rights were translated

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1 into the specialized concept that arises out of Indian law,  
2 aboriginal rights or Indian title, and we presented this to  
3 Congress. Congress began to say to us, the members, that we  
4 are not actually negotiating. Now, this time they did use  
5 sovereign. "We are the sovereign and we determine..." We  
6 resisted that very vigorously and, I think, very effectively.

7 It's hard to measure at this point, given all of this  
8 background, the strength and the vigor of the current movement  
9 today, in 1984, as it relates to this sense of tribalism, this  
10 sense of a desire to exercise sovereignty. The recognition that  
11 tribalism, the existence of a tribe, is dependent, to a large  
12 extent although not solely, on a land base.

13 Thus, as I look at our expectations back in '71, we  
14 were impelled by a sense of urgency of crisis, of land losses  
15 that were being incurred or had been incurred by state selections.

16 I haven't had the opportunity to state further that  
17 there certainly was a partnership of effort at various points  
18 with the state of Alaska. However, the Alaska Natives had to  
19 drag the state into a partnership with us, kicking and screaming.  
20 The state had initiated the suit, Alaska versus Udall. And here,  
21 this, frankly, isn't so much for your benefit. All of you know  
22 this but I think there are other people, Alaska Natives, who are  
23 dealing with some of the matter to which I alluded, who I hope  
24 will look carefully back to the history of ANCSA, not only  
25 with respect to provisions but how things were accomplished so  
that they can suit this and perhaps even improve on how they  
intend to deal with the improvement of ANCSA and, for that matter,  
with the steps toward the formalization, the revitalization of  
their tribal governments, if this is what the people should  
determine they desire, and the exercise of sovereignty incident  
to that status.

And all I wanted to say was that, on several occasions,  
we had not only a suit by the state of Alaska which was intended

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1 to break the land freeze on which the Natives triumphed, like-  
 2 wise the state of Alaska challenged the basis for our two  
 3 percent overriding royalty worth half a billion dollars, billion  
 4 dollars, and again, the Natives prevailed. The point being  
 5 that it was possible for us as we did, to be, on the one hand,  
 6 partners with the state because on a number of occasions and as  
 7 to a number of provisions, the state of Alaska did work closely  
 8 with us where we sought a commonality of interest. And at the  
 9 same time, we were adversaries on certain of the points.

10 Likewise, too, Chairman Aspinall, following passage  
 11 of the act, sponsored a proposed amendment to ANCSA which,  
 12 ostensibly, was intended to cure technical defects. In the  
 13 viewpoint of the Natives it was addressing substantive issues  
 14 and, with some help from Congressional friends, we had it killed.

15 I guess what I'm saying, essentially, is that it's  
 16 possible, in the process of Native people seeking the kind of  
 17 objectives that we had in mind when we sought the enactment of  
 18 ANCSA, to encounter some of the most powerful, sophisticated  
 19 opposition and, with the aid of friends and others sympathetically  
 20 inclined with our views, to still triumph over those.

21 I guess all I'm saying, Mr. Chairman, is on the one  
 22 hand there was a land claim because the Native people began to  
 23 assert their rights. After we asserted it, the social sciences  
 24 engineers had a crack at it, but you didn't have a crack at  
 25 anything until we got the ball rolling. Then, at that point,  
 we began to get input. And all I am emphasizing, again, is  
 that what we see with respect to the desire to revitalize tribal  
 bodies, exercise sovereignty, has a dignified history that  
 precedes the formation of our country. And when we see it  
 happen today, whatever we may incline toward the improvement of  
 ANCSA, and I agree with Mr. Peterson it needs improvement... I  
 have more gray hairs than him and I expect him to accomplish  
 this... And I appreciate Mr. van Ness' approach because I think

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1 ultimately that's where we're going to end up. Specifically,  
2 what can we accomplish?

3 All of this has a context of things that are happening  
4 in rural Alaska.

4 Thank you, Mr. Chairman.

5 MR. BERGER: Thank you, Mr.  
6 Borbridge.

7 Might I suggest how we proceed now. We have been  
8 adjourning here about 4:15 or 4:30. This is the bingo hall and  
9 the tables are needed for bingo, which commences within an hour  
10 or two I gather. And it makes just about a long enough day I  
11 think. But perhaps I might make one or two suggestions about  
12 tomorrow.

13 First of all, perhaps we could try to convene again  
14 about 9:15 a.m. Then maybe you might allow me to call on those  
15 who... and I apologize to all three of you gentlemen that I  
16 haven't reached you yet... Mr. Hope, Mr. Starr and Mr. Paul, to  
17 offer their thoughts and to ask some pointed questions of our  
18 panel of experts and... Mr. Peterson, if you have further ques-  
19 tions, we'll reach them then. Mr. Mallott and Mr. Johnson, of  
20 course, if you have further thoughts, we'll want to hear from  
21 you and, of course, from Mr. Upicksoun.

22 Could I just say before we adjourn, Mr. Peterson said  
23 he hoped this commission would pay as much attention to what  
24 the people in the villages say as we're paying to this group of  
25 people, notable people, assembled here this week and next week  
and the week after. Yes, we are. In fact, Don Mitchell suggested  
that this commission should hear from the experts, if all of you  
are willing to accept that designation, and then go to the  
villages and hear what people had to say. And so that's what  
we intend to do.

We've already been to two villages but we expect to  
go to many more after these three weeks of overview sessions are

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1 over.

2 Mr. Borbridge just alluded to something that keeps  
 3 coming up and I think it would be a mistake to try to ignore it.  
 4 Mr. Borbridge said yesterday that he thought sovereignty would  
 5 be the issue of the '80s. The... Mr. Jones put exactly the  
 6 opposite case. He said, "Well, we don't need any governments  
 7 that are ethnically or racially defined. We don't want anything  
 8 that smacks of the reservation system of the Lower 48. Govern-  
 9 ment is public government and everyone shares equally in that  
 10 government. It applies to all," and that's a view that you  
 11 find in the United States. You find it in Canada. In Canada,  
 12 people say, "Well, why can't we all be Canadians together? You  
 13 know, my father came from Ireland and he did this and he did  
 14 that and now we're all equal as Canadians," and I'm sure this is  
 15 what you've heard a thousand times over. But in Canada, an  
 16 all-party committee of the House of Commons last November,  
 17 representing all parties, unanimously decided that the Native  
 18 people of Canada should be recognized as a third order of  
 19 government. We have the federal government, the provinces which  
 20 are the equivalent of the states, and, they said, a third order  
 21 of government, Native government.

22 Now, whether that will, ultimately, find its way into  
 23 legislation remains to be seen but it certainly is an expression  
 24 of, or, a commitment in the broadest sense by all the political  
 25 parties. Now here in Alaska, people keep saying, perhaps they  
 shouldn't be saying it, perhaps the idea has no future, but they  
 keep saying, "We want our own government." They're talking  
 about political institutions that have certain powers to  
 regulate their own affairs, certain powers of taxation and so  
 on. Mr. Johnson said... He said, "Well, perhaps we can  
 achieve those same objectives through ANCSA, through an astute  
 use of the powers we already have, an astute use of the influence  
 we have. Perhaps we can insure that our people are free to make

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1 the choices that seem important to them out in the villages."  
2 That's another view.

3 But perhaps some of you that have considered this and  
4 know, I suppose, the opposition that such a notion might attract  
5 in Congress or among the general public... might just consider  
6 it. It might as well be faced. It seems to me that some people  
7 ... Mr. Borbridge, when you talk about tribal government you're  
8 talking about a political institution in which Native people  
9 participate and, in a sense, has a government-to-government  
10 relationship with the federal government and the states. And  
11 that is what President Reagan said in his statement in January  
12 last year. He said, "We recognize the sovereignty of Indian  
13 governments and we acknowledge that we deal with them on a  
14 government-to-government basis." Now, has that notion got a  
15 future? If it has a future in the Lower 48, is it something  
16 that will get nowhere in Alaska?

17 Maybe tomorrow, and I hope we can... I know you're  
18 all busy, but those of you from out of town have not quite as  
19 good an excuse as others from not being here, but I know some  
20 of you can't be here the whole time. But you might take a  
21 kick at that and tomorrow Mr. Hope, Mr. Starr and Mr. Paul,  
22 I promise that we will get to you right away. But we did have  
23 these distinguished people here and I thought we should call  
24 on them.

19 Mr. Hope?

20 MR. HOPE: Mr. Chairman, are  
21 we going to be on television tomorrow? I need to know how to  
22 dress.

(LAUGHTER)

23 MR. BERGER: Well, I think  
24 you look just fine.

25 So, could we try for 9:15 and see how it goes?

(HEARING ADJOURNED)

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