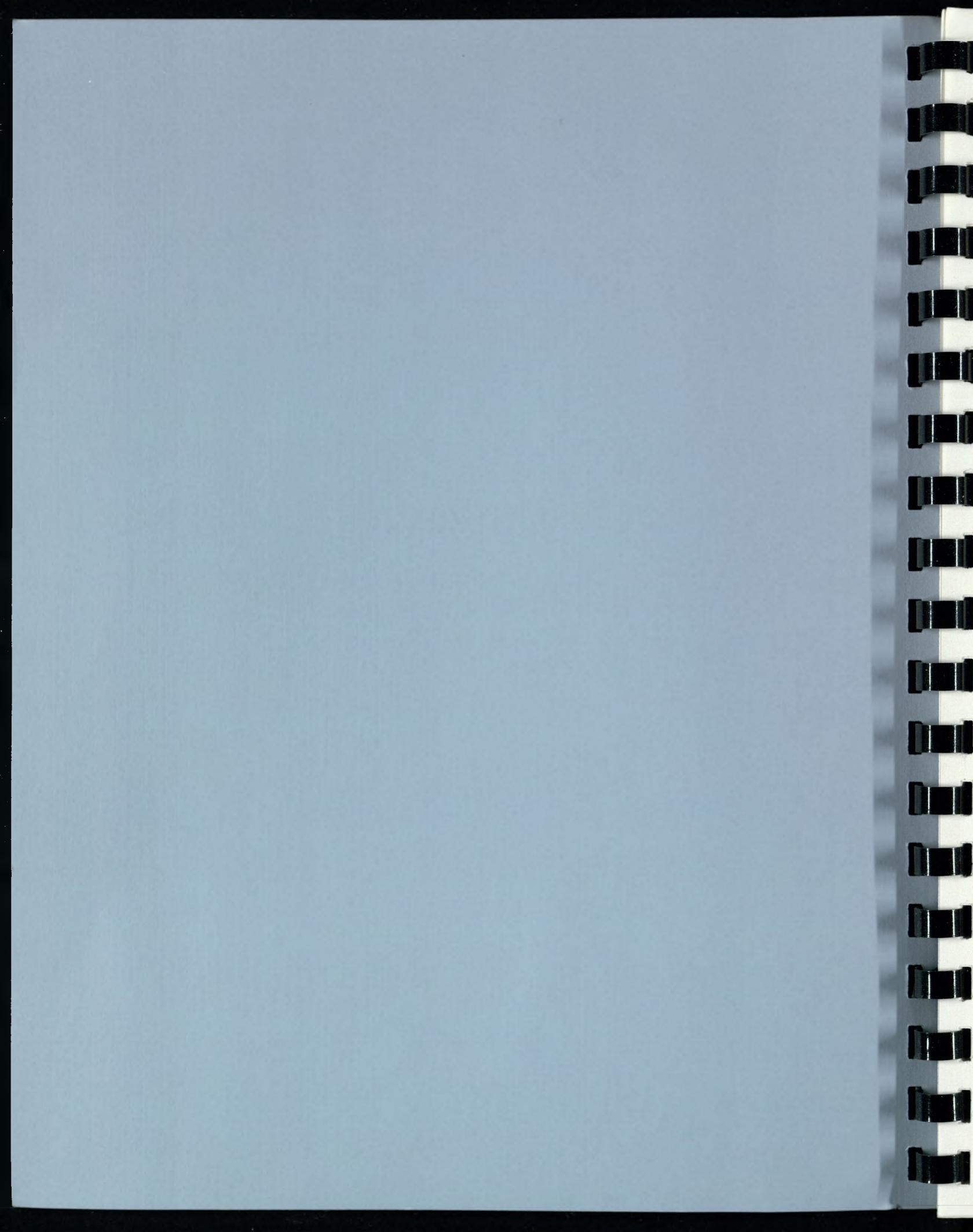


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Transcript Of Proceedings
Alaska Native Review Commission
U.S. National Policy
March 09, 1984
Anchorage, Alaska

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VOLUME IX
PAGES 833 - 933
TRANSCRIPT OF PROCEEDINGS
ALASKA NATIVE REVIEW COMMISSION
U.S. NATIONAL POLICY
MARCH 09, 1984
ANCHORAGE, ALASKA

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PARTICIPANTS

Alaska Native Review Commission Overview Hearings
Anchorage, March 6, 7, 8, 9, 1984
U.S. National Policy: Week 2, Session 3

Joseph Jorgensen

Professor of History and Anthropology, University of California (Irvine). Author of The Sun Dance Religion. Professor Jorgensen prepared a paper to lead the week's discussions.

David Case

Law Professor, Native Studies Program University of Alaska, Fairbanks (also Special Counsel to the ANRC).

Ted Chamberlin

Professor at the University of Toronto and author of the book, The Harrowing of Eden which traces the White-Native interaction in North America.

Tim Coulter

Executive Director of the Indian Law Resource Center, Washington D.C.

Ada Deer

Organizer and Representative of the Menominee Indians throughout period of Restoration.*

Kim Gottschalk

Attorney, Native American Rights Fund (NARF), Boulder, Colorado.

Russell Jim

Former chairman of the Yakima Nation, Washington State.

Ralph Johnson

Professor of Law, University of Washington and co-author of the 1982 revision of Felix Cohen's classic Handbook of Federal Indian Law.

Ralph Lerner

Professor of the Social Sciences, University of Chicago.
Author of Reds and Whites: Rights and Wrongs.

Tito Naranjo

Professor of Psychology and Social Services, Highlands University, New Mexico and past Vice-president of the Santa Clara Pueblo Tribal Council.

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- 1 John Stevens
Governor of the Passamaquadie Tribe of Maine.
- 2 Alma Upicksoun
Inupiaq law school graduate currently working with the
3 Native American Rights Fund (NARF), Boulder, Colorado.
- 4 Don Mitchell
Former vice president and general counsel, Alaska Federation
5 of Natives (AFN) (Or substitute suggested by the AFN).
- 6 Dalee Sambo
Assistant to the President, Inuit Circumpolar Conference,
7 Alaska.
- 8 Al Gozmer
President, Native Village of Tyonek and Treasurer, United
9 Tribes of Alaska (U.T.A.)
- 10 Sheldon Katachatag
Vice president of the U.T.A.
- 11 Walter Parker
12 Consultant (Anchorage) and author of the overview paper
for session 2 (March 1 & 2).
- 13 Alfred Starr
14 An Athabaskan elder who was involved as an early proponent
15 of a land settlement to preserve Native rights.

16 -----
17 *The Menominee Tribe was at one time terminated as a federally
18 recognized Indian Tribe and the period of "restoration" was
a movement to restore the rights and recognition of the tribe
as a tribe.

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(TAPE 32, SIDE A)

(March 9, 1984)

1
2 MR. BERGER: Tito Naranjo and
3 Tim Coulter both had to leave last night so they will not be with
4 us today. Joe Jorgensen, I think, expected to be with us but he
5 had sudden news of an illness in the family and... I hope he does
6 come today so that we can thank him for leading off the discussion
7 with his paper and to express the hope that nothing serious has
8 occurred to any member of his family. Sheldon Katchatag, who
9 is vice-president of the United Tribes of Alaska, has joined us
10 this morning and we welcome him and invite him to participate.

11 I said yesterday that we would invite Dalee Sambo and
12 Alfred Starr to lead off the discussion this morning if either
13 wishes to. Dalee, do you want to begin?

14 MS. SAMBO: Thank you.

15 I work for the Inuit Circumpolar Conference at the
16 Alaska Regional Office here, but throughout these comments that
17 I'll make this morning, they in no way reflect what the ICC's
18 feelings or positions or policy is with regard to ANCSA and,
19 hopefully, at a later date and time the ICC will come out with
20 a formal statement to the commission and can make that either
21 orally or in writing.

22 I'm an Inupiaq. My parents are from Unalakleet. They
23 were born and raised there. I was born and raised here in
24 Anchorage and have somewhat of an understanding of Indian law.
25 I hold a tribal court advocate certificate and a paralegal cer-
tificate. I wanted just to, before I got into some of the
issues that I wanted to see come out in this roundtable discussion,
just make note of two things that were mentioned over the last
couple of days. Mr. Lerner and also Tito Naranjo made mention to
... or, Mr. Lerner stated that a good number of Indian people are
betwixt and between, and Mr. Naranjo said... I think said it in
the way that, one foot in two worlds. And this may be true for
a great number of Indian people as well as a great number of Inuit

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1 throughout Alaska, Canada and Greenland, but I think we should
2 keep in mind that we may be betwixt and between, we may have one
3 foot in two worlds, but we do so with one spirit.

4 There was also a point made by Mr. Lerner about dis-
5 crimination, and I think that Tim Coulter was trying to respond in
6 that... The point that Mr. Lerner made was that there was dis-
7 crimination... or, maybe... Well, he used both words, discrimina-
8 tion and favoritism, by allowing those people of one-quarter blood
9 or more to be enrolled to a tribe and to get... to receive
10 special privileges or... I can't remember exactly the word, but
11 I think the point that Tim Coulter was trying to make in response
12 to that point was that there's discrimination in the other
13 direction, also, like the nonapplication of the Fifth Amendment
14 to Indian people. That's a discrimination. And over dinner
15 we were discussing this the other night and Charlie Edwardson
16 made the comment that he's spent ten million dollars to find out
17 that the Fifth Amendment did not apply to him, and that's
18 discrimination in the other direction.

19 I think that some of the things that have been said
20 here in regards to possible alternatives and Mr. Johnson discussed
21 municipalities and IRAs and Public Law 280... I kind of wanted
22 to expand on some of these things. I think that he is right to
23 say that it's going to take a more comprehensive and more intensive
24 type of work to develop some of these possibilities or alterna-
25 tives or accommodations that could be applicable here in Alaska
and I certainly look forward to that type of work, whether it's
done through this commission or through the interests or concerns
of people like Mr. Johnson and other legally qualified people,
as well as lay people here in Alaska and other areas.

I think that we can all generally agree that ANCSA was
a land settlement, a land settlement and only a land settlement,
not a jurisdictional settlement. I'm wondering what the possi-
bilities are in terms of a jurisdictional accommodation or an



1 alternative jurisdictional settlement for Alaska Native people.
2 And also, have there been land settlements in the past that did
3 not address a governing body or political institution, or just
4 did not address a jurisdictional settlement? Have there been
5 settlements like this in the past and throughout the Lower 48?
6 And what... If there have been, what were the ways in which the
7 people chose to settle the lack of a jurisdictional settlement,
8 or how did they choose to create a governing body for themselves
9 on the land that they received under a land settlement?

10 ANCSA, being only a land settlement, here in Alaska
11 has created quite a number of problems and we do have quite a
12 bit of overlapping, like Mr. Johnson stated the other day. The
13 ... Yes, through ANCSA, the resources and the control of the land
14 was left to the regional and village corporations. But still,
15 there again, it left out any address to the jurisdictional ques-
16 tion here.

17 Those corporations are obviously not governments and
18 they never will be governments, so that lack of a jurisdictional
19 accommodation is still there and I think that the proof of the
20 movement of the United Tribes of Alaska and IRAs and other
21 traditional governments here in Alaska just shows that there is
22 a need for some type of jurisdictional accommodations here. And
23 I'm wondering, what are the possibilities here in terms of a
24 governing structure and alternatives to Alaska Natives to meet
25 this need here?

26 In Alaska we have ANCSA, we have Public Law 28 which
27 I feel applies only to private property and private or personal
28 rights of individual people, personal and private rights... They
29 don't apply to the traditional Native villages, the IRAs and
30 Native allotments, reservations or restricted lands held in trust
31 by the U.S. for Alaska Native people. Nor do... Under Public Law
32 28, nor do the laws of the state of Alaska in declaring or
33 implementing the state's power or the state's sovereignty apply to

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1 the institutions that I've just mentioned, such as the power to
2 tax. And also, we have the IRA governments, and even further
3 more, we have the municipalities... And Ada Deer had mentioned
4 the other day the situation in the Menominee reservation... or,
5 within the Menominee nation. The municipality... or, excuse me,
6 the tribal legislature and the county government... and I
7 assume that the tribal legislature is federally chartered and the
8 county government is state chartered. Well, here in Alaska we
9 have something very similar to that situation in that the
10 municipalities throughout rural Alaska are state chartered and
11 the IRA governments are federally chartered, so we have it... it
12 seems to me a duplication of or an overlapping jurisdiction.
13 And I'm wondering... And that was why I posed the question the
14 other day about what is the distribution of jurisdiction and
15 why is it beneficial to have both the municipality and a tribal
16 government. It would seem to me that there is quite an overlap-
17 ing there or a duplication of services and I'm... And that's
18 why I was so curious about this division... or, distribution
19 of jurisdiction. Or, is it that you have both and both can...
20 both institutions can receive benefits from varying different
21 places and that the only difference is that the tribal government
22 has the inherent power of sovereignty to govern themselves and
23 the county or municipal governments are given that power by the
24 states. And that may be the only difference.

19 So... I'm... The other... I mean, to follow up on that,
20 what is the best accommodation for those people and, like Al
21 Goozmer mentioned the other day, the village of Akiachak who has
22 just dissolved their municipal government and disbanded it,
23 dissolved it, and turned over the land holdings and what not to
24 the IRA government. Is it... Is it necessary to do that
25 throughout to settle the question of a jurisdictional type, or
can they both work cooperatively? What's the benefit of that?

25 And then there was discussion about the North Slope



1 Borough and Mr. Johnson talked about municipalities also. And,
2 you know, that may be a possibility here but there is that fear
3 that at some point in time, like the North Slope Borough, they...
4 The Inuit people are a majority there, the mayor is an Inuit,
5 the assembly... they're Inuit. However, they provide services
6 to all residents in the North Slope Borough. They don't distin-
7 guish between a Native person and a non-Native person. Both have
8 the right to vote within the North Slope Borough but there is
9 still that fear that the majority might shift and the control
10 may be... may be lost to non-Natives. The assembly may be lop-
11 sided and be a majority of non-Native people, so there's that
12 fear as well within a municipal-type government and would not
13 insure an accommodation specifically for the Native population
14 and the concerns of Native people and Native people only.

15 I think that... And we heard through the outline of
16 Ann Fienup-Riordan's paper last week and through some of the
17 discussion of the first three days of last week in terms of the
18 aspirations of Alaska Native people... I don't think that those
19 aspirations or those visions or those dreams have really changed
20 that much. As expressed through through the testimony in 1968
21 and 1969 and I think that will probably be expressed throughout
22 the village meetings and hearings that will be held by the
23 commission, I think that those feelings are all the same in
24 Alaska... the need for retention of the land, the preservation
25 and the protection of the land and the resources.

And I also think that ANCSA, in village Alaska and at
the village level, has not had a significant impact and I think
that those were some of the statements that came across in the
two village hearings at Emmonak and Tununak... that it hasn't
put food on their table, it hasn't impacted them that greatly.
However, it will, and I think that it's biggest impact will be
1991 and the issues that surround 1991. Those will be the biggest
and the most devastating impacts that ANCSA will leave with the

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1 Native people. It'll be the most severe impact. The 1991 issues
2 of stock alienation, taxation, alienation of the land 20 years
3 after the date of conveyance and so on... and all of that is
4 generating a real fear that we're going to lose all of the
5 benefits that we've received under ANCSA and that will be its
6 biggest impact... I mean, loss of those benefits, loss of that
7 control.

8 And... It's... It is an emergency situation, like Mr.
9 Gottschalk said yesterday. I think that it is an emergency
10 situation that we have to... we do have to develop some alterna-
11 tives. We have to do this and do it as quickly as possible and
12 begin some of this comprehensive and intensive legal work as to
13 ... as to what accommodations can be found. The statements that
14 Tim Coulter made in his initial presentation, I very much appre-
15 ciate and endorse the statements that he made regarding the
16 plenary power doctrine, the power of Congress to extinguish the
17 Fifth Amendment and its nonapplication to Indian people, and the
18 need for some basic and fundamental changes in the policies of
19 the United States government towards Native people and Indian
20 people throughout the U.S. And it may be... It may seem to be
21 impractical, but that really is the crux of our problems I think
22 and that's the crux of the problem here for ANCSA as well as for
23 other Indian tribes and future negotiations, that if they're
24 always going to be taken from this base, that Congress has the
25 power to do whatever it wants to do with Indian peoples... If
some of those basic and underlying problems are not changed,
then we'll always be working from the short end of the stick.
And I think that in the long run, we need to... to point this
out, we need to assert this, that... that we feel that they
are wrong.

But that still leaves us with the immediate issues and
concerns that need to be addressed and it's already been mentioned
here but I think, again, the best way to do it is to go to the

1 people in urban and rural Alaska, find out, you know, on a grass
2 root level, what it is that they want. Once we've determined what
3 it is that they want, look at it legally and look at all possi-
4 bilities in the legal context as to how do we accommodate their
5 needs with an understanding of the reasons why they want those
6 things, and try to devise a vehicle in which they can... we can
7 satisfy the needs.

8 After... After this type of work is done, I mean, after we
9 find out what it is the people want, what is the legal vehicle
10 for that, take all of that work and assert that this is... this
11 is what is wanted by the Native people, but make this claim on the
12 basis that from the beginning and throughout its history, the
13 U.S. plenary power doctrine is wrong and the power of the United
14 States to extinguish your aboriginal right and title and terminate
15 you... or, the eventual termination as a compromise for a land
16 settlement is wrong. Assert these things and not, again, just ask
17 for another handout, like Tim had mentioned. But to do all of this
18 work in the framework of... or, simultaneously asserting that
19 these initial and fundamental problems and underlying problems
20 are wrong... In the meantime, of course, all of this discussion
21 about the feasible alternatives for a jurisdictional settlement
22 have to take place. I mean, who... This may be out of line, but
23 maybe we should declare that we're ready to negotiate for a
24 jurisdictional settlement and call for a full-fledged restoration
25 of our right and title. Start from the bottom, like the Menominees
did, call for a full restoration of right and title within the
context that... that this plenary power doctrine is wrong, the
power to extinguish... the power to do whatever they want to do
with us is wrong.

Then, again, there's the more practical side of it.
You know, what are the alternatives with respect to our land
settlement, ANCSA? Are there possible solutions that could apply
only to the regional corporations and another set of solutions that

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1 could apply to the village corporations? And this morning I was
2 talking to someone... Maybe this whole question of... of stock
3 alienation, maybe we should just get rid of stocks, you know,
4 and make everybody an equal member in the corporation.

5 And also, the issue of after borns... First, get rid
6 of the stock, let everybody become a member whether they were born
7 before 1971 or... or after 1991, or whichever, allow everyone to
8 become members. Maybe there... And I guess I'm restating myself...
9 Maybe it's possible that we can allow the village corporations
10 to do as they choose, independently and individually. Maybe
11 there needs to be a redistribution of the resources. Allow the
12 village corporations to hold all the land that they have, both
13 surface and subsurface, and maybe turn over a little bit of land
14 to the regional corporations and let them play Monopoly, or
15 whatever.

16 But we do need to look into all of the different
17 possibilities. And Ralph mentioned some of these things and the
18 jurisdictional issues that have developed from the years 1970
19 throughout up until today, 1984, the issues of Public Law 280 and
20 how they apply to Indian people as a jurisdictional issue. Also,
21 I mean... the jurisdictional issues under Public Law 280, the
22 civil and criminal jurisdiction and taxation. And he also
23 mentioned some of the accomplishments made in regards to fishing
24 rights and also the... the recent movements and aggressive move-
25 ments on the part of IRAs to exercise governmental powers and to
move away from the secretary of the Interior's approval over their
constitutions and what not. These types of aggressive movements
that are taking place... to look at them against ANCSA, to look
at them against all of the vehicles and all of the institutions
that we have now.

Also, Mr. Chamberlin mentioned and David Case... there
was discussion about the strategies and I quite agree with Mr.
Chamberlin that all of these strategies are inseparable and a new



1 accommodation needs to be found to encompass all of those strategies
2 ... the political institution, the control of the economic
3 resources, the land and the resources, the... I can't recall all
4 of the different strategies that were mentioned, but a vehicle
5 in which to encompass all of these things and also to help clear
6 up this... this overlapping of jurisdictions and what we found
7 with the municipal corporations, the IRA governments, the tradi-
8 tional governments, the village corporations, the regional corpora-
9 tions. The picture looks pretty blurry right now and maybe...
10 maybe there's something entirely different, entirely fresh and
11 new that we can come up with outside of all of the institutions
12 that we've... that have been created and that we've been working
13 under. And maybe this isn't quite the form to drag all of those
14 possibilities out. There's going to be quite a bit of brainstorm-
15 ing that needs to be done and some real comprehensive and, again,
16 intensive work in reviewing all of these possibilities against
17 the background of Indian law and the history of Indian law, the
18 history and the experiences of Indian people throughout the United
19 States as well as... such as this upcoming week, the international
20 experiences. And it's going to take a lot of brainstorming.

21 But these... You know, again, the 1991 issue... you
22 know, they're... They're, to me, the most pressing issues but
23 all of this work has to be done simultaneously. We can... We
24 have to look at the short-term. We have to look at the long-
25 term, and need to devise something that will assure us the things
that we're so afraid of and the fears and the tension, the
dissentation, the disgruntlment of the initial settlement that we've
received... you know, something... something new and that's all
I have to say. And I hope that we can come up with that. I
mean, it may take at some point in time... I mean, as... And I
don't know if it's a means of last resort or not, but to declare
that there is a need for a jurisdictional settlement, that we
want full restoration. Who knows?

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1 MR. BERGER: Well, thank you,
2 Dalee. Thank you very much.

3 I wonder if, before we move on, if... if Ralph Johnson
4 and David Case and Tim Gottschalk and Alma Upicksoun would like
5 to address the issues that Dalee raised? In particular, is there
6 anyone willing to answer her question, were settlements in the past
7 in the Lower 48 made that related only to land, only to real
8 estate, and failed, as it is suggested ANCSA did, failed to
9 address the question of political institutions or Native govern-
10 ment, and in those cases, how did the Native people concerned go
11 about creating a governmental body for themselves? That was one
12 question she raised that some of you might be willing to address.

13 MR. JOHNSON: Well, I might
14 start. I'm sure that --

15 MR. BERGER: Ralph Johnson.

16 MR. JOHNSON: -- Ralph Johnson...
17 that Kim Gottschalk and David Case can add to and maybe correct
18 some of my data, but one of the most recent settlements was...
19 Well, there have been a series of things and there's no consistency
20 among the settlements that have occurred in the past ten years.
21 The Menominee reservation, as you know, has been reconstituted,
22 as Ada Deer pointed out, with more or less full governmental
23 powers. Some small tribes in Western Washington and Western
24 Oregon... What's the name of the...

25 UNIDENTIFIED: Celeste.

MR. JOHNSON: Celeste tribe was
reconstituted a year ago. Again, as my understanding, with
full governmental powers. Is that right, Ada?

MS. DEER: I'm not sure.

MR. JOHNSON: I think it was
reestablished as a reservation with the same governmental powers
as other reservations in the United States with property that is
Indian country under 11 U.S... or, 18 U.S. Code 11.51. The



1 Lower Elwah tribe and some other small tribes in Western Washington
2 were reconstituted the same way. On the other... And, I believe,
3 also the portion of Mount Adams and the Blue Lake Taos that were
4 either allegedly mistaken surveys or other errors were put back
5 into the reservation status and subjected to tribal governmental
6 powers.

7 On the other hand, you have the most significant land
8 transaction which concerned the Passamaquoddy and Penobscot tribes,
9 the Maine Land Settlement Act, requiring the consent both of
10 Congress and of the state of Maine, which essentially did not
11 return to the tribes' governmental powers, with the exception of
12 some peripheral powers, not really insignificant. They do have
13 governmental power, for example, under the Indian Child Welfare
14 Act, but a fairly small segment of governmental power that was
15 returned to the Passamaquoddy and Penobscot tribes, to my know-
16 ledge, the other negotiations for settlement for the Eastern
17 land claims are based more on land claims settlements, not on
18 jurisdictional issues, as some of you well know. That has,
19 in the case of a Maine land claims settlement, that has caused
20 a great deal of anger, hard feelings. Some of the, if not most
21 of... I can't tell you how many, but many of the Passamaquoddy
22 and Penobscot tribes feel that they should have negotiated more
23 for governmental power in addition to a land settlement. Whether
24 that was achievable under the circumstances at the time,
25 somebody else with a greater power of foresight and hindsight
would have to comment on. But at least factually, that settle-
ment was a major land settlement and only included a small portion
of governmental powers. But it did recognize the issue, it did
return to the tribes governmental powers under the Indian Child
Welfare Act.

Maybe David and Kim can say a lot more on this subject.

MR. BERGER: David Case?

MR. CASE: The... My understanding,



1 and it may be quite imperfect, is that really, generally settle-
2 ments in the... settlement patterns in the past have focused on
3 reservations and that, in the jurisdictional aspect of the
4 settlements, is almost... is implicit in the establishing of the
5 reservation and it was very seldom relatively inexplicit in the
6 terms of the treaties. You know, the treaties will... especially
7 the earlier treaties, will be more explicit about the reservation
8 of governmental powers to tribes than the later ones. And I
9 think that maybe is a reflection of the mental set of the treaty
10 negotiators which sort of assumed, in many cases, that these
11 political institutions would not survive.

12 But, of course, the interpretation of the treaties has
13 been quite the opposite. The courts have always interpreted
14 treaties to reserve jurisdictional control in some significant
15 measure to the tribe, just the fact that the reservation, itself,
16 is a federal preemption of conflicting jurisdiction with the
17 state in many respects.

18 So that's, I think, the pattern in the past... is
19 reservation and jurisdictional settlement sort of being implied
20 in one another in the course, in the process, of making what is,
21 in fact, a settlement of land claims with a mutual cession of
22 aboriginal title and a payment of some kind of compensation. And
23 I don't think... I cannot think of an example where there has
24 been a strictly a land claims settlement, except for the very
25 recent past, including the claims act. And so we end up, if
that is true, in a unique situation which makes it difficult
to find models and examples to guide us by. You know, you're
in new territory. But the example that does come to my mind,
sort of going at this all backwards, is Oklahoma, where there
had been a past reservation of sorts... I mean, reservation
settlement. I think we can call it that. It's got the removal
and everything else in it's history... And a subsequent alleged
termination of tribal political authority along with the opening

1 up of the Oklahoma Territory and the establishment of the state
2 of Oklahoma. And so you essentially... It seems to me, and
3 my understanding of this is imperfect so I'd hoped that Browning
4 Pipestem would be here... That's why maybe we can address this
5 more next week when he does come. But it's always seemed to me
6 that that... essentially establishes the situation where you have
7 tribes that have uncertain political power, undefined in many
8 ways, or clouded because of the actions of the United States,
9 political authority and no clear reservation land base to attach
10 it to. And that may be... And that's sort of the gray area in
11 my mind of Indian country and jurisdiction. It's the dependent
12 Indian community question of jurisdiction. And, frankly, that's
13 it. I mean, we are in an uncertain area in which the court's
14 have not really defined what the scope of a tribe's authority
15 would be in a nonreservation-dependent Indian community.

16 And so that gets back, finally... maybe, to your
17 question, sort of what I thought to be one of the major thrusts
18 of your talk... was the... How far do you go in accepting the
19 legal definitions of jurisdiction that are now the doctrines of
20 federal Indian law? Do you work within them? Do you attempt to
21 ... work some way beyond them? Do you do both? I don't know,
22 but I guess the long and the short of this sort of diffuse discus-
23 sion is that there are few models, and that's one of the problems
24 with talking about jurisdictional arrangements in Alaska today
25 because there are very few, if any, models from the past. And
Oklahoma may be the best example, maybe the worst situation, but
the best example of the kind of pattern that we now seem to have
in Alaska.

MR. BERGER: Kim Gottschalk?

MR. GOTTSCHALK: Well, I can
only confirm what Mr. Case and Johnson have said, that there's
a spectrum of situations ranging from tribes that obviously have
fully recognized and developed jurisdictional rights and governing

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1 powers in which they give up a piece of land, and tribes who are
2 unrecognized and have no land base and operate from that basis.
3 And Alaska seems to me to at least be at the high bargaining end
4 of the scale in terms of their vast resources to bargain strongly
5 for... I don't even know if there's a need to bargain, maybe
6 just demand jurisdictional rights.

7 MR. BERGER: Mr. Lerner? And
8 then Joe Jorgensen, sorry.

9 MR. LERNER: Just a question for
10 some information. Does any of these jurisdictions, whether village,
11 borough... this whole complex series of layers of government...
12 Does any of them have the power to tax and license?

13 MR. BERGER: David Case.

14 MR. CASE: All of them do.

15 MR. LERNER: Do they?

16 MR. CASE: Yes. Now, it's not
17 complete, it's not absolute. There are always limits, but they
18 do have the power.

19 MR. LERNER: If the North
20 Slope Borough wished to tax salaried incomes at a certain level?

21 MR. CASE: As long as it has that
22 delegated authority from the state. I don't think local govern-
23 ments have a delegated income tax authority in this state.

24 MR. LERNER: And under the
25 federally chartered governments, might they do such a thing?

MR. CASE: There's an inherent
power to tax there and there's no limit on it unless Congress has
limited it, sort of the reverse or the obverse of the... of the
local governments --

MR. LERNER: Because they're not
creatures of the state legislature.

MR. CASE: They have inherent
power, not delegated power.



1 MR. LERNER: Okay, and do they?
2 MR. CASE: Yes.
3 MR. LERNER: Do they --
4 MR. CASE: Do they actually
tax income?

5 MR. LERNER: Yes.
6 MR. CASE: I don't know... I
mean, people from the Lower... None in Alaska do, that I know of.

7 MR. LERNER: I mean in Alaska.
8 MR. CASE: No, none to my
9 knowledge. No tribal governments in Alaska exercise an income
10 taxing power. They, I think, would have it but they don't
exercise it.

11 MR. LERNER: Thank you.
12 MR. BERGER: Dalee Sambo and
then Joe Jorgensen.

13 MS. SAMBO: Yeah... It was
14 just... brought to my attention that maybe there has been a
15 resolution of this jurisdictional issue and I was asked to ask
16 David Case that... Does Carlos versus Gustufson, the case...
17 resolve that jursidcitional... some of the jursidictional
questions and, if so, how?

18 MR. CASE: Carlo versus Gustufson.

19 MS. SAMBO: Okay.

20 MR. CASE: Well, I don't think
it resolved... I mean... resolved all the jurisdictional ques-
21 tions. I think it is very clear in this state that the state
22 courts do not have... proprietary jurisdiction over trust or
23 restricted property, and that case involved a restricted townsite
lot. And that's really... It's a federal case. The better...
24 I mean, the other cases that the state court has decided
25 really seem to go further than that federal case and deny state
court jurisdiction over the control of this property, of restricted



1 allotments or restricted townsite lots, which are the two kinds of
2 restrictive properties we have in this state.

3 Carlo versus Gustufson confirmed a trust responsibility
4 on the part of the federal government to administer these town-
5 site lots with a high degree of care, and that is a very recent
6 case, '81 or '82. In my mind, it doesn't go so much to the
7 jurisdictional... state jurisdictional questions that we seem to
8 be talking about, but there are other state cases that do.

9 MR. BERGER: Joe Jorgensen?

10 MR. JORGENSEN: Yeah, I'm...
11 I think I need some clarification from Ralph Johnson, but as I
12 read the statutes for the Maine Indian Claims Settlement Act, the
13 act provided for the Passamaquoddy, Penobscot and Maliseet, if they
14 wished, to form governments. You can go ahead and do so and that
15 it provided a little bit more than Indian Child Welfare Act...
16 that they would then have access to the Indian Self-determination
17 Act as well as to the Indian Education Act, and that at least
18 says you can create a government and now you have a vehicle
19 through which you can... you can cut from the BIA certain contracts
20 and from the Indian Health Service a certain contract, and it
21 provides a governmental floor that they hadn't had in the past in
22 relation to the federal government.

23 MR. JOHNSON: That is true, and
24 I was only using the Indian Child Welfare Act as one example. But
25 it's my understanding... I'm sorry John Stevens isn't here to
26 give us an authoritative answer... that the Passamaquoddy, Penob-
27 scot and other... Maliseet, don't have the power, for example, to
28 levy taxes on either their members or nonmembers, don't have the
29 power to adopt zoning laws that are binding on members or non-
30 members, don't have the power to enact a criminal code so that
31 those aspects that we frequently think of as important aspects
32 of jurisdiction were not returned to the tribes.

33 MR. JORGENSEN: But the... They



1 did state that PL 280 would apply. Would that... Is that a way
2 that, if there are these joint jurisdictions, that the tribe then
3 could assume the power to control civil and criminal --

4 MR. JOHNSON: If they did say
5 that PL 280 --

6 MR. JORGENSEN: Yeah. They did
7 say that in --

8 MR. JOHNSON: Well, PL 280, of
9 course, cuts the other way --

10 MR. JORGENSEN: Yes, I know but --

11 MR. JOHNSON: -- ostensibly and
12 that's... I guess at this point I'd have to say I'd have to look
13 at the --

14 MR. JORGENSEN: Okay.

15 MR. JOHNSON: -- documents again
16 to see, because I haven't made that close a study of --

17 MR. JORGENSEN: Okay.

18 MR. CASE: One thing to perhaps
19 put in about the Passamaquoddy-Penobscot-Maliseet settlement is
20 that it occurred after the claims act, and in some ways --

21 MR. BERGER: After ANCSA.

22 MR. CASE: -- After ANCSA...

23 and it did include some jurisdictional components, and that
24 more or less highlights, perhaps, what Dalee's point was that
25 the claims act did not include such a component and that there
is still a question of a jurisdictional settlement then in
Alaska.

MR. JORGENSEN: Well, can I
raise one more point then, as I'm trying to speak eventually to
jurisdiction. The... Many of the villages have nonprofit corpora-
tions that are IRA governments. The... If these are established,
the IRA governments, although they don't have the authority that
IRA governments have in the Lower 48, the non-ANCSA governments...

1 If there is to be a change, if you are asking for a large change
2 from ANCSA, is it possible because IRA governments have been
3 established, to take back to them the authority for the control of
4 land as well as for the control of the economy as well as for the
5 control of the government, and then work with the issue of trust
6 status of land?

6 MR. CASE: Well... I don't think
7 I would agree that the IRA governments do not have the same powers
8 that tribes in the Lower 48 have. There's nothing in the applica-
9 tion of the IRA in Alaska that limits that authority. The IR...
10 Limits in the terms of the law.

10 MR. JORGENSEN: Governmental
11 authority... How about the control of the economy, the... the
12 establishment... In the Lower 48, the economies are controlled by
13 the IRAs. There are some exceptions, such as Menominees where
14 they chose to separate the government from the business enterprise.

13 MR. CASE: Well, I think what
14 you're... what I hear in the question then is, does the control
15 of the land, or lack of control of the land... How does that
16 relate to the control of the economy?

16 MR. JORGENSEN: Yes.

17 MR. CASE: And it's... Yeah, it
18 has a very significant although uncertain effect, and that is
19 essentially the fact that there is no reservation. There is no
20 unity of political and property ownership in Western terms,
21 authority, and that essentially cuts off one leg of the strategies
22 that I had mentioned earlier. It makes it difficult to control
23 economic enterprise because the tribe doesn't have the... the
24 ownership control in legal terms of the property. And so, that
25 gets to the question of trust lands in Alaska. And... the
only thing that really can be said very persuasively is that it's
confused, politically confused. And then there have been legal
interpretations of political authority which makes it even more

1 confusing, by the Interior Department's solicitor.

2 Theoretically, you could argue that... more than
3 theoretically... You can argue that the claims act, itself, does
4 not prohibit the secretary of the Interior from taking land in
5 trust and the IRA still applies in Alaska and still permits the
6 secretary to take land in trust. But the solicitor has interpreted
7 the claims act to have just that effect.

8 MR. JORGENSEN: Correct.

9 MR. CASE: To prohibit the
10 secretary from using the IRA to take land in trust. And, finally,
11 the IRA, as originally applied to Alaska, included a separate
12 reservation establishment provision. And, interestingly enough,
13 that provision was still on the books for five years after the
14 claims act but it was, perhaps incidentally, repealed in 1976 with
15 the federal land policy and management act, along with a whole
16 bunch of other land withdrawal legislation.

17 So you have that sort of pattern, you have the claims
18 act, you have the subsequent repeal of legislation authority
19 under the IRA in Alaska, but you have the continuing reservation
20 trust land authority under the IRA, and that's all still appli-
21 cable.

22 MR. JORGENSEN: So, if we
23 follow up Ralph Johnson the other day, there is a basis to make
24 a rather large change which is, in fact, just a series of small
25 changes. It is conceivable that villages could be the possessors
of the land. They could reestablish reservations and they could,
in some fashion, have that land in trust. It need not be in
the secretary, it may be under the non-intercourse act, even, but
it's conceivable.

 MR. CASE: Oh, yes. Right.
I mean, you can sort of talk about and we can spin this fine
little... or, less fine little web of legalese here, but... Yes,
right. There's some... I mean, there's the statutory IRA that

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1 could do it and even the fact that the tribe owns the land and
2 has the title to the land would be sufficient under the non-
3 intercourse act, although the Interior Department says the non-
4 intercourse act doesn't apply to ANCSA lands or, finally, you get
5 to the point of sovereign immunity. And if the tribe owns the
6 land, then the IRA says that the tribe will... cannot be dis-

(TAPE 32, SIDE B)

7 MR. CASE: is... There is
8 inherent sovereign immunity, in the first place, and the IRAs
9 puts a statutory confirmation on that. So, I mean, you have several
10 levels and sort of backup positions that, in my mind, seem to
11 arise with the interaction of this federal legislation and the
12 basic doctrines of Indian law.

13 MR. BERGER: Mr. Lerner, just
14 before I call on you... The discussion has been wide-ranging from
15 cosmic considerations to very specific considerations and I think
16 that enhances the discussion. I wonder if all of those who are
17 legally trained around the table, for the sake of the record
18 of this proceedings, because the typist will take the audio and
19 type it up, I wonder if, when you have a moment this morning,
20 you'd just write out on a piece of paper, the names of the cases
21 you've cited that you can remember, and we can just hand the list
22 to the typist so that she will be able to reproduce those case
23 names without embarrassment, if I may put it in that way.

24 The other... Perhaps I just might add something that
25 bears on what will be happening next week at these meetings. One
of the members of the media handed me a note. As you know, in
Canada this week the prime minister and the premiers of the
provinces are holding a constitutional-mandated meeting with the
Native leaders of Canada, and that meeting is held in public and
is televised to the whole nation. And I'm told that Prime
Minister Trudeau yesterday proposed an amendment to the constitution



1 of Canada to entrench aboriginal rights, including provisions for
2 Native self-government, Native languages and Native education
3 rights. To have a constitutional amendment accepted in Canada,
4 seven out of ten provinces must agree and of the seven provinces,
5 one or other must be Ontario or Quebec. Those are two very large
6 provinces, each with a third of the population of the country.

6 And according to this note, Ontario, which is one of
7 the provinces whose agreement is essential, and New Brunswick
8 and Nova Scotia supported the proposal. Seven others argued
9 against it and said they were opposed to it. And that's an
10 interesting development because, in 1969, Prime Minister Trudeau,
11 in a famous public statement, made it clear that he would never
12 recognize aboriginal rights, that the rights of the Native peoples
13 of Canada were in the... were to be regarded as no different from
14 the rights of other Canadians and that their claims, as he put
15 it, could only be satisfied as citizens of Canada in the same way
16 that the claims of other citizens of Canada to education, health,
17 housing, and a good life could be... could be achieved. And I
18 suppose this illustrates that much is happening in other places
19 besides Alaska, and when the Canadian Native leaders arrive here
20 next week, it will be very interesting to see... what that... how
21 that proposal was greeted.

18 It says here that one of the Native leaders said it was
19 a grand gesture. Well, no doubt it was, and I... May I say
20 this about next week. We will start on... We won't start on
21 Tuesday morning, but we will start Tuesday afternoon at 1:15.
22 That's when the third and last session of the overview will be
23 completed, Tuesday at 1:15. And apart from David Case and Rosita
24 Worl and myself, who... it is to be hoped that we provide some
25 continuity from one session to the next, Browning Pipestem will
be here from the Lower 48 and I hope one or two others who will
introduce an Alaskan flavor to the proceedings.

I think that Mr. Lerner, you were next on my list.

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1 MR. LERNER: I had a question
2 for Mr. Case but... the briefest comment on your observation about
3 Mr. Trudeau. Either he has reached a different understanding on
4 the matter or he is acting on his publicly proclaimed decision
not to seek elective office again in Canada.

5 MR. BERGER: Or both.

6 MR. LERNER: Or both, right. I
7 think that will be probably an exhaustive classification.

8 Mr. Case, if I heard you correctly, you were saying that
9 an IRA government could not be deprived of its lands without its
10 consent. If that's... If the language has that kind of definiteness,
that would be a greater protection than ordinary citizens would
enjoy under the Fifth Amendment to the constitution.

11 MR. CASE: Right. It doesn't
12 probably run against the United States government.

13 MR. LERNER: Whom does it run
14 against?

15 MR. CASE: Anybody else.

16 MR. LERNER: The state couldn't
17 exercise some eminent domain --

18 MR. CASE: Right... right.
19 States cannot condemn tribal property. That's the general rule.
20 States can condemn individual Indian property that's held in
trust or restrictive status. There's a statute to that affect,
but tribal property is not subject to state condemnation, or
any other involuntary loss from judgment or otherwise.

21 MR. LERNER: But from the
22 standpoint of a non-Native Alaskan then, this would be a pro-
tection that... that he or she might very well envy.

23 MR. CASE: Well, yes... but...
24 Yes, that's true, and it is a protection that is part of the
... fabric of federal Indian law as it applies to tribes, and
25 that is, perhaps, an anomaly in a constitutional system that



1 focuses on individual rights. But there is, in fact, in my view
2 and I think Ralph Johnson mentioned this before, a separate
3 history and with respect to native American status that is very
4 much a mixed bag but it is essentially, I think it's fair to say,
5 a status, a legal status that is in, for good or ill, outside
6 the U.S. constitution, and that it is true that native American
7 tribes, as communities or groups, whichever or whatever term...
8 I'm not necessarily limited to those you prefer to use, it is
9 a status that the native American communities have. The Bill of
10 Rights does not or has not... does not even now apply in total
11 to native American communities and it applies, theoretically in
12 part, through an act of Congress. But even that act has a very
13 limited remedy. In other words, tribes are not subject to federal
14 court jurisdiction to enforce the Bill of Rights, or any of the
15 rights protected under the Bill of Rights with the exception of
16 habeas corpus.

17 So these rights are... true, but they are the rights of
18 a community, not the rights of an individual and it is the
19 community that has the right to prevent, as a political sovereign,
20 or a political community, the loss of its assets without its
21 consent.

22 MR. JORGENSEN: A follow-up
23 to that, if I may. So, insofar as one's thinking about the
24 problem in the terms of ANCSA not conjuring up an entire new
25 world, one objective that Native peoples might have would be to
see how they can combine the advantages of this special protection
within the framework of a law... of this communal or collective
protection, or the protection of that communal or collective
organization gives them within the framework of a law that
pretty much mandates individual title.

MR. CASE: Right. I guess
that's one way of putting it, and that... seems to be one of the
... approaches that has been suggested and that is, indeed, the

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1 point of attempting to... as one of the AFN resolutions has
2 suggested, retribalize the ANCSA lands or some portion of them.

3 MR. LERNER: But when you
4 say retribalize, that carries with it to my untutored ear, an
5 effort to recur to earlier forms that history... The history of
6 the interactions in white man's law between those earlier
7 forms and government have been so mixed, so disappointing, so...
8 so mutable, that it would seem that one wouldn't want to travel
9 that route yet again. I mean... that... Someone spoke at an
10 earlier meeting of the swinging of the pendulum, blowing hot and
11 cold. And to that extent, I was wondering whether... the language
... I mean, whether the language isn't, in a way, locking you
into a repetition of something that probably most people don't
want to relive.

12 MR. CASE: Well... And I think
13 that that points out in my mind the importance of people...
14 Native people, in particular, at the grass roots that are affected
15 by these questions of understanding the pros and the cons. I
16 mean, there is the risk of which you speak. I mean, there are
17 disadvantages in being outside of the constitution and there are
18 advantages, I guess is one point that could be made. And there
19 are both, and it is not entirely clear that by jettisoning that
20 status, you not only eliminate the advantages along with the
21 disadvantages. I mean... It's... There... These are... It's
important to understand the relative risks and benefits of...
of both forms, if you will, of relatively being under the
constitution or relatively being outside of the constitution.

22 MR. LERNER: Yeah. Well, I
23 guess that was the thing that struck me in these earlier sessions,
24 the human desire to have one's cake and eat it, too. But that is
25 to say, to have the immunities that attend special status, special
treatment under the law, and yet to have all the benefits that
come from being under the law... money, and the protection from the



1 one side and the money that comes from the other, and given the...
2 I mean, the utterly unpredictable and... and checkered character
3 of Indian relations under... under Indian... under, you know, the
4 special American Indian law, one might wonder whether some of
5 those or the most important of those advantages that come from
6 collective and cooperative joining together might not be secured
7 in some inventive way under the regular law. It's a question...
8 I'm very far from having an answer, you know, to which I'm trying
9 to tug people along. I'm just wondering about it.

10 MR. CASE: Well, I don't know...
11 and I'm sure it's not... my place to even... I don't have an
12 answer to that question.

13 One must be leary of doing new things. I think that's
14 ... It's a wise caution. I mean, new things are fine except that
15 you don't know what they're going to do, and I don't share, I
16 guess, the feeling that the law with respect to native Americans
17 is completely or terribly unpredictable. It does swing back and
18 forth but I think a very good point could be made that it has
19 stopped swinging, that there is now a policy that is pretty well
20 entrenched that focuses on self-determination. We have to watch
21 that very carefully. You have to watch the pendulum doesn't start
22 to swing but there's about 20 pieces of legislation enacted since
23 1971 that in many ways entrench that philosophy, if not in the
24 constitution, at least in the law.

25 And so I'm not so sure the pendulum is in danger of
swinging back the other way and that that is quite a great a
concern as it has been in the past and I'm not so sure that the
law is unpredictable.

Finally, one... I just don't want to go on here, but
one would appoint... just a thought... It occurred to me as
Dalee was talking about the need for clarity in the law in
resolving these jurisdictional questions. It may well be that
there is an advantage in not resolving. And that is that as long

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1 as they are unclear, there is freedom to act and that there is
2 always the risk that in attempting to clarify things, they will
3 be clarified in a way that is not advantageous to whatever interest
4 it is that you happen to support. So it's, perhaps, important to
5 be well aware of the political realities when one is attempting
6 to clarify issues or if one is attempting to develop new institu-
7 tions. I mean, the risk in developing new institutions is that
8 you won't be in control, really, of the design of them and then
9 that compounds the problem of not being aware of how they're going
10 to act once they're put in place.

11 MR. BERGER: That is a provocative
12 remark. Ted Chamberlin and then Sheldon Katchatag and then
13 Ralph Johnson.

14 Might I offer an observation that the... this pendulum
15 that swings, as far as Native people are concerned, doesn't
16 appear to swing in response to the currents of conventional
17 American politics. That is, it is, it seems to me, interesting
18 that in a sense the last high water mark for acknowledgment of
19 Native people's distinct place in the U.S. scheme of things
20 occurred in the early years of the Roosevelt administration,
21 Franklin Delano Roosevelt, and certainly President Reagan's
22 statement on Native sovereignty of January last year, goes
23 beyond anything that was, I think, explicitly acknowledged by
24 President Roosevelt. Those two presidents are thought of as
25 being, I think, at opposite ends of the conventional political
spectrum and yet both happened to be in office when the pendulum
was swinging in the same way. Perhaps that's a naive and
simplistic observation but...

26 Ted Chamberlin, and then we'll carry on from there.

27 MR. CHAMBERLIN: I just wanted
28 to pick up on the reference of... the use of the word anomalous
29 to describe the relations with Indian groups in the United States.
30 That's a word that's been used since the 18th century and, indeed,



1 one which was routinely celebrated as constituting... as describ-
2 ing the character of the Indian nations. Lewis Cass used it.
3 Senator Dawes and others tried their best to remove the anomaly
4 and it wasn't until the New Deal legislation that there was a
5 determined effort to acknowledge that anomalous character, to
6 embrace it, to in some sense enhance it. It is and has always
7 been as much a part of a distinctly American, and before that a
8 distinctly British, tradition and there's absolutely no reason
9 to see things otherwise.

10 In 1914, Frederick Abbott, who was at the time the
11 secretary of the Board of U.S... Board of Indian Commissioners,
12 which was a religious group set up by Grant under his peace
13 policy after the Civil War. Abbott was instructed to do a review
14 of Canadian administration, came to Canada and wrote a report.
15 In the course of that, he spent a lot of time with Duncan Campbell
16 Scott, who had recently taken over as deputy superintendent
17 general, and... Scott became, over the next 20 years, the single
18 figure who pronounced on Canadian Indian policy. In his report,
19 Abbott describes Scott's... or, recounted Scott's description of
20 Canadian Indian policy, and the phrasing that Scott used was that
21 Canadian Indian policy was founded on what he described was the
22 radical principle of maintaining the Indian community attached to
23 the land while leaving individuals free to pursue their livelihood
24 far and wide, on or off the land. Abbott strongly endorsed that
25 principle, said it was a principle which should be returned to
front and center of American Indian administration, and it was in
some measure that principle which was picked up by the Meriam
commissioners in their report. They phrased it in, again, in
familiar terms, in terms of the complimentary principles of
protection and advancement, which was phrasing which was used
through the '20s, '30s, '40s, and '50s, very much as a kind of
stock in trade phrase, by American and Canadian administrators...
a phrase which certainly highlighted the difficult decisions that

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1 had to be reached in balancing those two obligations, those two
2 responsibilities for protection of advancement, but also high-
3 lighted the anomalous character of legislation that was being
4 passed and of the position of the Indian nations. And it seems
5 to me that the thing that has to be kept in mind is that there
6 is nothing inconsistent or discontinuous about searching for ways
7 to reestablish that anomalous character in Alaska.

8 It seems to me that ANCSA has eliminated many of the
9 anomalies and there is much to be said in bringing them back,
10 perhaps in different forms, perhaps through IRAs, perhaps in
11 various other ways, but certainly in ways that... focus on the
12 blunt fact that there is nothing like the Indian nations in the
13 United States. There is nothing comparable. There are no rights
14 that are comparable to the rights that have traditionally been
15 acknowledged, not always respected, but acknowledged as belonging
16 to... belonging to the Indian people. And I think the difficulty
17 of finding ways of sustaining those rights and enhancing them
18 emphasizes the importance which has certainly been referred to
19 a number of times here of returning to the villages, to the
20 elders, to the people, themselves, to try to draw from there the
21 principles that will inform the legislation that will protect
22 those rights and those interests. And I mention that for a
23 particular reason, because there are a distinct... range of
24 issues that have, in recent years, been brought to bear on land
25 claims.

There are essentially three kinds of ways in which
land claims have been presented. They've been presented in some
cases on the basis of traditional rights, which often usually
go back to what are recounted as precontact activities. They're
often captured in a... in a notion of aboriginal rights and they
usually, to some degree or another, inform all land claims. But
there have also been land claims which have taken... which have
focused on a different aspect. They've focused on post-contact



1 activities, on historical rights, on rights which are often
2 constitutional rights, or rights which have become accepted
3 through administrative practice or whatever.

4 And then there's a third group which are no less im-
5 portant for many of the claims, and those are the current needs
6 of the people, contemporary needs and future needs, and certainly...
7 and I'm sure you'll hear much more about this by people who know
8 much more than I do next week. But certainly in Alaska...
9 excuse me, Australia, right now you can see all three kinds of
10 claims being presented on all three bases, on the basis of
11 traditional, precontact aboriginal rights in the northern
12 territories, on the basis of historical practice and historical
13 rights in Queensland, and on the basis of contemporary needs in
14 New South Wales. And I think all of those have to come together
15 in the perception of the people who are most concerned, the people
16 in the communities have to come together from the perception of
17 both the young and the old, from both the people who... who have
18 a sense of their own immediate and future needs and people who
19 have a sense of their past traditions.

15 MR. BERGER: Thank you, Ted.
16 I... Sheldon Katchatag, you wanted to add something?

17 MR. KATCHATAG: Yes. My name
18 is Sheldon Katchatag. I'm the vice-chairman of United Tribes
19 of Alaska but at the present time I'm speaking strictly as a
20 person who is vitally concerned with all the issues which you
21 have been discussing here for the last two weeks.

21 A point that I'd like to bring up is the fact that the
22 IRA governments were set up as political governments. But we
23 also have the right, as political governments, to have a require-
24 ment for a certain minimum blood quantum for membership. Why
25 is that?

25 Okay, first of all it recognizes that we, as a culture,
are separate and distinct from the Western culture of the United



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1 States of America. It also provides a political vehicle through
2 which we can protect our separate and distinct cultures.

3 And one other thing which has not been brought out since
4 I've been here, and please excuse me for not being here during
5 the whole time... Political power is inherent from and derived
6 through the will of the people. And at the time, when the IRA
7 act was applied to the Native people of Alaska, those people
8 were all Natives so that there was no question of discrimination
9 or protectionism or exclusivism, because they were all Native.

10 One of the things about the IRA act which I think has
11 proven to be a detriment to the Native people of Alaska is the
12 fact that, through the IRA act, we were reassured that the
13 federal government would look out for all of our interests, and
14 that is shown in the part of the IRA act which says that no lands
15 ... interest in lands can be sold, leased, encumbered in any way
16 without the consent of the tribe. Now that, to my way of think-
17 ing, says that the great United States government says we are
18 holding everything that you hold dear in trust, which includes
19 all of the lands which we have used and occupied, which are many
20 times greater than the land that we have received under the
21 claims settlement act.

22 Somewhere along the line there has been a transition on
23 the federal government's part in their role from keepers of this
24 trust to that majority government from which we now must claim
25 those interests which they say they have been holding in trust.

And also, I believe that we have a political right,
since political power is inherent and also derived from the will
of the people, that in order to protect and promote our various
and diverse cultures, we have a mechanism available to us to do
this. Otherwise, you can see very easily that we are in the
process of being assimilated and that is not the wish of the
people. The man in the village does not identify with the
corporation, and that presents a very serious problem when you



1 consider that everything that they have gained under the Alaska
2 Native Claims Settlement Act, they don't identify with. They
3 seem to think that corporations will have their day and they'll
4 be gone. But what they don't realize is the fact that what will
5 go with them is, first of all, the land base and all the renewable
6 resources upon which our various and diverse cultures are based,
7 because our culture is not based on beef, it's not based on corn,
8 it's based on those resources which have gotten us from primitive
9 times to where we are today. And even now, in this very modern
10 age, we still derive approximately 70 percent of the food we
11 need from the land, and not from the supermarket.

12 And I believe that one of the things which I think
13 everybody who is a member of the Western society should begin
14 to think about is the idea of cultural equality. We, as a culture,
15 have a right and also we believe we should be respected as a
16 culture. We are not to be assimilated solely because that great
17 government in Washington, D.C., says that is to be their policy.
18 Even if the Congress decides to enact... (CLEARS THROAT) excuse
19 me... to enact that there will be no more IRA governments, there
20 will still be tribal governments because that is the will of the
21 people.

22 Another problem that we have is the fact that the
23 majority of our languages have not had a written component in
24 them. We have always had historical boundaries between our
25 various and diverse settlements. These boundaries were abided
by these neighboring villages, and yet because they were unwritten
and oral, however old they may have been, they were not respected
or even considered by the great influx of the Western society.
And it really... I really have problems with ANCSA because of
that clause of the IRA act which says that the secretary of the
Interior can do nothing with any of our land, interest in land,
water rights, surface rights, you name it, without the consent
of the tribe, and to my way of thinking, that's what ANCSA is.



1 It's an act that has been passed and imposed upon us from the
2 outside world without the consent of the tribe. And that is, I
3 think, is one of the main reasons why your man in the village does
4 not identify with the corporations, even though everything about
5 him and his life and his lifestyle is potentially tied up in
6 those corporations.

Thank you.

6 MR. BERGER: Thank you, Mr.
7 Katchatag. Mr. Johnson?

8 MR. JOHNSON: Yes. I'd like to
9 simply expand on what Sheldaon Katchatag has said that in the many
10 years of experience that I've been working with the tribes in the
11 Lower 48, and not just with radical members or whatever but with
12 the heart and core of the people, tribal judges, tribal leaders
13 from around the country, one thing is clear, and that is they
14 don't want to eliminate the... even the confused powers of
15 government they have. It may look anomalous and confusing to some
16 of us outside, but when the question comes up, "Well, let's clean
17 this up. Let's fix this up and you'll just be like a county,
18 it's a neat, clean system." There's a very clear answer and
19 that is, "No."

20 Two major attempts have been tried, let's assume it
21 was by people of good meaning, in Dawes, a Christian man in the
22 1870s who thought that it was best for the Indians. My under-
23 standing is that he thought it was best for the Indians. A lot
24 of other people may have had other ideas, but some of the sponsors
25 of that act thought it was good for the Indians to assimilate
and to put them on the tracts of land and they would then assimilate into the great melting pot.

By 1934, it was apparent that that was a failure. If the goal was to make the Indian life better, it was a total and abject failure. It simply worsened the lives of Indians all over the country.



1 In Public Law 280 and in the specific terminations of
2 the 1950s, the same thing was tried. That is, let's... "Everybody,
3 we shouldn't have these rural ghettos. The Indians are the worst,
4 the poorest, the most diseased people in the country and the way
5 to resolve that question is to bring them into the state government."
6 That didn't happen. In fact, the Menominee and the Klamath tribes
7 that were terminated, their lives became much worse. We've heard
8 Ada Deer much more personally on that. And the other tribes
9 that had been terminated so that it became universal recognition,
10 not just Indian, you know, files or somebody over there, but the
11 universal recognition that the Indians' life was worse because
12 of Public Law 280 and because of the specific termination acts
13 that occurred during that time.

14 What I'm saying is that it may be confused questions
15 of jurisdiction, there may be anomalies, but if you ask the
16 Indian community what the answer is, their answer is very clear
17 and that is, "We prefer to have such powers of self-government
18 as we can."

19 I'd like to leave one other notion in mind and that is
20 ... Well, two ideas, and that is that they're sophistication in
21 the exercise of their government has been increasing by tremen-
22 dous leaps and bounds since 1950, 1960, in that era. Its
23 training, ability to deal with the outside world and with their
24 own problems, has been increasing very rapidly.

25 There's one other idea though that it seems to me we
want to have woven in here and that is the de facto exercise of
jurisdiction, that the IRA governments and tribal governments in
the United States have been exercising, are sometimes best
handled in a situation of concurrent jurisdiction. If you have
either state jurisdiction or tribal jurisdiction, you frequently
get into exceptionally difficult and complicated legal questions,
whereas when you have... frequently you have a concurrent juris-
diction, it's a matter that's very important to the tribe, then :

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1 they exercise jurisdiction. If it's a matter that is very im-
2 portant to the state, then the state exercises jurisdiction. In
3 most cases on Indian tribes in the Lower 48 where that jurisdic-
4 tion has been exercised by the tribes, the state stays out of it,
5 as they should. And so one possibility for considerations for
6 handling some of the problems in Alaska may be to look at the
7 question of concurrent jurisdiction and let a de facto situation
8 arise where if the Natives here wish to exercise jurisdiction and
9 go ahead and do it, that's the way it would be done.

8 MR. BERGER: Ada Deer?

9 MS. DEER: I'd like to respond
10 to some of what Dalee has brought up in terms of the vision and
11 the sense of justice.

11 In our treaties, we ceded away millions of acres of land
12 to the federal government and if I recall correctly, something
13 like nine and a half million acres of land were ceded over. And
14 the agreement was that the Menominees would have their reservation,
15 to be held as a homeland for the Menominees as Indian lands are
16 held. We interpreted this to mean forever, not at the whim of
17 Congress, and when we started doing a background work and trying
18 to understand the termination and so on, this was brought out
19 and we looked at our treaties. Now, I realize you don't have
20 treaties up here, but the point here is, you know, what is just?
21 And we rejected the plenary power of Congress in passing this
22 termination act.

20 And in the passage of the restoration act, we were
21 successful in getting all the major provisions that we wanted.
22 As a matter of fact, our powers of tribal sovereignty are
23 enhanced, and it's too long to go into here but I would like to
24 suggest that the commission invite members of the county govern-
25 ment here, the tribal legislature, and others that have been
connected, or perhaps Mr. Berger could, or some staff person,
could make a visit to Menominee County. At any rate, I want to



1 make a suggestion that a more comprehensive study be done of the
2 Menominee situation for the purposes of ANCSA here, because we
3 don't have the time and I don't have all the information that you
4 all require to have a complete understanding of this.

5 In terms of social engineering, many of the people that
6 do this, and I mentioned this earlier but I want to emphasize
7 this again... they have gone onto bigger jobs, corporate law
8 firms, whatever. They dream up these schemes and these... new
9 experiments, and it's the Native peoples that have to live with
10 them. And I wish there would be some way that the people who have
11 a part in this would also have to suffer and pay the price that
12 they impose on the rest of us. As you can tell, I'm very angry
13 about these... these people that do all this social engineering
14 and that the rest of us then have to clean up the mess afterwards.
15 I think you ought to keep track of who all those social engineers
16 were and whenever you decide you want to do something, make them
17 pay, and I mean... I'm real serious about this. Make them
18 retract their statements, as Pierre Trudeau recently did for
19 whatever his reasons, and I think it's extremely important that
20 you got a... that the Natives and whoever it was prevailed and he
21 saw the light. So you can see, with the politicians you can
22 certainly bring about the pressures to change. So, you know,
23 keep track of those people, ask them for contributions and help
24 them rectify the injustices that they have wrought on the people
25 here.

26 This will be a little disjointed because there are many
27 thoughts, but I want to get this into the record. Someone brought
28 up this idea of taxation. I feel, and I'm sure that many Native
29 peoples would feel this, that the millions of acres that we have
30 ceded away can never be repaid in terms of the taxes. Why is the
31 U.S. so wealthy? They're wealthy because they have, the govern-
32 ment and private individuals, have developed and built on the
33 wealth, on the land and the resources, that has been taken away

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1 from Native peoples. And we need to keep this in mind. Now, I
2 know there are all kinds of legal reasons and I pay my taxes,
3 too. I pay my income tax and my federal tax and so on, but I
4 think the idea that Indians have already paid their taxes forever
needs to be kept in mind.

5 Another thought... When we were working to achieve our
6 restoration, we wanted maximum tribal sovereignty. And, again, I
7 want you to study the trust and management agreement that we
8 came up with. We're the only tribe at this point, according to
9 my understanding, and, again, you have to remember now I have
10 not been actively involved in tribal affairs for a number of years
11 ... We're the only tribe that has the power to and the right to
12 negotiate directly with the secretary of the Interior, and I
13 think that this should be looked at both for its advantages and
14 disadvantages. We wanted federal protection, not federal
domination. And, of course, this is open to interpretations but
that was the most concise phrase that we could come up with as
we worked to redefine our relationship with the federal government.

15 Here in Alaska, the Native peoples have a high degree of
16 political power and economic power, and I feel that this needs to
17 really be analyzed, explored and utilized. Politicians respond
18 to pressure and with the upcoming elections that are coming soon,
19 the Native peoples need to develop their particular platform,
20 whatever it is, and confront the congressmen, congressperson...
21 I know you have one, the two senators and other people that are
22 involved in the political process and to utilize the voting power
23 and other political and economic power that is available under
24 this system of government. If a small tribe like the Menominees
25 can achieve what we did in the time that we did it with very
little money, with excellent legal assistance, and we don't have
the percentage of people in our state as you all do here... You
know, you can do what you want to do. Of course, you have to
figure out what you want to do and I feel that it's clear that



1 people do want to maintain the land. They want to maintain the
2 resources. I think people here have been very eloquent in
3 expressing what the aspirations are. Now, there may be different
4 ways of achieving this but, again, I look at 1991 as this huge
5 pressure coming down and that people do have to get mobilized.

6 I also want to make a slight correction in my comments
7 about the churches, and I would like all people, church members,
8 Natives and others, to really think through what the roles of the
9 churches has been in Indian affairs. I know that people in the
10 churches were very involved in the Dawes Act, for example, and
11 a good example of the participation of churches today is the
12 Friends Committee on National Legislation. It's a very small group
13 in Washington, D.C., that listens to what Indian people want and
14 then does it. I would like to suggest that it's time for all the
15 churches to examine what their roles are, what their functions
16 are, what their responsibilities are, and that they need to be
17 more responsive and responsible in their actions in this area of
18 social action and political activity.

19 MR. BERGER: Thank you. Russell
20 Jim?

21 MR. JIM: Thank you, Mr.
22 Chairman, and I, too, would like to express the gratitude with
23 the eloquence of which Mr. Katchatag brought forth in regard to
24 the importance and the very crux of this whole forum, is the
25 culture of the people.

And I keep hearing these overtones that continues to --

(TAPE 33, SIDE A)

MR. JIM: -- confirm that
perhaps the first treaty did have at the bottom, "or 90 days,
whichever comes first."

(LAUGHTER)

MR. JIM: And of course,
again, this term of consultation and concurrence that is supposed

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1 to be practiced by the Bureau of Indian Affairs, as far as I know,
2 has never truly come about, and that follows in more than one
3 category.

4 I appreciate the insight of Dalee Sambo and, from a
5 layman's point of view, I would hope that the concerns that she
6 has brought out as a paralegal can somehow be worked out and
7 those perhaps that watch these proceedings through TV or hear
8 about them in the paper, perhaps, consider them comical if not
9 absurd in the requests of the indigenous people. For instance,
10 the full return of the... and the full turn back of the jurisdic-
11 tional rights to the aboriginees. But I think it must be
12 constantly hammered into the federal government, constantly remind
13 them, that they were not put here to dominate the aboriginees
14 but to assist them. But, again, I refer back to the constant
15 misapplication of the term trust responsibility.

16 It seems that I have this opinion. I have this opinion
17 that... I hope it's not a... I hope it isn't final. But I have
18 a conscience and the majority of my people, and as I have been
19 taught by my elders, I have a conscience, and there is this other
20 great land that you go to when you leave this earth, and to carry
21 that conscience with you at all times, and it would make you a
22 better man and appreciate your fellow man's property and his
23 rights. But as I observe the many... the actions of many main-
24 stream people, they seem to get their conscience and put it in a
25 corner for many years, and when through their lives they realize
there is a gate and there is things that I have to do on this
earth in order for me to get through that gate perhaps, and
so in the latter days of their lives they get their conscience
back to them and do something in regard to, perhaps, minority.

Take, for instance, with the exception of the present
chairman of this forum, the judges of the supreme court or the
federal judges in the particular regions, Judge Boldt... in the
latter days of his life he made a major decision in favor of the

1 indigenous people of the Pacific Northwest. But as the law is
2 applied and the appeal process can be put into effect, the
3 judge either gets sick or dies or both, or resigns and practically
4 puts the indigenous people back into square one again. Perhaps
5 this is a feeling of Mr. Trudeau, as Mr. Lerner has said, his
6 actions come after the time when he said, "I am going to resign."

7 But enough cannot be said and I hope, and as I state
8 as a layman to this body, the importance of understanding that
9 there are no Thriftway, A & P, Safeway stores out here in these
10 villages. There are these stores all around the Yakima reser-
11 vation and yet the Yakimas choose to gather a large portion of
12 their food off the land, naturally.

13 And I leave you perhaps with this comment, and I think
14 it is well put, in regard to cultures by an Irish author by the
15 name of Peter Farbe, in his book, "Man's Rise to Civilization."
16 And he noted the contributions by individuals, organizations,
17 monetarily for the protection or the extinction... against the
18 extinction of certain birds and animals, passenger pigeon, et
19 cetera. He says, but when Yahi and when Ishi, the last Yahi
20 Indian to ever roam the face of the earth died in a museum of
21 anthropology in San Francisco, not one dime raised for the preser-
22 vation of Yahi or his culture, no different than the tools and
23 the weapons that abound in the museums across the nation are
24 never analyzed and the people that... the people that made them
25 are never understood, tried to be understood. And I think the
26 way he analyzed the situation in regard to culture was, if I can
27 remember it, "Man is quick to prevent cruelty to animals and
28 sometimes even to humans, but there is no counterpart to the
29 Humane Society or the Sierra Club for the prevention and
30 cruelty to entire cultures."

31 And I think this is... I'm sure many in this body
32 realize this, but here is a white man, an Irishman with such
33 great insight, and can put into this black and white English words



1 such a profound statement, just as Mr. Sheldon Katchatag has.

2 Thank you, Mr. Chairman.

3 MR. BERGER: I think... I wonder
4 if it's all right with you if we might take a five minute break
5 for a cup of coffee and I'll confer with David Case about the
6 rest of the program. Is that all right? We'll just take a break.

(HEARING RECESSES)

(HEARING RESUMES)

7 MR. BERGER: Ladies and gentlemen,
8 I thought we might carry on for a few minutes and then go to lunch
9 and then come back after lunch and carry on for perhaps an hour
10 or so, or as long as we feel it appropriate to do so. And then
11 we'll wind up after that.

12 I think that I would like now to ask Alfred Starr if he
13 wishes to speak. Mr. Starr has been very patient with us and we
14 were delighted to have him with us throughout all of last week
15 when he did make a contribution that was much appreciated.

16 Mr. Starr, if you'd like to proceed now, please do, sir.

17 MR. STARR: Thank you, Mr.

18 Chairman.

19 I heard so much about Indian laws and that. I'm
20 thankful that people that study the Indian laws from way back is
21 talking to us here. Here I'm going to talk a little about taking
22 care of Alaska, when we first heard about the Indian villages or
23 where they live or Native allotments or...

24 It wasn't until 1915 that the secretary of Interior
25 came into the Interior of Alaska. They was going to build rail-
road, and it wasn't until about 1904 that the missionaries came
and what happened... quickly happened in a lot of places was
that when the missionaries came, they came into villages or
they moved villages and told the Indians to come, "We're going to
build a church here," then they took the land. They took the
land, and very often quite a lot of it. Since then, up to about

1 1968 when the first congressional... had a hearing up here on
2 Indian lands and land claims, up the Tanana River, around Nenana,
3 especially around Tanana today, they told the Tanana Indians
4 where I was born, that's on the Yukon... You just look at the
5 Alaskan map... We had a village down below Tanana and the
6 missionaries came there... I was born in 1898. I guess they
7 learned from the white man how to build cabins and one thing and
8 another and we had a good place, little Tanana. The missionaries
9 said, they say... that's going to be a town, they're going to
10 establish a military post up where the Tanana River and Yukon
11 River comes together. That's about 40... 30 miles up the river.
12 "And we want you to move up there because we're going to build a
13 church there, we'll have a church for you."

14 So they said... The Indians said, "That's kind of a
15 windy place. This is a good place here, you know. There's no
16 wind... not too much wind and things like that here. We like to
17 live here." "You'll be away from where you're going to be,
18 military post, and where you're going to be work and things
19 like that." So they moved up there. They left their village and
20 they moved up there and they built cabins and started a village.
21 And the missionaries took all the land around there. And they
22 were not own their land at the village. That's what I was
23 so worried about lately, that the Indian in the Interior of
24 Alaska and all over Alaska, as far as that goes, wherever their
25 villages is that they should own that, own the land.

Today they're selling that land. They were trying to
sell it and the Tanana... the people of Tanana, the Indians,
said that "That's our village. We didn't tell the missionaries
to take land around it."

And up Tanana River around 1968, after 1968, finally
we started having meetings down there after I worked so many
years to get that started, that the Natives up the Tanana River,
around Tanana Cross and different villages up there, had the

1 same problem. They always had villages there. The missionaries
2 came and they took the land around it. So when you go to build
3 a highway they said, "Say, you have to move your cabin. We're
4 going to build a highway." Then they say... they move their
5 old cabin and put it together again.

6 Then three or four years later, something else going to
7 be built. You got to move again, keep moving. And we... Many
8 years that I talk to the University of... with the people from
9 the University of Alaska. We didn't have no compensation but we
10 did talk about land, that we should have land to live on. Alaska
11 was covered with trails used by Indians, just like the... just
12 like the Lower 48. And just like the Lower 48 from the Eastern
13 part when they started to come West, that was all Indian trails
14 that was taken, and all good land was... had to be taken by
15 settlers. That's... That's why I was glad that they started this
16 ... your commission.

17 We American Indians, (INDISCERNIBLE) American Indians,
18 the whole North American Indians, lived here not too long ago
19 before there was any white man came from Europe and we had rules
20 about our villages, our hunting grounds. I talked about that
21 before in the earlier part of... and each tribe according to
22 population because of the game, the plants, roots and different
23 things they had to pick, fish... had a certain amount of land
24 and the Indians always talked about that so that their people
25 will live and we couldn't have one whole... one tribe in Alaska.
We've got to have all different places, including the land
around... around the coast, coast of Alaska, the Bering Sea in
the northern part. They, themselves, have to have different
villages on account of amount of sea animals that they live on
and the furs and the caribou wintering in our... They got their
clothes, they make their clothes of.

And it's funny, listen to you people that study the
Indian land and Indian laws. Most of the laws about the Indian



1 land or Indians was made through the colonial times. Today, when
2 we got mostly over population all over the world and the people
3 will have to move quickly to different parts of the world, that
4 original people up here, what their laws was wasn't asked, but
5 the white man laws was put into it.

6 The village today... The villages today of Interior
7 Alaska haven't got too many, at the present time, too many white
8 people among them. Some villages, maybe, will have one missionary
9 or one school teacher. That's about all. Some have a little more.
10 So I'm glad that the young people up here is talking about the
11 village rules, about their land. They've got to have that.
12 And they also will have to have the land that they were given if
13 it's not taxed. Just this tax, like I said the other day, if they
14 start a mine or find oil or something, that's a... making money.
15 It could be taxed. But if it's not making any money, it has
16 nothing... done on it but to hunt and live off the game, one thing
17 and another, well it shouldn't be taxed. And that's another thing
18 like 1991 that you... that I heard so much about, that it sound
19 like now what we talk about in 1971, before 1971, that it shouldn't
20 be taxed unless we do something on it, cut timber or mines or
21 something, or some oil found on that land, only way that should
22 be taxed. Use should be taxed, not all the whole 44 million acres
23 but how much land that oil or that whichever mine or whatever
24 they could start on those lands.

25 Not too many years ago, about 1970... after 1971, the
Korean government got in touch with the village corporation at
Nenana... the Doyon corporation, too, regional corp... the village
corporations... that they would... they like to... they like to
have timber and they could start a barge lines on the Yukon
River to transport the logs and the timber products from the
Yukon River down to the Bering Sea and it could come on the...
transfer to the ocean ships to take it back to Korea. And you
have to ask the state, I guess, and the federal government to get

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1 permission to all those things, and the corporations haven't got
2 the power unless we got permission from them. There is not much
3 else in the Interior of Alaska at the present about industry...
4 anything. But things like that should be looked into, and when
5 you talk about you study the Indian laws, you should represent...
6 you should tell Washington or the state government about these
7 things.

8 I got a "Tundra Times" last night. I finally found it.
9 I was asking so... finally it was downstairs and I went there at
10 noon time. But on it, it said that... the state... and the state
11 government and their rule, wherever they spread money, like the
12 game commission, would have to hire a certain amount of Natives,
13 some percentage of Natives. And the legislators all thought all
14 day that they introduce a bill which they think it will pass,
15 that the villages that's got no white pupils in it, a lot of
16 villages got no white children, but still the people from outside
17 and the white people runs the schools, teach the schools, that
18 they going to start a loan so that the Native mostly... the
19 women, young women, young ladies, that had education will get
20 money so that they can go to college to learn how to teach so
21 they can teach their villages. They could run those, be teachers,
22 be teachers, things like that.

23 And, again, this Mr... this gentleman from Yakima, Mr.
24 Russell... when they went on this... he went someplace... If you
25 still got problems in the states and you have... you talking
yesterday about the 1890s or before that the laws about the
reservations, up here in Alaska, like I say, it wasn't until
a few years ago we didn't have no schools 'til about 1910 in the
Interior of Alaska. And we didn't have no hospitals and we didn't
know what... what the game laws was. We did not know game laws.
And we didn't have no food stamps or welfare, whatever you call
it, which is so much of the white people say they getting hand-
out from the government. It's new to us up here. We didn't ask

1 for it. The American Indians always did work for his living. He
2 had to. He didn't have the matches, he used a flint. They made
3 needles out of different things to sew their clothes and they
4 work hard for their living. But they like to work and if the
5 Europeans come up here, so-called white races, what I wouldn't
6 say, I wouldn't say white races... I think all human beings on
7 this earth is one people. I'm with Martin Luther King. You
8 came to different people altogether. I often thought about it
9 that if some... some other races or some other people that's
10 maybe from planet ... I'm just talking, you know... some planet
11 went to New York or Washington, D.C., or Ottawa, where Mr. Berger
12 ... Canada... beautiful country. I've been to part of it... and
13 would say that "We have a different language. We're going to take
14 over your country." Why, you think quite a bit about losing your
15 homes. That's what American Indians... happened to American
16 Indians.

17 So, I'm going to quit talking to you. I'm going to
18 quit talking to you, but I'm going to quote Will Rogers. He said
19 that he was proud that his ancestors, that the people that came
20 off Mayflower way out on Plymouth Rock, when they first came,
21 talking about the English, I'd say that include Alaska. That
22 we're proud that you came and we can't help but live with you
23 for a long time to come.

24 So I'm glad that you're talking about this... about...
25 you, commissioner, about what... about the Indians and what
26 should be... should be that the rest of the people, we should
27 get together ourselves and maybe through these little forums
28 to help run things like that so that the governments of each
29 country could hear about the people that they took their land
30 away from.

Thank you.

MR. BERGER: Thank you very
much, Mr. Starr. I think you've given us all food for thought

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1 from experience that goes back longer than that of any of us by
2 a long shot.

3 Mr. Katchatag?

4 MR. KATCHATAG: Yes. First of
5 all, Mr. Commissioner, I would like to thank you for showing the
6 respect for an elder in our presence by allowing him to speak.

7 Second of all, I have seen it written and I believe that
8 it is true that all honest men belong to one tribe, and that is
9 one of the bases why we, as Native people, are now in the position
10 that we are, fighting from the defensive. In relating with the
11 United States government, we did it in good faith. We believed
12 that they, like we, were looking out for our mutual best interests.
13 The United States has made great progress as far as freedom is
14 concerned. We are one of the freest nations in the world. I
15 have traveled, not extensively but I have traveled some abroad
16 and believe me, it's always great to come back home.

17 Along that same line, I believe that we, the Native
18 people, especially of Alaska, just being the so-called last
19 frontier of North America, are the freest people in North America
20 and since the United States government and its people places so
21 much lip service in support of freedom and democracy, I would
22 think that, if they were looking out for our best interests as
23 we the freest people, that they would do everything in their power
24 to insure that we as a culture and a people survive.

25 Our people are very, very independent. That is one of
the things that... one of the aspects of our people which Western
society is not very well aware. In a matter of hours, we can
be sitting here talking in this great urban mass of civilization,
and to us it's a jungle. We have more problems trying to keep
our personal bodies all in one piece and safe here in a civilized
area than we do back in the village. And when we get out into
the country which we are so much a part of --

(TAPE 33, SIDE B)

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1 MR. KATCHATAG: -- we are truly
2 free. We have to... We answer to no man and we ask no man to
3 answer to us and we have the greatest of respect for that freedom.
4 And that is why you see this movement now to protect that freedom.
5 Somewhere along the line, this respect for this freedom has gotten
6 lost and we would hope to reawaken it. And we are a self-sufficient
7 people by the very nature of where we live and how we live. We
8 don't take care of ourselves on a day to day basis. We do it
9 by years. When we harvest our resources, it's not just for the
10 day or the week or the month. We do it until the next season
11 comes about. And as free and independent people, your man in
12 the village is very intolerant of government as we know it in the
13 city. We accept the extended family and its protocol and con-
14 straints because we have to live with those, they're our family.
15 Tribal government is tolerated as necessary to prevent the break-
16 down of our societies and cultures. With the advent of the
17 state government, we were pretty much blackmailed into the forma-
18 tion of second class cities. The state's attitude then was that,
19 until such time as you incorporate into a city, we will not fund
20 you. All... At that time, the state wasn't very wealthy so it
21 really didn't make that much difference. But with the advent of
22 the pipeline at Prudhoe Bay, all of a sudden there was all this
23 wealth available. And the village people... Their culture is
24 based on the ability to adapt. If you can't get money as a
25 tribal government and you need money to govern your people, would
it not make sense then to adapt to access funding? And that is
one of the major reasons why we have seen a proliferation of
cities in bush Alaska.

As far as the day to day lives of our Natives of Alaska,
we are now seeing that we have to make a choice. What mechanism
of local government will best serve our people? And as things
are structured today, we are seeing that we will face very
serious problems under the municipal forms of government, and

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1 Akiachak has taken the lead as far as reverting. They have
2 dissolved their city government and are now in the process of
3 finalizing that dissolution.

4 Again I come back to cultural equality. Our lifestyle,
5 our subsistence way of life, will not... I emphasize will not,
6 survive if everyone's individual right to access to those resources
7 is to be allowed. Our Native people moved here to Alaska, I would
8 think, for two reasons. Number one, to get away from the strife
9 and the wars that have been endemic down through history, and
10 number two, to find a way of life in a climate and an environment
11 so harsh that nobody else would want it. And it's only within
12 the last 100 years that the resources available in our land have
13 proven that that is not so.

14 One of the greatest problems we have now, if we are
15 to resolve all these integrated problems, is the education and
16 information of our Natives. This will be our number one priority.
17 The second priority is information and education of the non-Natives
18 of not only our state but of the nation. Alienation of stock,
19 as far as I'm concerned, is a moot point because the regional
20 corporations own the subsurface estate and as such, whatever way
21 they go goes the way of our land. I would seriously urge this
22 commission to look into the corporate indebtedness of our regional
23 corporations and I would also urge you to look at the due dates
24 on these loans. What is the due date on the loan which finances
25 the Sheraton Corporation, the Sheraton Hotel or the Hilton Hotel?
Rumor has it that the due date on that indebtedness is 19
December, 1991.

As far as Indian country is concerned, Indian country,
as far as we Natives are concerned, has always been attempted to
be determined by outside forces. I believe that it is necessary
and proper and only fair to ask the Natives of Alaska, what is
your country, rather than to say from the outside, is there any.

Traditionally, before the advent of the Western society



1 in Alaska, the Native people were a nomadic people, adapting their
2 life and their lifestyles to be in tune with their environment
3 and the resources upon which they depended. It was only with the
4 advent of the missionaries and the schools that Native people of
5 Alaska settled in the villages permanently. We have used and
6 occupied vast areas of the state, even in our regions if you
7 talk to the elders and start asking him about the boundaries of
8 their travels... It's huge, vast.

9 One of the things... One of the reasons also I think
10 that we are fighting from a defensive position is the fact that
11 the leaders which negotiated the claims settlement act did not
12 consult with their elders and as such, the elders that I speak
13 to are telling me that they are gravely concerned. The corpora-
14 tions are not safeguarding our lands, they are not safeguarding
15 our resources, our culture or our heritage. And it is the elders
16 who determine the direction and policy of our people. They provide
17 guidance and as such, I believe that they are the prime movers
18 of the movement now back to tribal government and sovereignty
19 because they are truly concerned that everything about our people
20 and our way of life is threatened under the corporate mechanism.

21 And I believe, as I said to the Sixth Annual Elders
22 Conference in Nome, that we have to prevent our people
23 becoming minorities in our own home town. A recent survey done
24 by a major news organization here in Alaska has said that we're
25 on the very verge of entering that era... 52.7, I believe, percent
of the population of bush Alaska is Native and 47.3 is non-Native.
So we're getting very close to that point already.

And one of the things that has kept me going as I try
to determine how to help my people is that motto of the Alaska
Native Brotherhood and Sisterhood of Southeast Alaska which says
that everything I do is not for me and my own but for my grand-
children. And I would ask all of our people, all the Native
people of Alaska, to unite in our efforts to preserve and protect

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1 our Native lands, our resources, our heritage and our culture, and
2 I'm asking the corporate leaders, our social organizations, our
3 nonprofits, our tribal governments, everyone... if we don't
stand together on this, we're going to lose it all.

4 And 1991, as far as I'm concerned, is very misleading
5 because it implies that we have seven years to do something
6 about this. The time to do it is now.

Thank you.

7 MR. BERGER: Thank you, Mr.
8 Katchatag. Well, you've given us much food for thought and I
9 think most present would like to reflect on what you've said and
10 what Mr. Starr said earlier for a little while. So I think this
11 would be a good time to adjourn for lunch, and we'll come back
at 1:30, one hour from now.

(HEARING RECESSED)

(HEARING RESUMED)

12
13 MR. BERGER: Well, we... We have
14 a couple of hours and we're still rolling along very well. Did
15 any of you wish to make any observations on what Sheldon Katchatag
16 said this morning, or to make any observations on what Alfred
17 Starr said this morning? We have one or two other items to
cover, in any event.

18 We have with us this afternoon Mr. Jan Konigsberg, of
19 Montana Land Reliance. I think Mr. Konigsberg and his father
20 are well known to many of you, and since we are discussing forms
21 of holding land that may be innovative and may be of interest
to Alaska Natives, it might be useful if we asked him to discuss
that subject for a few minutes.

22 Mr. Konigsberg, if you'd like to go ahead, take the
23 microphone and then just proceed with the subject as you think
24 fit.

25 MR. KONIGSBERG: Thank you,
Mr. Berger.

1 I hadn't really expected to speak to the commission
2 today. I had asked Dorik Mechau to give me an opinion of my
3 broadly conceived notion of an alternative land conservation for
4 Alaska over lunch and he suggested and put me in the hot spot of
5 saying, "Why don't you present it to the commission?" And I'd
6 like to preface my remarks by saying that I haven't had the oppor-
7 tunity to develop my ideas at all fully with respect to how they
8 may apply to Alaska but I'd like to simply put it out on the
9 table so that those of you who are working with it on a day to day
10 issue... on a day to day basis, can at least consider it as an
11 alternative and I'd be most interested in... as you think about
12 it, in hearing from you as to whether or not you think it makes
13 sense.

14 The tool that I'm familiar with, and it may have some
15 applicability in Alaska on Native land, is conservation easement.
16 The conservation easement is essentially an easement attached to
17 the deed that frames the use of the land in perpetuity. That is,
18 it's a negotiated document that allows for certain uses of the
19 land and prohibits certain uses of the land, and as a background
20 example for what an easement is, my work is with an organization
21 called the Montana Land Reliance. And that organization protects
22 agricultural land in Montana. The Montana Land Reliance is called
23 the land trust. There are approximately 400 local land trusts in
24 the Lower 48. All of those trusts are dedicated to conservation
25 of land. Not all the land trusts are involved with agricultural
land. Some protect scenic areas, some protect simply river
corridors, others protect public recreation and public access to
certain areas in the United States.

Now, when we're working with a tool, we go to a rancher
or a farmer who owns... you know, who owns a considerable amount
of land, private land, in Montana, maybe anywhere from 7,000 to
40,000 acres under individual ownership. And we ask that person
to donate their development rights to our organization. Now what

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1 that means is that we will write a document, the conservation
2 easement, that donates the rights of development to our organiza-
3 tion which then prohibits the development of that land in non-
4 agricultural use in perpetuity. As soon as the document's signed,
5 our organization accepts the responsibility for insuring that the
6 land is conserved in agriculture in perpetuity. Or if some future
owner prefers to simply let it return to its natural state, that's
permitted as well.

7 One of the beauties of this tool is that it's private.
8 We don't rely on any government agency or organization to effect
9 its purpose. The use of the easement is allowed under state law
and there's tax benefits under federal law. So undoubtedly...
10 You know, the framework for it has its basis in law but the
11 actual implementation is all done between the private land owner
and the land trust, which is a private organization.

12 There may be some application... and, again, if you'd
13 like to think about how it would apply, I raise it in that
14 sense. There may be some application in Alaska on Native land
15 where the deed of the land could be restricted on the basis of...
and Mr. Chase indicated a subsistence easement, where assuming
16 a certain development will occur and assuming that if it occurs
17 in a traditional framework that development's going to be
18 constrained by existing state and federal and local law, and I
know from our experience in Montana, and I've followed Alaska from
19 afar since my father and mother do live here, I know that that's
20 often fraught... and, by the way, I spent seven years in state
government regulating energy development. I'm too much of a cynic
21 to believe that the traditional approach in terms of government
22 regulation of resource protection is a viable one. I think that
23 this tool, the easement, allows you to restrict it, a development
24 within a framework that makes sense to all the parties, including
the villages and the regional corporations, doesn't prohibit
25 development but what it would do, if it were framed correctly,

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1 would allow for the protection of the renewable resource base and
2 would insure, again, a negotiated matter could insure that the
3 use of the nonrenewable resources were done in a manner con-
4 commitment with a subsistence culture.

4 Now, it may or may not take the detail of a management
5 plan. What I suspect may be the case is that it would be a con-
6 stitutional kind of framework for the use of that land so that
7 you wouldn't put in the easement document specifically how such
8 and such and acreage were to be logged, how on such and such a
9 river drainage were to be developed. Because it constitutes a
10 priv... it occurs within the context of property law, the imple-
11 mentation of that would be based on having an institution that
12 was somewhat akin to a land trust which presently... and, to my
13 knowledge, there are no trusts in Alaska that are set up to
14 administer easements.

12 What I'm suggesting is that you have a corporate struc-
13 ture that is obviously set up or has been established to facilitate
14 development. There is no parallel institution with the kind of
15 power to enforce a cultural notion of subsistence. From what
16 I've heard and read in the past few years, that's a ground swell.
17 It's a... People who voice the concern don't have... apparently
18 don't have the power that the corporate entities have. The
19 whole... I guess the institutional perspective of this would be
20 you would create an institution whose goal would be to make sure
21 the conservation purposes were being achieved so that you'd
22 have a parallel counter force, if you will, to the development
23 entity. And that institution would function like a land trust.
24 It would enforce the provisions of the easement in perpetuity.

22 And how... I don't have any answers as to how that would
23 be established or how the members would be elected or appointed or
24 the tenure or the bylaws under which those trusts would operate,
25 or even if they'd be called a trust. But the point is there'd
be a parallel institution enforcing an aspect of property law and

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1 the easement document would allow for arbitration and, if necessary,
2 would allow for legal enforcement of the easement in perpetuity
3 so that you couldn't... you wouldn't be in a position of having
4 a development entity coming in, doing something, and no...
5 you know, nothing but the traditional framework for enforcing
6 conservation purposes. This organization would be specifically
7 devoted to that.

8 Now, the other question, of course, is how would it be
9 funded? It's very important in all land trust experience that
10 the funds be there. You cannot take on that kind of role without
11 an endowment fund, so whatever... You know, that's the important
12 consideration... is how will you fund that kind of a trust
13 institution? I would suggest, just off the top of my head, that
14 something like ten percent or 20 percent of the revenues that
15 come out of the development entity would have to go to support
16 the trust.

17 Now, that's about as far as I've carried it in my own
18 mind. I haven't developed it. You know, I certainly feel...
19 I normally wouldn't throw out ideas that are so ill thought out
20 but I'm only up here for a short time and this is the only
21 opportunity I'm going to have to raise the question. And I
22 would simply reflect on my own experience in working with land
23 trusts. I did... I went to work for this organization last year.
24 I spent seven years working with the state government on resource
25 issues and I can tell you that the framework of the easement is
a much easier one to administer than that of the law of resource
development law.

And to explain why, I think, would take a long time...
and maybe that's my own personal bias. I have found it a much
more suitable framework for achieving conservation values on
private land. And one other thing is that the public agencies,
themselves, are now particularly concerned that their activities
on resource protection will be influenced by conservation easement

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1 procedures. They simply don't have the money to acquire land and
2 the Forest Service and National Park Service, Department of
3 Agriculture, is moving in the direction of utilizing the conserva-
tion easement.

4 There are a number of other tools that are available,
5 bargain sales... In other words, you... If necessary, for example,
6 you could sell land to private developers and attach the conserva-
7 tion easement restriction on the sale of that land. If it should
8 become necessary under the taxation provisions of the land claims
9 settlement... and I think this is, at least, a fear I've heard...
10 that portions of the land get alienated. Whether or not they
11 will, I don't know, but if they were to be alienated, you can
12 restrict the use of that land with the sale of the land by deed.
So if... That may be an area, that whole area of land conservation
through property law, may be an area worth exploring on the part
of Native people.

13 That's, essentially, what I'd like to bring... I'm glad
14 to answer any specific questions if I can.

15 MR. BERGER: Thank you, Mr.
16 Konigsberg. In fact, it is my understanding that in Australia,
17 the... the arrangement for holding aboriginal land that is being
18 developed is one in which the land is held in fee by a trustee
19 but the trustee takes direction from an elected land council that
20 is constituted of aboriginal people. I mention that as a footnote
21 to what Mr. Konigsberg has said because it hinges back to something
22 that Ralph Johnson urged earlier in the week, that is that
23 consideration be given to developing new ideas about ways for
24 Native people to hold their land in perpetuity without... for
25 uses they deem appropriate without it being subject to the...
the federal government trust. I don't... So I think it is useful
to at least know that there are other ideas floating around out
there that might, in one way or another, be adapted to purposes
of Alaska Natives.

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1 Do any of you have any questions of Mr. Konigsberg or
2 any observations on what he has said? Alma Upickson? All right,
3 Ralph Lerner.

4 MR. LERNER: Were you going to
5 ask a question?

6 MS. UPICKSOUN: Two questions.

7 MR. LERNER: Oh, no. Then I
8 defer.

9 MS. UPICKSOUN: I was a little
10 confused I guess. In setting up a conservation easement, would
11 this be something included in the land title or contract, or is
12 it in private hands? I mean, how is it done?

13 MR. KONIGSBERG: The... In our
14 case of the land that we deal with, the easement... We deal with
15 the present owner of the property. An easement's drawn up and
16 then it's recorded at the county clerk recorder and attached to
17 the deed. It's an attachment to the deed of the property so that
18 it runs with the land. Any future owners have to observe the
19 conditions of the easement. It doesn't prevent, in our case,
20 ownership... subdivision of ownership of that property. Does
21 that answer your question?

22 MS. UPICKSOUN: Yes. I had
23 another question. Are you familiar or have you compared this in
24 any way with the land bank system that we've developed under the
25 Alaska National Interest Lands Conservation Act?

MR. KONIGSBERG: No, no I haven't.

MR. BERGER: The... What you're
suggesting, Mr. Konigsberg, merely for people to think about, is
the possibility that just as you approach ranchers in Montana to
sign a perpetual easement dedicating a portion of their land to
agricultural purposes, that here the corporations which hold the
land might be asked to agree to easements dedicating the land in
perpetuity to subsistence purposes.



1 MR. KONIGSBERG: Right.

2 MR. BERGER: Mr. Lerner?

3 MR. LERNER: Mr. Konigsberg,
4 whom I've never met nor, indeed, ever heard of and I think it's
5 probably... our ignorance is mutual, has really gratified me by
6 his remarks in that I didn't have the wit or imagination to think
7 of ways... of a detailed way, though I've urged in a general way,
8 the exploration of devices within the framework of standard
9 American private property law whereby large collective purposes
10 might better be served.

11 I wonder whether there would be some useful advice for
12 people thinking about the Alaskan situation if they consulted with
13 an organization such as the Nature Conservancy or maybe open
14 lands trust, or so on, who have worked in this way, trying to
15 circumvent the whole uncertainty of government... fluctuating
16 governmental policies?

17 MR. KONIGSBERG: I... Yeah,
18 I think that's important. The Conservancy has probably had the
19 most experience of any land group in the United States. The
20 organization that the land trust... the local land trusts have
21 formed is the Land Trust Exchange and it's based in Maine. And
22 there's another group in California called the Trust for Public
23 Lands that provides all the initial legal information to new
24 land trusts. That's their job in the Lower 48, is to help new
25 trusts get started.

26 I'll be glad to provide a list of organizations. There's
27 a couple of excellent publications out, one of which I have to
28 admit the Land Reliance put together, but book form on this... on
29 the private tools of land conservation that, I think, would be
30 very useful to look at, to review.

31 MR. BERGER: Mr. Katchatag?

32 MR. KATCHATAG: One last area
33 which I think most people generally don't think of because I think



1 it's a problem of perspective, is the fact that I believe that
2 your IRA and your traditional governments also have the power and
3 the authority to hold land in trust in perpetuity. Everybody is
4 devising possible solutions, again from the outside in. Why
5 don't we ask the people in the village, what do you think would
6 be acceptable to you? And I think we, as IRA and tribal govern-
7 ments, after all the education that we have received at the hands,
8 not only of your educational institutions, but in dealing with
9 your governments, believe we have the ability to manage land in
10 trust as a government, and I would, again, please try in your
11 thinking to consider the perspective of your everyday Alaska
12 Native in the village. He is very resentful of outside inter-
13 ference, even if it's in their own best interests, as far as
14 your concerned. We have to ask the man in the village what he
15 would be most comfortable with. And there is a strong movement
16 afoot now for local control, self-determination, self-sufficiency,
17 and the best way that we can... I can see, personally, to imple-
18 ment that would be through our traditional tribal governments to
19 hold the land in trust for our tribal members.

Thank you.

16 MR. BERGER: Could I... Mr.
17 Katchatag, could I just follow that up? In the Lower 48 where
18 you have IRA governments, and Mr. Johnson will correct me, I'm
19 sure, if I'm wrong about this, the federal government is trustee.
20 It holds the land for the benefit of the members of the tribe.
21 You're suggesting that the tribal council should actually hold
22 the land as trustee for the members of the tribe?

23 That's what you said, and I just wanted to make sure
24 there was no misunderstanding between us about that.

25 MR. KATCHATAG: Yeah, that's
basically what I'm trying to get across, is the fact that the
Native people of Alaska have been reacting to external stimuli
ever since we have been interacting with the Western society and

1 its governments. We, as independent people, which we generally
2 are, especially at the village level, have never been asked how
3 we feel about these things, and as a result, we have been fighting
4 a battle which we are continually having to turn around and say,
5 "Bang... Okay, I shot at you," and then you turn around and there's
6 somebody else again. What we're asking for is the respect that
7 we have the ability to manage our own affairs. You know, even
8 if you have our best interests at heart, it's still considered
9 meddling.

8 MR. KONIGSBERG: Can I just say
9 one --

10 MR. BERGER: Mr. Konigsberg...
11 and then Alma Upicksoun.

11 MR. KONIGSBERG: I'll make this
12 short. I wasn't... You know, I certainly don't intend to be
13 perceived as an outside influence, but since we are talking
14 about peoples' aspirations, I'll just give you my aspiration,
15 and that is my view of ownership may be different than yours.
16 But I don't think... The reason I work for the Montana Land
17 Reliance is I don't think that anybody owns the land. I think
18 they're there to take care of it and so I'm as interested, perhaps,
19 as you are in making sure the land in Alaska and Montana is
20 well taken care of. And the only thing I was suggesting is that,
21 when one makes a decision that's going to have long-term effects,
22 that people be aware of all the choices they have to do it. And
23 my one concern about governments, whether they're Native govern-
24 ments or white governments, whatever, is that they are subject to
25 temporary immediate needs that will influence immediate actions
that have long-term consequences, and unless the land is protected
from that kind of human interference, the land, itself, then
we may not have what we want in the long run. And easements
simply put... protects that land from human variance to the
extent possible under property law so that a government could hold

1 land in trust for people. The question is, who's running the
2 government.

3 And I don't... You know, this isn't meant to be dis-
4 respectful to anyone, but I don't trust any government all the
5 time, and I think that's something that is of benefit for every-
6 body to learn from our... you know, from white culture's experience.
7 So, simply put, an easement would allow you to make sure that
8 the conditions under which the land will be treated in its broadest
9 respect won't depend on who happens to be in power in the future.
10 That's all I'm saying.

11 MR. BERGER: Alma Upicksoun and
12 then Joe Jorgensen?

13 MS. UPICKSOUN: If I can be
14 correct in assuming that, Mr. Konigsberg, your perspective is one
15 looking at Native corporations as private entities holding
16 private land, in that suggestion, and with Mr. Katchatag looking
17 at the alternative of IRA governments through the federal govern-
18 ment holding land in trust... Is that right? No. Okay... from
19 what you had said before --

20 MR. BERGER: I think I got it
21 right.

22 MR. KATCHATAG: I'll clarify
23 that a little bit, Alma.

24 MR. BERGER: Mr. Katchatag.

25 MR. KATCHATAG: Okay. I really
don't feel that the Native people would entirely trust the
federal government after the treatment we have received at their
hands. We trusted everything... I mean everything, about our
lives to the federal government, and then we had to turn around
and claim it back again and we're still in that process.

Also, it doesn't make sense to me, as... I consider
myself a semi-reasonable person, to expect a government with a
debt to the extent of 1.6 trillion dollars, or whatever it is, to



1 be able to hold anything in trust for me. And it's about time
2 that we, as Natives, be allowed to determine for ourselves,
3 whether we fail or not. In other words, if our ship is going to
4 sink, then, damnit, let us be the captains and sink it rather
than have somebody shoot it out of the water from under us.

5 Thank you.

6 MR. BERGER: All right, Alma.

7 MS. UPICKSOUN: You addressed
8 or raised a point which I wanted to discuss, especially in this
9 forum where we're supposed to be looking at United States' policy
10 and it's affect or parallelisms to the Alaska situation, and I
11 think IRA governments in the Lower 48 is one instance that we have
12 to look at and understand in Alaska, you know, what it means
13 there, what it means here, and how it's developed and problems
14 and solutions that it may or may not have raised. And if... IRA
15 councils, as instruments, are created or solicited by the federal
16 government as an instrument of the federal government, if we can
17 look at it that way and also bring in a new perspective that those
18 foundations maybe possibly could be changed and that it would
19 not necessarily be the federal government in a trust situation
20 with IRA governments, is a different situation I think that needs
21 to be emphasized as apart from what has happened in the 48... that
22 the IRA situation which you have in mind is a much different
23 vision or a view than what has happened in the Lower 48.

19 MR. BERGER: Yes, Mr. Katchatag.

20 MR. KATCHATAG: One last point
21 in this regard is that... the secretary of the Interior, through
22 the IRA act of 1934, was authorized at his discretion to set up
23 reservations, and there has only been one reservation set up in
24 the whole state of Alaska, the Metlakatla. Now, I really don't
25 see that if we are to be truly self-determining, to be truly
self-sufficient, that we are to rely on the discretion of one
man, any one man, and, again, it... it brings my point about us

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1 being able to hold land in trust as governments, whether or not
2 it's IRA or not, we still have tribal governments. Congress could
3 go ahead and say tomorrow that by an act of Congress there shall
4 be no more IRAs period. But that would still not do anything about
tribal governments. We would change our hats again.

5 And land, to the Natives up here in Alaska... We believe
6 that land is not something that you own. Land is something that
7 you use, take care of, interact with, and harmonize with, and it
8 is to be respected as such because it provides anything and
everything for us that we live on. It's only since our interaction
with the Western society that we have even thought of owning land.

9 (TAPE 34, SIDE A)

10 MR. KATCHATAG: But, if in
11 fact that is the only way that the Western society understands
land and its use, then we are going to adopt to that also.
12 And, please, don't be every mistaken to think that the Native
13 people of Alaska are going to abide by the claims settlement act
14 boundaries. We were not raised that way and we don't raise our
15 children that way. Our land boundaries are very ancient and
16 there... I see a movement afoot now for the Native peoples to
17 start saying, "Okay, since the Western society does not abide
by or even recognize oral, unwritten boundaries, then by golly,
we're going to put them down so that you do recognize them."
18 And we may not ever get title to them, but we still believe that
19 we exert jurisdiction over them. And I will always make the
20 point that political power is always at the... at the good will
of the people, and if they say... by they, I mean the tribal
21 members... If they say that that is the direction that they want
22 their leaders to go, then they better go that way.

23 Thank you.

24 MR. BERGER: I think I should
say that this morning, Mr. Katchatag, you said that... you said
25 that political power comes from the people. There was a discussion



1 a very lengthy discussion, throughout this week turning on that
2 very question and the... the people around the table and some who
3 are now gone back to the Lower 48, discussed the question, where
4 does sovereignty come from. And I won't say that there was
5 unanimity on the point, but the same question that you asked here
6 and... a number of answers offered.

6 Joe Jorgensen and then David Case.

7 MR. JORGENSEN: Pardon the
8 redundancy, but I did want to respond to Mr. Katchatag's point
9 about where trust responsibility sits. Two days ago I mentioned
10 the Western Shoshone case. I want to bring it up one more time.

11 The Western Shoshone had ceded to them about 15 million
12 acres in Western Utah and Nevada. They seek the return of that
13 land and they have asserted ownership over it for many, many
14 years. They have continued to hunt on land that is either federal
15 or state land and have gone to court over it. They continue to
16 run their cattle on federal or state lands without paying fees
17 on it and have been taken to court over that. Now they seek,
18 and on March 11th they will meet with the Senate Select Committee,
19 as well as with their own leadership and with their attorneys
20 and with the Bureau of Indian Affairs, in an attempt to do
21 several things, one of which is to gain title to that land and
22 that it not be conveyable, and that the protection for them come
23 under the Indian Non-intercourse Act. There's no mention of
24 trusteeship vested in the secretary of the Interior or in the
25 federal government, but there is protection through the Indian
Non-intercourse Act. It might be instructive and worthwhile
to watch what happens in these negotiations that are going on now.
They may have some application, although the case is very different
from the Alaska situation. They may have some application down
the road for Alaska Natives.

MR. BERGER: David Case?

MR. CASE: Yeah. I have about

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1 three and I hope short in answers, specific questions for Mr.
2 Konigsberg.

3 You said there were some tax advantages to this kind
4 of transaction. Could you briefly elaborate on that?

5 MR. KONIGSBERG: The Tax
6 Treatment Extension Act of 1980, which amended the Internal
7 Revenue Code, allows tax benefits from the conveyance of an ease-
8 ment... or, excuse me, the execution of an easement to a trust
9 organization. In other words, if a rancher gives us an easement
10 over his property, he's... under tax law, allows him to claim
11 the deduction, a charitable contribution, because by giving up
12 the development rights, he gives up a certain value and you're
13 looking at substantial...

14 For instance, I'll give you an example in Montana, in
15 the Madison Valley, a 15,000 acre ranch would be worth approxi-
16 mately five million dollars. The donation of the development
17 rights to the Montana Land Reliance is based on an appraisal of
18 the before and after value, and that will generally run around
19 50 percent of that five million so that he's giving a charitable
20 contribution of two and a half million dollars to the Montana
21 Land Reliance, which he then takes as a deduction on federal
22 income tax.

23 The application on corporate lands under that code is
24 that a corporation can take a deduction. Let's say a Native
25 corporation were to assign an easement to considerable acreage.
26 Apart from the problem of figuring out the value of that gift,
27 the tax law would allow the corporation to deduct from ten
28 percent of its adjusted gross income the value of that gift over
29 a period of six years. There are amendments that President
30 Reagan has suggested, a 15 year carry-over period. We don't know
31 if it's going to happen, but for a corporate entity those are
32 the tax advantages. It's a straightforward deduction from income.

MR. CASE: And am I correct in

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1 my understanding that the advantage of this approach doesn't
2 arise from the fact that it is managed by a trust, but it arises
3 from the legal status of an easement being a restriction on the
4 land, no matter who controls it?

5 MR. KONIGSBERG: Yes, that's...
6 It's the strongest, at least as far as we're able to tell, it's
7 the strongest mechanism to protect certain conservation purposes,
8 regardless of future ownership.

9 MR. CASE: What would happen if
10 the trust ceased to exist?

11 MR. KONIGSBERG: The trust...
12 There's provisions within the easement to allow for the conveyance
13 of the protection of the easement to another organization. Under
14 federal law, any 501(C)(3) group, organized exclusively for
15 conservation purposes, can enforce an easement... can accept an
16 easement in any public agency, whether it's local, state or
17 federal. It can accept an easement donation, so there's provisions
18 in the easement, itself, to allow a transfer of the document.

19 MR. CASE: Kim, do you want to
20 say something now or is it... Okay.

21 And finally, are lands covered by the easement subject
22 to state or federal condemnation?

23 MR. KONIGSBERG: We've had that
24 asked many times from ranchers whose lands are in danger of being
25 crossed by power lines, gas lines, roads. Under certain con-
ditions, yes. But generally, no, an easement does not protect
land from condemnation. There was a situation in district cou...
I think it was in federal court with the Nature Conservancy in
the state of Minnesota where... this is an interesting example...
a large utility had built, I think it was, 765 KV transmission
lines, which are the biggest built in the United States these
days, to the owners' property. Now, they built the lines up to
the west boundary and up to the east boundary. They assumed they

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1 could go in and condemn the land so they could cross. What had
2 happened, the Conservancy had accepted an easement from the rancher
3 and had, in turn, given the land to the state Department of
4 Natural Resources as a special management area. The courts
5 ruled that the management by the state department constituted
6 prior public use and didn't allow for condemnation by the utility
7 company.

8 So there are... You know, there's case law that says
9 under certain conditions you cannot condemn property where an
10 easement has made possible public management.

11 MR. BERGER: Is that all your
12 questions, David?

13 MR. CASE: Yes.

14 MR. BERGER: Just before we
15 call on Kim Gottschalk, it seems to me that the... that there
16 are... that the Australian model may come very close to what
17 Mr. Katchatag. That is, there, the land is held in trust but it
18 is, as I understand it, a private trust and the trust acts on
19 instructions... the trustee acts on instructions from the Native
20 land council. And we will find out more about that because we
21 have five Australian aboriginal people coming here on Tuesday
22 and maybe they'll be able to tell us more.

23 Kim Go --

24 MR. PARKER: Let me ask a
25 question, is that under trust to the federal or the state
26 government?

27 MR. BERGER: I... I don't know.
28 I think it must be under state legislation because it was
29 achieved in South Australia before, I believe, the federal
30 government assumed jurisdiction over Native land, but I can't
31 answer that question.

32 MR. PARKER: Well, in our
33 case here, then, you could set up a similar trust under state law

1 which would be protected by the federal courts if you took it
2 that far, right? At least, that's the way I would see it operating.

3 MR. BERGER: Well, you may be
4 right. As a matter of fact, I... I was hoping that Kim and then
5 ... Kim Gottschalk and then Ralph Johnson and David Case might
6 comment on Sheldon Katchatag's proposal and on the appropriateness
7 of the Australian model here in Alaska. And perhaps David Case
8 might also tell us whether what has occurred at Venetie has any
9 bearing on this discussion.

10 I should say, for the record, that was Walter Parker
11 who asked the last two questions.

12 Mr... Kim Gottschalk.

13 MR. GOTTSCHALK: I want to make
14 sure that I understand the implications of what you're saying in
15 that, if I understand what I think you're saying, I think it's
16 very important that everyone else have it clarified, as well.

17 I think you're suggesting that at a given point in time,
18 someone will sit down and decide what this easement is about and
19 from that time on, in perpetuity, if the Native view stays exactly
20 the same, consistent with that purpose, everything will be fine.
21 Should it ever vary, what you're saying, in effect, that future
22 governmental entities run by Native people will have no say over
23 the change, if any, of how their land is used. In other words,
24 to a certain extent, if future goals deviate from what is set
25 out in that document, they have lost all control over the future
development of their land. Is that right?

MR. KONIGSBERG: I'm not... not
sure I understood your question, but what the easement would
allow would be certain kinds of development within certain
parameters in perpetuity. In our case --

MR. BERGER: Laid down in the
easement?

MR. KONIGSBERG: Laid down in

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1 the easement. It... All easements in the Lower 48 that are
2 conservation easements, we get... You know, that's a concern of
3 a lot of farmers and ranchers, and, again, I'm only raising this
4 as a model. I'm not saying it answers the Alaska situation at
5 all. But... An analogy is, we've got concerns that if we do this
6 in perpetuity, that means it can never change. Our response is,
7 I guess, two responses.

8 One, in our situation we're dealing with the imminent
9 threat of subdivision or wholesale resource exploitation such as
10 strip mining. So our response generally to that question or
11 that concern is that your concern about the irremedial aspects
12 of the easement are somewhat illfounded in that any use of the
13 land in the future, that would be subdivision or mining, in
14 perpetuity will restrict its future use, and that the easement
15 document permits the land, at some point in the future... If...
16 I would assume that legislation... We assume that if the social
17 need is such that that land has to be subdivided or mined, that
18 legislation or court decisions will permit that particular parcel
19 to actually go out of its agricultural use and break the easement.
20 So we can't answer that with any finality. All we can say is,
21 it's the securest way of preserving a use that you dedicate it
22 toward in the future.

23 MR. GOTTSCHALK: But if I under-
24 stand you, your goal is to get the most ironclad agreement you
25 could to make it be committed to a given use, which as long as
the Native government feels that that use is what they want, is
fine. But should they disagree with it, you've tied their hands.

MR. KONIGSBERG: Right, you've
tied it.

MR. BERGER: The... Might I
just say, if we can follow that thought up... If a land were
dedicated to subsistence by a perpetual easement in Alaska, and
no deviation from that use were countenanced by the easement

1 document, then Native people controlling the land, whether through
2 a Native government or a corporation, if the easement meant
3 anything at all, could not develop the land in the future. But
4 state legislation could change all of that. In other words, in
5 Montana, the easement is subject to state legislation, the state's
6 overriding power to say, "This easement is no longer in force."
Have I got that right?

7 MR. KONIGSBERG: Yeah. The
8 specific instance as that would permitted, that we know of...
9 would be if a land that was dedicated to agriculture, the sur-
10 rounding land use changed too much as to prevent agricultural
11 use of the property, the courts would extinguish the easement.
12 We're only making the assumption that if society at some point
13 deemed exploitation of land that we have under easement is
14 necessary, they'd find a way to do that. But we could only
15 operate within the law... you know, the framework that we have.

16 MR. BERGER: Ralph Johnson and
17 then Al Goozmer.

18 MR. JOHNSON: Ralph Johnson.
19 A very short comment. I presume the easement could provide that
20 either a majority of the beneficiaries, that is, of the village
21 or of the tribe, could change it or that at two-thirds majority
22 or a seven-tenths majority or whatever. I mean, the easement
23 could provide for a change in use, depending upon whatever the
24 easement prescribed were the terms. I mean, that isn't what you
25 do in Montana but the one that would be devised here could
reflect whatever the Native group wanted to do.

MR. BERGER: Could you please
go ahead and answer the question?

MR. KONIGSBERG: Yeah, Ralph.
I can't answer whether or not that would be possible under a
conservation easement in Alaska. You may be right. We haven't
had any experience with that. Our easements don't allow for any

1 future owners to make any changes in the easement use.

2 MR. BERGER: Could I... Just
3 before we leave you, Mr. Johnson, and go to Mr. Goozmer, could
4 I ask you about Mr. Katchatag's proposition? I take it that
5 nowhere in the Lower 48 is land held by tribal governments in
6 perpetuity as trustees for the members of the tribe, that the
7 ... the owner and trustee is the federal government in all
8 instances?

9 MR. JOHNSON: That's not correct.
10 There are... Only the land that is held in trust is held by the
11 federal government. Various Indian tribes own land off the
12 reservation. They also own some lands on the reservation that has
13 not been accepted back in trust by the secretary of the Interior
14 and so --

15 MR. BERGER: Excuse me... Those
16 lands that come from the restoration --

17 MR. JOHNSON: Well, in the
18 Colville Reservation, for example. I believe it's also true in
19 the Yakima. You buy back lands, don't you? You have a policy
20 ... Your Colvilles, I know, have a policy of repurchasing lands...
21 If a non-Indian owns land on the reservation and decides he
22 wants to sell, then the tribe usually tries to buy it, and if
23 they buy the land then it's a question whether the secretary of
24 Interior will accept it back in trust or whether the tribe wants
25 it to go back in trust. But then it's just owned... the tribe
owns black acre as black acre.

MR. BERGER: And... So that
on some reservations, some lands may be held in trust by the
federal government for the tribe, other land is held in fee
simple by the tribal government?

MR. JOHNSON: That's exactly
right. Not very much, but there is such land. I might ask --

MR. BERGER: Mr. Jim?

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1 MR. JIM: Yes. Also keep in
2 mind that in order to put the land back into trust, to purchase
3 by the tribe, you seem to have to have a certain color money,
4 FHA monies that come from perhaps the selling of... You have to
5 sell trust resources to use that money to purchase the fee land
6 for it to go back into trust or you use borrowed money from FHA
7 that has that certain hue or tint to go and purchase land and
8 put it back into trust. But were you to use tribal dollars
9 strictly out of the treasury to purchase that fee land, it would
10 remain in fee. Some of the complications that perhaps Mr.
11 Johnson might be able to address much better than I.

12 MR. BERGER: Just before we
13 go to Mr. Goozmer, could I ask David Case to comment and tell us
14 whether Venetie has any bearing on this discussion?

15 MR. CASE: All right. I wanted
16 to ask Mr. Jim, though. Are the Yakimas an IRA tribe?

17 MR. JIM: No, sir. We rejected
18 IRA in '47, somewhere there.

19 MR. CASE: Right. And would
20 that account, Ralph, for the reason that the land could not be
21 taken into trust under the IRA, or is that... Well, Mr. Jim's
22 nodding yes, so...

23 MR. JIM: In part, yes. The...
24 The promise is, if you take this, we will provide you with this
25 and this and this, and that was one of the things that you...
You would be able to purchase your land directly back with your
treasury money, directly back into trust if you are a member of
the IRA. But we refused IRA and that's just one of the complica-
tions, for some reason or other, that was created.

MR. CASE: I'm not sure if I
want to say this, but I will anyway. That portion of the IRA
has been amended, you may know. Section V has been amended, I
think, to apply to any tribe, whether it's rejected the IRA or not.

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1 That was just last year. The Devil's Lake Sioux band had a
2 statute put through Congress and they put a little amendment to
3 the IRA on it and I don't know if that will eliminate the need to
4 go for the FHA money under that other statute which... But it's...
5 I'm not sure what the effect of this recent amendment, either,
6 but it may or may not address that question.

7 About... the Venetie situation. I don't think I will
8 really speak directly to that. But let me just ment... say
9 something about the --

10 MR. BERGER: That is land
11 held by a tribe --

12 MR. CASE: Well, let me
13 clarify that... Yes, that's true. The lands of the former
14 reservation of Venetie, about 1.8 million acres, were conveyed
15 under the claims act to the village corporations, two village
16 corporations which occupy that former reservation, and they, as
17 a matter of fact, before they even received the land, conveyed
18 it to the Venetie tribal government and it is held by the Venetie
19 tribal government as fee land.

20 This idea of holding lands in trust... I mean, it
21 means so many different things I suspect. If we are talking
22 about actually putting the land into a trust under state law...
23 I mean, this is a legal concept... and there are provisions under
24 state law whereby land owners can put land... transfer land in
25 trust to other people or other entities, and that may be possible,
legally, for a corporation to transfer the land in trust to
such an entity, perhaps including a tribe. It's important to
be careful in doing that that you understand the consequences
of... under state law... of putting land in trust. I'm told
and I haven't done this research, myself, though... but that if
the trust document is not specific on the terms of the trust...
I mean, how the land will be managed, under what conditions and
by whom and so forth, that the attorney general for the state of



1 Alaska is the trustee if there is ever any dispute about the
2 nature of the trust.

3 Well, it is important to be careful about the involvement
4 of the state of Alaska if it is with respect to the management
5 of those lands, I suppose. Another thing that I suspect is
6 being suggested is that the fact the land is held by a tribe
7 which has sovereign immunity is equivalent to a kind of trust in
8 that it, for all practical purposes, prevents most kinds of
9 involuntary loss or alienation by a judgment or by state condemna-
10 tion. It protects against all of those things, as long as the
11 tribe's sovereign immunity is retained. And that may be what
12 is being suggested by trust. I mean, trust has a kind of a...
13 It's like sovereignty, I think. It has a kind of a general
14 meaning of good faith and being fair about things and very, very,
15 very honest. And it has another sense which is a more legal,
16 narrowly legally defined sense which I associate with property
17 management and property law.

14 MR. BERGER: Just before we move
15 on to Mr. Goozmer... Mr. Lerner, would you forgive me if I just
16 tried to clear up the rest of this legal debris that we've got
17 here.

17 Where... This is probably a stupid question, but the
18 chairman should be willing to ask stupid questions. Where a
19 tribe in the United States has... recovered or at least has
20 purchased land from a non... a non-Native person on the reserva-
21 tion, that land can then be alienated by the tribe. It doesn't
22 require federal government consent, I take it, just as it would
23 be free to alienate land it held in fee off the reserve. Have I
24 got that right, Mr. Johnson?

23 MR. JOHNSON: True. It can
24 sell the land like anyone else can sell it because it's not held
25 in trust by the United States government. I guess a question
that I've not tried to worry about is whether it's... whether it's

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1 restrained by the Non-intercourse Act, from the sale of that
2 land to anyone... In other words, federal law latches onto it at
3 the instant of acquisition by the tribe so although it's not
4 held in trust, that it's subject to the restrictions of the Non-
intercourse Act. I don't know, is that your reaction?

5 MR. BERGER: David Case?

6 MR. CASE: Well, that's my
7 understanding, is the Non-intercourse Act applies, by its terms,
8 to tribally-owned land. It doesn't say tribal trust land or
9 tribal reserved land, or anything else. It's an old statute, but
10 it does just say tribally-owned land. And I'm not aware of any
11 court decisions that have faced the question of the Non-intercourse
Act application to tribally-owned fee land. The Solicitor did
write a letter regarding the tribally-owned land in Venetie --

12 MR. BERGER: You mean the
Solicitor for the --

13 MR. CASE: Interior Department
14 of the United States.

15 MR. BERGER: That's Solicitor
with a capital S, for the record.

16 MR. CASE: That depends on your
17 style manual, I suppose. (LAUGHTER) But the... The question...
18 Probably a lot of us are aware of, Venetie leased its all or
19 a large part of the reserva... of the lands that are owned by the
tribal government to an oil company for exploration for oil and
20 there's several million dollars hanging on that deal, and the
oil company was judicious and wanted to be sure that this could
21 be done without the approval of the secretary of the Interior
22 and they were largely concerned about the Non-intercourse Act,
23 which is probably irrelevant because the Non-intercourse Act
24 requires an act of Congress or a treaty and not just the
secretary's approval. Well, in any event, the Solicitor wrote a
25 letter which said that, in his opinion the claims act, as I recall,

1 had satisfied the requirements of the Non-intercourse Act as far
2 as these ANCSA lands were concerned. People that do this even
3 more than I do for a living have said that that is just simply
4 wrong, that that opinion is wrong, and that... that the Non-
5 intercourse Act would, nonetheless, apply to tribally-owned
6 ANCSA lands. So, I mean, you know, there's nothing you can get
two lawyers to agree about and I suppose that demonstrates it.

7 MR. JOHNSON: I should add to
8 this that another aspect of the question is whether the land is
9 on the reservation, is within the exterior boundaries of the
10 reservation. If it is, it is Indian country under 18 U.S. Code
11 11.51. If it is not on the reservation, then under the Mescalero
12 case it is subject to state taxation and any income from the land
13 ... In other words, if the Yakima tribe buys a hotel in Seattle,
14 heaven forbid they'd want to, but if they bought one then the
profit from that hotel would be subject, or the building, itself,
would be subject to state taxation. But it wouldn't be held in
trust.

15 MR. BERGER: Well, Mr. Goozmer,
16 we --

17 MR. GOOZMER: Just a couple of
18 comments. On... We're talking about a lot of different vehicles
19 and different entities to deal with the Native issues here and,
20 the way we see it, that... I believe, in my point of view, that
21 what vehicle are we going to use to have that land status, and
22 I believe that the IRA and traditional form of governments are
23 the best vehicle to be used. As stated by Mr. Johnson, well, if
24 a tribe owns a piece of property, as we do... We own a lot of
25 property here in Anchorage and we are being taxed for that. So
the tribal government tax status act of 1982 doesn't apply to
that form of taxes. We still have to pay taxes but the vehicle
that I feel has to be used would be with traditional or IRA form
of governments because the people... the power comes from the people

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1 and the Alaska Native Claims Settlement Act was based on valid
2 existing rights. And the rhetoric that's going on, who's going
3 to be controlling the land... the traditional government, IRA
4 government or the corporation formed under ANCSA. And under
5 Alaska Native Claims Settlement Act, the people have the power to
6 say what vehicle is going to administer that land. And all you
7 need is two-thirds of the vote from the people to say that
8 Alaska Native Claims Settlement Act, this land is going to belong
9 to the people, to the IRA government, on valid existing rights.
10 We do have that status, we do have that control of saying what
11 vehicle are we going to use to administer our land. We're talking
12 about state governments, state corporations, IRA traditional
13 form of governments, which one of those are the best vehicle to
14 be used. And, in my opinion, the traditional and the IRA form
15 of government is that vehicle to be used because under the
16 Fourteenth Amendment and due process, Indian tribes have a status
17 higher than state governments, federal governments, sovereign
18 entity. We never bought it, we never stole it and we never
19 bartered for it. It was always ours and it is based on valid
20 existing rights that... In my opinion, I believe that the
21 traditional and IRA form of governments are the best vehicle to
22 bring this issue to be addressed. Under the Self-determination
23 Act of 1975, recognized Indian rights to control their relation-
24 ship both among themselves and with non-Indian governments,
25 organizations and persons. Alaska is a PL 280 state... PL 280
state but this also was amended to follow further assumption by
state jurisdiction only with the approval of the tribes affected.

Jurisdictional rights, under the Cherokee Treaty...
1785, jurisdictional rights, any person of the United States or
other person or Indian shall attempt to settle on Indian land
hereby allotted to Indians shall forfeit the protection of the
United States and the Indians will punish him as they see fit.
And under... as governments, tribes have the general power to

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1 govern the conduct, including non-Indians, in Indian country,
2 establish bodies such as tribal police, courts to enforce and
3 administer justice, to exclude or remove nonmembers for a cause,
4 regulate hunting and fishing, land use, environmental protection,
5 taxing, the whole thing... You know, in my opinion, I believe the
6 vehicle that... is best going to be used to address the problem
7 is your tribal form of government and the people, that's where
8 you get your power from.

9 Under the Fourteenth Amendment of the United States
10 constitution, it says Indians are not... Indians are not states.
11 They have a status higher than that of states. And under the
12 Fifth Amendment, the Bill of Rights applies because only the
13 federal government actions... and Indians are not federal powers.
14 They have a government of their own that can control their own
15 destiny and under the Alaska Native Claims Settlement Act, under
16 the valid existing rights, we can control those lands by two-
17 thirds vote. Power derives from the people.

18 At one time in our history, we owned... We didn't
19 have no... Our unwritten laws and everything are still valid
20 today as they were 10,000 years ago. At one time, we owned
21 everything on the west side of Cook Inlet, from... I don't know
22 how familiar you guys are with the area, but we did, and it didn't
23 ... It... We didn't... We said, "This land is ours," okay...
24 from Tuxedni Bay to Redoubt to Spur to Tyonek and back to the
25 water. All of that land was ours. We didn't need those
documents under the Western culture saying that... this is
yours, Section 10, Township 10, latitude... all this other specific
legal description of where your land is. I think, you know, that
this... The land base is very important to us and that this is,
in my opinion, the vehicle that we have to use to settle this
or address this issue.

MR. BERGER: Dalee Sambo?

MS. SAMBO: I'm just curious.

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1 Russell Jim mentioned earlier that they refused IRA and
2 they are a treaty tribe now, the Yakima nation. I'm curious about
3 why they refused IRA as we have a suggestion that IRA is the
4 vehicle... or alternate vehicle here.

5 MR. BERGER: Good question. Mr.
6 Jim?

7 MR. JIM: I have an article here
8 I wrote which seems to come back to haunt me once in awhile be-
9 cause of my stand against the Bureau of Indian Affairs, and as
10 you hear me, I call them sometimes an inept bureaucracy, most
11 because of their nondefinition and their seemingly loss for
12 lack of identity in regard to trust responsibility. And the
13 Yakimas were approached to become an IRA tribe and refused be-
14 cause they felt that the implicitness and the full understanding
15 of our ancestors, when they returned from weeks of negotiating
16 a treaty with the United States of America, was not only sufficient,
17 it was the best avenue. And also, they felt that it would also have
18 given them the opportunity to formulate their own formal govern-
19 ment in the eyes of the United States of America.

20 So that's basically why the Yakimas refused, but I'm
21 sure there were other influences... like, in order to make a
22 major decision or a major change if and when you had become an
23 IRA tribe, you must get permission from the secretary of the
24 Interior, as you well know. And that was more than likely an
25 influence.

26 While in Sun Valley, Idaho, at the Self Rule Conference,
27 you heard the... many of those that had accepted IRA in the past
28 were very disenchanted. The secretary of the Interior, for one
29 reason or another, would go sit on a change or a suggestion or
30 a direction the tribe wanted to go. And if he didn't sign it,
31 they didn't go anywhere.

32 I hope I've answered your question.

33 MS. SAMBO: They also, at the

1 Sun Valley IRA conference stated that at some points in time the
2 secretary of Interior never even did approve the initial
3 constitution to set the course for the IRA and that... held his
thumb down on it.

4 MR. JIM: Yes, and there are
5 tribes on the coast of the state of Washington that wish to
6 change their constitutions but are meeting much resistance. And
7 the... Many of these IRA constitutions were written by members
of the Bureau of Indian Affairs.

8 MR. BERGER: Dalee Sambo,
9 another question?

10 MS. SAMBO: Well, I wanted
11 Ralph Johnson to expand a little bit on the new developments and
12 accomplishments that have taken place with respect to IRAs or
13 traditional governments and their new... or, the revitalization
14 or the aggressive assertion of the IRAs and traditional govern-
15 ments. At the Sun Valley IRA Conference, there was a lot of
16 displeasure expressed about IRAs and I'm wondering if some of
17 the statements that Russell has just made now and against the
accomplishments that you recited either yesterday or the day
before in terms of changes that have taken place from 1970 to
'84 with respect to IRAs and traditional governments...

18 MR. JOHNSON: Well, what I was
19 referring to then was that... This is Ralph Johnson... What I
20 was referring to then was that some of the IRA tribes... and I
21 should add that we tend to talk somewhat artificially here about
22 tribes in the United States either being IRA tribes or non-IRA
23 tribes. There are permutations that go all the way from zero to
24 100 and there are tribes that set out as IRA tribes and they
25 haven't followed the forms of the IRA so it's questionable whether
they're IRA tribes. The IRA anticipated that you'd have a
tribal government of a certain structure and you'd have a
corporation to do business, and there's an enormous amount of

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1 intermixing of these ideas so that it is not clear when the
2 corporation is acting and when the tribe is acting, which has
3 important considerations of sovereign immunity because when the
4 tribe is acting as a corporation, it doesn't have sovereign
5 immunity, probably. When it's acting as a tribal government,
6 it does have sovereign immunity.

7 So what I want to go into this comment with is that it
8 is not as if in the Lower 48 there are neatly organized IRA tribes
9 and then non-IRA tribes. There's a lot of confusion and mixture
10 in that process.

11 But let's take a tribe, some of those that at one time
12 or another accepted the IRA and accepted the secretary of the
13 Interior's authority to approve amendments to the tribal code
14 or the tribal constitution. What's happened in recent years, and
15 as I say, it's not a widely known thing, it isn't published widely,
16 but what privately is happening is that a tribe goes to the
17 secretary of the Interior and says, "We want to change our
18 constitution so that you don't have any authority to refuse to
19 approve our code or changes in our code," and he says, "I won't
20 do that." And then the tribe says, "We're going to do it anyway,"
21 and when it comes to the crunch and the pressure is on, the
22 secretary of the Interior can insist upon veto power or some
23 control under one circumstance very clearly, and that is when
24 tribal... when trust property is involved. He refuses to relin-
25 quish that at all because he has a legal obligation to approve
any action that would have to do with trust property, or water
rights... including water rights.

The other area where the secretary of the Interior has
been particularly hard to deal with on this issue is when the
Indian Civil Rights Act questions... due process questions are
involved. He feels that he should exercise some review powers
there. But aside from those two areas, there are all kinds of
other activities that the tribe engages in, enacting laws or

1 whatever, that is really not the secretary's business and when the
2 tribe pushes very hard, the secretary says, "Okay, then I won't
insist upon my right of approval of that." Now...

3 But realize that sometimes the tribes view it in their
4 own interest to get that approval because if that... if they wish
5 to apply that ordinance to non-Indians on the reservation, for
6 example, and you're going to have that challenged in a federal
7 court, it sometimes is very influential to say, "Well, this was
8 approved by the secretary of the Interior, and so it has the
9 stamp of the federal government on it," so it's not always a
10 question of the tribe saying, "We don't want your approval."
11 They may very well want that approval but it's a different
12 question then. It's maybe a question of the tribe feeling that
13 it can enhance its position now, in getting the approval, not
14 that it has to have it in order for the document or the law or
15 the regulation to become effective. The regulation or the law
16 would become effective then, not because of the federal govern-
17 mental structure under the IRA, but because of the inherent
18 sovereignty of the tribe. And just because the tribe has
19 organized under the IRA does not mean that the inherent sovereignty
20 is now gone. It's still there. At least, that's our argument.
21 It's still there. There's just simply an organization here
22 that's an IRA organization but it leaves this other power, this
23 latent power of the people that Mr. Katchatag... that still is
24 there. Nothing happened to it.

(TAPE 34, SIDE B)

25 MR. BERGER: I wonder... We'll
come... What I was going to suggest now, if you'll allow me to
do so, is that in a moment we break for a cup of coffee for
five minutes and then we'll ask Ralph Lerner and Ted Chamberlin
to speak and one or two others who wished to speak and perhaps
give a few minutes to any of our guests from the Lower 48... I
almost said the United States but --

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(LAUGHTER)

MR. BERGER: -- the Lower 48, who wish to say anything before we disperse at 4:00. But could I ask the lawyers, especially, and anybody else who during the week mentioned a case name, Martinez or so-and-so versus somebody else, or a name that might not be apparent to the typist who's going to type up this record, would you just take a moment now and write down any of these difficult names on a piece of paper and hand them in to Jim Sikes, who's at the console there, and let's have a cup of coffee and then reconvene in a few minutes.

(HEARING RECESSED)

(HEARING RESUMED)

MR. BERGER: Could we start now? And what I propose to do, if I may, is this. Ted Chamberlin has found the actual words of the trust arrangements in Australia and I think he might read those out for the record just so that when we use this transcript again it's complete. And then, David Case has a question for Walter Parker and then Vernita Zyles has a number of questions that she wants to state. And then we might just go around, starting with Mr. Lerner, and have any observations that all of you... if we can reach all of you, wish to make before we close.

So perhaps, Ted Chamberlin, could you give us the benefit of that material?

MR. CHAMBERLIN: Yes, this is the legislation... just reference to the legislation passed in Australia that was referred to earlier. This is specifically the Northern Territories legislation, which is legislation under the authority of the Commonwealth of Australia, under the federal government of Australia. It was passed in 1976, called the Aboriginal Land Rights Act (Northern Territory). It provides for the grant of land to aboriginal land trusts, who hold title... which hold title, "for the benefit of groups of aboriginals



1 entitled by aboriginal tradition to the use or occupation of
2 the land concerned." That's the end of the quotation. Aboriginal
3 land is held... is an estate in fee simple and is inalienable.
4 The land trusts have no independent power of initiative. The
5 traditional owners have the predominant position and instruct
6 through the land councils, which are established under the act, and
7 through the land councils, the land trusts are instructed.

8 The land trusts can only act under the direction of
9 a land council, which is not to be given unless the traditional
10 owners consent and aboriginal communities or groups affected have
11 been consulted. Now, the difficulty is in determining the
12 mechanism for consultation by those land councils. The land
13 councils are established under the authority of the act... out
14 of the aboriginal... out of the membership of the aboriginals
15 living in the area of the land council, and are cho... The
16 members are chosen in accordance with such method or methods of
17 choice and holding office on such terms and conditions as is
18 or might be approved by the minister from time to time. That's
19 the minister of aboriginal affairs.

20 What that has meant is that there are a whole range of
21 situations in the land councils where members are appointed for
22 a period of years which vary. Elections in some cases are held,
23 in other cases are not. The attempt is to make that process as
24 consistent with aboriginal traditions as is possible. There has
25 been a considerable amount of concern that those land councils,
themselves, are European institutions, in many ways inconsistent
with aboriginal traditions and posing another barrier to the
effective exercise of authority over the land by the aboriginal
communities. I'm sure you'll hear much more about this next
week but I just thought it might be useful to get something of
that on the record.

MR. BERGER: David Case,
your question for Walter Parker?

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1 MR. CASE: Right. This is
2 something I probably should have asked at the last session, but
3 it just reoccurred to me... and we just discussed this a few
4 minutes ago, Mr. Parker and I.

5 In the... In your paper, you said that the claims act,
6 and perhaps the claims act and the statehood act in combination,
7 were intended to afford the state its selection rights over
8 economically valuable and settlement lands. And by economically
9 valuable, I believe you meant resource lands and settlement lands,
10 lands where people would actually be building homes and the like.
11 And that, as to the village corporations, they were by...
12 because and by virtue of the claims act, to select habitable
13 lands. And I wonder if you could comment a bit on the meaning of
14 the term habitable and... as well as the nature of the kinds of
15 lands that the state was interested in.

16 MR. PARKER: Yes. Starting
17 with the Statehood Act, when Congress' great fear, when Alaska
18 petitioned for statehood, was that the state would be a real
19 drag on the national budget and would not be self-supporting.
20 So the state acquired the rights to 104 million acres of land
21 with the intent that out of that 104 million acre land base it
22 would be able to craft an economy which would lessen its demands
23 on the federal budget. The Alaska constitution, as most of you
24 know, was moot on the question of Alaska Native rights to land
25 or anything else, and in the first years of statehood, the state
selected its lands primarily near the white settlements, near
the highway corridors, and in some cases, such as Prudhoe Bay,
near what they hoped would be major re... give them control of
major resources and with great luck, of course, in the case of
Prudhoe Bay.

At the time that Secretary Udall put the land freeze on
in 1966, the state had selected about 26 million acres, one-fourth
of its entitlement in the patterns as I have just stated, and had

1 selected practically no land in Alaska Native villages, or near
2 Alaska Native villages with... They had had land transferred in
3 the form of airports and other former federal reservations but
4 not selected. So when the claims settlement was crafted, why
5 there were 206 villages which qualified under the terms set down
6 by the Congress as Alaska Native villages, and there are only
7 about another 60 places in Alaska which are communities in any
8 sense. And they have... Of course, some of them have substantial
9 populations of Alaska Natives but are not considered Native
10 villages. So those 206 places were generally located just by
11 historic utilization at the places it was most suitable for people
12 to live in a Arctic or subarctic climate... generally along the
13 rivers and near the sea coast and so forth, mainly with easy
14 access to subsistence resources. And that's what I meant when I
15 said most habitable, habitable in that sense, not habitable in
16 the sense of in the Western sense of best suited for economic
17 development.

18 And the problem of... The fact that was recognized that
19 the villages had historically moved around considerably but no
20 one was able to satisfy that very dramatically. A lot of villages,
21 however, did make their land selections to incorporate future
22 sites which they might want to move to at some future time and
23 that kind of foresight was put in by the villages, themselves.
24 And you can go on, but that's generally what I meant.

25 MR. CASE: The reason I wanted
to ask this question now is because I think it bears on the
question of what institutions might be best or the best options
for the control and use and management of these village lands.
And my question, I guess, is, if the village lands were selected
primarily to be available for subsistence purposes, and that
was their primary value, that implies to me that there was
relatively little cash value. In other words, these lands are
not the kinds of lands that would be convertible into cash. Their

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1 resour... Their value was not in resources below the ground. It
2 was not in an attractive or highly valuable commercial location.

3 Is that correct, generally?

4 MR. PARKER: Yes. It was the
5 luck of the draw as far as since the villages only got surface
6 rights, why... for the villages it was just the luck of the draw
7 on where you happened to be in that moment in history as to the
8 economic value in Western terms. Southeastern villages, some of
9 them, as you well know, have enormous value in timber and some
10 of them have already realized that value. And for most of the
11 villages, why, it's the subsurface resources that are, of course,
12 going to have the most value, and the subsurface resources belong
13 to the region and the Congress, viewing the act in its totality,
14 assumed that those subsurface values would find their way, of
15 course, to the village stockholders through their roles as
16 regional... stockholders in the regional corporation. And the
17 requirement for disbursing 70 percent of the value of subsurface
18 resources across all of the corporations, which, of course, has
19 caused a great deal of debate since the act, was simply an attempt
20 to achieve equity across the board, recognizing that all regions
21 were not going to be able to have the same economic value in their
22 subsurface or surface resources.

23 MR. CASE: Then, what is the...
24 I wonder if you could comment on the propriety or the utility
25 of having the surface lands, which often have a noneconomic
value, having them managed and controlled by profit-making
corporations. It strikes me as a bit discontinu... discontinuous
to have profit corporations responsible for the management of
noneconomic resources.

MR. PARKER: The option... The
option was there for the corporations to create themselves as
nonprofit corporations. They were under the corporate laws of
Alaska. They could have gone either way, but they did, in effect,

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1 have to form a corporation to hold the land. That was the require-
2 ment.

3 And the... It was chosen, I think, as the most flexible
4 vehicle that they could come up with at that time to hold the
5 land. And I think that... you know, if Alaska Natives had wanted
6 to put, at that time, those who were negotiating for Alaska Natives
7 had wanted to put some kind of trust requirement in which would
8 have in effect held the surface resources inviolate, that could
9 have probably been negotiated. I'm not sure, things began to
10 happen very quickly in the last year of the claims settlement.

11 MR. CASE: Well, do you have any
12 idea why there were no nonprofit corporations formed?

13 MR. PARKER: The dialogue as
14 I experienced it in talking it over with people from many
15 villages was that it is possible to form a nonprofit corporation
16 without any mandate from ANCSA. That option is open under state
17 law anyway, and a good many nonprofit corporations have been
18 formed throughout rural Alaska to provide services and some...
19 you know, have done it very successfully. And if you form the
20 nonprofit corporation to, in effect, provide the government-
21 type services, why you were letting the state and federal govern-
22 ment off the hook in providing those services. So that was... a
23 feeling at that time, that the new corporations shouldn't be
24 burdened with providing the services of a government. And that,
25 I think, governed a lot of peoples' decision-making in 1971, '72,
'73 when they were making these decisions.

26 MR. CASE: Okay. Thank you.

27 MR. BERGER: Vernita Zyles, you
28 have a few questions you wanted to put on the floor.

29 MS. ZYLES: Thank you, Judge.
30 My name is Vernita Zyles. I have the great honor and pleasure
31 to be the sister to Sheldon Katchatag and, as he already said, we
32 are from Unalakleet. I'm Inupiaq and the questions that I have

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1 were not originally questions that I was going to present. But
2 in the interest of time, I will present I think three questions
3 with accompanying observations to people who have been here since
4 Tuesday.

5 You'll forgive me if I seem disjointed at times. I
6 think that I may be running out of the kind of energy that
7 attending this review hearing has given me.

8 My first question, I guess, would be addressed to Walt
9 Parker. I don't know what authority he might have to represent
10 the state of Alaska or the federal government, but I wonder
11 whether he views the Alaska Native Claims Settlement Act as some
12 Natives do. It's been called privately a state of Alaska benefit
13 act and the United States benefit act because... the reason why
14 ANCSA was enacted in the first place was so that, for instance,
15 the federal land freeze could be lifted. The state of Alaska
16 had sued the federal government because the federal government
17 had said until these land claims are settled, you know, no pipe-
18 line can be built. And as we all know, since the pipeline has
19 been built, 80 or 90 or 95 percent of their... their operating
20 money has been derived from the pipeline. So definitely the
21 state of Alaska not only had a very prior... high priority
22 interest in getting ANCSA enacted and enacted quickly, certainly
23 ... they have benefited greatly from the passage of ANCSA. And
24 extending that, the federal government, in receiving its share
25 of pipeline revenues has also benefited greatly from ANCSA. And
adding to that, they have put themselves in this position of...
both of them, one at the same time, protecting our interests, as
they say, and protecting their own commercial interests in the
pipeline.

A good example of this is a person who is called Eskimo
John. His land was crossed by the pipeline and it was crossed
unlawfully and he sued. But the state of Alaska, you know,
definitely had an interest in making sure that this... this avenue



1 through his land was kept open. Now, how they proposed to
2 protect his rights while at the same time being required by their
3 own constitution to protect their own rights is beyond me. And
4 it's the kind of... question that we, as Natives, run into all the
5 time, that at the same time that they propound to protect our
6 interests they are, in effect, required by their own constitution
7 to protect their own. And this is why I believe that... it would
8 be to our mutual interest to remove this conflict, to have the
9 Alaska Natives recognized as separate, certainly, and equal,
10 certainly.

11 Another thing that I can't understand is why this whole
12 question of our land trust is so ludicrous. I completely agree
13 with what my brother brought out, that why is it not possible for
14 us to be trustors of our own land? Inupiaq people speak in
15 analogy all the time and so I'll use analogy, and it's relevant
16 to ANCSA. Under ANCSA, I have shares and my son has shares and
17 my daughter doesn't have shares. My son will... I hold my son's
18 shares in trust for him until he's of an age to take care of
19 them himself. To protect my daughter's interests, the way the
20 law is written right now, I expect my son should... should I
21 die before my daughter can inherit my share, my shares, I expect
22 my son to take over for me and hold them for me... for her.

23 Now, if we go from this small... and certainly I can
24 understand that the land is... at least in the Western view... a
25 lot more important to worry about than shares in a corporation.
The fact is that my shares are my land. Why... Ada Deer spoke
to this. Why is there continually this attitude of the United
States government and the state of Alaska, any state, towards
American Natives as parents to children? This may have been
relevant when we didn't have competent thinking people... or,
we've always had competent thinking people, but people who are
educated in the Western ways... As soon as those people became
educated, why did this system yet continue?

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1 I'm going to be brief today. I'm going to go on to
2 another question and I wish that Mr. Parker would bear my question
3 in mind.

4 I've noticed a certain reluctance... Maybe it's not a
5 reluctance. Maybe it's just a nonrecognition of the importance of
6 American language... American language... here I am, I'm disjointed
7 ... the American Native language. You know, that was almost taken
8 away from us. It came so close to being taken away from us. I
9 can say to you, and this is akin to your children hearing your
10 first words. Here I am, I'll be 34 in July and I can barely put
11 together a sentence in my own language. (SPEAKS IN NATIVE LANGUAGE)

12 Now all that is, is my name is Vernita. I'm an Inupiaq.
13 I'm from Unalakleet. I'm glad you're here. And yet, it took me
14 a half an hour to make sure that I had it right. But yet, when
15 I say those words, you know... there's no question... We spoke
16 about what is an Indian, what is an American Native, what is an
17 Inupiaq? When we talk our language, all of that doubt and con-
18 fusion that arose at the first contact with the Western culture,
19 at the first time that most of us began to speak English over
20 Inupiaq, for the first time... you know... Okay, when I say those
21 words, there's no doubt in my mind what my identity is. I'm
22 Inupiaq. How many people speak Inup... Anybody can learn English.
23 And when I eat my food, as Russell Jim so eloquently pointed out,
24 there's no doubt as to my identity. When I eat dried fish or
25 seal oil or surah (ph), willow leaves soaked in... You name it,
the way that we fix things, that... you know, people come up and...
The way that we measure strangers is how willing they are to
accept our food, to try to learn a word of Inupiaq here and there
because that's us.

And so I wondered whether, when we... when you're going,
if it would be possible... and I guess this would be directed at
Judge Berger and the rest of the commission, if you could explore
as you go through the Native villages just how important their

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1 language is. Because when I look around Alaska today, the
2 places where the people have kept their language are the strongest
3 politically as well... and I mean Barrow, I mean the Yukon-
4 Kuskokwim area, I mean St. Lawrence Island, I mean Kotzebue-
5 NANA Region. They keep their language and they've kept whatever
6 power they've been able to.

7 And finally, a question that I have about... about the
8 provisions of ANCSA, itself. One of the things that consistently
9 puzzles me when I try to muddle my way through the act, itself,
10 and... I'm... You know, I've been thinking about becoming a
11 lawyer and as soon as I open up a book that is required, you
12 know, to cover ANCSA and when you see the subsection, subsection,
13 subsection this and that and this and that, you know, it's
14 daunting. But one of the things that does puzzle me is this,
15 ANCSA provided... it made provisions for us to be compensated in
16 money for lands which were refused to us, to which we felt we
17 had a claim and which, you know, they were acknowledged within
18 ANCSA. The United States, whether it liked it or not, when it
19 enacted this... this instrument, left a paper trail and we're
20 going to use this paper trail. But one of the things that bothers
21 me is... Okay, so they, within ANCSA, said, "Look, we can't give
22 you this land, but we'll give you money... a billion dollars.
23 We'll give you the money for the land that we can't give you,
24 and we'll give you 44 million acres." But they tied it together.
25 The money is tied to the land. I can't understand that.
Why can't we just own the land so that if the corporations fail,
we'll still be here?

I heard one of the Alaska Native corporation executives
up there and he explained, somehow, why this is impossible, but
will someone explain it to me in clear terms, because it makes
no sense to me.

Just a final observation. I find a delicious... I
have two halves in my brain. One is Western and the other one is

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1 Inupiaq. The part that's delicious is the Western idea that this is
2 1984. The other half, the Inupiaq part, says it's bitter because
3 with the advent of 1984, everybody's talking about George Orwell
4 and his book and they're saying aren't we lucky, you know, that
5 this was just a warning vision and everyone heeded the warning.
6 And shortly after I read that, I walked across town and I looked
7 at all the people in their cars waiting at traffic lights where...
8 for the green light, you know. They weren't heeding the laws
9 of science, they were heeding what was set down for them by a
10 pervasive entity. You will stop. You will not go, even... no
11 matter how much sense it makes to go. Those kinds of laws, of
12 course, were meant to be guidelines before but now they're some-
13 thing else.

14 Well, it's not that far of a leap to ANCSA, you know.
15 You have people who know the answers but they're sitting at some
16 ... some intersection and they're waiting for the green light.
17 Martin Luther King was the one that said all it takes for evil
18 to flourish is for a good man to remain silent. And, you know,
19 I'm so glad that we have good men and women, of course, here
20 who are... removing themselves from the silence of other people
21 who are, I'm sure, good men.

22 I'd like to thank Judge Berger again for his indulgence
23 and I'd like to wish again the commission the very best of luck
24 in continuing the work that's begun. And I thank you.

25 MR. BERGER: Thank you very
much. I think that the last question that Vernita Zyles asked,
why is the land tied up with the fate of the corporations, is one
that we've struggled with and I don't expect you to answer it,
although if you can in 120 seconds, please do. But we have
struggled with that for a week... two weeks now. What was said
about the areas of Alaska where the language is strong, I
noticed that those are all Eskimo regions of Alaska. I intend,
as the commission travels throughout Alaska... it is impossible not

1 to notice where the language is strong and where it is not, and
2 of course, in the villages we visited, in Emmonak and Tununak,
3 it is clearly very much the language the people speak. But I
4 wouldn't draw any conclusions at this stage about whether the
5 use of the language is necessarily the most important factor in
6 continuing to think of oneself as a Native person. I think that's
7 a most complicated question and the answer is not, by any means,
8 clear cut. That's my preliminary observation and maybe I'll
9 reach a different conclusion, but... Maybe I'll reach a conclusion
10 such as that that was urged, but I'm not at all certain about
11 that.

12 Perhaps, Walter Parker, we might ask you to say anything
13 you wish about those questions because your name kept coming up
14 as a representative jointly of the federal and state governments,
15 in addition to your other capacities.

16 MR. PARKER: It's difficult to
17 follow such eloquence, but I will... you know, can only respond
18 as a citizen of the state of Alaska and a citizen of the United
19 States at this time, having had no formal authority in either
20 government since 1979. I always viewed the claims settlement from
21 the beginning as just a part of the development of the future
22 of Alaska Natives within the framework of living in Alaska and
23 dealing with the government in which they deal. That's why in
24 my paper I brought in the example of one of our oldest village
25 sites, Tununak, which has been in existence for 3,700 years,
which Byron Mallott later picked up on and where one hopes that,
as the people of Tununak maintain that tie with the land if we
have some luck working out the present situation, that they might
live there another 3,000 years and deal with who knows what future
governments. But the advantage that we have in Alaska that has
been lost in so much of the rest of North America is that the
basic relationships between the people and the land and the
wildlife have not been totally disrupted, and where they have been

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1 disrupted, it's been by legal and governmental interventions and
2 not by nature.

3 So I hope that through educating, as Sheldon and Alfred
4 and others pointed out... important to educate, more important to
5 educate the people living in the urban areas than Alaska Natives
6 on most of these questions, but certainly through educating we will
7 be able to work out a better future. And it's so critical at this
8 moment in history as Alaskan population expands dramatically that
9 we do everything possible to protect that land and wildlife base
10 upon which the future of Alaska Natives is more firmly rooted than
11 in any government that they have to deal with now or in the future.
12 So I think that we just have to proceed to try to do our best and
13 I would say that, in trying to handle this with several governors,
14 I have never had the response from the state of Alaska I would
15 hope on these issues, but I keep hoping that in the future, why
16 with some luck in the electoral process, we will get a state
17 government which is more responsive in these areas than they have
18 been in the past.

19 MR. BERGER: Well, thank you,
20 Mr. Parker. We've reached the hour, virtually the hour of
21 closing, and since all of those here from Alaska are invited back
22 next week in one capacity or another, and I do hope you will be
23 back next week, and I repeat that we will start again Tuesday
24 at 1:15.

25 Perhaps I might treat what Walter Parker just said as
a closing statement on behalf of all Alaskans present, and invite
our guests from the Lower 48, to whom we are most grateful for
their having spent a week with us. Starting with Mr. Lerner and
proceeding around the table, if you have a few closing observa-
tions, I would certainly welcome them at this stage.

Mr. Lerner, please.

MR. LERNER: I didn't think I'd
have an occasion to make yet another swan song to Alaska and

1 Alaskans.

2 The misgivings that were prompted by Mr. Konigsberg's
3 remarks and expressed by Mr. Katchatag and Mr. Johnson, I think
4 stir some very important problems of self-government, and maybe
5 it's worth taking just a minute to bring those out into the open.
6 They show the limit... The misgivings that you two raised about
7 this, show the limits of that kind of a formula, that kind of an
8 incantation that says power comes from the people. That sentiment
9 could be expressed in other ways. You could say popular sovereignty,
10 or you could say political authority rests on some popular basis.
11 That's old standard American doctrine.

12 But the misgivings that Mr. Katchatag and Mr. Johnson
13 expressed really grew out of a concern to have it both ways,
14 somehow to have a hard bound control in order to achieve some good.
15 But that hard bound control ought also to be overridable under
16 certain circumstances. It happens that other people thinking
17 about their self government, people very different from the
18 Native peoples of Alaska, wrestled with exactly that problem
19 and one of them said, "If men were angels, no government would
20 be necessary." The problem consists in this, in enabling the
21 men and enabling the governed... excuse, me, in enabling the
22 governors to control the governed, and enabling the governed to
23 control the governors. Okay. You've only got men to rule over
24 men, and that doesn't matter whether they're white or Inuit or
25 what have you.

26 So on the one hand, you're unwilling to have the dead
27 hand of the past to control the living. What if 100 years from
28 now you want to use that land that you've committed in a certain
29 way, you want to use it in another way? Are you bound by that
30 earlier generation who could not have, perhaps, foreseen the
31 circumstances that that later generation was under?

32 At the same time, you want to prevent any existing
33 government... Well, let's put it this way, you want to guard against

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1 the corruptability of any existing government because at any
2 point you've only got a group of people who can be boss. You
3 don't know.

4 That, I think, comes down to that really deep, difficult
5 and indispensable question that only Native peoples can ask or
6 answer for themselves. If subsistence... If the subsistence way
7 of life is, indeed, indispensable to being Inuit or what have you,
8 then that would point one way. When I say that the subsistence
9 way of life; I don't mean that each and every Inuit has to live
10 that life but that it somehow has to be available for those who
11 want to live that life, okay? Then that argues, fix as much
12 as possible the preservation of the land in its present, relatively
13 virgin condition. But if it's conceivable that that way of life
14 might take very different forms in some distant future, then you've
15 got to preserve some flexibility. Who can answer that for you?

16 MR. BERGER: Ada Deer?

17 MS. DEER: I appreciate very
18 much the honor and the pleasure of being invited to participate
19 in this Alaska Native Review Commission session. It's been a
20 tremendous and exciting experience participating in this high
21 speed seminar with minds of Professor Johnson and other professors
22 here and the Native peoples. I've learned a lot and am heartened
23 by what I've heard. People of good will, scholars and others
24 who are new to Alaska and new to the area of Indian affairs have --

25 (TAPE 35, SIDE A)

MS. DEER: -- asked extremely
penetrating questions of moral nature, intellectual nature, a
political nature, a cultural nature, a legal nature, and there
are no easy answers to any of these. I'm reminded of what one
author said, "We not only react to our environment, we, in a large
measure, can create our environment," and I think that this is
what is in process here.

There's much I could say but I would ask all of us,

1 Natives and others alike, to seize this moment in history and
2 do it right. When we were working on our Menominee restoration,
3 Senator Ted Kennedy came and spoke to one of our meetings, and
4 he said in reviewing the history of American Indian affairs,
5 there's very little that we can be proud of but he commended the
6 Menominee people and all others who were working at that time,
7 and I do want to pay recognition to the many who did help us in
8 our effort. We didn't do it alone. He did want to state that
9 the Menominee restoration would be an exception to this, that
10 this would be an example of the American system working to bring
11 about justice, and with the intelligence, the imagination, the
12 dedication and the commitment that we've heard here, we have
13 another opportunity to make a positive and a lasting contribution
14 in the history of American Indian and Native affairs, a positive
15 one that will bring justice to all.

12 MR. BERGER: Thank you. Alma
13 Upicksoun?

14 UNIDENTIFIED: (INDISCERNIBLE)

15 MR. BERGER: Yes. If you're
16 getting a plane south, you're from the Lower 48.

17 MS. UPICKSOUN: The commission,
18 in these last two weeks and the week to come, will be receiving
19 a lot of input, a lot of information from a lot of different
20 areas, and hopefully during the time, more ideas, more solutions
21 to some of the issues and problems that have faced the 48 and
22 Alaska would be talked about and I think much lies ahead as far
23 as brainstorming and creativeness.

24 And I think one point has been made here which I would
25 reiterate... would be the important idea to keep in mind is the
26 role of attorneys and what role they will play, and I think that
27 has been emphasized this week and I hope continues to be so.

28 MR. BERGER: Ralph Johnson.

29 MR. JOHNSON: I'm impressed by

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1 how much I didn't know before I came here and how much I have
2 yet to learn. It's always a very exciting experience. I'm
3 honored to participate in this process and with the commission
4 the very best of luck in what I feel is an enormously important
5 question that needs to be. This is just the start of something,
6 I think, that's going to be very, very important... not only in
7 Alaska but across the country and I think it's a very, very
8 significant beginning. We're going to hear a lot more about it
9 in the future and I wish you all the very best in that effort...
10 hope to participate in it.

MR. BERGER: Russell Jim.

MR. JIM: Thank you, Mr.

11 Berger. I, too, am very honored to be able to participate in
12 this very historical occasion. I mentioned to Sheldon earlier,
13 privately, and I will share with you a feeling that I have and
14 I must confess it was somewhat of pessimism when I first arrived
15 but now I have this feeling that something can and should and
16 will be done to preserve and protect the cultures that have been
17 mentioned.

18 And the... the statement I made to Sheldon was that
19 in our language, there is a term that says (SPEAKS IN NATIVE
20 LANGUAGE), "You are not alone," so the mutual problems we have
21 of the Lower 48 and the Alaska Natives are real. Many of the
22 problems that have been discussed here, I'm afraid have been
23 created by unconfessed designs and the... the solutions are going
24 to be an uphill battle but I truly believe that it is necessary
25 to be done.

In this scientific revolution during this recession
period and during this overwhelming deficit we have with the
federal government, I'm reminded again of another warning created
under the Carter administration, "Global Report Year 2,000," a
warning with regard to the dwindling resources and the over crowd-
ing that may come. There are estimated 4.5 billion people on the

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1 earth today. By the year 2,000, there will be six billion and
2 the warnings that are professed can be thwarted, I think. I
3 must qualify that in a sense of a problem of the Yakima again.

4 Many years back there was an erroneous boundary on the
5 Yakima reservation which cut off virtually all of the timbered
6 area which I mentioned earlier was 600,000 acres and homesteaders
7 were allowed for many years to go in there and build little
8 villages and towns, stores, homes, et cetera, and eventually the
9 ... the erroneous boundary, after much costly battles in court,
10 was nullified but the owners of the land were told, "You cannot
11 live there but you still retain ownership of the land."

12 Now, again we're back to this term of just compensation
13 which has been the practice of the federal government to throw
14 money at the situation and call it just compensation, which puts
15 the Yakima nation and many like indigenous people back to square
16 one again. Now if and when we don't heed the warning of "Global
17 Report Year 2,000," what society, what administration is going to
18 allow in excess of 700,000 acres on the Yakima to remain closed
19 to inhabitants to live on, and when these fee patent lands that
20 are in some of the areas of prime timber, some of the best timber
21 in the world left, these fee patent lands are to remain by virtue
22 of a mistake, not of the Yakimas but of someone else in perhaps
23 the federal government, then the people that are going to inhabit
24 this earth, in excess of six billion people, are going to be
25 allowed to have first choice at the most prime sites on the
Yakima.

I wish I had a magical solution for this whole issue,
but I have a renewed, enlightening feeling that with the expertise,
the feelings of sympathy and the legal system, this formidable
body of law of the United States of America, if it can be
adhered to, will and should be carried out for true justice to
the indigenous populace.

Thank you.

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1 MR. BERGER: Mr. Konigsberg,
2 I thank you for coming. We include you in our list of guests.
3 Ted Chamberlin, from Canada, we thank you for coming. Anything
4 you wish to add?

5 And Kim Gottschalk from National... American Rights
6 Fund, NARF, do you wish to add anything, Kim?

7 MR. GOTTSCHALK: I just want to
8 say thank you for the privilege of participating and that's a
9 thank you for myself and for the Native American Rights Fund who,
10 of course, has assisted the indigenous peoples of the Lower 48
11 with their legal problems since 1971 and is equally available
12 to people of Alaska for what help we can give them.

13 MR. BERGER: All right, and
14 Joe Jorgensen. You began the discussion on Tuesday and we invite
15 you to have the last word now Friday afternoon.

16 MR. JORGENSEN: Thank you.

17 A... One thing that anthropologists have learned, working
18 around the world, is that all populations everywhere have
19 assigned values to space and place and Russell Jim the other day
20 made very clear what was meant by space and place and every Native
21 speaker here has done the same thing.

22 Space is where you gain your livelihood, the air you
23 breathe, the animals and plants that live on it... the relations
24 between these abiological phenomena and the biological phenomena,
25 including humans. Places are those spots on a space where you
bury your dead, where you honor them, where you marry, where you
raise your family, where you honor past generations and you make
plans for the future generations.

The values that are assigned to space and place are
spiritual, they're material, they're perhaps even commodities.
What Natives have told us again and again and again is that
commodity value is not the predominant value assigned to either
space or place, that, indeed, it is a very minor value and as a

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1 matter of fact, the notion of just compensation recognizes the
2 commodity value and not other values of either space or place,
3 That the courts seldom recognize any values, any symbols assigned
4 to culture and by culture, other than commodity, is a travesty.
5 That's what you're working against. I do hope, I do wish you
6 success. I think that there are avenues that will provided limited
7 success.

8 The avenues I like the most are those expressed in
9 Native will. Let's take it all. Let's be stewards. Let's hold
10 this land in perpetuity. And by Tim Coulter, who said, "Go for
11 it."

12 MR. BERGER: Thank you, Joe.

13 Well, thank you all. This has been a good week and
14 I have learned much and I hope that goes for all of you. And
15 we will adjourn until Tuesday at 1:15 to begin the international
16 session.

17 (HEARING ADJOURNED)

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