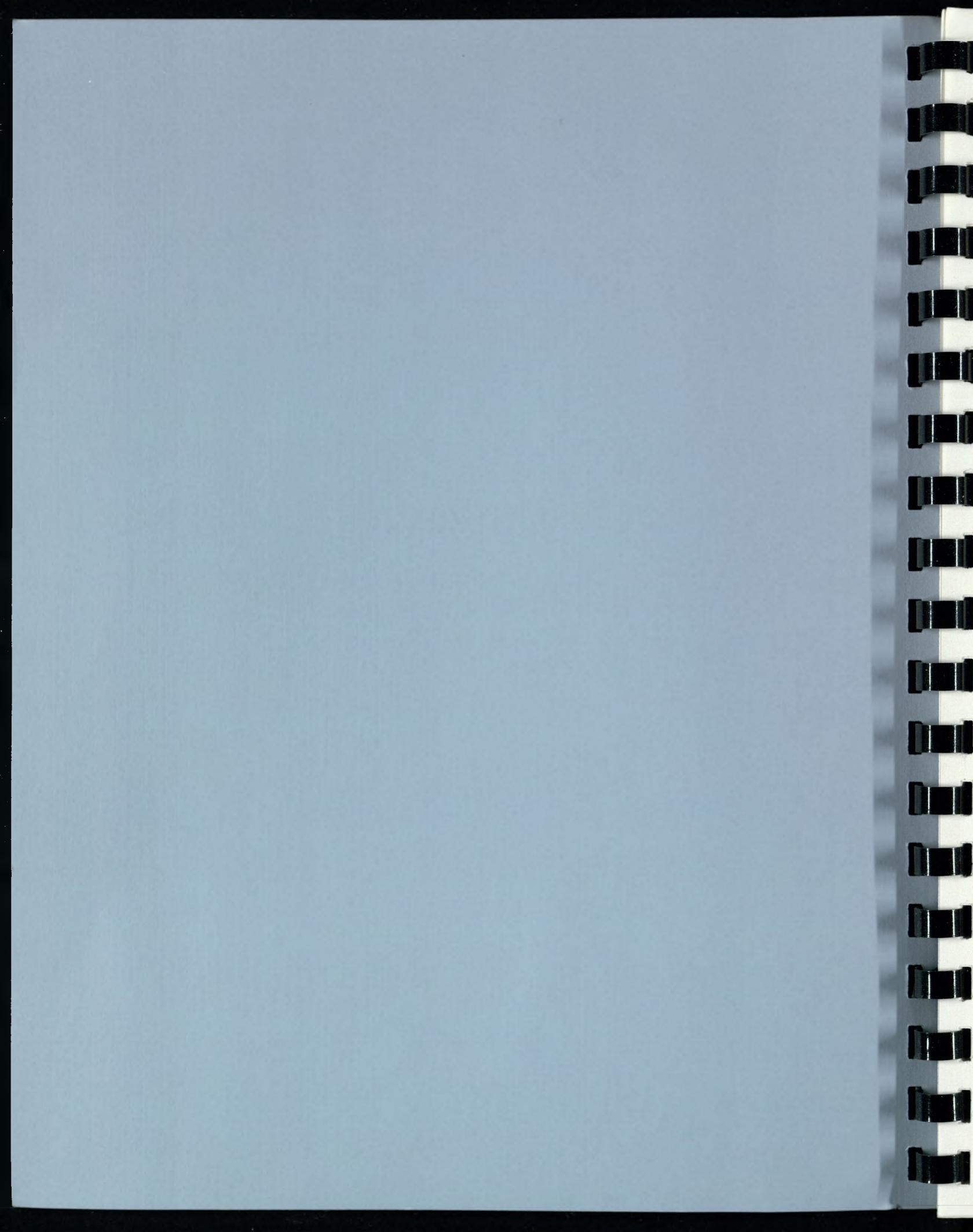


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**Volume V**  
**Pages 416-512**  
**Transcript Of Proceedings**  
**Alaska Native Review Commission**  
**ANCSA Institutions And Legal Regimes**  
**March 02, 1984**  
**Anchorage, Alaska**

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**Volume V**  
**Pages 416-512**  
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VOLUME V  
PAGES 416 - 512  
TRANSCRIPT OF PROCEEDINGS  
ALASKA NATIVE REVIEW COMMISSION  
ANCSA INSTITUTIONS AND LEGAL REGIMES  
MARCH 02, 1984  
ANCHORAGE, ALASKA

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ACKNOWLEDGEMENT

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1 PARTICIPANTS CONTINUED

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3 An early organizer of Natives from Nenana and proponent  
4 of Congressional action to preserve land rights. Has  
5 served Tanana Chiefs Conference, Alaska Federation of  
6 Natives, and the Nenana Village Corporation.

7 Flore Lekanoff (Anchorage)

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

13 Lillie McGarvey (Anchorage)

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15 health and social services. Currently president of Alaska  
16 Native Women's Statewide Organization.

17 Fred Paul (Seattle)

18 A Tlingit attorney who worked actively in support of  
19 Native interests during and following passage of ANCSA,  
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21 Association.

22 Ralph Purdue (Fairbanks)

23 An early advocate of organizing Native for a settlement  
24 in the early 1960's and a president of the Fairbanks Native  
25 Association; presently in private business.

Alfred Starr (Nenana)

An Athabaskan elder who was involved as an early pro-  
ponent (decades before ANCSA) of a land settlement to preserve  
Native rights.

Don Wright (Fairbanks)

President of the Alaska Federation of Natives during final  
period of ANCSA negotiations and now working with the village  
of Venetie.

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(MARCH 2, 1984)

(TAPE 17, SIDE A)

MR. BERGER: Well, why don't we take our seats and begin to struggle with this again.

(LONG PAUSE)

MR. BERGER: Well, I think everyone's here. Let me remind you of the procedure I think we agreed we should follow this morning. There were opening statements by all of those members of the roundtable who joined us yesterday for the first time and they were, indeed, fascinating. And we had begun to canvass the table opposite me for some observations and questions and I promised we would continue along those lines this morning. And perhaps this morning we could hear from Mr. John Hope, Mr. Alfred Starr, Mr. Fred Paul, and then Mr. Peterson, if he has further questions, and Mr. Mallott and Mr. Johnson. And then, perhaps, ask our guests who joined us yesterday to take a full opportunity to respond to what has been said already and what is going to be said this morning.

One other thing, we have invited the public to participate. It's difficult to work them in but I hope we will be able to give the public an opportunity late this afternoon, members of the public, to say something. We allowed that to be done late in the afternoon on Monday, Tuesday and Wednesday and perhaps we can work that in this afternoon, later on.

Mr. Hope, perhaps you would begin this morning then, sir?

MR. HOPE: Thank you, Mr. Chairman.

Mr. Chairman, I was fascinated by some of the remarks made yesterday. My remarks will be more comment than questions. I was, I guess, shocked probably is the term when I heard there was a proliferation of IRAs since 1966. And I think in the eyes of the state of Alaska and perhaps Senator Stevens, two new IRAs



1 constitute a proliferation. In 1966 there have been only two  
 2 IRAs who had elections called by the Secretary. One was the  
 3 Inupiat and one was the Kenaitze people. There were more than  
 4 nine IRAs in 1966. The job I had when I was with the Bureau  
 5 was to help the tribes form IRAs. There have been only two.  
 6 There have been at least... Well, during my tenure, there were  
 at least 12 applications that are still sitting in Washington.

7 The other comment that... And Mr. Hickok comes with  
 8 real force and authority and if I didn't know better, I probably  
 9 would have believed that. The one sovereign concept I found I  
 10 was really pleased, the Supreme Court doesn't agree with Mr.  
 11 Hickok that there is but one sovereign. Some of the things the  
 12 court has said with respect to sovereignty, "The sovereignty  
 13 which a tribe has is of a unique and limited character but  
 14 retains all the attributes it had which has not been expressly  
 15 limited by Congress." In 1978, the Supreme Court said, in part,  
 "The power of Indian tribes are, in general, inherent powers of  
 a limited sovereignty which has never been extinguished." It's  
 inherent.

16 I heard Senator Stevens the other day say the federal  
 17 government is about to give a lot of sovereignty in Alaska. The  
 18 Supreme Court thinks it's inherent, that nobody gives it to you  
 and they can recognize it.

19 I guess the part that I would probably take issue with  
 20 because I believe that tribes do have sovereignty, not with  
 21 Mr. Hickok's statement but with the rule of international law  
 22 that states the rule of discovery and conquest gives the conqueror  
 23 sovereignty and ownership over the lands thus attained and so,  
 24 because that's a rule we live under, we are burdened with the  
 limitations it imposes. And true justice, I believe, would  
 fault that statement.

25 Mr. van Ness said the IRAs would be a mistake, it has  
 a bad record. It's an instrument of the '30s. I think the IRA

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1 has application in current time because the problems the IRA was  
2 intended to address are the problems that we still have today.  
3 And I think there are some general statements and I don't think  
4 ... At least, I had some dealings with IRAs and I think that  
5 probably, if I were you, Mr. Chairman, I would make a visitation  
6 to Metlakatla. There's an IRA and there's a reservation, and  
7 I think you might get a different perspective than what we've  
8 been hearing about bad IRAs.

9           The other IRA community that's strictly IRA in South-  
10 east Alaska is Klukwan. They used to have a reservation. They  
11 have refused to incorporate under state statutes. They still  
12 operate an IRA entity and I think they're satisfied with it.  
13 Those are two communities, but if you were to just listen to  
14 testimony and say these vehicles are poor vehicles and should  
15 not be foisted upon us, I think it would pay you well to visit.  
16 And as I said the other day, I think if you talk to the people  
17 down there in Metlakatla and say, "We have a great act here intended  
18 to do wonders for the people of Alaska. We'd like for you to have  
19 the opportunity to avail yourselves," I think probably you would  
20 not get an affirmative response. I think they're pleased with  
21 the instrument they have and it's also a reservation. A lot of  
22 people condemn reservations. I think you would be impressed  
23 with the physical appearance of that community. You've heard a  
24 lot of negatives about reservations and I think, unless you visit  
25 one, I don't think could have a fair judgment about what those  
things are.

          I was... I was... It was interesting to me to hear Mr.  
Jones say that it was an express intent for the shares to go  
out of non-Native hands. He said, "That's what we wanted."  
The first few days, I think we were blaming the Native leadership  
for that. But now I think I'm beginning to place it in the  
right perspective. And he said, "When you lose land, that's  
what we wanted. You'll get money in return," you know. I guess,

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1 from a Native perspective, that's not a plus. That probably is  
2 a minus. If I had a choice of money or land, probably I wouldn't  
3 think that was a fair exchange. I was really... fascinated by  
4 that concept.

5 I think, Mr. Chairman, those are the things that I  
6 wanted to jump up and respond to yesterday, but keeping with  
7 the decorum that you've established here, I had probably one  
8 more ulcer develop overnight.

9 Thank you, Mr. Chairman.

10 MR. BERGER: Thank you, Mr.  
11 Hope.

12 Mr. Starr?

13 MR. STARR: Thank you, Mr.  
14 Chairman.

15 At the roundtable, a roundtable, people that sit  
16 around a roundtable, you trying to tell there are... not only  
17 the Alaskan Natives, but the population of Alaska as a whole...  
18 And before the white man came, the Indians done things in the  
19 leaders and I, from way back, have great-grandfathers was chiefs  
20 of the Natives. And they didn't have no Washington, D.C. They  
21 didn't have Juneau, and they didn't have the white man, but they  
22 ran their country.

23 The economic problem in this country, in Alaska, there  
24 was nothing that was done about it and I'm glad that you mention  
25 some... should be some economic problem started here. The  
26 other parts of the world, there's some parts of the world where  
27 they're over populated and they haven't got the timber or anything  
28 else that we've got up here. And it's funny that Alaska never  
29 exported anything to any other part of Asian countries where  
30 those are needed.

31 I'm going to tell you a little story about the old  
32 Indian rules and laws. Rapids Alaska Blue Rampart was a fishing  
33 ground and they had dip nets made out of willows. It was made

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1 out of willows. And they... fished there during July, the king  
2 salmon run and they had a rock there. It's still there, the  
3 rock is still there where they dip net from. Every person that  
4 was over there, and they came from the Tanana River, up Yukon  
5 River and downriver, not only from the... for the people there  
6 at the Tanana District, that part of... They came from all over,  
7 those that could travel, and worked to put in a month or so of  
8 fishing. They were allowed two fish... and it don't... Some say  
9 in less than ten minutes that they caught two fish there, two  
10 king salmon, and they get in a canoe and they catch that two  
11 fish and somebody... The village was on the other side of camps,  
12 it was on the other side. Somebody got in a canoe and came  
13 over and take his place, 24 hours a day, and when you...

14 Mr. Parker, here, I know him in 1930s, before this I  
15 think and when they have game laws, it seems like the Copper  
16 River Center where they dip net, it was too much, too many  
17 people getting into the places like that. They're going to  
18 over fish. They should be allowed so many people at all to  
19 get in there because they're going to be over.

20 And about the Indian lands, the Natives is worried that  
21 they going to lose their land in 1991 because they can't pay tax.  
22 And in 1961, before the 1962 meeting in Canada, the first Indian  
23 meeting in the interior of Alaska, our record with the university  
24 people, when they ask me what Indian land should be a reservation,  
25 I think the reservation, if it's got to go back to a reservation,  
I'd like to see them keep their land because they can't... they  
can't live without land.

And I'll tell you about... I'm here to tell you little  
stories, but they're true. Not too many people back here to  
listen to, to talk to either, you know. I like to talk to big  
crowd of people.

(LAUGHTER)

MR. STARR: That's what the

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1 Indian chiefs is for. I don't know what...

2           The first white man that came up the river was a Russian  
3 and they said they had... They came far as Nulato where they  
4 started a trading post. They didn't have nothing but tea, I  
5 guess. I don't know what else, maybe the old muzzle loader gun  
6 shells. I wouldn't be surprised if I... I wouldn't be sure if  
7 they even had a pilot bring them. They had (INDISCERNIBLE),  
8 those Russian traders had. He was some big shot, this Russian,  
9 you know, was going to go up and look at the other parts of  
10 Alaska, and... he got a Native what was a slave, you know. He  
11 didn't pay him, and he came below Tanana where there's a...  
12 They got a bar down there called Tosies (ph). It's good fishing  
13 there, too. You can fish there in the fall under the ice. You  
14 get... But there was an Indian girl from upriver. She lost a  
15 son, drowned. So he went downriver looking for his son and this  
16 Russian big shot, he was... I don't know what you'd call him...  
17 He had a fire on the beach there at north of Tosie (ph) and  
18 this Indian with him told this man coming down in a birch bark  
19 canoe... There was nothing but birch bark canoes then... to  
20 go... He talk in the Nulato language, Athabaskan language, and  
21 told him to go back because this man told him to go back. The  
22 Russian told him to go back, he got no businss down there,  
23 turn around, go back upriver. And he kept going. And, again,  
24 there's not too many young Natives. I (INDISCERNIBLE) talk  
25 to young Natives, because I like them to know the old time  
stories and what happened, what happened before the white man  
came. And there's not too many here this morning. I should  
talk when they all come in this afternoon before the...

          In those days they had two knives. What the knives  
was made of, I don't know, maybe Mr. Hope or there's some other  
Natives, Mr. Paul there, maybe they know. They're not made out  
of stone. They sharpen them so they could eat with it. They  
had two knives. One was to eat with and one was to... knife they

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1 could defend themselves with in case they get in trouble.  
2 He landed there, he didn't go back. He landed. He  
3 didn't pull his canoe up very far, but he did come to the fire.  
4 The big Russian got up. He's a white man, you know, Russia,  
5 you know. He's a white man. "Why, you broke the law. When you  
6 was told to go back, you should have went back." He was going  
7 to kick him and he got with his knife so quick, you know, and  
8 went down to his feet. Well, he pulled his feet back. He was  
9 going to kick him in the other foot. He done the same and  
10 (INDISCERNIBLE) the knife and then he was going to hit him. He  
11 done the same thing with the knife, you know. So he sat back  
12 on this box and he asked this Nulato Native, I guess, what he  
13 was doing around there. And we can talk the same dialect from  
14 Tanana as Nulato in case (INDISCERNIBLE)  
15 people (INDISCERNIBLE) Yukon River, you know. "I lost my son,"  
16 he told this Native. "I lost my son and was looking to see if  
17 I can find a body." Well, the Russian got sorry for him and  
18 the Russian told him that, "You go on one side...." They give him  
19 cup of tea. And he never had tea in his life and he was sitting  
20 on a box... He never seen a box in his life. So the Russian  
21 boss told him, "You go on one side and we'll go another side.  
22 Then if you find your son, make sign to us and if we find him  
23 on this side of the river, we'll make sign to you." I guess  
24 he went on other side then and he turned back but the Russian...  
25 The Russian sent word back to Russia and told the Russian  
government that, "I was going to go upriver and look at the  
rest of the Yukon River, see what the Natives up there... who  
lives up there. But it looked like the warriors up there and  
maybe I couldn't go up there with the few Russians I got here."  
The Russian government told him, "Don't go up there. That's  
their land. That's their land. They lived there for thousands  
of years and we're not going to go up into their land." You  
will gradually find out that we'll hear, through the mukluk news

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1 or snowshoe wisdom, this, you know... and the Russians never went  
2 up the Yukon River.

3 So, again, I'm glad that you mix with... I'm talking  
4 with the whites, you mix with the Natives but you're talking  
5 about people's lives, about their future, and I would say that  
6 the Indians should keep their land, some way or another. They  
7 shouldn't pay tax unless they make money on it, whether it's a  
8 mine or something, they find oil or something on it. But the  
9 Indians in Alaska are worried. And about jobs, I looked down-  
10 town here, after I looked downtown I go into a different coffee  
11 shop, different business places, and I don't see no Natives  
12 working down here. And in the villages it's nice to see the  
13 Natives, they're clerks, the girls is. They're very nice and  
14 they're just like anybody else. They're just like... just  
15 working people. They're nice. So it's too bad that there's  
16 not too many Natives working here. That's what I see.

17 Mr. Paul, he's a lawyer and he'll tell you about old  
18 times. He'll tell you about it.

19 Thank you.

MR. BERGER: Thank you, Mr.

20 Starr. Thank you very much, sir.

21 Mr. Paul, Mr. Starr has introduced you and...

MR. PAUL: Thank you, Mr.

22 Chairman.

23 I have a number of sort of miscellaneous points before  
24 I go into the political process.

25 There's an inherent contradiction in the settlement  
act. ANCSA corporations got their property, whatever they got,  
because of tribal rights so that, in the management and operation  
of the corporations geared towards profit, have had a tendency  
to forget the origin of whatever they have. We hear the comment  
corporation-for-profit, which is... which is totally opposite  
from the tribal creation of the property that the corporation has

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1 so that management in the corporation have problems in satisfy-  
2 ing the desires of the rank and file tribal members which we  
3 now call stockholders.

4 The legal rights, the trust responsibilities that the  
5 U.S. supreme court has, time and time again recognized, really  
6 didn't gain much support in the Native movement. We used to say  
7 the words, but it was hardly ever manifested into the actual  
8 wording of the legislation. It wasn't until Don Wright became  
9 president in the fall of 1970 that, with his support, people  
10 began to focus upon the trust relationship. He brought up  
11 leaders from the Lower 48, he was instrumental in getting Bob  
12 Jim of the Yakima tribe in promoting a very substantial loan to  
13 the AFN, 225 thousand dollars in the spring of 1970. Don's  
14 involvement in the NCAI likewise produced some support for the  
15 trust theory.

16 It wasn't really until February of 1969 with the release  
17 of the Federal Field Committee report that there came about a  
18 sort of general acceptance, somebody mentioned a general  
19 acceptance of legal rights in the Natives of the ownership of  
20 their land. I cannot commend the staff of the Federal Field  
21 Committee too highly, Dave Hickok and Doug Jones and especially  
22 the chairman, Mr. Fitzgerald, for the Federal Field Committee  
23 in its report explicitly recognizing, and I can quote the  
24 phrase... First, there had been a number of federal withdrawals  
25 and that land was gone. But it boiled down to... Instead of  
375 million acres, it boiled down to 275 million acres which  
the Federal Field Committee said, "The Natives of Alaska have  
a substantial claim." That's their language, not mine.

I'm going to avert to the political process shortly,  
but with respect to whether or not there would have been a  
settlement at all had it not been accomplished in December of  
1971... One of the problems of the Natives of Alaska, we had  
no money. Lawsuits cost money. When the Presbyterians gave a

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1 grant to the Arctic Slope Native Association of 85 thousand  
 2 dollars in September of 1971, it took us, I think, to get  
 3 Edwardson versus Morton on... on file. That case was directed  
 4 at the Secretary of the Interior to require the Secretary to  
 5 perform his duties, his trust responsibilities, to bring an  
 6 action against all of the invaders of the North Slope to eject  
 7 them. Had there been no legislation, that would have been a  
 8 viable alternative.

9 Now with respect to Joe Upicksoun and Etok's plea for  
 10 corporations, one must put it in the context of the times. As  
 11 of then, the Natives did not have any desire for regional cor-  
 12 porations. They had a choice of a statewide and village corpora-  
 13 tion. The Arctic Slope wanted a region. They felt that they  
 14 were one people and they would protect all of the people through  
 15 a regional corporation. The Arctic Slope was not getting any  
 16 support for either the regional concept... or for their IRA  
 17 desire as the mechanism to receive the yield of the settlement.

18 One has to be contemporary and the next best vehicle  
 19 would be a regional corporation. And we were successful in the  
 20 Senate bill of 1970, S-1830, of having created a "North Slope  
 21 Native corporation." The AFN leadership and the Congress and  
 22 general counsel to the AFN gave us a little sop in the North  
 23 Slope Native corporation in giving the Eskimos 500,000 acres  
 24 of surface rights. Not much value in surface rights on the  
 25 Slope, particularly that small a size. We were able to convince  
 on our own, however, when the bill got to the floor of the Senate  
 to convert the 500,000 acres to fee simple acres.

I want to talk a little bit about the Alaska Federation  
 of Natives. Let's take a look at it prior to the settlement.  
 The initial bill endorsed by the first Chief's Conference, out  
 of which the AFN grew, was based upon land lost. The bill pro-  
 vided that the court of claims would define the area of ownership  
 still in the possession of the respective Native groups so that

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1 you'd have a court decree setting forth metes and bounds. And  
2 for lands already expropriated by the United States, they would  
3 be paid some money. The other Natives of Alaska realized that  
4 if the Eskimos were to get a share of their aboriginally-held  
5 lands, that perhaps the others would not get anything. I never  
6 understood that because I have a belief that the Natives have  
7 a pride of ownership in whatever land they have.

8 But the Alaska Natives are becoming somewhat Westernized.  
9 They're losing some of their commonality of ownership within their  
10 respective tribes so that, shortly, the voting procedure of AFN  
11 was based upon a population proportion basis. The Arctic Slope  
12 Native Association proposed that because its population being  
13 concentrated in the Tlingit and Haidas and in the Bethel area,  
14 the AFN, in its propoganda to the Congress, would swallow up the  
15 smaller regions, smaller in terms of population, Copper Center,  
16 Arctic Slope Native Association, Aleut. They would get the  
17 smallest.

18 Then the... We now have the settlement, and initially  
19 I was most impressed with John Borbridge, Jr.'s, remark about  
20 freedom in corporate elections. Particularly with the regions,  
21 there is no freedom of corporate elections, none. Management...  
22 This is the nature of the beast throughout the United States in  
23 the corporate world, management can spend corporate money to  
24 reelect themselves, and they do. Some of the larger regions  
25 will spend as much as 100 thousand dollars. They have TV ads,  
they have radio ads, they have solicitors, they have airplanes,  
they have free telephone and they hire girls to go around to  
bingo games and they pester the old ladies until they sign another  
proxy.

Now the structure of... of the AFN, Inc., after the  
settlement is based upon representing the regions. The village  
people have no representation in AFN, Inc. You have 12 directors  
representing the regions. Even the AFN convention has no power

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1 according to its constitution. It's a great fellowship time and  
2 that serves a function. Natives like to get together, see their  
3 old school mates.

4 But there is no voice within the AFN, Inc., for the  
5 village people. I was most impressed with Frank Peterson's plea  
6 to the commissioner to listen to the village people. Now, when  
7 you translate the lack of freedom in corporate elections into  
8 the AFN, Inc., as it is composed today, you really have AFN  
9 espousing the desires of the respective managements of the regions.

10 Now I want to go on to the political process. In  
11 presettlement, the Natives of Alaska had quite a bit of clout.  
12 They had legal rights, particularly after the Federal Field  
13 Committee report was issued. They had the Udall land freeze and  
14 it was of sufficient clout... Somebody mentioned Bill Foster's  
15 lobbying on behalf of the oil companies during the last year  
16 of the settlement. As far as I know, the oil companies did not  
17 oppose any of the desires of the AFN during that last year, any  
18 major desires. As far as I know, the orders that Bill Foster  
19 had was to get a settlement, any kind of a settlement. It didn't  
20 matter what it cost. By that time, the pressure on the oil  
21 companies was immense. They had spent 900 million dollars for  
22 some so-called oil exploratory rights in 1969, and I might men-  
23 tion that the state of Alaska was so frightened of the legal  
24 rights of the Natives that in the leases that the oil companies  
25 bought for that 900 million dollars, there was a disclaimer  
clause. That is to say, if the state of Alaska didn't have any  
authority to sell those oil rights, the state of Alaska did not  
have to return the money. That's what you call clout.

Edwardson versus Morton was filed in the last year  
of the presettlement and there was an article in the "Newsweek"  
magazine which indicated that maybe... maybe the Natives of  
Alaska did, under American law, own all of Alaska. That kind of  
publicity is political clout. It worries people.

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1           What kind of pressure do we have today? I was most  
2 impressed with Bill van Ness' remarks about what possibility is  
3 there to get some really substantive improvements on the settle-  
4 ment act. We don't have the land freeze. Title up here is  
5 pretty much fixed.

6           I've got to respond a little bit to the subsistence  
7 remarks of Doug Jones. Obviously, subsistence is a very, very  
8 important matter to the Alaska Natives. It was never a ploy  
9 during the settlement effort. It was never something we threw  
10 out to gain sympathy. It was a very real thing. That was not  
11 the problem, however, about subsistence. The problem, as of  
12 then, was that some powerful figures wanted to have subsistence  
13 rights as the real compensation that the Alaska Natives would  
14 receive in the extinguishment of their rights. There were real  
15 efforts. Chairman Aspinall, in his in-house explanation of  
16 HR-3100 in the spring of 1971, mentioned that in his bill they  
17 gave subsistence rights and that that was put in for "psychological  
18 reasons," in other words, to fool people that maybe the Natives  
19 were really getting something of substance.

20           One more thought before I leave the political process.  
21 problem, there is an inherent conflict between the regions and  
22 the villages and the ANCSA corporations. One brief illustration  
23 is gravel. Who owns the gravel? Is gravel subsurface or surface?  
24 And gravel, in many areas, is very valuable. There's major  
25 litigation been had and still going on about the ownership of  
the gravel, part of the 50 million dollars in attorney fees that  
I mentioned earlier.

          Now the only thing we have going for us for improvements  
on the settlement act... We don't have any real pressure, like a  
freeze. All we have is justice. Not so shabby a thought.

(OVERLAP TAPE 5)

MR. PAUL: But I'm cynical  
enough to say that the Congress does not enact laws simply because



1 they're just. Congress reacts to pressure. Congress understands  
2 power and this beautiful ideal we have of justice is not that  
3 kind of power. Well, that's pretty strong. It's an awfully  
4 hard job to sell to the Congress something that's not at a  
5 crisis level just for the sake of justice.

6 I have a belief, that if anybody can document the need  
7 for justice to the Alaska Natives, this commission can do so.  
8 While I'm somewhat cynical, agree with Bill van Ness to a large  
9 extent, one has to try. So we have this ideal of justice.

10 But let's suppose we fail in that regard, we get  
11 extension of stock alienation for ten years or so and we get  
12 some freedom of taxation for awhile, odds and ends like that.  
13 But the real substantive provisions that are troubling the people  
14 are lost, suppose that. We have to have a --

(TAPE 17, SIDE B)

15 MR. PAUL: -- there in front of  
16 them. It does not need legislation and it can provide a certain  
17 amount of protection.

18 Somebody mentioned that the ANCSA corporations would  
19 lose their economic power if they promote the IRAs. Well, we're  
20 talking about the same people. The assets that the ANCSA cor-  
21 porations have would not be lost, still there perhaps in the  
22 form of an IRA or some reasonable division between IRAs and  
23 ANCSA corporations so that their economic power and political  
24 power would be just as much as it is now.

25 One of the reasons why I have the belief that the ANCSA  
corporations have not utilized the IRAs is that it's sort of an  
unknown to most of us. What we do know about it is not very  
healthy, failure of the Southeast canneries, to a large extent  
the failure of the stores out here to the westward, has not  
been a healthy situation. John Hope has agreed with me that  
the canneries were being bossed by the bureaucrats from Washing-  
ton, D.C. They never really had a chance. I was delighted to hear

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1 Frank Peterson agree with that.

2           There is a substantial amount of oversight by the BIA  
3 for government-owned money. That is to say, the revolving fund  
4 that the IRA first established, but if the IRAs were funded by  
5 private money, including ANCSA corporations, you don't have that  
6 federal oversight. John Hope's example of Metlakatla is totally  
7 right. They exercise a substantial amount of self rule in  
8 Metlakatla. But again, it is an unknown.

9           So let's assume we baby-up into the IRA concept,  
10 utilization. Let's assume that there be modest loans from  
11 ANCSA to the IRAs, whether village or regional. See how it works.  
12 We don't have to strip the ANCSA corporations of assets totally.  
13 I agree with John Havelock to some extent. There are minority  
14 rights in corporations. By minority rights, I don't mean Native  
15 as opposed to non-Native. I mean minority in the sense that  
16 they're out of power... So that there has to be somewhat of  
17 an arm's length agreement between ANCSA corporations and the  
18 IRAs. It can't be a gift because then you invade the rights of  
19 the minorities in the corporations.

20           One of the fears I have of 1991 is corporate raids.  
21 We have some village corporations that are very wealthy. Kavilco,  
22 located at Kasaan, sold 15 percent of their timber rights, not  
23 the fee, the timber rights, cutting rights, for 25 million dollars.  
24 There are 120 stockholders in Kavilco. Multiply that out and  
25 that's 200 thousand dollars apiece. Now, I'm not suggesting  
that this would happen to Kasaan by any means, but some of  
these village corporations are going to be gobbled up by out-  
siders. People are going to sell their stock.

          Again assuming that 1991 is not overhauled to any great  
extent, in the corporate world one knows that you don't have to  
control 100 percent of the stock or 51 percent of the stock to  
dominate it. You can oftentimes dominate a corporation by ten  
or 15 percent, and in the Native world, I rather believe that

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1 that would be enough. An example, the canneries in Southeast  
2 were dominated by the cannery superintendent. Some of them  
3 weren't that worthy, and unless the villagers went along with  
4 the cannery superintendent, he didn't get a boat, or his boat  
5 needed repair and he didn't get financing, or if he didn't go  
6 along with the superintendent the cannery tender didn't come out  
7 and pick up his fish... lots of ways to control in the hands of  
8 the cannery superintendent.

9 So it is a real problem about corporate raids. But  
10 supposing the IRA were to have management of most of the ANCSA  
11 corporation's assets. ANCSA corporations would have... would  
12 own a debt that the IRA owed it... You know, some relationship to  
13 fair value. There wouldn't be any enticement by an outsider to  
14 come in there and pick up the stock because all he would be  
15 getting would be a right to some payments by some sister organi-  
16 zation. The management of the timber, for example, would not  
17 be available to him.

18 There are... Before some of these gentlemen came,  
19 we talked about this before, but IRAs have, you know, the real  
20 virtue, only Natives can belong to it. But it also has avail-  
21 able to its health the Self-determination Act, the Indian  
22 Financing Act, the Loan Guarantee Act, the Interest Subsidy  
23 Act... the federal government will pick up interest, instead of  
24 20 percent interest it's going to be something compatible with  
25 earning a profit. Finally, it has income tax... federal income  
tax exemption. You don't pay federal income taxes when an IRA  
makes a profit

Now there have been some remarks made about IRAs and  
... Walt Parker, I believe, called it an anachronism. Bill van  
Ness recommended against it, and one or two others made some  
slighting remarks. I have a question to these gentlemen. What  
is wrong with the IRA?

Thank you.

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MR. BERGER: Thank you, Mr. Paul.

Mr. Peterson, I think I said if you had some further questions...

MR. PETERSON: Thank you, Mr. Chairman.

In school I learned that one never asks the questions unless he knows the answers. But for the benefit of those who may not know some of the answers or maybe to help pose further questions for the purposes of this commission, I'd like to ask these questions, especially to those of us here on the panel.

Number one is what, for historical perspective, is the genesis of ANCSA, and we can make references in trying to get the answer to the Russian statutes prior to the Treaty of Session. We could make reference directly to the 1867 Treaty of Session and also to the Alaska Statehood Act as it relates to the aboriginal title.

Next one is what was the Native claim to the land as was referred to by Mr. Paul? As I recall, in the mid '60s there were some 29 Native associations formed because of the claim that was being discussed by Native people. And as I further recall there, when asked to make the claim for the lands based upon the aboriginal title, that the entire state of Alaska plus parts of Canada were claimed under the use and occupancy laws.

Another question is what are the structures created by ANCSA as compared to the existing infrastructures of the Native community? As I understand, the ANCSA creates business companies but there seems to be a misconception by a number of people that the business companies formed by ANCSA also have additional responsibilities for social and governmental activities. The corporate structure, as created in ANCSA, totally avoids the infrastructures and the communal lifestyle of the Native people.



1           With regard to the land conveyances, what form should  
 2 the land conveyance take? There's some discussion here about  
 3 fee simple title versus trust. I think there's some... there  
 4 can be some good arguments made as you conduct these hearings  
 5 throughout Alaska and the villages for developing your recommenda-  
 6 tions at the end of the two year period that you're going to be  
 7 working here. I think in arguing for both the fee simple title  
 8 and the trust title, that it should be considered for any possible  
 9 amendments to ANCSA as far as 1992 is concerned, that in order  
 10 for Native people to be properly compensated for the 1971 ANCSA  
 11 act, that we need to consider both the trust title and fee simple  
 12 title in order that people can adjust to the Western economic  
 13 system that we're being forced to live within through ANCSA.

14           I believe that both the Native community and the  
 15 individual Native person will properly benefit by a conveyance  
 16 in fee simple and trust lands to the Native community. I think  
 17 this would also cause a shift of the beneficiaries of the claims  
 18 act to date from the attorneys, the accountants, consultants to  
 19 the originally intended beneficiaries and parties, that is, the  
 20 Native individuals and the Native communities.

21           Also, I think as you conduct these hearings throughout  
 22 Alaska and the villages, you will find that there are two types  
 23 of Native people. One is the urban Native and the other is the  
 24 village Native. That should be properly considered as you develop  
 25 your recommendations. Each group has their differing views as  
 to what should result from the claims act. Each group has  
 differing views, differing needs. I think it's a concensus of  
 a large part of the urban Native, for instance, to promote the  
 alienability of the stock because they need it. They can use it.  
 They know how to use these assets. But I think if you were to  
 ask the same question of the Native person living in the village,  
 that you would find their response more to say, "Why don't we  
 keep the land or the money or the assets within the community for

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1 community use," for the lifestyle has been generally communal  
2 rather than private land ownership.

3 We have an example in the Koniag Region in two parts  
4 of the settlement act. One is Section 22(g). According to  
5 Section 22(g), those lands conveyed to any of the villages within  
6 the wildlife refuge do not have or will not have fee simple title  
7 as was understood to be. A second example is in the D(2) bill  
8 or ANILCA where, for those lands exchanged or authorized to be  
9 exchanged in ANILCA, that those lands to be accrued now by  
10 shareholders of Koniag will not be getting fee simple title  
11 because ANILCA guaranteed public access to be accrued by the  
12 shareholders of Koniag.

13 I read in some of the material that you had distributed  
14 here and I was impressed with what Mr... the late Mr. Hugh  
15 Nichols said in his testimony. He says, "The ANCSA process is  
16 backwards." This was during the claims act days. He said, "The  
17 federal government should have been asking for the lands and that  
18 the Native people should have been giving." And I think that's  
19 very true because if we look at the statistics and the amount of  
20 lands that we were talking about under aboriginal title, 586,000  
21 square miles or 375 million acres. And I was just checking with  
22 John here. He says the amount of land that the Native community  
23 is supposed to be getting is one-ninth of 375 million acres.

24 I think, Mr. Chairman, I must commend you again for  
25 this awesome task that you have to investigate how this...  
What shall I say?... landmark achievement in the form of claims  
act is impacting the Native community. And hopefully, when you  
come up with your recommendations, that we will have a consensus  
for 1992.

Thank you very much.

MR. BERGER: Just before we  
turn to Mr. Mallott and Mr. Johnson, I wonder, Mr. Parker and  
Mr. Borbridge, if either of you would like to add anything? You

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1 had a... You spoke yesterday afternoon but you may feel that  
2 we haven't still got it fresh in our minds what you said. Other-  
wise, I'll move on to... All right.

3           Might I just make a comment that Mr. Starr has told us,  
4 in a graphic way, of what he regards as the fact of Native  
5 sovereignty because he referred to days when Native people ruled  
6 themselves and, to use his language, there was no Washington, D.C.,  
7 there was no Juneau... I'm sure a ghastly thought to many, but  
he did remind us of those days.

8           Mr. Hope suggested that, at least in New Metlakatla,  
9 the reservation system had worked in Alaska, and Mr. Paul pursued  
10 that theme. May I just say that what strikes me is that all of  
11 you are talking about political institutions' governmental  
functions.

12           Mr. Johnson made it clear yesterday, and I think every-  
13 one agrees, that the regional corporations had sought to act  
14 politically on behalf of Alaska Natives as well as acting, as  
15 they are bound to do, as profit-making institutions. And Mr.  
16 Paul suggested that, since these are essentially corporations,  
17 and he referred to the way that elections are conducted, that is,  
18 by accumulation of proxies, I assume that that was what he was  
19 getting at, that they are not to be equated to elections that  
would be held normally in the political... in a political setting.  
I don't know whether I'm doing justice to what he said or what  
Mr. Johnson said, but that was my impression.

20           Then, of course, you have the state, which as I under-  
21 stand it says, "You want political institutions? You've  
22 got them. We've chartered first and second class cities all  
23 over this state, so let's get on with it." And it seems to me  
we're dealing with perhaps three points of view on that.

24           Might I also throw out for our... the visitors that  
25 joined us yesterday, a thought that many have uttered about  
ANCSA but... that they might reflect on and comment on, and that

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1 normally in the entrepreneurial system, the capitalist system,  
 2 or whatever... the market system... if somebody is an entrepreneur,  
 3 he seeks or finds an economic opportunity. And then he goes  
 4 and he gets a lawyer, I suppose, and he forms a corporation.  
 5 Then he goes to the bank or an investor and he raises the money  
 6 so that he can then pursue that economic opportunity. I mean,  
 7 I think we were all raised to believe that's how the system  
 8 works.

9 Under ANCSA, you turn that around and I... I'm the  
 10 one, Mr. Petersen, who said ANCSA is a landmark achievement  
 11 because when you think about it, even with the flaws that some  
 12 have suggested it has, I think it is an achievement that...  
 13 can only be described as a landmark. But ANCSA turned that  
 14 around and they said, "Here's a corporation, here's some money,  
 15 now go out and find an economic opportunity." I'm sure that's  
 16 a trite thought, but our guests might like to consider whether,  
 17 at the time of ANCSA, that occurred to anybody.

18 Well, perhaps we could move on then, Mr. Mallot, if  
 19 you'd like to speak again now. You're certainly welcome.

20 MR. MALLOTT: Well, Mr.  
 21 Chairman, I'm not sure where we're at in this process and  
 22 whether it's appropriate to continue going around the table  
 23 commenting on what one another said. And if that's your intent  
 24 ... but having not said a word since yesterday morning, like  
 25 everybody else you tend to have observations based upon what  
 you've heard, and so if you'll indulge me.

The business of the... political nature and the diffi-  
 culty with the election process of ANCSA corporation is as in  
 the nature of most human events perceived by whose ox is being  
 gored, to a large degree, and I think that's what we exist  
 with today. The... I think there's an irony here and I'm not  
 defending the process because the process of annual meetings  
 and the election of directors in a form that is not well understood

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1 and difficult to explain, even to sophisticated investors, is a  
2 difficult one and has caused us, I think, a lot of grief. Every  
3 year we're picking at a scab, something that is never allowed to  
4 heal. But I'd just like to point out a couple things I think  
that might help keep this into perspective.

5 The corporation allows every single shareholder the  
6 opportunity on an individual basis to vote. There aren't very  
7 many other institutions other than purely governmental institu-  
tions that allow that.

8 Secondly, corporations, at their inception, had the  
9 option of allowing cumulative voting which virtually every ANCSA  
10 corporation, to my knowledge, did. And that puts substantial  
power in the hands of minority shareholders.

11 For example, in Sealaska corporation, for every one  
12 vote that management has, any other individual pursuing a  
13 directorship on the board of directors has the equivalent of  
14 six votes. And in an ANCSA corporation like Sealaska, the  
15 power of shareholders to influence the corporation has been  
16 very substantial. The corporation in each year of its existence  
17 with only two or three years to my knowledge, has not been  
18 able to elect its entire slate of candidates. Now, I don't  
19 like the process but, once again, this dynamic, corporate  
20 vehicle which many have said here is able to mold itself to  
21 the needs of its owners, operates in many ways very differently.

22 It is bound by a huge history of precedent and law  
23 and regulation that hamstrings the efforts of those in manage-  
24 ment to a considerable degree to change that corporate system.  
25 For example, and, gosh, we've had, in our corporation, for  
example, years of training. You know, we've said, "Hey, we're  
just a bunch of dumb clucks here. We've never run a huge  
corporation before and we've got this money and what are we  
going to do with it?" So we brought people in from the places  
where people are supposed to know... John Feters, with Arnold

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1 and Porter, who's now the security chief of... or, the enforcement  
2 chief of the securities and exchange commission, taught us how to  
3 be board members. And the one thing that kept hammering at you  
4 is, you know, you have the obligation to the bottom line.

5 And one of the things they kept telling us was that one  
6 of the significant responsibilities of the board of directors of  
7 a corporation is to insure continuity of management, that finan-  
8 cial institutions frown upon revolving-door boards of directors.  
9 You have to be very careful in how you assess and how you allow  
10 the policy-making of your corporation to be influenced. And so,  
11 in that context, there's been a terrific tug and pull because I,  
12 personally, feel very strongly that that process needs to be  
13 opened up somehow. But I'm also substantially constrained by  
14 thinking, you know, we've got 30, 40 million dollars in operating  
15 and long-term debt. What are the banks going to think about  
16 that? What are the financial institutions going to think about  
17 that? And those are very real problems that we all must wrestle  
18 with.

19 I know the frustrations, I know the anger, and I will  
20 leave it because, to a large degree, it is inherent in the vehicle  
21 that we've been beating from pillar to post.

22 The comment that was made more than once yesterday that  
23 ANCSA has avoided, and I am referring largely to Guy Martin's  
24 statement now, that ANCSA has avoided being static which has  
25 been the fate of most Indian legislation, and that is one of  
its important strengths, is something that I agree with because  
we, over the years, have had the opportunity, and Bill van Ness  
pointed this out, too... And I'm going to stop doing that.  
We're all going around the table more and more saying, "I agree with  
what someone else said," and pretty soon we're going to not be  
addressing other things. But I think that's something we need  
to recognize in ANCSA, is its dynamism and, hopefully, our ability  
as Native people to ultimately make it work for us.

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1 I'd like to comment on... And this is the last time  
 2 I'll do it, I hope, referring to another member of the panel...  
 3 Dave Hickok's classification of periods of ANCSA development...  
 4 and I've discussed this with David prior to this meeting. But  
 5 after the passage, that period 1969, roughly, to '71 of  
 6 active and substantive negotiation with Congress, the period of  
 7 implementation ran, in my judgment, not really from '72 to '76  
 8 but from '72 to '79 because it wasn't until 1979 that we were  
 9 able to get the state to make the advance payment of the state's  
 10 portion of the dollars and I don't think we got most of that  
 11 until 1980. And so... And it wasn't until 1979 and then begin-  
 12 ning in 1980 that the land began to be transferred to Native  
 13 corporations. And during that period from 1972 to 1976, we  
 14 were involved as corporations largely in dealing with govern-  
 15 ment. We were not, for all practical purposes, business insti-  
 16 tutions during that period of time. Some of us were making  
 17 business decisions and were involved to some degree or another  
 18 in business, but our principal focus was on Washington, D.C., and  
 19 it was a very difficult period.

20 At one point, someone counted up the number of lawsuits  
 21 that Native people... that ANCSA leaders were involved with  
 22 during that period of time. There was something like 22 pieces  
 23 of litigation on easements and transfers and... dealing with  
 24 these federal agencies who continued to hang onto that land  
 25 because they had been responsible for management prior to ANCSA.  
 And substantial resources, both in human and dollar and the  
 allocation of time terms, were involved in those battles. And  
 of those 22 lawsuits, the Natives won 21. The one we lost,  
 I'm not sure how important it was. But they were debilitating  
 to a considerable degree on our efforts to really make ANCSA,  
 at least the corporations, work.

And, of course, then we've got '79 to the present. I  
 mention that, Mr. Chairman, only because if you look at 1991

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1 and that date, that... Congress saying, "We'll give you 20 years  
 2 to get your act together and then you'll function like every-  
 3 body else." I don't think Congress envisioned it would take  
 4 us anywhere nearly as long to get control of the assets and that  
 5 to really implement ANCSA at the corporate level in the kind of  
 6 business context that Congress had it mind... It ain't been  
 7 20 years, it's been something much less. For those of you who  
 8 are English majors, I use ain't by way of emphasis as opposed  
 9 to some other way.

10 The... Both... Well, I'll do it once again. Both  
 11 Charlie Johnson and Mr. Borbridge raised the issue of confusion  
 12 over what sovereignty means to Native people. To some it means,  
 13 you know, one thing and to others it means something else, and  
 14 that's something that the Native people are going to have to  
 15 work out over time as we look at how we deal with ANCSA.

16 John Havelock pointed out something and it was his  
 17 initial statement that I think is very important, and that is  
 18 there was a failure in educating Native people in the complex  
 19 law that was ANCSA. And then we heard also that Mr. Jones,  
 20 in the years he spent in Congress and in the research arm of  
 21 the Library of Congress, never saw a more complex act... And  
 22 those, you know, that is something that I agree with. It's  
 23 been a failure on the part of Native leadership but it also  
 24 needs to be looked at in terms of being almost an impossible task  
 25 when you juxtapose that need against all of the other competing  
 needs at the time and the implementation of ANCSA. But I  
 think it is correct to note that, in terms of our priorities,  
 we might have done something differently. And not just us, but  
 other institutions that had an obligation to implement ANCSA.

The... It was interesting to note that several speakers,  
 at different times yesterday, said both that corporations were  
 very flexible and dynamic and then said later that they were  
 inflexible. The same individual said that.

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1 I was interested in some of the comments that Doug  
 2 Jones made because I think that they are important and to get  
 3 that staff perspective helps us, I think, as Native people,  
 4 understand some of the perspectives that existed at that time  
 5 that maybe we didn't see because we had our own. And to... And  
 6 while some of us were almost visibly reacting to some of the  
 7 things that Doug was saying, I will give him the benefit of  
 8 the doubt that from his perspective those things were real and  
 9 they were right, and they're only wrong because we were feeling,  
 10 as someone said, a different part of the elephant. And I think  
 11 that what Doug said may not have been a personally held belief.  
 12 He was a staffer. He was carrying out and reacting and building  
 13 upon the direction and research that he had, that if you look  
 14 at ANCSA from that perspective of what, ostensibly, Congress may  
 15 have intended, that we should not be concerned about land falling  
 16 into Native... about land falling into non-Native hands because  
 17 that's what ANCSA intended, you know, is something you need to  
 18 sit back and take a look at. I think it allows us to focus  
 19 better on the job we've got to do. And, of course, if you lose  
 20 the land, you get value in some other form, hopefully, and,  
 21 hopefully, it makes sense in the marketplace. But, of course,  
 22 to us the marketplace, itself, may not make sense, so we've  
 23 got a problem.

19 And his comment that Congress hoped to attain attitudinal  
 20 changes and maybe even cultural changes in Native people was one,  
 21 I think, that we need to take note of. And, Doug, if I'm  
 22 misquoting you or... or paraphrasing you in a way that you  
 23 didn't intend, I know that you will respond. But I think that's  
 24 what you said, because that's what I wrote at the time. And I  
 25 think we have to recognize that, as Native people, as we put what  
 we've got to do in order to deal with what we consider the prob-  
 lems of ANCSA into... into focus.

And I guess I might just, since several people have

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1 posed questions around the table... If, Doug, Congress hoped to  
2 attain attitudinal changes and even cultural changes, what  
3 were they?

4           There was a thought expressed that the settlement could  
5 have just been land. We didn't have to get money, we didn't  
6 have to get other things. I guess, you know, my reaction to  
7 that is that, from our perspective, it certainly could just have  
8 been land. That's what we went in for. But that was not in  
9 the cards in any way, shape or form... at least to get, as  
10 Frank has pointed out, what Natives owned at the time. And I'm  
11 not sure in what context that was made, that maybe by accepting  
12 money you created your own problems because if we could have  
13 obtained just land, we would be, I think, in different circum-  
14 stances right now. We may have had problems just the same,  
15 but we would be dealing from an entirely different frame of  
16 reference.

17           There have been several comments about Indian reserva-  
18 tions and their success and it's something that I recall vividly  
19 back then when other American Indian groups began to understand  
20 where ANCSA was going and the comments almost universally that  
21 we heard from them was that, "You people are on the wrong  
22 course." That, "You are being terminated." I mean, it was  
23 almost universal, at least in my own recognition, and I wondered  
24 at that point, you know, "What are these folks talking about?"  
25 And I guess the only comment I would make there, Mr. Chairman,  
as to reservations being a failure... If there were no reserva-  
tions, the Crows, for example, would not be sitting right now  
on 22 billion tons of coal and, for all practical purposes,  
there would not be Indians as we know them today if there were  
no reservations, and for all the problems, Indians still own  
land in this country. And to say that that is a failure, I think,  
is overstating in a very considerable way.

That's not to endorse how Indians got to the reservations

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1 but it's a comment, I think, on what exists today and the  
2 possibilities, slim as they are, as we look to what might have  
3 been.

4 Of course, there have been comments about... the  
5 subsistence comments that Doug made and the only thing I wrote  
6 here is "BIM comment, bull."

(LAUGHTER)

7 MR. MALLOTT: And that wasn't  
8 referring to Doug but whoever might have felt that that was how  
9 we felt at that time.

10 The comments that Bill van Ness made, Mr. Chairman,  
11 were hugely important to me because to a considerable degree  
12 they allowed me to recall some of our attitudes at the time,  
13 and that was to be realistic and to be pragmatic and to look  
14 at where we were going in terms of timing and to look at the  
15 art of the possible. But I think it's important to these  
16 hearings to note that all that was done in the context of  
17 having a touchstone of fundamental principle and I think that's  
18 what we've got to get back to, that if fixing ANCSA becomes a  
19 mechanical, technical sort of process without a question that  
20 Fred Paul used... there I go again... of justice... and for  
21 my frame of reference, not justice in the sense of throw ANCSA  
22 out and start over, but in the frame of reference of how, with  
23 what we've got and with what is realistic and what is possible,  
24 can we achieve but doing it from some fundamental touchstone  
25 that has less to do with tinkering with ANCSA than it does with  
what Native people view as being able to achieve as much as they  
can in terms of justice.

And, of course, the comment that, "Let's not raise  
expectations beyond where they already are in the galaxy," is  
certainly a caution that I think is very important because, as  
has been mentioned many times in these proceedings, that is one  
of the huge difficulties that we face and have been faced with

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1 since ANCSA became law. And as I've said and others have said  
2 here, the expectation issue is exacerbated to a considerable  
3 degree today because, to put it in a nutshell, again from my  
4 own perspective, the gap between the rich and the poor is grow-  
5 ing. It ain't being diminished. And that compounds our difficulty  
6 as Native people.

7 The comments that were made... and I think it may have  
8 been part of the question that you earlier posed that you wanted  
9 me to comment on, both about the political nature of the elections  
10 and the political nature of the corporations, that is, corpora-  
11 tions having both social and economic requirements, is both a  
12 burden and an incredible opportunity, and I think that if we are  
13 able to make that an opportunity, it requires time. And one  
14 of the reasons we are here is that it may require more time  
15 than Native people are willing to give to the institutions and  
16 the leaders of those institutions, for reasons that are fairly  
17 clear and which those leaders also understand and share.

18 But to change the institution, to change the perception  
19 of the institution, to change those levers and those demands and  
20 those dynamics that work within it so that we can be comfortable  
21 and successful with being both an economic, profit-oriented --

22 (TAPE 18, SIDE A)

23 MR. MALLOTT: -- institution  
24 and one which is able to deal to some degree with social and  
25 other needs is something that will take time and will have to  
be built upon a foundation of being able to prove something at  
a particular point in time that Native people can say, "Well,  
they've started, let's give them..." I was going to be cynical  
and say, "Let's give them some rope..." but, "Let's give them  
some time."

The comment that I refer to and others have referred  
to about corporations, and even in this instant moment, being  
dynamic and able to be creative, is also something that is both

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1 possible and impossible, depending upon what kind of time frames  
2 that you're talking about. And Dave Hickok's comment that we  
3 can do anything... Not anything, but that we have flexibility  
4 in ANCSA to deal with some of these problems ourselves, and  
5 Mr. Jones' comment that one of the fundamental underpinnings of  
6 ANCSA was that Natives were being given the opportunity to make  
7 difficult choices, is one that is a belief that is not unknown  
8 to us and many Native corporations and institutions involved  
9 with ANCSA are making efforts to deal with that.

10 For example, Sealaska corporation submitted to its  
11 shareholders at its last annual meeting a proposition which  
12 essentially asked, "Should Sealaska begin to try to devise a  
13 method or methods by which corporate-owned land could be taken  
14 out of the corporation and be put into some other status for  
15 the long-term benefit of Native people as Native people?" And  
16 the response to that proposition from shareholders was over-  
17 whelmingly yes. And as we began to look at how that might be  
18 done within existing legis... within existing statute, we've  
19 looked at things like the Bishop Trust and we're looking at  
20 the Royal Dutch Shell and we're looking at all sorts of options  
21 that we might pursue and we think that you could probably cobble  
22 up something that, for an individual corporation at a particular  
23 point in time, might make sense. But I think that that begs  
24 the question of justice, and I go back to my Tununak observation  
25 yesterday that the corporations own the land and its purpose  
under ANCSA is an economic one. It has nothing to do with  
tribalism. It has nothing to do with being Native land, and  
we're trying to use structures that don't deal with those  
issues at all to create some sort of patchwork response to what  
is essentially a question of justice.

And again, I say that while we say it with some fervor  
and justice can be very broad and... and overwhelming in its  
connotations, that I think justice can be achieved within the

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1 framework of the ANCSA legislation if we all put our minds to  
2 making those changes, that it would not do violence in any  
3 significant way to what Congress really intended for Native  
4 people, and would be responsive to what Native people had intended  
5 at the time as to how land would over the long term be owned  
6 and utilized. So some corporations, and most corporations, I  
7 think, are looking at these issues and are trying to be respon-  
8 sive to the interests and the needs of their shareholders.  
9 And, of course, having said as I have several times during my  
10 opportunity to speak at this... What do you call this thing?

MR. BERGER: Well --

MR. MALLOTT: Hearing --

UNIDENTIFIED: Roundtable.

MR. BERGER: It doesn't look --

MR. MALLOTT: -- hearing, okay.

MR. BERGER: -- very round,

13 but that's what it is. (LAUGHTER)

14 MR. MALLOTT: I have said it  
15 a number of times, that we need changes. It needs to be done  
16 within the framework of justice, that they're fundamental  
17 problems but that they can be accomplished within the framework  
18 of the existing law and our existing relationship and understand-  
19 ing with... with Congress. And so I guess to some degree I  
20 respectfully disagree with someone whom I respect very much,  
21 Frank Peterson, that ANCSA was a farce.

22 I agree that the corporation is an institution for  
23 trickle-down economics with large benefit going over time not  
24 to shareholders, but to the survival of the institution. And  
25 that's, largely, what corporations are all about. That's the  
way the law made them, and that's one of the things we have...  
It's been difficult for us both from a technical viewpoint and  
from a viewpoint of simple justice, I think again, to explain  
to shareholders. If you own 100 shares in IBM, IBM may earn

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1 four billion dollars in 1983, but if you own 100 shares out of  
2 the millions that may be outstanding, that 100 shares might  
3 get you a hundred bucks in terms of a dividend, and if you  
4 don't like the way IBM is managed, you know, you don't go to  
5 the annual meeting and try to throw out the chairman and the  
6 board of directors, you sell your stock and you go somewhere  
7 else where you think your investment will make the kind of  
8 return that you expect. And it's in that inalienation feature  
9 of our stock that a large part of the political problem that  
10 we face flows. But it is also, of course, that feature which  
11 gives us the opportunity to maybe deal with some of the prob-  
12 lems that we have with ANCSA.

13           The corporate vehicle is just really an anomaly  
14 dichotomy. I don't even know what those words mean, I just  
15 read them someplace. It's... It's very frustrating, and I don't  
16 know how Charlie or Frank or John or... John Hope might have  
17 felt at certain times, but there are times when I just want to  
18 rip off this suit, you know, and I feel like I'm outside myself  
19 looking at the guy being involved as a corporate mogul, to use  
20 a term that people have used, because a lot of times this thing  
21 doesn't make sense to me. Why should I be over here trying to  
22 make this business work when, for all the money we make, to  
23 the individual shareholder it's not going to make a fundamental  
24 difference in their individual economic status unless we liqui-  
25 date the corporation. And if we liquidate the corporation,  
utililizing all of its assets, we will have disposed of land.

          But at the same time, I look at the institution and  
I say minority people generally have been kept minority people  
in terms of their economic status and in terms of their social  
status largely because they haven't had economic power, and if  
we can use these institutions to, as a people, gain economic  
power over time, to be able to influence public policy, to be  
able to influence social policy, to be able to influence business

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1 policy... then what an incredible opportunity that is for  
2 people. But the individual expectations and what the corporation  
3 can really do, both in the short term and the long term, are at  
4 this point very, very divergent. And that is a big problem  
5 for us.

6 There is an inherent conflict between village corpora-  
7 tions and regional corporations. Witness what we're doing with  
8 ... with gravel, but they are conflicts that are able to be  
9 dealt with, I think, by Native people and the institutions,  
10 themselves. They aren't the fundamental nature that some of  
11 the other problems that we face in ANCSA may be.

12 The comments that Mr. Paul made about AFN... that  
13 it represents regional corporations, is owned by regional  
14 corporations, is certainly true. But it is also funded and  
15 its board of directors also includes the nonprofit corporations  
16 which have very powerful ties and involvements with particularly  
17 the village and rural areas and the convention has no power.  
18 That ignores, of course, the whole underpinning of Native  
19 strength as it's been demonstrated over the years which is that  
20 of moral suasion. And I think it was clearly demonstrated just  
21 the other night in an AFN dinner meeting that was held where a  
22 number of us were talking about AFN and where it's going with  
23 1991... And I want to point out once again, Mr. Chairman, that  
24 there are other institutions that are as deeply involved and  
25 as concerned with and as organized and are working to deal with  
this issue, and at some point I would hope that there would be  
a way that all of those forces could be brought together at some  
point to see where we are, because these processes, these  
efforts, should be ones of fostering unity and strength as  
opposed to creating divergence and acrimony. And that just  
relates, once again, to one of the things that we've understood  
right from the beginning and which has been demonstrated here  
and in some form has been used on us as a form of tyranny... That

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1 is, you have to be united, you know. If a senator says, "Don't  
2 come to us in Washington unless you're united," you know, he's  
3 just copped out, because sometimes it just ain't possible and  
4 I suspect that in dealing with fixes to ANCSA, that it is going  
5 to become more difficult for us to create monolithic and all-  
6 encompassing single kinds of solutions because we don't have  
7 the kind of flexibility unless we do start over that we had  
8 at the outset.

9 I do agree that even if we bring options, we ought to  
10 agree on at least the menu, and if that's what is meant by  
11 being united, I have no problem with that.

12 But to get back to the dinner meeting the other night,  
13 there was some conversation in which I was involved, saying how  
14 to begin to be more focused in 1991 in our response to the  
15 issues that exist and when it was all said and done, the AFN  
16 leadership, the management of AFN, said, "We don't want the  
17 regions to get too far out in front. We aren't particularly  
18 interested in what you folks cobble up as specific solutions.  
19 We want to go back to the convention. We want that gathering,  
20 regardless of why people come together, for friendship or  
21 whatever reason, we want that gathering which is a very respon-  
22 sive and widely representative gathering, to be largely responsible  
23 for giving this institution the direction that it needs." And  
24 I think that that is a commentary on how AFN functions and the  
25 kind of institution that it is that speaks for itself.

We're all concerned about the possibility of takeover  
and 1991, and I've got some personal feelings and ideas about  
how to deal with that, but I don't think that, at least at this  
point in your hearings, Mr. Berger, that that's... is appro-  
priate, but what opportunity for losing the lands that 1991  
makes possible, is very, very frightening and I think that that  
is a point that has been... that has been well-made here. I  
would make, once again, a personal observation, Mr. Chairman, by

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1 saying that if the corporations were stripped down, race horse-  
2 type of financial economic business institutions, without carrying  
3 the obligation for Nativeness that comes to the corporation  
4 because it owns the Natives' land, that at whatever time stock  
5 may become alienable, that we would have a very different  
6 capability to deal with those kinds of problems. But in a  
7 for-profit business corporation in this day and age in this  
8 current economy, the competitive edge that is required for just  
9 survival is so great that to be encumbered with these other obli-  
10 gations for a business corporation, creates serious problems.  
11 And I'm not saying that in any negative way, but from a business  
12 corporation viewpoint, I'm just stating what I consider to be  
13 reality. And if we find some way to get the land, that land  
14 which Natives identify as having Native cultural value, something  
15 that is a touchstone of their history and their existence, which  
16 may or may not be all of the land within corporations... I  
17 would hope that it not be all of the land. I don't know that  
18 any of us lived very deeply within the earth, for example, that  
19 it would be important that the subsurface not be retained in  
20 some manageable way that does not do violence to the surface  
21 ownership for Native purposes that that might not be retained  
22 in the profit-making corporation. But if we could create a  
23 mechanism to separate those two, the chance of success that,  
24 in my judgment, as we are faced with 1991 would be immeasurable  
25 increased.

20 I thank you.

21 MR. BERGER: Thank you, Mr.  
22 Mallott.

23 Mr. Johnson?

24 MR. JOHNSON: Yeah, I've been  
25 sitting here making notes and sometimes I wanted to go like  
this and say something, but it's kind of difficult when you're  
sitting here.

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1           Some comments... A statement made yesterday by Frank  
2 Peterson about ANCSA is a farce, we can tie that to a couple of  
3 other statements that have been made. Fred Paul made a statement  
4 about the roots of ANCSA settlement, you know, lie in the fact  
5 that there was tribal rights involved and the corporations are  
6 there because of tribal rights. John Borbridge made some state-  
7 ments about looking back about the legalities of ANCSA settlement  
8 which tie to statehood or tie to laws that were passed. And if  
9 we accept those statements, we must then say those are true if  
10 we assume that ANCSA was a just settlement, that it was a settle-  
11 ment that Uncle Same recognized our rights. The matter of fact  
12 is, Uncle Sam has never recognized the rights of indigenous  
13 people and settled them in a just manner. You can look down the  
14 history of the U.S. Not once has there been a settlement because  
15 Uncle Sam or Congress or whoever said, "These people have rights  
16 and we should acknowledge them and there should be justice."  
17 It has never happened. It only happens if there's an economic  
18 or other gain to be had, and I think that we have to look at  
19 the fact that ANCSA... And really what brings it out is Mr. Jones'  
20 statement about what the feelings and what the thoughts were of  
21 the staff in Congress and the people that were involved. It  
22 really brings down to us the facts that the ANCSA was an  
23 economic settlement. It's not a settlement or recognition of  
24 any rights that we have. Whether those are there or not, it's  
25 a poignant argument to make, but it just doesn't fly in the  
face of fact. So ANCSA, then, is really an economic settlement.

          Then let's look at some of the other statements that  
I'd like to make comments on. On the elective process, I've  
been involved with quite a few Indian groups in the states on  
reservations and the elective process that Mr. Paul talked about  
in the corporations and the tendency of management or those  
in power to insulate themselves or to use the mechanism of the  
corporation to remain in power is really not a characteristic of

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1 corporations any more than it's a characteristic of municipal  
 2 government. The very same arguments that Mr. Paul has stated  
 3 have been used time and time again on reservations and when they  
 4 talk about the chief or the chairman of the tribal council, the  
 5 very exact same arguments I've heard time and time again by the  
 people that want to throw the bum out, or whatever.

6 The fact of the matter is in the corporations in Alaska,  
 7 at least the regional corporations, you can look at the changes  
 8 that have been made in the corporation's leadership and, in fact,  
 9 you have to come to the conclusion that they are dynamic corpora-  
 10 tions that are continually changing. Look at the fact that the  
 11 many people have been voted out of office and the statement that  
 12 perhaps the leadership in the corporation is not listening to  
 13 or does not represent the feelings of the stockholders is really  
 14 not there, because if you look at the fact of the matter, it  
 15 doesn't take very long for our stockholders, if the leadership  
 16 or the board or whoever is not responding to what they feel  
 17 are the responsibilities of the corporation, for that person to  
 18 be voted out. And I've seen that time and time again.

19 Now, to the statement about an inherent conflict  
 20 between villages and regions, there's a couple of things I think  
 21 we should understand about that. One, you know, the villages  
 22 are both our strength and our Achilles heel at the same time  
 23 because let's look at the strength side of it and what we expect  
 24 or expected somewhat out of the land claims act. The expecta-  
 25 tions, I think, are starting to coalesce, that the act really  
 provided us a vehicle to remain unique and provided to maintain  
 some uniqueness as a people, that through the act and the  
 corporations, at least the village corporation's control over the  
 surface of the land, it allowed us to continue to live a life...  
 you know, free from some other pressures, perhaps, that might  
 come about if we did not have ownership of this land through  
 the corporations, that without that land base and without the

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1 villages, we would not have been able to maintain, you know, our  
 2 identity or our lifestyle or our culture. At the same time, we  
 3 hear about some villages with tremendous wealth and the fact that  
 4 when the stock becomes alienable, we might lose particular  
 5 villages or the control of particular villages because of their  
 6 wealth. And that's a very true and real danger in 1991 if we  
 do not do something about the alienability issue.

7 Now, I want to also add to what Byron was saying about  
 8 the fact of the existence or continued existence of Indians in  
 9 the South 48 and I think the statement that he made that, were  
 10 there no reservations there would not be Indians as we know them  
 11 now, the fact that there is a Crow reservation or Sioux reserva-  
 12 tion has allowed them to maintain their identity, maintain their  
 13 language, maintain their culture. Now if we grade the survival  
 14 of people on, or if we grade an institution on how it effects  
 15 the survival of people, then we have to say that the reservation  
 16 system has been a success because the Indian people of the U.S.  
 17 have survived because they have a reservation that they own,  
 18 regardless of whether we make arguments about the imposition of  
 the BIA and the trusts and whatever other federal or government  
 19 institutions are placed upon its management, the fact is that  
 20 because the Indians, or specific tribes in the United States,  
 21 own land and have a land base, they have survived as a unique  
 22 people.

23 If we use other measures of success such as the former  
 24 Secretary James Watt did, then we can say they're a failure.  
 25 Now, let's go back to our villages again, and more and more I  
 think we're seeing a feeling or perceptible shift in the expecta-  
 tions of ANCSA. And that shift is toward an expectation, or  
 maybe it's a hope, that the ANCSA corporations and the ownership  
 of the land really is what we're going to need if we're going  
 to remain a unique and survive as a people.

So... I'll look through here a couple times...

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1           Back to the regional corporations, we see in several  
2 regional corporations now a move toward involvement of the  
3 villages in the decision-making process of the region. For  
4 example, Ahtna just recently merged with its villages. Control  
5 of that region is based now in the representatives from the  
6 villages. My particular region just went through a reorganization  
7 where we have given back control, literally, of the regional  
8 corporation to the village corporations where the villages now  
9 have more than a majority, a super majority, on the board, that  
10 the village interests and through the village representation  
11 perhaps a closer response or responsibility to the individual  
12 stockholders that live out there, that they can affect the  
13 regional corporation in a more dramatic and direct way. And  
14 we see this in... right now, in the regional corporations that...  
15 developing responsiveness to the needs of our people.

16           And when we go back to the premise that if the village  
17 people are our strength, I think we're seeing that the regional  
18 corporations are, in fact, strengthening themselves through  
19 this process.

20           Now, another statement was made... I don't remember  
21 who made it... about the fact that these are profit corporations.  
22 Byron has emphasized that we're not necessarily social institu-  
23 tions. You know, the fact is that it's true, however the re-  
24 sponse of the regional corporations, the profit corporations I'm  
25 talking about, to addressing some of these other needs is not  
always done by choice. We are expected by our people because, in  
fact, there is a gap or a void that otherwise... that should be  
filled by other institutions, that we are expected as representa-  
tives of our people to address some of these needs. So we are  
responsive and I think the moves that you see with the regional  
corporations to include villages, the fact that... there is  
constant change in the management or representation on the  
regional corporations indicates that, in fact, the stockholders do

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1 exercise a lot of their responsibility in making the regional  
2 corporations represent what they feel their needs are. I mean,  
3 this is not to say that the corporations are the answer to the  
4 needs that we have as Native people, and I've said it and you've  
5 all said it, particularly those of you that have been leaders  
6 in the Native community, the corporation is... and ANCSA is not  
7 a perfect vehicle and it never will be. And I think what we're  
8 trying to do is, in the face of all that's wrong with it, trying  
9 to make it go and do the best we can with what we've got.

10 I don't think that a reversion to an IRA or whatever  
11 would solve the problems that we are bringing out. It's not a  
12 solution. I think, really, it's a set of another... series or  
13 institution with its own unique and otherwise almost insolvable  
14 problems that we have with the corporate structure that we're  
15 now in. So I'm not indicting or saying that we shouldn't go  
16 back to the IRAs, I'm only saying that the problems that we're  
17 bringing out with the corporations are also true of the IRAs.  
18 Whether or not there is advantages to that structure or... maybe  
19 I should say more advantages or less disadvantages really is an  
20 argument that I don't think can be won on either side. So if  
21 we look back again at where we are, I think that the issue of  
22 land ownership is really what is going to determine and with  
23 the issue of land ownership, the survival of... of Alaska Natives  
24 as unique and different people is going to determine whether or  
25 not ANCSA can be viewed as a success, because we, I think, do  
not want to be part or just another citizen. You know, we want  
to be Alaska Natives, we want to be Inupiaq, we want to be  
Aleut or Tlingit. We don't want to be just a citizen of the  
United States. And we heard from Mr. Jones that part of the  
process, or part of the thinking at that time, was that we, in  
fact, should be eventually just citizens. And I don't think  
we want that as Alaska Native people.

MR. BERGER: Thank you, Mr.

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1 Johnson. I think, Mr. Johnson, I... just indicated the... some-  
2 thing that lies beneath all this discussion, something that lies  
3 at the root of it, and perhaps our guests might like to comment  
4 on it.

5 Mr. Martin, I think... I hope the members of the panel  
6 agree that we might proceed in this fashion for a little while  
7 and hear from Mr. Martin and Mr. Jones and Mr. Hickok and Mr.  
8 van Ness, and then, perhaps, have a little more interchange.  
9 But it's been a kind of a mixed verdict on ANCSA and you gentle-  
10 ment, as... not authors, but people who had something to do with  
11 ... perhaps you were midwives, I don't know. But anyway, go  
12 ahead, please.

13 MR. MARTIN: Mr. Chairman, and  
14 I direct this comment to myself as to others, brevity may be  
15 the soul of wit but it is apparently not the soul of discussion  
16 of ANCSA, and at the risk of violating both your directive and  
17 the practice, I'm not going to choose to respond by speech at  
18 this point.

19 I clearly fall on the side of the people who believe  
20 that, first, for all its flaws, ANCSA has basically held up fairly  
21 well, particularly given the fact that it has been an act which  
22 has been willingly changed by Congress when good cause has been  
23 shown. I think that an analysis of the several amendments of  
24 ANCSA will disclose that, while some have fallen into the cate-  
25 gory of special interest legislation to address the specific  
needs of individual corporations... and I don't mean that pejora-  
tively... most of the major amendments have been those which  
dealt with institutional problems in the act which deserved  
serious attention and got it and got remedies... including...  
I think the best example is something like the land bank.  
In the future, obviously, there are amendments like that which  
seem certainly in store, addressing the taxation issue, address-  
ing the alienability issue, without knowing how they'll come out...



1 addressing the submerged lands issue and a number of others that  
2 are being pursued either currently or prepared for later pursuit.

3           So it seems to me clearly that the identification of  
4 flaws is a good and an ongoing process, but there's little doubt  
5 that the basic framework of the act has held up fairly well.  
6 Going just a little bit further, it seems to me that the kinds of  
7 concerns that seem to be provoking most of the discussion at our  
8 table today, which are those which apparently go to the organiza-  
9 tional inequity and maybe the sort of social/cultural insensitivity  
10 of the act, are ones which at least I have found have been  
11 rather abstract in terms of the advocacy. In other words, while  
12 I understand the concern, I register it, I still have not heard  
13 the specific proposals for change that are inherent in moving  
14 toward an IRA structure, and perhaps even a little bit stronger,  
15 I have real reservations, in spite of the fact they ought to  
16 be discussed thoroughly, whether those kinds of changes are  
17 realistically to be expected in the context of the amendments  
18 that we've seen to ANCSA so far.

19           I have more to say about that, but rather than violate  
20 my own idea about not responding by speech, let me just put a  
21 question on the table that I would address to any of the individu-  
22 als who either have deep concerns about the way the act's working  
23 now or who propose fundamental structural change in the organiza-  
24 tion or the implementation of the act. And that question is,  
25 what are the specific and highest priority changes that you  
want to accomplish by movement in the organizational structure...  
the specific and highest priority changes that you want to  
accomplish by changes in the organizational structure?

MR. BERGER: Mr. Hickok, would  
you like to follow?

MR. HICKOK: Thank you, Judge.

I've only a few comments and I think we've heard  
enough of what has happened to the act, who wrote what, who did

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1 this or that, and I'd like my comments to be briefly directed  
2 to some future aspects for this commission and for the Native  
community as a whole.

3 First, I think you really have got to define sovereignty.  
4 Whether or not you agree with me that the United States is  
5 sovereign, above the states, Judge, and also above the Indian  
6 people is immaterial. I happen to know that the states of  
7 the United States cannot enter into treaties with foreign govern-  
8 ments. I know that U.S. law prevails over Indian reservations.  
9 So my point is that there may be limited or diminished sovereignty.  
10 It may be inherent or otherwise, but you folks have got to define  
what you mean by sovereignty in the context of what you want to  
do.

11 Charlie Johnson says it means freedom to him. Fine.  
12 Whatever it means, define it.

13 I said the other day and I repeat it, that there is  
14 nothing in the ANCSA statute, itself, to prevent existing corpora-  
15 tions from going to IRAs or to any other institution. It seems  
16 to me that this is a persuasive... task of persuasion internally  
17 in the Native corporations and the Native communities and I  
18 agree from my own research, having talked with several Congress-  
men in the past several months, that it's going to be a very,  
very difficult task to get anything except some perfecting  
amendments before the Congress.

19 I think, Byron, that you could put your land, Sealaska,  
20 in its own institution and separate, if you wanted to divest of  
21 the money, you could still retain the land. I think the flexi-  
bility is there to do what you need to do.

22 There are forces of change upon this land of great  
23 magnitude. Alaska is the most rapidly growing state in the  
24 nation. The resource and economic pressures that are coming  
25 here through particularly domestic demands but also international  
demands are incredible. There are U.S. international boundary



1 situations here in Alaska where, on the one hand, there may be  
 2 cooperation and interchange, but on the other hand we may be  
 3 faced with conflict. I happen to be one of those who's written  
 4 for over ten years now on what I think is the coming conflict  
 5 between the Soviet Union and the United States and Alaska in  
 6 the oil aspects along the International Dateline. There are  
 7 forces of change that you will not have any real way of coping  
 8 with. You'll have to be part of that milieu that the rest of  
 9 us are in and try and handle it as a people.

10 And the question of people is my last note. Fred Paul  
 11 said that Alaskan Natives are becoming Westernized. I'd like to  
 12 say to you that there have been many Western whites in this  
 13 state that have become somewhat Nativized. Walt Parker and myself,  
 14 when we were in our prime, would put ourselves up against any man  
 15 in the woods or on the tundra or in a canoe. Walt won many  
 16 dog sledding events. I won many things with axes and canoes.  
 17 We both have hunted and trapped as well as anybody. We've  
 18 probably been around this state in more pieces in the lands and  
 19 on the woods and on the waters than almost anybody in the state.  
 20 There is a... a thing in our history that the people of the  
 21 worlds are becoming more and more homogenized, more the same.  
 22 Many of you might be amazed to know that Mr. Starr's ancestors  
 23 and my Celtic ancestors came from the same place in Central  
 24 Asia. His people travelled east, my people travelled west from  
 25 where we came, but we came from that same Central Asian steppe,  
 as far as history of mankind is cognizant. So we are becoming  
 homogenized. There are 16,000 Alaska Natives in Anchorage.  
 There are also 3,000 Koreans here. In 1966, there wasn't  
 hardly two or three. There is change, and we are, in many ways,  
 becoming more and more one.

Thank you.

MR. BERGER: Mr. Jones?

MR. JONES: Thank you, Mr.

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1 I think that it's a very good format, the one that  
2 you're following, to go around the table for at least one more  
3 round, and I don't think that the panelists... that we need to  
4 feel apologetic about doing that, maybe tidying up something  
5 that was either said or needs clarification from yesterday, or  
6 picking up on some point that another panelist responded to.  
7 And it isn't so much, I don't think, that the record be this  
8 or that, but rather that we understand each other, that we  
9 communicate well with each other and what it was you had in mind  
10 when you said it. So if I may, just a couple points that have  
11 come up.

12 Mr. Hope, I want to make sure that he, if I didn't  
13 communicate it well on the point of shares perhaps passing into  
14 non-Native hands and my phrase that's what we wanted to happen  
15 or what we intended, be aware that the point there was that we  
16 wanted the possibility of that not to be precluded. It wasn't...  
17 I didn't mean to say, if I did, that I or anyone else is terribly  
18 anxious to see that happen. The point is that we didn't want to  
19 put unusual restrictions on it. We didn't want to, I don't think,  
20 attach constraints on it. We wanted to treat it neutrally,  
21 neutrally just like other shareholders are treated in the sense  
22 of being able to alienate it as they will. The only thing that  
23 we did attach to it was a time period in which it couldn't  
24 happen, which was, without trying to be parental about it, I think  
25 was... hoping there'd be a learning period there so the risks  
of alienation, later on, would be minimized. So it was really...  
What I was talking about, Mr. Hope, was a push toward --

(OVERLAP TAPE 5)

MR. JONES: -- equal treatment,  
neutral treatment if you will, and if that's a proposition you  
come with, neutral treatment, equal treatment, then you come to  
an answer like that rather than that there was anyone who was  
anxious to have it go into "non-Native" hands. We didn't want

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1 to have a racial restriction, as I recall the matter, with  
2 respect to alienation.

3 Now, a lot of our discussion has to do, I think, with  
4 two levels of talking about these things, and I suspect the  
5 first one is a tactical view of how do you achieve changes, let's  
6 say, in the act, or whatever the act prescribed. How do you make  
7 it work out terribly well? And that's a very, very important  
8 thing, obviously. And... But that tactical view of it, talking  
9 about windows of opportunity to change it for the better and so  
10 on, is fine... okay, probably, as I say, more useful to you than  
11 the one I'm interested in, that is, a... on the... As best one  
12 can tell on the merit, what's the public policy aspects of some  
13 of these decisions. Nobody likes to yield tax preferences if  
14 you've already got one. Nobody likes to give up gains, usually  
15 described as hard-fought gains, but you may view it that way  
16 from the tactical point of view but you might come out with a  
17 quite different answer if you looked at it... one looked at it  
18 from a national point of view. So I think the windows of  
19 opportunity point of view is fine. The act certainly needs  
20 tidying up. But for me, if it means kind of a crass move to  
21 how do we hold onto things just on the basis of --

(TAPE 18, SIDE B)

18 MR. JONES: -- that was earlier  
19 talking about, I think you come out oftentimes with different  
20 answers, including on the tax matter. Because, again, if your  
21 proposition is, over time, to bring things to be normalized and  
22 equal treatment, then that includes changes in the tax matter.

22 Now on the Indian Reorganization Act, and I'd forgotten  
23 that that IRA, to me for a long time had meant that's where you  
24 put two thousand a year in a tax-deferred fashion, and it took  
25 a little while to remember that it's, I think, the Indian Reorgani-  
zation Act. So I don't know a lot about that. But a proposition  
that I think may cause trouble... I think this picks up on a...

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1 on a point or two made this morning as opposed to yesterday, was  
2 if you... if you set up a two-track system for gain and you say,  
3 "I think I'll use the Indian claims route and the Indian Reorgani-  
4 zation Act route and maybe a BIA route and the Public Health  
5 Service route and all those things that are specialized Indian-  
6 related matters" and that's one route for gain and arranging  
7 useful things for oneself, then when you've run that one out or  
8 it seems to be a time that one shifts to the national political  
9 route and, "We'll deal in some kind of political settlement for  
10 other things," if you set up such a two-track system for gain,  
11 I think that invites a lot of opposition because it means to me,  
12 I think, carrying on in tandem, searching for gain on the basis  
13 of differences as long as one can and then searching for gain  
14 on the national political scene on the basis of sameness, and I  
15 think that that can invite a good deal of difficulty.

16 Now, Byron, if he... mentioned that my reference  
17 yesterday to maybe even attitudinal changes might have been some  
18 of the motivation of some of the framers or some of the crafters  
19 of the legislation, and cultural changes, and he properly said,  
20 you know, what does one mean by that. What I had in mind in  
21 using those two words, was that maybe attitudinal changes was  
22 the racially-based dependency was... was what I was talking  
23 about, BIA, Public Health Service things, racially-based  
24 dependency and that attitudinal changes was the way I was  
25 describing those. And I admit it's a pretty loose term and it's  
totally fair to say why did you use a phrase like that and  
what did you have in mind.

On the matter of cultural changes, that's still  
tougher. But what I had in mind was that the act, I think some  
folks felt, could induce or encourage cultural changes in the  
sense of caring more about financial, commercial, so-called  
market system, so-called Western financial-commercial institutions  
was what I meant by cultural changes. I wasn't talking about

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1 destroying other more artistic and other sorts of things, because  
2 I...

3 Oh, and on the just citizens one with Charlie Johnson,  
4 and just like everybody else, those two phrases which I know can  
5 get pretty heavy going, recall that what was being talked about  
6 there, at least when I used them, was I was talking about just  
7 citizens and just like everybody else in the sense of how govern-  
8 ment treats you in terms of entitlements and law and official  
9 relationships. And I suppose it's just... it's just a matter of  
10 how one views what you want, would like to see the long-term  
11 direction be. And for me it is, do you want to see things  
12 promoted that keep Native America and non-Native America running  
13 in some parallel course that never gets together, or do you  
14 want to have it go in a divergent course and be doing things,  
15 officially now is what I'm talking about, so that they go still  
16 farther apart in various ways, or is it your view of the world,  
17 as it is mine, that over time, one would like to see a convergence  
18 of Native and non-Native America and that that's the longer-term  
19 thing just talking about directions and thrusts. We're not talking  
20 about losing identities and so on in my view. So that's what I  
21 had in mind in using, perhaps, the too casual phrase just  
22 citizens, just like everybody else. I was talking official,  
23 technical treatment.

24 Back to the claims act, itself, it seemed to me that  
25 at least a lot of people felt that we were trying to do a  
fairly tricky thing, tricky in the sense of difficult not in the  
sense of deceptive, a fairly tricky thing. And that was, how to  
take an occasion which was inherently racially based, a legal,  
legitimate claim, and craft a solution in the longer term that  
had the chance of minimizing racial distinction, and that, I  
think, was a key thrust, in my recollection, in the trickiness  
of that awful hard task.

Thank you, Mr. Chairman.

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1 MR. BERGER: I notice some of  
 2 you looking at your watches. I was told yesterday that we  
 3 remained too long, we should have been out of here by four  
 4 o'clock, so if it's all right with you, perhaps we might  
 5 adjourn now for lunch and hear from Mr. van Ness and Mr.  
 6 Upicksoun this afternoon. And then others might consider the  
 7 question that Mr. Martin put, and I know that David Case and  
 8 Rosita Worl and Chuck Smythe will have some other questions  
 9 this afternoon to put to all of you. Perhaps after we hear  
 10 from Mr. van Ness and Mr. Upicksoun this afternoon, we could  
 11 proceed in that way if that's all right. Perhaps we could  
 12 try for 1:15?

(HEARING RECESSED)

(HEARING RESUMED)

13 MR. BERGER: Maybe we could  
 14 start. Mr. van Ness hasn't returned, but Vernita Zyles had one  
 15 or two questions I think she wanted to ask and points she wanted  
 16 to make. So since we promised the public they could participate,  
 17 I thought we could let her have the microphone for just a few  
 18 minutes and, by that time, Mr. van Ness will likely be ready to  
 19 go ahead.

(INDISCERNIBLE COMMENTS ASIDE)

20 MRS. ZYLES: Thank you, Mr.  
 21 Chairman, and members of the panel.

22 My name is Vernita Zyles. I'm from Unalakleet. I'd  
 23 like to say at the outset that I came to Anchorage originally to  
 24 organize and help the Alaska Native Women's statewide organiza-  
 25 tion. However, Lily McGarvey, who is the president of the board  
 of directors, was one of the panelists on Wednesday and brought  
 me with her here to this meeting on Wednesday and I was... rather  
 enthralled and have been enthralled since. But I am speaking  
 today as an individual and not representing any organization.

It's very hard for me to sit. I have the same feeling



1 that Charlie had, Charlie Johnson, earlier when he said that it's  
2 hard to sit and not want to raise your hand. But I would like  
3 to make some observations on some of the things that I have  
4 heard this morning. And whenever possible, I will try to make  
5 reference to the person who spoke.

6 Mr. Peterson had spoken about the urban versus the  
7 village Native and I'd like to make an observation about that.  
8 He said that their viewpoints differ as to the optimum results  
9 that they would desire to attain from ANCSA, and that the urban  
10 Native would rather be considering the individual profit empha-  
11 sis whereas the village Native would more likely consider the  
12 communal sharing of benefits. And I agree, however, I would  
13 caution that in looking at this particular viewpoint, the criteria  
14 used to determine who is urban and who is village should not  
15 be based on whether or not that person lives in the village or  
16 in the urban areas because some village people are urban in the  
17 extreme in their viewpoint and others follow the old dictum that  
18 you can take the Native out of the village but you can't take  
19 the village out of the Native. And I have seen examples of both  
20 of these kinds of people in my experience.

21 Byron Mallott spoke about the consideration that members  
22 of the boards of directors of the corporations have to give to  
23 the attitudes of financial institutions and I can see his view-  
24 point that it is necessary to consider their attitudes in order  
25 to gain their cooperation. However, to me this is the direct  
example of something that I spoke about on Wednesday, which is  
the one way attitude in education where Natives have traditionally  
and historically been forced to educate themselves toward the  
Western way's methods of doing business and there has been almost  
no reciprocity where the Western institutions have not educated  
themselves in the Native ways. And when boards of directors make  
this consideration, maybe unintentionally they are reinforcing  
that attitude that education is only one way. Our Native ways,

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1 methods of doing business that the corporations and the villages  
2 and the regions have taken is not necessarily a case of better or  
3 worse. It's... But... But the ways that they have done business  
4 are as much a fact of life as the attitudes of those financial  
5 institutions of which Mr. Mallott spoke, and unless you move  
6 the villages en masse to the city or educate the villagers who  
7 choose to stay in the village en masse to the Western ways, unless  
8 this happens this conflict is going to continue. And as Mr.  
9 Mallott said also, 20 years... that's not long enough to overcome  
10 that sort of problem.

11 In giving us this insight on the kinds of things that  
12 successful boards of directors have to consider, and I thought  
13 it was extremely eloquent, it's also a direct example of some-  
14 thing else that I spoke of and that is the communications barrier  
15 that arose when members of corporate administrations and boards  
16 of directors were forced to... to school themselves in the cor-  
17 porate process and in so doing made themselves more comfortable  
18 in the English language, perhaps, than they are in their various  
19 Native tongue so that when it came time to explain these kinds  
20 of things, they were at a loss as to how to explain to share-  
21 holders who were not comfortable in English this kind of problem.  
22 Either the boards of directors will have to take steps to... and  
23 this is... boggles the imagination to learn the Native tongue.  
24 I know how hard it is, I had to practice for... let's see, how  
25 long does it take to fly from Nome to Unalakleet to learn just  
how to say a couple of sentences to my mother in Inupiaq.

(MRS. ZYLES SPOKE VERY BRIEFLY IN INUPIAQ)

21 In English... (PAUSE) It's very emotional. In English  
22 that means I have been thinking it is time for me to learn my  
23 own tongue. Would you teach me? So it boggles my mind and I  
24 understand the problems that the... these executives face. But  
25 ... I think that they should make more of an effort to begin an  
outreach to their shareholders to explain what they're up against

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1 to make their corporations succeed in the Western sense.

2 Mr. Mallott also said that he had made reference to  
3 those people who have no economic power and to me it was implied  
4 that people with no economic power are pitiable. In my experience,  
5 there are people living now in the villages with no economic power  
6 whatsoever, who do not desire economic power, who use what little  
7 money they have to maintain the quality of life that they have  
8 succeeded in achieving in subsisting off the land... but whose  
9 quality of life is threatened by ANCSA's consequences should  
10 this law's intents be subverted or foiled.

11 On the question of unity, I think it was Mr. Upicksoun  
12 yesterday who made reference to Frank Degnan's often-quoted,  
13 "United we stand, divided we still stand," and since I am an  
14 individual speaking today I think I can say that it's also a  
15 reality on the question of unity that in some cases, united we  
16 have stood and united we have fallen. And there are corporations  
17 faltering right now to whom this particular statement applies  
18 no matter what the ideal is. I would like to see "United we stand,  
19 divided we still stand," but there's this threat also of falling  
20 as a people.

21 Charlie Johnson said ANCSA is an economic settlement  
22 and he wasn't too optimistic about the impacts resulting from  
23 this economic settlement. And, yes, I agree it is an economic  
24 settlement but as other documents like ANCSA, it is couched in  
25 terms that... that address the issue of justice. It has the...  
ANCSA has the face of justice and it is this face of justice  
that we should use so that the lip service paid to justice within  
ANCSA can be made into action. I don't know if this is possible.

Charlie also said that many executives have been voted  
out. I say that the ones that have been voted out, in many cases,  
are the ones who, when they achieved the status of being board  
members, realized the sometimes huge private and personal costs  
of maintaining a corporate position. The ones who have paid this

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1 cost have stayed in some cases, but in staying and maintaining  
2 their corporate positions, they're paying their way into another  
3 world while simultaneously acquiring the ability to rationalize  
4 and justify the payment, and some of them rationalize for public  
5 reasons and some to be able to live with themselves.

6 I see, in listening to this hearing, that there are  
7 two viewpoints that are arising, and one is the viewpoint of the  
8 corporate executive and one is the viewpoint of the shareholders.  
9 This is kind of inevitable. The question arises, when persons  
10 strive to understand the Western ways with the intention of  
11 helping their people and when these Western concepts of economic  
12 success begin to make sense, what then happens to their Native  
13 identity? I think it's important, yes, for them to achieve  
14 success for the corporations and, by extension, for the share-  
15 holders but I caution that they should be aware that in under-  
16 standing and making sense of the Western ways, they not step  
17 over into that other world that I spoke of.

18 And then Mr. Parker spoke of ANCSA and said that the  
19 basic framework of the act has been holding up but in looking  
20 around me at the economic and social impacts of ANCSA, I wonder  
21 when he said that whether things are, indeed, going to plan. Was  
22 it the plan of ANCSA to divide families using... I don't think  
23 it was. He also asked the question, what the specific and highest  
24 priority changes desired to be accomplished, and I will reiterate  
25 what I said on Wednesday, that I feel that the... the children,  
the 20,000 or 30,000 plus children so far who are disenfranchised  
by ANCSA by being born after 1971 are... that's the highest  
priority and I will use my own example.

When my daughter is 21, I'll be 51. When she's 21, I  
hope that she would be in a position and desirous of being able  
to speak for herself. However, under ANCSA she will have no  
forum in which to speak for herself and she will not have any-  
thing until I die, and I really don't plan to die when I'm 51.



1 I would hope to live my... for... My people have a history of  
2 longevity and if I follow in my grandmother's footsteps, for  
3 instance, I'm going to be 79, 80, 80-some years old before I  
4 die and she will then be middle-aged and have children and  
5 grandchildren of her own. This, to me, is the highest priority,  
6 that we take care of these people.

6 Finally... And I don't know how appropriate this par-  
7 ticular statement will be to this forum, but for all of the  
8 plaudits that have been levelled at the grass roots efforts to  
9 understand ANCSA, I find that, as a grass roots Native and to a  
10 lesser extent some places and sometimes to a greater extent than  
11 others, as a woman, that my opinions are suspect because I am not  
12 affiliated with a properly recognized institution. I am not a  
13 board member of any corporation. In this respect, sophisticated  
14 Natives who do belong sometimes are capable of perhaps more  
15 virulent bias than their non-Native peers. Yet I am not a radical  
16 unless the definition of a radical is one who thinks and asks  
17 questions but does not run for office. I've had a Native person  
18 say to me, you know, "Boy, you really could have been something  
19 with an education." What am I now? What's this something that  
20 I lack without the education?

17 I know one thing that it's not. I do not lack my  
18 Native identity. I know who I am and what I can do. I think  
19 that hearings such as this have been a help.

19 Thank you for your indulgence.

20 MR. BERGER: Thank you, thank  
21 you very much.

22 Mr. Upicksoun, please go ahead. You have... Mr.  
23 van Ness, I understand, has given you his time and you have your  
24 own as well. So...

24 MR. UPICKSOUN: Thank you, Mr.  
25 Chairman.

25 When you are a driving force, the first thing I have to

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1 say is, "I am a landlord." I'll tell the commissioner, "You  
2 haven't paid your rent yet." Having made that statement, I have  
3 proof of being surrounded by the best technical people to say,  
4 "Joe is not blowing his stack." Now, we get into some other  
5 statements that I will make now and will simply tell you that  
6 "Look, when I made my previous statements, I said that in this  
7 white man's world, we need white man's tools." The Arctic Slope  
8 Native Association went beyond ANCSA and ANILCA because we were  
9 surrounded by technical people that kept us advised of how  
10 Congress was moving.

11 Now let me get down to what I feel about the leadership  
12 in this one piece of instrument, one white man tool. That's  
13 only one. When you define what a leader is, you have to under-  
14 stand that he has the ability to influence human behavior, on  
15 the other hand set a very good example, too, and really come out  
16 for tougher goals. Now that, giving you the definition of what  
17 a leader is, but to some they'll tell me, "Look, Joe, when you  
18 define a leader, it's that fine line between the hook and the  
19 sinker." That's different language. When I say that the Alaska  
20 Native land claims, itself, was just one of those tools, we as  
21 leaders had to seek some other course to resolve the problems  
22 that were identified by using another method.

23 Now I have eight months of combat and that's in Korea.  
24 My chances of coming out alive was that I wanted to be the leader  
25 because I know if I'm the leader I'm going to come out alive. But  
during the course of those eight months, the biggest enemy that  
I had was my own American G.I. rather than the enemy because I  
looked like a Korean and, by golly, when you are an American  
G.I. and you are afraid of your own troops rather than the  
enemy, then that's a different experience. It's a hairy experience.

Under the involvement that I had in fighting for my  
country, I went through a lot of leadership reaction tests to  
prove that I was worthy and when you go through 36 hours of reaction

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1 tests, that's an experience.

2 Now, having all this behind me, I understood regimenta-  
3 tion and learned how to develop new leaders. I can't carry the  
4 ball by myself. I need some help. The way you do it is you  
5 delegate authority. But when you do it, you have to make sure  
6 that that man is honorable. I handpicked people. In fact, being  
7 associated with Fred Paul and our ability to cause the Western  
8 civilization to support our side of causing Congress to move was  
9 that we told the Western civilization, especially the Pacific  
10 Northwest, "You write to your congressman, your senator and we'll  
11 tell you... we'll show you what impact it's going to have on  
12 your economy because when you look to the state of Alaska, its  
13 mineral wealth..." I can go deeply into Adam Smith... In fact,  
14 he wrote the book for me, but he never knew anything about  
15 Indian law.

16 Now having this one white man tool now is not the cure-  
17 all. It isn't. There are a lot of faults in the claims act  
18 but when you listen to your own people, they identify their  
19 problems and it's up to the leadership to find the answers and  
20 cure it.

21 Alaska Native Claims Settlement Act, as I said, Arctic  
22 Slope Native Association went beyond it. That's why we... when  
23 I made my earlier statement that, look, we know that Arctic  
24 Slope Native Association is going to get five million acres but  
25 we came into this with 56 and a half million acres and we were  
losing control over 51 and a half million acres, okay. There  
are other ways that we still can maintain control if we are  
going to survive as landlords, and that is the Alaska state  
constitution. Those framers were beautiful when they wrote  
the borough concept.. I think we surprised them when we  
approached the voluntary borough act concept and got our  
people involved in it so that they elected to incorporate as  
a borough. We knew that we had the population, we had our own

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1 mayor, we had our own assemblymen, we had an independent school  
2 district, well financed. We could never get our BIA.

3 No, I dislike going to Congress ever year for the  
4 appropriation to support a BIA educational system. I hate to  
5 go to Juneau to fight for my piece of the revenues that are  
6 being developed from my land. The one way to do that is cause your  
own villages to really understand grass roots. I want you to tell  
me what you want in terms of self-determination.

7 Right now, Alaska state government is getting too big.  
8 The federal government has been too big. There is lacking what  
9 we call free enterprise. What I am going to eventually close  
10 with is that... My opening remark was saying that in this white  
11 man's world, we need those white man's tools and the claims act  
was only part of it. And it can never resolve the complaints  
12 we get from our stockholders but we, as board members and  
13 stewards, have to acknowledge that and right now I cannot make  
14 a commitment unless I have specific instructions from my board  
of directors. I was able to keep my president and my chairman  
15 of the board advised of what was happening and I asked him, "What  
16 do you want me to do?" "Well, you've been involved in the  
17 claims act and we don't authorize you to say anything other than  
what the claims act means in the definition of another tool."

18 I think I... I know I've said my piece.

19 MR. BERGER: Thank you, Mr.  
Upicksoun.

20 Well, David Case had some questions that he wanted to  
21 put and perhaps you could go ahead, David.

22 MR. CASE: Okay, thank you.

23 My questions, I have three at the moment and two of  
24 them I think are interrelated and one is separate. I think  
they're all to Doug Jones.

25 The claims act has often been characterized, and I think  
President Nixon did this, too, as a... the first of the



1 self-determination pieces of legislation. And the term has come  
2 up here, too. Mr. Upicksoun just referred to it. But we really  
3 haven't talked about that very much as an item or a concept in  
4 public policy, and my question is, what is your recollection,  
5 your perception, of the idea of self-determination being a public  
6 policy concept at the time that the claims act was being  
7 crafted? Was it part of the policy considerations that went  
8 into the claims act? And then, I guess the next part of that  
9 question is, if it was then how, specifically, perhaps not  
10 completely, but specifically do you see that it... the claims  
11 act addressed that policy consideration?

12 MR. JONES: What are the other  
13 two questions? (LAUGHTER)

14 MR. CASE: There's one other  
15 question but it's unrelated to this one, really.

16 MR. BERGER: Could we tackle  
17 that one first, Mr. Jones, and then...

18 MR. JONES: Well, not tackle  
19 it very well, I guess. Perhaps, David, you'd help the question  
20 out a little bit more though if you'd mention to me what you  
21 think surrounds the self-determination question --

22 MR. CASE: Well, that's the  
23 point of the question.

24 MR. JONES: Well, perhaps,  
25 although... If you don't, then I have to say, well, I don't  
remember the phrase self-determination being a central one at  
... in a lot of the discussions surrounding it. Now, if you  
mean by self-determination, though, some of the things I was...  
as Howard Cosell would say... alluding to on relations, perhaps  
changed relations, with the Public Health Service and BIA, that  
sort of thing, the dependency question, then I'd answer a little  
differently. But if the phrase self-determination as you use it  
is one of those crucial phrases like termination was or is and

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1 a handful of a few others, I'd say that was not one that I'd  
2 recall as frequently surrounding the discussions on the issue.

3 MR. MARTIN: I disagree  
4 slightly in this sense, that I think Doug is exactly right in  
5 that there was no academically-styled policy debate over what  
6 self-determination was in the legal sense and some conscious  
7 decision made to promote it in a strict legal sense of the act.  
8 But I think that those words came up. I would say I recollect  
9 them coming up fairly often in the context that Doug mentioned,  
10 and that is that there was clearly a reaction against the kind  
11 of settlement that had been visited upon the tribes in the Lower  
12 48, which was regarded in, you know, sort of the buzz word on the  
13 other side of the ledger, paternalism, the reservation status,  
14 and to the extent that that whole issue was resolved.

15 It's like some of the others that I differed with my  
16 friend Dave Hickok on. I don't think they were discussed a  
17 great deal but I think they were mentioned. I think there was  
18 a conscious decision to have the settlement involve self-determina-  
19 tion and the manifestation of that self-determination was  
20 essentially what we got in ANCSA, the corporate structure, the  
21 fee conveyance of land, and the idea, particularly in the...  
22 maybe I saw it more starkly than Doug did on the House side  
23 because, as someone mentioned, Wayne Aspinall, who was chairman  
24 of the Interior Committee at the time, may very well have had in  
25 his mind ANCSA being kind of a subtle termination sort of statute  
and so he may well have accepted without saying so some method  
of self-determination, but in his mind, and I'm projecting here,  
the cost for that in terms of the corporate structure and fee  
simple was, "Do not expect to return again, nor expect that you  
will receive the same level of benefits from the federal government"  
even though in the final negotiations over ANCSA, it became clear  
that Mr. Aspinall and his general philosophy with regard to the  
reduction of federal services and federal benefits to Alaska



1 Natives could not be meaningfully reduced by virtue of this  
2 act.

3 MR. CASE: That the services  
4 could not be meaningfully reduced?

5 MR. MARTIN: That's right. I  
6 think in the final analysis, the notion that, at least I took  
7 away and which was tried later in, you know, various ways, was  
8 that there would not be a meaningful reduction of federal  
9 services and the 2(c) study... Is that the right... Yeah, the  
10 2(c) study was, I think, seen in different ways by different  
11 people but I have a feeling that Mr. Aspinall may have left the  
12 table thinking the 2(c) study would prove that those services  
13 were too much and, you know, some years hence that those services  
14 were still great, they were still costly, and, therefore, there  
15 should be a policy decision made to reduce them. I think other  
16 people left the table feeling that the 2(c) study had the  
17 potential to prove the value of those services and the importance  
18 of them in an overall scheme.

19 I know I can speak for myself that there was no ques-  
20 tion in my mind, and several people said it... I think Byron said  
21 it and I believe Joe said it yesterday and I've written it several  
22 times, the Native land claims settlement, in my view, was never  
23 a piece of social or cultural litigation. It was basically a  
24 business deal. It was the settlement of a piece of litigation  
25 on economic terms and to the extent that it had... it had  
substantial social and economic implications, but when people  
left the table, it seemed to me that it was essentially an  
economic settlement of a legal claim.

MR. CASE: To respond to your  
question, Joe, by self-determination, I'm just... This is kind  
of historical interest because the policy seemed to have been  
thought about around the time of the claims act and maybe have  
been discussed or even voiced publicly by President Nixon and then

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1 it later became a statute with that name, the Self-determination  
2 Act, so I guess I think of self-determination as it's been later  
3 evolved as involving institutions or resources, or both, that  
4 ... over which Natives have a great deal of... substantial  
5 control, if not complete control. And the policy has been one  
6 that... of developing or transferring to Native control institu-  
7 tions that have been under other forms of control. And so I  
8 was just interested in the claims act. I mean, there obviously  
9 are institutions, but I was... that are controlled by Natives  
10 as a result of the claims act, and that's what I was looking to  
11 see if you had some recollection of.

(TAPE 19, SIDE A)

10 MR. JONES: Right. Again, 14  
11 years... It's hard to remember some of those things. But most  
12 of the things that I've tried to remark about the last couple  
13 of days, I think, was certainly consistent with self-determination  
14 and control. But recall that the thing that I kept emphasizing  
15 was the... what I think was the Congress' idea that self-deter-  
16 mination didn't mean insularity and it didn't mean necessarily  
17 a permanence and endless trusteeship arrangements or wardship  
18 arrangements or overlordship arrangements, and it really was a  
19 self-determination that could go in any direction. That's what  
20 alienation... idea was dreamed up for, so that using the  
21 private corporation notion, people could go do what they wanted  
22 to do after some 20 or whatever year period the Congress decided.  
23 So in that sense, I think that self-determination and the  
24 kind of deemphasizing differences and emphasizing sameness was  
25 what did surround the act.

MR. BERGER: Thank you for  
joining us after the great events taking place earlier today.

MR. HAVELOCK: I've been busy.  
Thank you for letting me come back and I apologize for not hearing  
what was said earlier but, as you know, I had some preoccupations.



1 I just wanted to add one note to this discussion, and  
2 that is that, certainly, there was some discussion. I don't  
3 think it was the intent of the state in particular but there  
4 was discussion about this being a capitalists settlement. And  
5 just as the Allotment Act contemplated in some senses the con-  
6 version of American Indians into small farmers, there was no  
7 doubt that there was some fond hopes on the part of many members  
8 of the Congress that this act was going to turn Alaskan Natives  
9 into capitalist businessmen. And maybe that worked to a point,  
10 I don't know. But I think that certainly was there and some  
11 people were devoted to that proposition, particularly in the  
12 Congress, talking about people, a Republican from Pennsylvania,  
13 something like that, you know, who would have that kind of  
14 objective as part of their objectives. I don't think those of  
15 us from Alaska were thinking about it that much.

16 So the form, itself, presupposes a certain amount of  
17 ... of determinism that runs against the grain of what you think  
18 of socially as being the ordinary meaning of the word of self-  
19 determination. You buy into a whole lot of things with the form.

MR. BERGER: Next question?

Oh, Mr. Borbridge. Sorry.

MR. BORBRIDGE: I want to  
intrude myself because, while you gentlemen are talking theory,  
I'd like to tell you what actually happened in respect to one  
facet of this. Firstly, and this will have a bearing, Mr.  
Chairman, on this question. During this time, as we discuss it,  
a lot of things were happening. Not everything was just  
focused solely on the claims settlement act. Some of you remem-  
ber President Nixon's message to the Indians and you remember  
that there was increasing emphasis, regardless of what we may  
think of how the terms or the rhetoric was carried forward,  
there was an emphasis and a desire in the administration to do  
something which was translated into this discussion we're having

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1 about self-determination.

2 It was mentioned by Mr. Jones that there was a hope  
3 that possibly the opportunities offered through ANCSA might bring  
4 in the melting-pot concept more into being, that newly emerged  
5 capitalists coming in from rural Alaska would somehow be fitting  
6 into this flow of history theme with all of its overwhelming  
7 pressures. Specifically at this time, the Central Council of  
8 the Tlingit and Haida Indians of Alaska of which I was a member  
9 and which I had the privilege of serving as president, was  
10 presenting itself and recognized as a tribal governing body.  
11 We considered that theoretically while the roots for the assertion  
12 of this status was derived from a long history to which I  
13 alluded the other day, we felt that the culmination of our  
14 efforts to be recognized for what we had been for a long time,  
15 a tribal governing body, had pretty much reached its climax  
16 with the recognition and enactment of legislation which the  
17 Tlingit and Haidas proposed to the Congress, which legislation  
18 proposed methods for the use of the Tlingit and Haida Judgment  
19 Fund. We not only proceeded, once the legislation was enacted,  
20 to implement the terms of the legislatively or Congressionally  
21 approved plan developed by the people, themselves, acting  
22 through their committees and their convention, but we, in fact,  
23 began to expand on the notion that we could act in a more  
24 powerful, assertive role by being a stronger tribal government.

19 See, there seems to be here a hint or a suggestion  
20 that a tribal governing body, if it associates too much with these  
21 Western institutions, might, itself, become a Western instrument  
22 and thus become alien to the very people who responded and who  
23 seized history to use it. But instead, in our instance, we used  
24 the tribal governing body by challenging the administration  
25 specifically through the Bureau of Indian Affairs to start to  
spell out some of the broad thrust of what President Nixon  
announced in his Indian message. The chief thrust of which we

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1 saw that was useful to us was the emphasis on self-determination.

2 One of the first steps we took, therefore, was to begin  
3 negotiations to take over the operation of the Southeast BIA  
4 agency. We began negotiations on the Southeast level. We  
5 encountered, predictably, the opposition of the entrenched people  
6 who, if we were successful in our efforts to contract, would be  
7 removed or transferred and replaced by people appointed by the  
8 tribe, itself. We were successful in the negotiations and that  
9 is evident today. We also began successful efforts to contract  
10 for certain... the administration of education funds which  
11 previously had been administered by the Bureau of Indian Affairs.  
12 We began to administer those under a contract.

13 We also began to investigate possibilities for being  
14 involved in housing, for considering a credit union, and we also  
15 began to initiate other efforts. The point I'm emphasizing here  
16 is that there was no splitting-off whatsoever from our sense of  
17 tribalism. We, by acting through our tribal status and by  
18 moving into these programs and using what was available to us  
19 through presidential announcement and through programs in the  
20 Congress and this... this emphasis on self-determination, we  
21 began, as a result, to become much stronger as a tribe by  
22 doing for ourselves, which is the overall thrust of what we did  
23 through the contracting efforts we made. We, in fact, were  
24 exercising the strongest possible method of practicing self-  
25 determination. We, instead of depending on others to make  
judgments for us, were able to have our own people involved who  
understood more about us, had better insight about our concerns,  
our aspirations, and we considered that this was spelling out  
this whole concept of self-determination. I think this also  
partially assures some of us who were considering sovereignty  
as somehow a largely undefined theory. And even I may have  
suggested that. But at least in one instance, it was being  
spelled out.

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1 some date and did not want to leave it open-ended, I think was  
2 one thrust. They did not want to leave it open-ended and you  
3 could decide on one generation's worth or two generation's  
4 worth, or you could do what I think was most immediate and most...  
5 or was at least defensible at the time, and that is choose a  
6 date certain and the date certain, as is often chosen in legisla-  
7 tive acts, is the date of the passage of the act. So it was...  
8 You know, you could look backwards with legislation and do  
9 grandfathering of various kinds and you can look forward and  
10 set future dates. I think the Congress was just rather prag-  
11 matic about it, not wanting to leave it open-ended, just chose  
12 a date certain and that was the date of settlement. I don't  
13 think that there were and I certainly don't remember great  
14 deep-seated, raging struggles over that choice at --

MR. CASE: Why not --

MR. JONES: -- at the time.

13 MR. CASE: Why not leave it  
14 open-ended. Was there considerations given to leaving it open-  
15 ended and... otherwise.

16 MR. JONES: The best I could  
17 do on that, David, in recollection was that I think the worry  
18 about open-endedness was only to do with whether the numbers  
19 might get... the dollar amounts, the size of the settlement and  
20 so on might get larger, somehow, and not... I don't think the  
21 Congress would be concerned... I don't think the Congress was  
22 very concerned as long as it didn't mean a larger settlement  
23 in some fashion or another.

Do you remember that more clearly --

MR. MARTIN: I have one other --

MR. BERGER: Mr. Martin.

24 MR. MARTIN: I may be singing  
25 from the same songbook on a lot of these but with regard to a  
lot of these kinds of questions, I think the answer still is that

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1 you're going to find substantial... and this was my difference  
2 with Dave earlier... substantial work done by some of the  
3 interested entities, whether it was academic work, whether it  
4 was Natives, themselves, you will probably find some history  
5 with regard to these events, but with regard to this one like  
6 some of the others I mentioned earlier, I think you're going to  
7 find perilously little conversation about it in the actual  
8 consideration of the legislation. In the case of the cutoff  
9 date for afterborn, others may have different recollections.

10 I recall that coming up basically in the context of  
11 what I would call the sort of the bean counters from BIA and  
12 the Bureau of the Budget and others who were concerned about  
13 enrollment, and on regular occasions during the... the considera-  
14 tion of this act, there were concerns raised, sometimes in sort  
15 of highly veiled forms, but basically what people were saying is  
16 that they were worried about cheating in enrollment and the  
17 mistakes on enrollment and explosion of the enrollment rolls  
18 of people entitled to benefits under the act, people who were  
19 concerned about which proportionality between the regions would  
20 be maintained where you use the population base as the criterion  
21 for dividing certain benefits under the act. And as a result of  
22 that, there was some pressure on Congress.

23 In the absence of great concern... I mean, I don't  
24 remember anybody in the delegation being greatly concerned about  
25 this and in the absence of some pressing social or philosophical  
or policy concern on the part of Congress, the administration  
pressed for some kind of certainty with regard to the enrollment  
and for some kind of certainty with regard to a cutoff date, and  
one was added.

MR. BERGER: Mr. Hickok and  
then Mr...

MR. HICKOK: I think there's a  
lot to that. There was nothing about that date prior to the 1970

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1 dialogue, and it came about in two ways. My memory is very  
2 much the same as Guy's, although I think nothing is better than  
3 some research on these things and there is a written record, as  
you point out, on a lot of these.

4 But it came about both from administrative demands and  
5 from the aspect that this was compensation of the time, of that  
6 moment in time. Those two things.

MR. BERGER: Mr. Havelock?

7 MR. HAVELOCK: I do remember  
8 discussing with the delegation the administrative complexity  
9 that would be involved in leaving a permanently open enrollment  
10 and the... Remembering that the... that one of the functions of  
11 the settlement, as Dave was just saying, was to terminate or  
12 to make the settlement end as of then, we were setting up a  
13 system of state-based corporations. If we'd left an open enroll-  
14 ment, we would have had a continuing set of rights based upon  
15 federal statute. And one of the things that was intended to do  
was break it loose from the... from that federal... from a basis  
of writing federal law.

16 Also, we were looking at the, you know... again, as  
17 a part of that, looking at the free alienability of stock down  
18 the road when having a permanently open class would lose its  
19 meaning entirely. And there was discussion about possible  
20 problems of people being disenfranchised in a sense, but it  
was thought it would be taken care of for the most part by  
inheritance and that in 1991 it would become a moot issue.

21 MR. BERGER: Did you have another  
question, Mr. Case?

MR. CASE: No.

22 MR. BERGER: Rosita Worl, do  
23 you have some questions?

24 MRS. WORL: I'll limit my  
25 questions to two questions.

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1           During the first few days of the hearings and the record  
2 of the early ANCSA hearings, we heard that Native people had a  
3 very grave concern about control over their land, and it was the  
4 desire for control, as well as the fear of BIA oversight, which  
5 lead them to reject IRAs and to go with corporations. Mr. Jones  
6 has indicated that normalcy or equal treatment or, perhaps what  
7 social theorists would call economic assimilation, was the ob-  
8 jective of many congressmen and ANCSA. This normalcy or  
9 economic assimilation was to be accomplished through corpora-  
10 tions, but yet we had, at this period in time... already had  
11 the experience of corporations with the Menominee and, later on,  
12 with the Klamath Indians. And under this experience, we see that  
13 normalcy or economic assimilation was not accomplished. We saw,  
14 instead, a transfer of vast timber assets transferred from Indian  
15 ownership to non-Indian ownership.

16           The question I have is not really the contradiction  
17 between what the Natives wanted and what Congress wanted, but,  
18 really, what I'm asking is, perhaps Professor Jones and maybe  
19 Mr. Martin could explain to us the contradiction that I see  
20 between the ANCSA assimilationist objective and also the objec-  
21 tives expressed in other federal Indian policy which states that  
22 cultural pleuralism is a policy of the United States. And I  
23 think we've heard John Borbridge talk about President Nixon's  
24 statement on self-determination or the right for Indians to  
25 maintain themselves as tribal entities. We also have the National  
Environmental Policy Act that, for the first time in legislative  
history, it says that, you know, rather than looking only at  
economic costs, cost benefits of development, that we would also  
consider cultural benefits. And under that act, we see the  
protection of many cultural societies whose economies are based  
on subsistence, subsistence hunting. So I guess I'd like to have  
them maybe comment on this contradiction between two policies.

MR. MARTIN: I think it's well



1 to have other people com --

2 MR. BERGER: Mr. Martin.

3 MR. MARTIN: Yes, Guy Martin.

4 Let me suggest some other people comment on that because I don't  
 5 think that's anywhere close to the exclusive province of someone  
 6 who sat on the staff at the time. I think, in part, I've already  
 7 given my answer, and that is that the reason that you do not  
 8 see those policies that you articulated appearing as clearly  
 9 in the Alaska Native Claims Settlement Act is because the act, as  
 10 I experienced it in any event, did not start out with the  
 11 slightest intention of being that sort of law in the eyes of most  
 12 people, although I'm certainly willing to stipulate that there  
 13 were lots of people who were involved in the debate who had  
 14 policy objectives and some who pursued them throughout the  
 15 legislation. Most people never pursued it with the idea that it  
 16 was to be an important cultural and social... act in the way that  
 17 some of the others you named were: There was an acknowledgement  
 18 by some that what we were addressing was, as some people suggested,  
 19 a matter of truth and justice. There were some people who felt  
 20 strongly about it. For some, there was a sort of a passing  
 21 acknowledgement of that as a basis to proceed and to give political  
 22 justification to the act. For other people, it was simply enough  
 23 to know that the Trans-Alaska Pipeline couldn't be built unless  
 24 the claims were settled. For others, it was enough to understand  
 25 that they ought to seriously consider the issue of settlement and  
 if that didn't work, then find another way to build the pipeline.  
 And I think people were spread out over that terrain fairly  
 broadly.

When that was reflected in the act as I saw it... Maybe  
 I should say one other thing. That sounds a little crasser and  
 crueller than I would want it to be. I think most people clearly  
 approached it from the standpoint of righting a wrong and satis-  
 fying something they saw as a claim which, for one reason or

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1 another, simply had to be settled. I think there were fewer people  
2 spread out over that sort of more cynical spectrum.

3 But nevertheless, however they got there, I don't be-  
4 lieve that Congress, at least, believed that it had been asked  
5 to pronounce important social and cultural policy. I believe that  
6 it had been asked to settle an Indian land claim and they pro-  
7 ceeded to do that. And as the act unfolded over these, really  
8 over about a three year period of intensive activity, and over  
9 that final intensive year in which the act was passed the dis-  
10 cussions that were held, both the discussions at the committee  
11 level, the discussions between the various interests, particularly  
12 the Natives and the Alaska delegation... and I'm sure that the  
13 discussion of the various interests in their own council, turned  
14 almost exclusively on a kind of a bargaining model in the sense  
15 that people were really trying to figure out how much they could  
16 get and how much they had to give in order to settle this matter,  
17 and that relatively little discussion was given to the issue,  
18 you know, which social and cultural injustices this would right  
19 or what policy it would set for the future, not as a final word  
20 to say that those issues were ignored.

21 People talked about effects a great deal and people  
22 talked about what would happen if different courses were followed.  
23 But I can't stress strongly enough how much it occurred, to me  
24 at least, to be an essentially an economic and legal settlement  
25 of a claim.

MR. JONES: Rosita, my recol-  
lection of that is quite consistent with Guy's, but a couple of  
other things I think are worth saying on it. Legislative acts,  
of course, don't have to be single-purpose, single-minded. They  
generally have a major or primary purpose but while you're at  
it, you try to accomplish some other things. Another thing that  
I once was involved in here in Alaska was the postearthquake  
period. Now, there's an analogy here so it isn't much of a



1 digression, if you will. The point is that when the United  
2 States government came to grapple with, together with the state  
3 of Alaska, the rehabilitation of Alaska, as it was called, after  
4 the earthquake, it's almost certain that we over did it, over did  
5 it in the sense that if you said that all you were trying to do  
6 was reconstruct things and get things back to just what they  
7 were the day before Good Friday 1964, that you would have done  
8 it quite differently than what we... Now, again, the we now is  
9 the United States government and the state of Alaska, public  
10 policy... we probably wouldn't have done anywhere near as much  
11 as what was in fact done. In other words, that's what I mean  
12 by over doing it. We said, well, here's a very serious thing,  
13 a major disaster and the United States government is pretty good  
14 about responding to major disasters, I think, and indeed, it  
15 sees it usually as an occasion to over respond, over respond not  
16 just because of political pressure to do so and that there's  
17 sympathy to do so, but you may find there's an occasion that's  
18 just exactly the right thing to do. What I have in mind in  
19 this case is that the state of Alaska had only been a state  
20 a half-dozen years or so at that time and as tricky as it is to  
21 create a new state in the United States politically, it's still  
22 trickier to create one fiscally, financially. And so it was seen  
23 that in... while we were doing the right thing of rehabilitating  
24 Alaska after the earthquake and immediate postdisaster period,  
25 here was the opportunity to go ahead and do a whole bunch of  
things you otherwise wouldn't do to try to make that forward  
thrust of economic development which was so primary in everyone's  
mind at the time.

I think the analogy here is not perfect, but something  
to it, that at least political economists, maybe the attorneys  
were a little more precise on this than the rest, but political  
economists anyway and staffers of other stripes had in mind that  
that's right, here's a legal claim that you kind of want to

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1 extinguish once and for all but while we're doing it with these  
2 elements and components of the settlement, wouldn't it be smart  
3 to go ahead and try to look to the longer term economic develop-  
ment, frankly, of this particular portion of the Alaska citizenry.

4 So I would... never wanted to claim that it was a primary  
5 objective. I agree with Guy, certainly, on that, but I would  
6 claim that it was a major secondary objective.

7 On the matter of what about environmentalism and other  
8 concerns that we now see, not everything is explainable in the  
9 context of the times. There's a temptation always to do that.  
10 But recall in the '60s, it really was a theme of upward mobility  
11 and reducing economic barriers to upward mobility and the  
12 economic development theme, and this was so in black America  
13 as well. And not too many years after that, I think in the  
14 black citizenry the United States has had a reversion toward  
15 interest in differentness... and there were the black studies  
16 programs and so on and so on. Well, fine. But it was... that  
17 was not the themes of the '60s in my view in black America and  
18 it changed over.

19 Well, I think perhaps here we weren't wrestling with  
20 the environmental and cultural concerns. They were not center  
21 stage. It's hard for government to focus on very many things at  
22 one time I think.

23 MR. BERGER: Mr. Havelock?

24 MR. HAVELOCK: I think I could  
25 hear Doug maybe establishing some distance from Guy's position  
there in a way and it seems to me that there may be, with re-  
spect to the social and cultural aspects, that maybe there was  
more of a congressional view that it was simply settling a claim  
but it certainly would not have been the position of most of the  
state people, in the sense that the state... Anybody involved  
with the state was aware of the impact that this was going to  
have in Alaska, that economic impacts were going to have a lot to



1 say about culture and everything else going on. So... And that  
2 expressed itself in things like, for example, the 7(i), which,  
3 you know, the Alaska Natives had an interest in it in terms of  
4 the sharing of the pot, but the state of Alaska had an interest  
5 in it from the point of view of attempting to do whatever could  
6 be done within the context of the need for a consensual agreement  
7 to spread the revenue so that you would not have more extremes  
8 of wealth than would be inevitable within a consensual basis.

9 From the perspective of the Congress, also one of the  
10 things I ran into on more than one occasion... maybe you talked  
11 about it earlier... was that for many of the congressmen, it was  
12 left over business from the Statehood Act because there had been  
13 a provision that said... left the thing to be settled, and during  
14 the statehood battle there had been arguments made that Alaska  
15 was not ready for statehood and statehood should not come because  
16 this settlement act... because the settlement of the claim was not  
17 included in the Statehood Act. I can remember one congressman  
18 in particular shaking his finger at the governor and saying, "I  
19 told you, Bill, that you were going to have to come back and  
20 do this and that we should have done... taken care of it at the  
21 time." I might add, if they had taken care of it at the time,  
22 it would have been... that quantitatively, it would have been a  
23 small fraction of the settlement, and probably wouldn't have...  
24 It would have meant a settlement that would have had to be opened  
25 up again with a lot of bitterness later on.

MR. BERGER: Rosita, next  
question?

MRS. WORL: This one is for  
Fred Paul. This morning you suggested that there's a difference  
between BIA oversight over IRAs when federal money and when  
private money is used. As I recall, you said that BIA has  
substantial oversight over IRAs when federal funds are utilized  
and that they, BIA, doesn't have oversight when private money or...

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1 You were, I guess, referencing the possibility of private assets  
2 from Native corporations. In your opinion, would... If, as you  
3 said this morning that in that instance when private funds are  
4 utilized then BIA doesn't have oversight, the question is, if  
5 they don't have BIA oversight, is the trust protection in place?

6 MR. PAUL: Yes, the government  
7 does not have federal oversight with respect to borrowed money  
8 from outside sources. You can compare it with a banker. When  
9 the federal government is the banker, the federal government is  
10 looking over your shoulder to see how you spend the money, and  
11 that's what the BIA did in the cannery situation, the boat loan  
12 situation, and, in my judgment, that's the basic... basic fault  
13 of the failure of the IRA business enterprises in Southeast and  
14 also in the stores to the westward. You would still have the  
15 trust concept.

16 For example, you'd have sovereign immunity from lawsuits,  
17 which is your basic trust protection. On land, because of  
18 sovereign immunity, and if it's acquired in certain fashion you'd  
19 still have protection from invading your land base. I should  
20 mention that there were 62 IRAs as of 1940.

21 MR. BERGER: In Alaska, or in  
22 the country?

23 MR. PAUL: In Alaska, and I  
24 believe there were about ten traditional councils, which is the  
25 amorphous form of IRA. It's not as structured but it has about  
the same legal capacity. Beyond that, I don't know what trust...  
You have to consider trust responsibilities with respect to a  
particular thing. Those are the two that I have in mind.

MR. BERGER: Excuse me, Mr.  
Paul. Immunity from suit and immunity from federal income tax --

MR. PAUL: Yes.

MR. BERGER: -- flow from the  
trust relationship and you say that even absent federal oversight



1 where an undertaking is being carried out with private funds,  
2 those two characteristics continue in force?

3 MR. PAUL: That's right, unless  
4 waived. Now, maybe, in order to borrow money, you've got to waive  
5 it. But that's your choice. It's still available. Sovereign  
6 immunity can be waived by an IRA.

7 MR. BERGER: And is there any  
8 accepted legal opinion as to whether or not state income tax  
9 can be imposed on an IRA or on income earned by an IRA chartered  
10 corporation?

11 MR. PAUL: Not in Alaska, of  
12 course, because we don't have an income tax up here, state income  
13 tax, and I'm unacquainted with any in the Lower 48. The state  
14 does impose state business licenses on the IRAs up here but I  
15 believe that was because of default. In other words, the IRAs  
16 engaging in business, now speaking of the stores to the westward,  
17 what I called ANICA, Alaska Native Industries Cooperative Associa-  
18 tion... They have about 50 stores that they supply merchandise for  
19 every year... I expressed disappointment that there wasn't a  
20 contest but it wasn't until... There it is.

21 MR. BERGER: I see, yes. Did  
22 you want to comment, Mr. Jones? No. Did you want to comment,  
23 Mr. Case, on Mr. Paul's answer?

24 MR. CASE: No, I don't. Thank  
25 you.

MR. PAUL: I had some other  
thoughts I wanted to express.

MR. BERGER: Well, go ahead.

MR. PAUL: Thank you.

With respect to our general discussion as to why we  
have ANCSA at all, part of it is Alaska has been plagued with  
what I call social do-gooders. We have had so many Ph.Ds up  
here who, in the space of one month, can identify the problem and

1 another 30 days they can supply the answers. To some extent,  
2 that is true of congressmen. They are in a position of power.  
3 They have the voice and the votes. It is their authority which  
4 enacts laws, and many of them try to do social good and, as a  
by-product, sometimes they miss the boat.

5 Certainly it is true of staff. I know that the  
6 youngsters we had helping Justice Goldberg exercised enormous  
7 power and did much of the drafting. I'm sure that that was true  
8 of the... the congressional staff. They had their idea of social  
9 justice. Doug Jones said that one of the thoughts that was  
prevalent back there was amalgamation. Certainly, amalgamation  
was in the mind of Senator Jackson, and --

10 MR. BERGER: Do you mean  
11 assimilation or amalgamation?

12 MR. PAUL: Amalgamation...  
13 Assimilation.

14 MR. BERGER: Oh, I see, yeah.

15 MR PAUL: Same thing. We're  
16 going to have, as Doug put it a little while ago, we're going to  
17 have an end product of one people. That is, of course, the  
18 very antithesis of self-determination.

19 I don't share that criticism of the Alaska Native  
20 Review Commission, however. The commissioner's had vast experience  
21 over 16, 17 years that I know of and has fought very seriously  
22 for the rights of aboriginies of Canada and so I'm not... I'm  
23 not classifying this commissioner with what I call the do-gooders.

24 An example of imposing... or suggesting, maybe not  
25 imposing, do-gooding is expressing an opinion that the IRA is  
not a suitable vehicle. I've thrown out this question in my  
presentation this morning and nobody's answered it yet. What's  
wrong with it? I don't share Doug Jones' criticism that it's  
wrong to have several layers or several different routes, is  
the way he put it, the IRA route, the borough route, the



1 settlement corporation route. I see nothing wrong with that. Each  
2 of them performs different functions and they can walk down the  
3 road arm in arm. There's a little confusion about it as to which  
4 agency should have jurisdiction over some social function, but  
5 those things will be ironed out. And I surely would get back to  
my question, why isn't IRA a proper vehicle today?

6 Thank you.

MR. BERGER: Yes, Mr. Parker?

7 MR. PARKER: Mr. Paul asked me  
8 that question earlier and I guess the time has come to reply.

9 The... I guess the difference is, visualizing the IRA as  
10 one avenue is very different from that which has been proposed by  
11 some as viewing it as perhaps the primary or only avenue for  
12 solving some of the problems that are arising from ANCSA. So I  
13 think that I would stand by my original contention that it is  
14 not the best avenue at this time in history. Some villages,  
15 some tribes, may find it one of the options they wish to exercise  
16 and it may work well for them. I am not sure whether, you know,  
17 the community of Metlakatla has become such a viable and well-  
18 functioning community because of or in spite of the IRA. I don't  
19 know Metlakatla that well. I know it pretty well and I do know  
20 it, you know, that it functions very well as a community but I  
have always attributed that to the ability of that people to  
function as a community and a very enterprising community, and  
it lies in the resources of Southeastern Alaska, in the seas and  
land.

21 I think many of the points that have been made around  
22 the table this afternoon are absolutely critical. In earlier  
23 conversation with David Case, he asked me why I expressed my  
24 antipathy towards Justice Marshall yesterday and the route upon  
25 which he set the United States. I say, in crystallizing that a  
little more than we did in our earlier conversation, it is  
because the tribe does not need the recognition of any particular

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1 Western institution to exist. The tribe exists. The village  
 2 exists, and it is for the convenience of Western institutions,  
 3 primarily Western governmental and legal institutions, that we  
 4 go through all this. In order to continue to exist, obviously,  
 5 the tribe requires some geographical expression, some land base,  
 6 and securing that land base, of course, is what Paul talked about  
 7 and how to continue to secure it in the future, has been many of  
 8 the options I tried to bring out in the paper and many other  
 9 people have taken up here today. But remembering what, you know,  
 10 the ultimate goal of ANCSA as an economic, as a partial economic  
 11 solution to long-term problems should not, you know, make it  
 12 the final and end-all, and I think it's been very aptly and  
 13 correctly brought out that, in the ideal world, each tribe, each  
 14 community, if it has a state and federal government which are  
 15 operating in the way they should, is going to be helpful in  
 16 insuring that it is able to seek out those options that serve  
 17 it best. And that's why I think that, in essence, those institu-  
 18 tions which lend themselves best to that, in essence, probably  
 19 not to trust institutions but institutions which have reasonable  
 20 long-term firm backing of Western institutions are best. And  
 21 there are many of those which can be exercised and those which  
 22 would be best would be those that would be created by the tribe  
 23 or village. As Joe Upicksoun pointed out, as John Borbridge  
 24 pointed out, you take and use the tools, choose from the tools  
 25 you have to satisfy the needs of the moment and I think that,  
 in essence, is why I am not particularly strong for IRAs.

21 MR. BERGER: Rosita, you had  
 22 another question? Oh, Chuck, yes. Chuck Smythe.

23 MR. SMYTHE: I have a question  
 24 for Mr. Jones and Mr. Martin about subsistence. I'm recalling  
 25 Mr. Jones' comment yesterday on the perception of subsistence  
 among the staffers in Congress at the time, and I was wondering  
 why or if you can recall why subsistence was deleted during markup



1 from the Hou... from the Senate version of the bill, I believe.  
2 Whether there is any, you know, rationale behind that, or was it  
3 just a bargaining?

4 MR. MARTIN: Well, I was think-  
5 ing about that yesterday when Doug was speaking and I tend to  
6 think that I probably associate myself a little bit more closely  
7 with the recollection that Dave Hickok had of that entire issue,  
8 that... While it may be fair to say to some extent that... I  
9 can't remember the exact word Doug used about subsistence being  
10 regarded one-third as a... on the merits and two-thirds as a  
11 tactic to gain extra land. I... I'm not sure I'd say it exactly  
12 that way. I recall that it was being... that it may well have  
13 been a tradeoff to some extent and, in that sense, it was  
14 subject to the same discussion I mentioned yesterday that  
15 village interests, my view was that village interests as a whole  
16 tended, in the final negotiations, to be somewhat submerged,  
17 maybe not even consciously. And my sense was, in the final going,  
18 that there was a kind of a trickle-down of knowledge to the  
19 villages and I recall seeing increasingly more village representa-  
20 tives in our office who were concerned about things like sub-  
21 sistence and the trust land concept and so on right at the end  
22 when the bill was essentially being put to bed, completed and put  
23 to bed.

24 As to why it was taken out, I think that Dave's recol-  
25 lection is essentially mine, and that is that, as the matter was  
negotiated out in the final going, the concept of fee ownership  
and the sacrifice of a greater number of subsistence acres for  
a lesser number of fee acres became the dominant way of dealing  
with the bill. I'm not as expert as Doug is, certainly, on the  
Senate debate but they simply decided, for a variety of reasons,  
that the mix of those two kinds of ownership was a more creative  
way to approach the settlement. But as it wound down, the trade-  
off of those two things was made.

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1 there is an expression of the Congress in congressional intent  
2 that the Secretary of Interior is directed to classify the  
3 public lands of Alaska for subsistence purposes. It's never  
4 been done. I, and others, have raised the question. Walt, I  
5 know, and Esther Wunnicke, in the Federal-State Planning Commission  
6 days, and I, myself, personally, with several secretaries of the  
7 Interior, raised this question over and over again as I did  
8 with the various heads of the Bureau of Land Management.

9 It's still on the books as the intent of the Congress  
10 as... Not in the statute, per se, but certainly in the history  
11 of the act. But it's never been done.

12 MR. BERGER: Mr. Jones and then  
13 Mr. Hope.

14 MR. JONES: Just, perhaps, a  
15 scrap of information to add to that, Chuck... And I'm beginning  
16 to feel a little badly that I brought it up that way yesterday  
17 on the subsistence use matter because, of course, it's merely  
18 an assertion that I thought one-third, roughly, is this way. I  
19 mean, that's an assertion. But it's a legitimate thing, cer-  
20 tainly, to thrash out but obviously I would be hard put to  
21 demonstrate how it was one would argue that a third felt that  
22 it was on the merit and two-thirds of the argument was something  
23 else.

24 But that aside, in trying to do a little bit more in  
25 answer to your question, a couple of facts... On Old S-1830, the  
old Federal Field Committee proposal, there's a sentence in the  
legislative write-up of it that I might recall for you. It says,  
"No grants of subsistence use of the public lands are proposed.  
Reliance for protection of subsistence resources is placed in  
state management." That was the Federal Field Committee early  
proposal.

Now, I don't say that everything sprung from that, but  
I mean that was a... one base document, anyway, that had it at

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1 zero. So anything after that was a building on that. And in the  
 2 legislative report accompanying S-1830, this one, you remember,  
 3 about June 1970, there is a legislative write-up that says that  
 4 the committee was not persuaded that even subsistence use land...  
 5 land use arguments that were persuasive for purposes of having  
 6 surface estate, that the committee felt it was not persuasive  
 7 that whatever the needs were of surface estate for subsistence  
 8 use required that one also own subsurface estate.

9 So I would recall that, I think accurately for you, as  
 10 some of the lines of argument where one... if you went all the  
 11 way saying, "Not only do we need subsistence lands but, by the way,  
 12 we have to own everything under it," that there was some  
 13 reaction to that, as my recollection, saying, "Well, maybe  
 14 subsistence is persuasive, but that doesn't require owning  
 15 subsurface estate." That's the other... addition I'd make to  
 16 that.

13 MR. BERGER: Mr. Borbridge?

14 MR. BORBRIDGE: Comment on  
 15 that, Mr. Chairman --

16 MR. BERGER: Oh, I'm sorry.

17 Mr. Hope? Mr. Hope, please.

18 MR. HOPE: Mr Chairman, I  
 19 won't be here tomorrow and I want to say a couple of things  
 20 before I leave. I'm glad for the opportunity to have been a  
 21 participant.

22 I think I conveyed the impression I was advocating IRAs.  
 23 I was just defending IRAs. I think the corporations are a very  
 24 new instrument. It's likened to being thrust in the major  
 25 leagues without even having seen a game before and not too many  
 people will be off and running. It kind of reminds me, I went  
 to radio school. That was kind of my career for awhile, I was  
 a radio announcer, and I broadcast the very first football game  
 I ever saw.



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(LAUGHTER)

MR. HOPE: And I only have seen once since that time. I'd like to think I did a good job, but I know I wouldn't compete with people who are knowledgeable in that field.

But I think Mr. Mallott mentioned that we didn't become viable corporations until the late '70s. Probably the last five or six years we've been in the game and they didn't make allowances for us. I mean, in the corporate world you're a corporate creature and you live or die by your ability to survive, and in this day and age in the time that we became active, we saw many a corporation take a dive, people that knew what they were doing and didn't do it right. I think Sea First... You know, millions and millions and millions of dollars and they couldn't make it because of the times and the economy just didn't lend itself to making very many mistakes. So I think our corporations are still in that formative stage, they're still developing. But it's the kind of a game that won't allow you learn the game and still be around, so there will be some corporations that just won't survive the corporate world.

If there are alternatives, I hope they will be reviewed objectively. I think people have made up their mind on some and don't even know how they function or how they exist and some people are suggesting that, if they fail, it's the fault of the instrument but if they succeed, it might be in spite of the instrument. I have some difficulty with --

UNIDENTIFIED: (INDISCERNIBLE)

MR. HOPE: -- that rationale.

(LAUGHTER) The other thing is, I keep hearing from Mr. Jones that these racially-defined institutions perhaps should not be there. He doesn't say that but it's kind of the way I'm interpreting it. Then I go back to the land claims act, Section 29 of the second one. This is what it says, "The payments and grants



1 authorized under this act constitute compensation for the  
2 extinguishment of claims to land and shall not be deemed to  
3 substitute for any governmental programs otherwise available  
4 to the Native people of Alaska as citizens of the United States  
5 and the state of Alaska." And to me that means they addressed  
6 that issue and they're not going to touch it. I think the BIA  
7 and IHS are when they meant here.

8 And further on in that same section, it says, "Nothing  
9 in this section shall be construed to create or terminate any  
10 trust relationship between the United States and any corporation  
11 or any individual entitled to receive benefits under the settle-  
12 ment act." To me, that's very clear also. So I kind of worry  
13 if some people interpret it otherwise, that maybe the land claims  
14 act meant that we'd be off and running and we'd all be equal and  
15 we don't need these, as he termed them, racially-based institu-  
16 tions. I worry a little bit about that and I take some comfort  
17 that the act, I think, looked into that and having looked into  
18 it, didn't terminate them. In fact, it did the exact opposite.

19 I just want to express my appreciation, Mr. Chairman,  
20 because I have to get back home. A lot of big things are happen-  
21 ing our region. We're a tribe, as Mr. Borbridge has said, and  
22 the tribe is going to move into its brand new building and I'd  
23 kind of like to be there when all of that happens. But I also  
24 didn't want to miss participation in this. I think sometimes  
25 the things that we don't think is that important and we don't  
attend, sometimes might have an impact on your in the future,  
and I didn't want to miss this opportunity and I thank you very  
much.

(APPLAUSE)

MR. BERGER: Well, I think we're  
all grateful that you were able to spend the week with us, Mr.  
Hopé, and I certainly am. And I think we all appreciate the  
usefulness of every intervention you've made. And I wondered if,



1 since you seem to be directing much of what you said to Mr. Jones,  
2 whether he wanted to reply at all?

3 MR. HOPE: (INDISCERNIBLE) I  
4 have no chance to reply to him.

5 (LAUGHTER)

6 MR. BERGER: There was one...  
7 Just one other thing that had come up that I just wanted any  
8 comments on.

9 Walter Parker, in his paper, in his summation, said,  
10 "Operating under state sovereignty probably offers a greater  
11 range of political and economic options for the future of  
12 Alaskan Natives that does a return to federal sovereignty. The  
13 political perils are obvious by the present composition of the  
14 Alaska legislature and its increasing urbanization," and Mr.  
15 Parker mentioned that yesterday. "However, the urban areas  
16 have elected many who worked hard for programs and laws benefiting  
17 Alaskan Natives in the past and there is no reason why that  
18 should not occur in the future. Insofar as the possibilities  
19 of creating a special form of sovereignty, either federal or  
20 state, we must bear in mind that the ultimate sovereignty was  
21 originally vested in the states except where the constitution  
22 or the Congress preempted that sovereignty." Well, we can  
23 leave that argument for the moment.

24 He says, "The Civil War pretty well nailed down the  
25 bounds of separatism in the American Union," and I guess that's  
something nobody can argue with, "and unless some forms of  
commonwealth approach were taken, there would not seem to be  
many options." And then he says, and I wonder, Mr. Paul, if  
you have any views on this, "The way in which the parcels of  
Native lands have been interspersed with state and federal lands  
over most regions of the state would make it difficult to give  
such sovereignty any cohesive geographical expression."

I think that speaks for itself and I'm just curious

1 whether you would like to comment and then I'll ask Mr. Borbridge  
2 for his views.

3 MR. JONES: That word sovereignty,  
4 I guess, has a hundred different meanings.

5 MR. BERGER: Well, I think  
6 really what he's saying is, if you wanted to have IRAs governing  
7 tribal lands, how can you do it with the land scattered all over  
8 the place?

9 MR. JONES: That, again, requires  
10 a definition of sovereignty. Are you saying... When I say you,  
11 rhetorical you... Do you mean the management of fish and game,  
12 do you mean management of zoning, do you mean... ownership in  
13 fee simple except for the trust quality of IRAs? I'm going to  
14 say that there is a... a movement within the government of Alaska  
15 that they're not going to stand for any sovereignty over fish  
16 and game. There may be some yielding on subsistence, but so far  
17 as sovereignty is concerned, it's going to be a tough battle.

18 But whether the state government is for or against  
19 sovereignty, the state government has exhibited an indifference  
20 to rural Alaska. Now, there have been huge inroads in rural  
21 Alaska for the benefit of Alaska Natives. I do not expect the  
22 state legislature to enhance sovereignty at all. I think the  
23 gains in education, in particular, have been, in a sense, stuffed  
24 down the legislature's throat. It had to be. The Molly Hootch  
25 case where the Alaska supreme court said bring high schools to  
the bush. The North Slope Borough's a great experience in  
assisting in education, marvelous, you know, just beautiful, but  
not a product of the state legislature. The neglect of the  
unorganized borough, the unorganized borough has an assembly.  
It's never met. It happens to be the state legislature and  
the governor's supposed to be mayor of the unorganized borough,  
so to speak.

So I can see problems in the management of fish and game



1 by IRAs where you have checkerboard ownership. I find it very  
2 difficult to believe that the state legislature's going to yield  
3 any sovereignty in that regard.

MR. BERGER: I see.

4 MR. JONES: Those are my  
5 remarks.

6 MR. BERGER: Mr. Borbridge,  
7 you wanted to add something?

8 MR. BORBRIDGE: Yes, Mr.  
9 Chairman.

10 I almost sense that... Well, as Mr. Paul indicated,  
11 we're victims of a term that's not quite defined so we're able  
12 to perhaps give it various meanings. I tie it in with Mr.  
13 Hickok's earlier mention that the United States is the sovereign,  
14 which in that case is a reference to where is the supreme power.  
15 However, within the relationship that the American Indians and  
16 Alaska Natives have had with the United States, we have the  
17 exercise of sovereignty by the tribe. Sovereignty is an attribute  
18 of their tribal existence by which they are able to make certain  
19 determinations such as those that are made by various levels of  
20 government to whom certain powers are delegated. But in this  
21 instance, the powers of sovereignty delegated by tribes are not  
22 those that are delegated to them, but rather are those that are  
23 an outgrowth of their existence as tribes. During their existence  
24 as tribes, true in recognition of this other sense of sovereignty,  
25 the sovereign power acting through the Congress has, in fact, been  
able to, has the power and has used the power to restrict the  
exercise of some of the powers of tribes. But, again, it's im-  
portant to appreciate that the origin of these powers are as  
old as the tribes, themselves, and precede the formation of our  
nation. I think we are beginning to use almost interchangeably  
the sense of sovereignty as it refers to a supreme governing  
power, the federal government, and sovereignty as an exercise of

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1 an attribute that a tribe possesses. I think we're all pretty  
2 much aware that through the Non-intercourse Act, the federal  
3 government made quite clear that certain relationships with the  
4 Indian tribes were reserved to and were the exclusive domain of  
the federal government.

5 Having given that background, I then consider that what  
6 Mr. Parker may be referring to is that it's possible that the  
7 Indian and Native tribes in Alaska might conceivably in the exer-  
8 cise of powers of sovereignty... and one example, clear example,  
9 of a power of sovereignty is the right to determine one's member-  
10 ship in the tribe. That is something that the tribe determines.  
11 Another is they have the land base, the power of taxation, a  
12 regulation over the ownership of certain things such as land and  
13 other tribal property. These are exercises of sovereignty.  
14 And I think the suggestion made that the shift in sovereignty from  
15 state to federal is, perhaps, not so much a change in the sovereign-  
16 ty, the power exercised by the tribe, because that, in fact, may  
17 not be assumed by the state government. It simply doesn't have  
18 that power. That is the province of the federal government. But  
19 the tribe, exercising sovereignty as a tribe, subject to state  
20 laws and regulations, conceivably within that framework could de-  
21 cide that it will want to function within it or law may determine  
22 it and the tribe will be subject, as it is now, to certain state  
23 regulation that pertain to all citizens and, by force of the law,  
24 to the tribe, itself.

25 So I do caution all of us against the notion that  
sovereignty is readily transferrable. It is not... Or, that it can  
be diminished by a non-federal entity. It may not be, nor do we  
as members of our tribe, challenge the notion that the federal  
government is the supreme power. It is, but we have existed as  
tribes, as has been defined before, as domestic-dependent nations  
and there has been a gradual change in the terminology. But it  
follows pretty much the development of the law since that time.



1           This is no specific answer but I think it does say  
2 certain things that have been said are not correct as far as  
3 their jurisdiction and their pertenency to tribal sovereignty,  
4 Mr. Chairman.

5                           MR. BERGER: Do you want to  
6 add something, Mr. Hickok?

7                           MR. HICKOK: I would like to  
8 remind John about something. At the time of the dialogue in the  
9 Congress, there was testimony after testimony after testimony  
10 from Native Alaskans, themselves, that outside of the Tlingit-  
11 Haida, there were linguistic groupings and there were ethnological  
12 groupings but that... and this is in the words of many, many  
13 Alaska Natives, that, "We did not have tribes." And that, I  
14 would refer you to the written testimony.

15                           MR. BORBRIDGE: I would be  
16 pleased to speak to that, Mr. Chairman.

17                           Likewise, we refer again to the past. This is the  
18 Native way. That way, we don't keep repeating the same mistakes.  
19 And one is that historically the Alaska Natives, like the native  
20 American nation of which they are a part and were clearly a part  
21 then, therefore, have also been caught in the flow of history.

22                           Let me give you an example. I agree with Mr. Havelock's  
23 comment and others have commented that, had there been a settlement  
24 a year later, and I think it was even suggested months later, there  
25 may have been... there would have been less land, less money and  
a few other changes that we wouldn't have been happy with. I  
suggest that if there had been a settlement prior to 1871, remem-  
ber, that would have been a settlement in which not only the  
Native tribes or groups up here would have received land, but  
there would have been, consistent with national policy, a need to  
settle with tribes as such. And so, the United States, as was  
the policy at the time, would not only have settled the question  
of land and the ownership to land, but would have likewise dealt

1 as it had been dealing, with Indian tribes. It would have had  
2 to define more about the tribal government. Because, up to 1871,  
3 tribes had been, as a matter of fact, dealt with by virtue of  
4 treaties and once the practice was changed and there was a move  
5 backwards by the federal government from dealing through treaties  
6 and, therefore, recognizing tribes as sovereign, independent  
7 nations, there was a lessening of a need by the federal government  
8 to do anything about recognizing tribes as they negotiated out  
9 settlements.

10 Here in Alaska we were subject to the same flow of  
11 history but just as I've indicated previously, we benefited  
12 because the land claims was not dealt with, although promised in  
13 '84 and, therefore, we benefited by a number of things in 1971.  
14 Also during that same time, Interior did not, in fact, ever  
15 complete its obligation to address the status of the Alaska  
16 Natives. The fact that they were not, however, called tribes,  
17 denoted as tribes, did not indicate that they did not regard  
18 themselves as such. It was merely not spelled out in the legisla-  
19 tion. Whether we call tribalism or tribes a manifestation of  
20 Alaska Nativeness which fits within the total flow of history  
21 from native Americans, I just don't find any inconsistency. The  
22 fact that... what Mr. Hickok, in large part said, was true does  
23 not mean that they did not so regard themselves as a part of  
24 native Americans. They were, they are, they were then.

25 MR. HICKOK: That's fine. The  
26 problem comes down to a very... I don't argue that. The problem  
27 comes down to the way that Congress received the testimony and,  
28 in turn, provided the compensation. The package of compensation  
29 only involved proprietary jurisdiction, not legislative jurisdic-  
30 tion or judicial jurisdiction in the bundle of aspects that make  
31 up whatever definition of sovereignty you want. So it becomes  
32 moot in my opinion because the message came to the Congress and  
33 the Congress, in turn, gave back the jurisdiction only in the



1 proprietary sense.

2 MR. BERGER: Mr. Havelock?  
3 Mr. Parker? Oh, sorry.

4 MR. PARKER: I just wanted to  
5 briefly describe what I meant by sovereignty in this case, and I  
6 was using it by then in its narrowest legal sense of the powers  
7 that exist between the federal and state government and the  
8 division of them. I think it's confused in the United States some  
9 time when Congress ran off with all the bootle in 1913 with the  
10 federal income tax, why, of course, they acquired power over the  
11 states simply by cracking the fiscal whip. And that confuses  
12 the situation as to how much actual federal power exists in key  
13 areas that are closest to home of any individual, police, educa-  
14 tion, health and so forth. And it was in that context which I  
15 addressed earlier in the paper that I was saying it would be  
16 difficult, under the present land distribution, to give geographical  
17 expression to any form of new sovereignty. And I think it is  
18 difficult to define and, using the term sovereignty, which is, in  
19 essence, a legal term of Western institutions, to describe inherent  
20 tribal rights may confuse the issue and we probably should not use  
21 sovereignty in that sense.

22 MR. BERGER: Mr. Havelock?  
23 MR. HAVELOCK: At the risk of  
24 the rest of the lawyers here jumping on me, I might wade into that  
25 a little bit. The... Sovereignty isn't really, in the context  
26 we're talking about it, a legal term so much as a term from politica-  
27 science and international law. John Borbridge mentioned the form  
28 in which Indian law was treated changed with, I guess, 1871, when  
29 the United States said it wasn't going to work via treaties any more.  
30 From my perspective as a lawyer, from that time on when anybody  
31 here is talking about contemporary tribal... sovereignty, what  
32 they're talking about is jurisdiction, and when addressing... And  
33 that jursidiction is whatever the Congress of the United States



1 defines as being that jurisdiction.

2 Now, there's not... The exception I would take, or,  
3 not so much an exception as a broadening of what Mr. Parker is  
4 saying, is that I think he neglects to look at the various bases  
5 for jurisdiction beyond territoriality. You also have jurisdic-  
6 tion over the subject matter and jurisdiction over the person,  
7 for example, and the jurisdiction of tribal entities with re-  
8 spect to its potential scope goes as far as federal power goes,  
9 and if you look... And that would be gauged, it would seem to me,  
10 in part by the scope that is being given to the rest of the  
11 Indian clause, which is the interstate commerce clause which  
12 allows for an enormous potential breadth of federal jurisdiction  
13 so that if the Congress was so disposed, they could write an  
14 act creating federal Indian corporations that had enormous  
15 jurisdictional power over persons, subject matter and, for that  
16 matter, places.

17 It seems to me the only ultimate... That is, once...  
18 Under the supremacy clause, once you decide that the Congress  
19 has the power to do something, it is simply, if they can adopt  
20 any reasonable means to bring that about. And if the... Under  
21 the commerce clause, the... as it has been interpreted, the  
22 United States has the authority to deal with the welfare of  
23 Indian people on a broad scale, then there is very little limita-  
24 tion to what they could do with... by respect of granting  
25 jurisdiction to political subunits to... such as Indian tribes  
on a wide variety of things. The only... The only ultimate  
limitation it seems to me you would run into is when you start  
hitting other provisions of the Bill of Rights, notably the due  
process clause.

26 In some senses, the Indian clause already has a little  
27 bit of an exception carved in it to... with respect to equal  
28 protection. The due process might pose a limitation in the...  
29 that part of it involving the taking of property, that is, or the



1 deprivation of liberty without due process of law. And when you  
2 look at the body of law on that topic generally, the government  
3 of the United States can regulate all over the place without  
4 depriving people of property. For example, as coming very  
5 close by regulation to expropriating the ordinary uses of  
6 property, for example, is considered regulation even though it  
7 may deprive people of the ordinary and usual use of that property  
8 so long as, as I understand the law... Maybe David Case or  
9 someone more expert could go on on it... but so long as it doesn't  
10 involve the transfer of a property interest from one group to  
11 another, that is if it is carrying out a basically regulatory  
12 function then... then the Congress is without limitation. So  
13 the requirement of a cohesive geographical expression does not  
14 seem to me to be a significant limitation on federal power. If  
15 the government of the United States decided, for example, that in  
16 the interest of protecting fish, game, water, you name it, with  
17 respect to the use of Indians, that they could pass those regula-  
18 tions and not worry a whole lot about where these little scribble  
19 lines are on maps that separate out the jurisdiction.

MR. BERGER: Well, Mr...

20 Gentlemen and ladies, my sense of things is, especially in view  
21 of the fact that we have to leave at 4:00 p.m. that we have had  
22 a good five days and, certainly, I want to thank Mr. Borbridge  
23 and Mr. Hope and Mr. Starr and Mr. Paul who've been with us for  
24 those five days.

25 We have ended up this afternoon on the subject that  
we're going to explore next week starting on Tuesday with Native  
leaders and scholars from the Lower 48 and it occurs to me that  
this may be an appropriate point at which to terminate our  
discussion. Mr. Case and Rosita Worl and I thought that it might  
be an imposition to ask you to come back tomorrow in view of  
the fact that some of you are leaving and in view of the fact  
that it's a Saturday and we've had an excellent discussion.

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1 David suggested we have what he calls a reality check.  
2 I'm not quite sure what that is and we just have a few minutes  
3 this afternoon. And I think that we've made... had an excellent  
4 discussion and unless any of you are... feel that we've left  
5 any avenues unexplored that should be explored tomorrow, I'm  
6 inclined, as chairman, to say that it's a good idea to conclude  
7 a session like this when everyone feels... still feels that they  
8 have... that it has been an advantage to be here, let's put it  
9 that way.

10 I think that you know that the first three days this  
11 week we discussed what Native people wanted to achieve under ANCSA.  
12 We've had some time to talk about what the legislators in Congress  
13 thought they were trying to achieve. And we're grateful to our  
14 visitors from the Lower 48, Mr. Martin and Mr. van Ness and  
15 Professor Jones and, of course, to Mr. Havelock who was then in  
16 Juneau for informing us on that subject.

17 We've had a --

18 UNIDENTIFIED: (INDISCERNIBLE)  
19 MR. BERGER: (LAUGHTER) Yes,  
20 (INDISCERNIBLE). We've discussed some ideas for the future and  
21 I hope that next week, because you've raised IRAs, reservations,  
22 sovereignty, I hope next week we can take a good look at these  
23 things from the point of view of Lower 48 people who've had to  
24 live with those institutions.

25 And I should add that, in addition to our panel for  
next week convening here Tuesday, and they are people from the  
Lower 48, I've invited the AFN and the UTA, the Alaska Federation  
of Natives and the United Tribes of Alaska, each to participate  
by having somebody at the table to ask questions and I hope we  
can arrange that. We've talked about it and I hope it can be  
worked out and I think that would add very much to those discus-  
sions to make sure that all points of view are canvassed.

The week after that, that is, a week from Tuesday, we



1 will have representatives from Canada, Greenland, Australia,  
2 Norway, and perhaps other countries, to talk about the mechanisms,  
3 the instruments, that they've used to manage their land and  
4 govern their affairs. And it may be we'll get some new ideas out  
of all of this.

5 In addition, of course, the purpose of the commission is,  
6 as well, to enable people in those other countries to learn from  
7 the Alaskan experience. That's why there's a transcript. I  
8 hope that the report that comes out of this next year will be  
of use, not only to Alaskans, but to people in other countries.

9 May I repeat something... reiterate something that was  
10 said earlier, I've forgotten by whom. But that is, it seems  
11 to me that it is wise in such a discussion as this... It has  
12 been diffuse at some times, perhaps overly general at times, but  
13 you have to start somewhere. You have to nail the first board  
14 to something, and I think that, if we have as... discussions in  
15 the next week and the week after that are equally useful, then  
16 the visits to the villages and the meetings there will be...  
17 will enable us to know what people really want to do. Where do  
18 people... How do people feel about all this? What do they  
19 really want to do? Then we can call in some of the legal and  
20 constitutional experts and say, "Well, this appears to be what  
21 people have in mind. These are the directions they want to go  
22 and how can we achieve this?"

23 And I want to remind those who have attended the meet-  
24 ings as members of the public, we've tried to accommodate as  
25 many of you as we could. Some of you have spoken once, some  
twice. One of you, I know, wanted to give a 45 minute talk and  
I said no because I felt that would be asking too much time,  
given the fact that none of the panel have given a talk at that  
length, at least not that I can remember.

We will be holding a village meeting in Anchorage. It  
may take a night or two nights or three nights, however long it is

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1 required, and we will be in other villages and communities  
2 throughout Alaska through the remainder of the year.

3 I've had five days of village meetings last week and  
4 five days of these meetings this week and I wouldn't mind having  
5 a couple of days for reflection. There's been an awful lot of  
6 interesting and worthwhile things said and I hope all of you have  
7 found it useful, a useful exchange of views and, in my view, a  
8 good beginning.

9 So if you don't all hate me, one way or another, for  
10 suggesting that we wrap it up now, that's what I intend to do  
11 and we'll reconvene again on Tuesday morning at 9:00 a.m. when  
12 the people from the Lower 48 will be here and I just want to  
13 thank you all again, most sincerely, for your participation.

14 UNIDENTIFIED: Thank you for  
15 making this a very challenging week.

16 MR. BERGER: My pleasure.

17 (APPLAUSE)

18 (HEARING ADJOURNED)

19  
20  
21  
22  
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