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Transcript Of Proceedings
Alaska Native Review Commission
U.S. National Policy
March 06, 1984
Anchorage, Alaska

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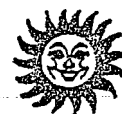


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VOLUME VI
PAGES 513 - 624
TRANSCRIPT OF PROCEEDINGS
ALASKA NATIVE REVIEW COMMISSION
U.S. NATIONAL POLICY
MARCH 06, 1984
ANCHORAGE, ALASKA

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ACKNOWLEDGEMENT

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

1
2
3 Joseph Jorgensen

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

7 David Case

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

10 Ted Chamberlin

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

14 Tim Coulter

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

17 Ada Deer

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20 Kim Gottschalk

21 Attorney, Native American Rights Fund (NARF), Boulder,
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24 Former chairman of the Yakima Nation, Washington
25 State.

Ralph Johnson

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

Ralph Lerner

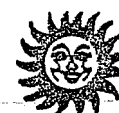
Professor of the Social Sciences, University of Chicago.
Author of Reds and Whites: Rights and Wrongs.

Tito Naranjo

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

14 -----

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

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1 (MARCH 6, 1984)

2 (TAPE 20, SIDE A)

3 MR. BERGER: Well, ladies and
4 gentlemen, to open the proceedings this morning I will introduce
5 myself. I am Tom Berger, conducting the Alaska Native Review
6 Commission which has been established by the Inuit Circumpolar
7 Conference to review the Alaska Native Claims Settlement Act of
8 1971. The commission is cosponsored by the World Council of
9 Indigenous People.

10 The main part of the commission's work will be to hold
11 meetings in villages throughout Alaska so that Alaska Natives,
12 Eskimo, Indian and Aleut, can express their views regarding the
13 impact of the claims act, the ways in which it has worked out
14 well, the ways in which it may not have worked out well, the
15 position today in their villages, their views regarding the
16 corporate arrangement established under the act, their views
17 regarding land and subsistence, all the questions of Native land
18 and governments that you hear about in Alaska today. And we
19 are going to be spending the rest of this year in the villages
20 obtaining the views of those people.

21 This overview meeting, this series of overview hearings,
22 roundtable discussions, is designed, in a sense, to provide an
23 intellectual framework for those meetings in the villages... if
24 nothing else, to educate me on some of the questions that have
25 to be considered. So the commission is taking the broadest view
of its terms of reference. We're looking at ANCSA in the very
broadest concept, ANCSA being the acronym for the Alaska Native
Claims Settlement Act, and next year I will write a report based
on what people in the villages have said. And the report will
be written for Alaska Natives to make use of in planning the
directions they intend to take in the years leading to 1991 and
beyond.

I hope it will as well be useful to native Americans

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1 in the Lower 48 and to indigenous peoples in other countries,
2 and, indeed, we expect that next week at our roundtable discussions
3 there will be Native leaders and scholars from Canada, Greenland,
4 Australia, Norway and perhaps other countries as well to discuss
5 the ways in which they have been grappling with land claims and
6 the issue of Native self-government in those other jurisdictions.

7 Today we have with us, to give the opening paper,
8 Professor Joseph Jorgensen who is a professor of history and
9 anthropology at the University of California, Irvine campus. He
10 is author of "The Sundance Religion" and is well known, particu-
11 larly in the West and Southwest.

12 David Case, who is special counsel to this commission
13 and teaches law at Fairbanks and is the author of I think the
14 most important work on Native rights here in Alaska will be
15 joining us here this afternoon. He is a law professor in the
16 Native studies program at the University of Alaska at Fairbanks.

17 Also joining us, but not until tomorrow morning, will
18 be Professor Ted Chamberlin of the University of Toronto, who
19 wrote "The Harrowing of Eden," a minor classic on white-Native
20 interaction in North America since the time of Columbus.

21 I think, as well, tomorrow Browning Pipestem will be
22 joining us. He is an Indian attorney from Oklahoma with great
23 knowledge of Indian history and law and is coauthor of the
24 Bureau of Indian Affairs' Indian Preference Act.

25 With us today as well is Mr. Tito Naranjo, professor
of psychology and social services, Highlands University, New
Mexico, and past president of the Santa Clara Pueblo Tribal
Council.

Alma Upicksoun is with us today. She is an Inupiaq
law school graduate currently working with the Native American
Rights Fund in Boulder, Colorado, and, as well, Mr. Kim Jerome
Gottschalk, an attorney at at law with the Native American Rights
Fund is here as well and has joined us at the roundtable.

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1 We are pleased to have Tim Coulter with us, who is
2 executive director of the Indian Law Resource Center at Washing-
3 ton, D.C., and has written extensively on questions bearing on
4 Indian land and governments.

5 We are also very pleased to have with us Ada Deer who
6 was organizer and representative of the Menominee Indians through-
7 out the period of restoration. Their situation is well-known
8 to us all. Ada Deer directed the Upward Bound Program at the
9 University of Wisconsin, chaired the Menominee Restoration
10 Committee and now teaches at the University of Wisconsin at
11 Madison after serving as legislative liason for the Native
12 American Rights Fund in Washington, D.C.

13 Tom Hawkins should be here. I'm sure he will be here.
14 He is director of the Division of Land and Water, the Alaska
15 Department of Natural Resources and former adjudicator of land
16 allotments at the BLM, the Bureau of Land Management, and formerly
17 on the staff of the Federal-State Land Use Planning Commission.
18 And he also served for a number of years in the early 70s as
19 general manager of one of the largest village corporations,
20 the Dillingham Village Corporation here in Alaska.

21 We are fortunate to have with us Mr. Russell Jim, who
22 served as a councilman of the Yakima Nation in the state of
23 Washington and has served, as well, as area vice-president of
24 NCAI, the National Congress of American Indians.

25 We have with us Ralph Johnson, who is a professor of
law at the University of Washington, and one of the authors of
the 1982 revision of Felix Cohen's well-known classic "Handbook
of Federal Indian Law," which I may say is a book used not only
in the United States but in Canada and in many other countries.

We have with us, as well, Ralph Lerner, who is a
professor of political philosophy from the University of Chicago
and author of "Reds and Whites: Rights and Wrongs." Now, there's
a title for you.



1 To provide a continuing Alaskan presence through this
2 overview, we have invited the following persons to be present.
3 Patty Ginsberg is here from the Alaska Federation of Natives
4 and... and, in addition, we have invited the United Tribes of
5 Alaska to have a representative at the table, and I don't see one
6 at the moment, but Sheldon Katchatag, the vice-president, told
7 me yesterday that they would be sending a representative. And
8 Dalee Sambo has been invited also to be present at the table.
9 She is special assistant to the president of the Inuit Circum-
10 polar Conference.

9 Now, might I just tell you that we have a transcript
10 made of all that is said here and so we are using the audio
11 equipment. And Jim Sykes and Tim Buckley are operating that
12 machinery. It means that, from time to time when you are
13 speaking, you will understand if I intervene and just state your
14 name so that on the audio it comes across. And if you can remem-
15 ber, yourselves, to give your name as we proceed if I have
16 failed to do so, if you would do that yourself, that would be
17 helpful.

16 All of the proceedings are being televised. I'm being
17 long-winded about this but we are going to be here all week so
18 I'll stop talking sooner or later. All the proceedings are
19 being televised by Learn Alaska, which is the bush television
20 network which is run under state auspices by the Independent
21 Television Network and by the North Slope Borough Television
22 Network, and they are making tapes or movies or something of all
23 of this and then they will be making programs out of the material.
24 That's my understanding of what they're up to.

22 I think that that's as far as I need to go now. Might
23 I now take some few minutes of your time by, in an attempt to
24 summarize what we learned last week so that those of you who
25 were not here will get some idea, and I cannot, of course, do
justice to all that was said last week. But some of you will get

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1 some idea of the thrust of the discussions last week.

2 Last week we considered the spirit of ANCSA, that is,
3 what was it that Native leaders and the Native people of Alaska
4 were trying to achieve at the time of settlement of land claims
5 12 years ago and what was Congress trying to achieve. And papers
6 were given by Ann Fienup-Riordan, an anthropologist who teaches
7 here at the University of Alaska, and by Walter Parker, an his-
8 torian and economist who has joined us again this week. And we
9 had a discussion in which, for instance, Don Wright, who was
10 president of the Alaska Federation of Natives at the time of
11 ANCSA and Francis Degnan, who was secretary of the federation at
12 the time, took part. So did many other Native leaders who had
13 participated in the land claims movement at the time, including
14 Mr. Alfred Starr, who is here with us again today and who told
15 us last week of the origins of land claims in this state many,
16 many years ago.

17 In addition, we had some of the representatives of the
18 corporations today. Mr. Charles Johnson, president of Bering
19 Straits Corporation and president of the Alaska Federation of
20 Natives participated. So, also, did Mr. Byron Mallott, president
21 of Sealaska, which is, I think, the largest of the regional
22 Native corporations. Frank Peterson, president of one of the
23 village corporations, joined us and, as well, we were joined by
24 Professor Doug Jones of Ohio State who was, at the time, legisla-
25 tive assistant to... Can anybody help me out?

UNIDENTIFIED: Senator Mike
Gravel.

MR. BERGER: Senator Mike Gravel
of Alaska. Guy Martin, who was legislative assistant to Congress-
man Nick Begich of Alaska, Mr. William van Ness, a Washington
attorney who was, at the time, an assistant to Senator Jackson,
Senator Henry Jackson, and we also had with us John Havelock,
of Anchorage, who was, at the time, attorney general of Alaska in

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1 the Egan administration.

2 Having given you the cast of characters, let me tell you
3 in as brief a compass as I can what they said. Native leaders
4 and others spoke of the history of the land claims movement here
5 in Alaska. They said that it was gathering momentum in the 1960s
6 and in that decade the idea of a legislative settlement began to
7 emerge. The notion of seeking justice through the U.S. Indian
8 Claims Commission gradually faded. The time that it took the
9 Tlingit and Haidas to achieve their settlement through the courts
lead, in one way or another, to a feeling that a legislative
settlement was to be preferred.

10 The discovery of oil in Prudhoe Bay in 1968, of course,
11 gave great impetus to the idea of a legislative settlement of land
12 claims in Alaska and at that time a settlement began to take shape.

13 Now, Ann Fienup-Riordan went through the testimony given
14 by Alaska Natives at the congressional subcommittee hearings that
15 were held in Alaska at the time and her paper discusses the
16 objectives as Alaska Natives perceived them in pursuing a land
17 claims settlement. And she listed, these were gleaned from the
18 testimony, continuity... Excuse me, one, continuity in use and
19 occupation of the land; two, the importance of cash compensation
20 in order to facilitate economic development; three, resolution of
21 past social ills and full participation in the future; four, the
22 achievement of self-sufficiency and self-determination; and, five,
23 continuity in cultural integrity. Ann Riordan pointed out that,
24 having listened to the discussion all of last week, she realized
that most of those things were still in the forefront of the
minds of spokesmen for Alaska Natives today, even though enhanced
public expenditures, federal and state, for housing and health
and education had greatly improved the condition of Alaska Natives
measured by those usual statistical indices.

25 The leaders of the land claims movement went to
Washington, D.C., in the late '60s and early '70s and they told

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1 us how they perceived the settlement that was enacted by Congress.
2 They regarded it as a real estate transaction, a means of secur-
3 ing as much land for Alaska Natives as they could, of insuring
4 that land for subsistence was obtained in maximum measure, of
5 insuring that cash was provided to enable economic development to
6 be undertaken by Alaskan Natives. They felt that the question
7 of political institutions, of sovereignty, was one that was not
8 addressed and not intended to be addressed.

9 Those who spoke for the Congress, that is, Professor
10 Jones, Mr. van Ness and Mr. Guy Martin, they told us that Senator
11 Jackson and Congressman Aspinall, and other congressmen, had an
12 agenda that was somewhat different from that of the Native leaders.
13 They regarded ANCSA as a means of insuring that construction of
14 the proposed oil pipeline, the Trans-Alaska pipeline, would not
15 be impeded. But at the same time they regarded ANCSA as a means,
16 and Professor Jones and Mr. van Ness were quite explicit about
17 this, a means of bringing Alaska Natives into the mainstream of
18 American capitalism. Professor Jones referred to the act as
19 social engineering. He said that it was intended to alter cul-
20 tural attitudes. And Mr. Havelock, though he did not approve
21 of this, made the oft noted comparison between the Dawes Act
22 and its attempt to turn Indians in the Lower 48 into farmers
23 and ANCSA as the modern-day counterpart seeking to turn Alaska
24 Natives into businessmen.

25 It was, at any rate, in this way that the corporate
model was chosen. Senator Jackson and Chairman Aspinall, the two
principal congressional figures in the development and passage
of ANCSA, were not willing, we were told, to see the reservation
system extended to Alaska. There were some reservations in
Alaska but the reservation system had not been extended in any
considerable measure to this state.

Alaska Native leaders were, themselves, not at all
convinced that the reservation system was suited to Alaska. Their

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1 experience with IRAs was limited. There were a number of them
2 in Alaska but to a great extent they were under the influence of
3 the Bureau of Indian Affairs so that Alaska Native leaders did
4 not urge that there be any other vehicle. A minority urged that
5 the land and money that were to be received under the settlement
6 should go to traditional councils or to the IRAs but it is clear
7 that they were definitely a minority.

8 As well, we were told that Alaska Native leaders were
9 advised that a plea that IRAs should be the vehicle for receiving
10 the settlement lands and money would not be well received by
11 Congress. So, for one reason or another, if they did not initiate
12 the idea of adopting the corporate mode, Alaska Native leaders
13 certainly concurred in it.

14 And under this arrangement, as you know. 12 regional
15 corporations, the 13th based in Seattle representing those
16 Alaska Natives not connected with any region... 12 regional
17 corporations were established. Two hundred village corporations
18 were established. They are all for-profit corporations. Each
19 Alaska Native enrolled under the act holds 100 shares in his
20 village corporation and 100 shares in his regional corporation.
21 Forty-four million acres received under the act... I put to one
22 side the question, "Well, this..." as many Native leaders said
23 to us last week, "This was all our land. You know, we weren't
24 given something. It was already ours." So I'm using this word
25 received in the hope that it's regarded as neutral.

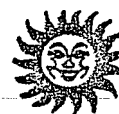
26 The 44 million acres were received by the corporations
27 and land selections were made by both the regional corporations
28 and the village corporations. But the village corporations hold
29 surface rights only. All the subsurface rights to land held by
30 the Native corporations is held by the regional corporations.
31 That is, they hold the subsurface rights to the lands that they,
32 as regional corporations hold. They also hold the subsurface
33 rights to the lands held by village corporations.

1 Nine hundred and sixty-two and a half million dollars
2 were also received by the corporations and this money was... has
3 been used for economic development of one kind or another. I
4 think there was a limited per capita distribution and there have
5 been some dividends paid by some of the corporations from time to
6 time.

7 Now, I should say that at the two village meetings that
8 we have already held at Emmonak and Tununak held last month,
9 two villages on the coast of the Bering Sea, we heard from Alaska
10 Natives who live in the villages about the settlement and in
11 those two villages. I only mention this because you may have
12 read something about our visits to those villages. I don't know
13 whether their views are representative or not, but the villages
14 there expressed the view I think was widely held that they had
15 seen little or nothing in terms of money under the act. As
16 local shareholders, they had received little or nothing in the
17 way of dividends. They had complaints about the fact that the
18 regional corporation held subsurface resources that were no
19 longer accessible to them on the one hand, or might, on the other
20 hand, be exploited without their consent or even, in some cases,
21 their knowledge.

22 On the other hand, I think it should be said, and I had
23 something I was going to read to you here that this act is, in
24 many ways, a landmark achievement. It was the means, it has been
25 the means, of holding and consolidating ancestral lands for 12
years now and it has been the means for the corporations, the
Native corporations, to acquire economic power and thereby
political influence in Alaska.

 In terms of their impact on the Alaskan economy, there
was an article last weekend, on Sunday, March 4th, 1984, in the
"Anchorage Times" written by Mr. Roy M. Huhndorf, president of
Cook Inlet Regional Corporation. This is one of the Native
regional corporations. And might I just read a few passages



1 because I think this is a view that many in Alaska, certainly
2 many in the business community, hold.

3 Mr. Huhndorf says, "Over the past 12 years, Native
4 corporations have quietly assumed a major role in the economy
5 of our state." And then he discusses the achievements of the
6 corporations, and I think it's fair to say he's talking chiefly
7 about the 12 regional corporations.

8 "First, what has occurred in the period following 1971
9 is the transfer of 44 million acres out of government hands into
10 private ownership. Prior to 1971, less than one percent of
11 Alaska's land was in private ownership. When land conveyances
12 have been completed to the Native corporations, approximately 12
13 percent of Alaska's land will be in private hands." The 44
14 million acres received by the Native people represents about, I
15 think, ten percent of the land in Alaska.

16 "From the perspective of resource development, this was
17 a particularly important change. The marketplace of opportunity
18 for mineral development, timber, oil and gas development, and for
19 other uses, has changed tremendously as a consequence. Evidence
20 of this is the quantity of land that Native corporations have
21 been able to commit for development over the past ten years.

22 For example, while 70 percent of the entitlement of the
23 Native corporations has been conveyed," that is, about 70 percent
24 of the land they are to receive has been formally patented, "about
25 half of that land, or about 15 million acres, has been committed
to resource development, to resource exploration and development."

He goes on, "These development agreements on Native
lands have, in turn, caused more than 750 million to be spent
on exploration and development activities over the past six years,
dollars which might not have otherwise been spent in the state's
economy. Native corporations have also been a source of invest-
ment capital in our state, investing most of the nearly one
billion," that is, the 962 and a half million dollars received

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1 under the settlement in 1971, "... investing most of the nearly
2 one billion dollars in proceeds from the settlement in various
3 businesses in all sectors of the state's economy. The Native
4 corporations have recognized that their destiny is tightly
5 bound to Alaska and, as a consequence, they have taken an interest
6 in the basic industries of the state, industries that are
7 important for the economic health of the Native community and
8 the state as a whole. Commercial fishing, cannery operations, air
9 travel, construction, oil and gas, minerals, coal, timber, and
10 industry-support service businesses have all benefited from
11 substantial investments from Native corporations.

12 Finally, Native corporations have served as a balance
13 in the economy and politics of the state, limiting the influence
14 of those who would lock up the state and those who would plunder
15 it. The Native corporations also have been an effective voice
16 for responsible legislation in Washington. For example, during
17 a time when environmental groups were pitted against development
18 interests almost to the point of stalemate, it was often the
19 Native corporations who were able to establish reasonable approaches
20 as the basis for coalitions that could command legislative
21 approval."

22 Well, I won't read the whole of the article, but that,
23 I think, is a view widely held among businessmen in Alaska and
24 perhaps as well among corporate leaders in the Native corporations.
25 I mention it because it is a view that has not so far been...
found its counterpart in the villages. Their feeling, thus
far at least, appears to be that the settlement has not brought
employment to the villages and that, indeed, it has raised
questions about the continuance of Native control over the land.

In 19... In the late 1960s, to Alaska Natives it is
apparent that the most important concern they had was to preserve
and protect their ancestral lands, and this, on the basis of the
meetings held at Emmonak and Tununak, is still today their most



1 important concern. But as Byron Mallott told us last week... He
2 is the president of Sealaska Corporation... He said it is not
3 their land. He said it belongs to the corporations. It is an
4 economic asset held by an institution dedicated to profit-making
5 ventures and Mr. Mallott acknowledged the dilemma that that
6 presents for people like himself who understand that the concern
7 of people at the local level, the village level, is the preserva-
8 tion of the land, subsistence and cultural integrity.

9 Mr. Mallott pointed out that the corporations, though
10 for 12 years they have had the power to sell the land, have not
11 divested themselves of the land or significant portion of it, but
12 he did say that there is nothing to stop the corporation from
13 selling the land. And it should be noted that the land can, in
14 any event, be sold to pay corporate debts or to satisfy creditors
15 on a bankruptcy.

16 And might I just return to Mr. Mallott's testimony
17 because he indicated the dilemma that the corporate mode of holding
18 the land presents. He pointed out that, for the villages... and
19 many, many of them in Alaska, subsistence is their primary
20 concern. It is an activity not likely to generate income and
21 the land, regarded as an economic asset by the corporations, may
22 then be required to be dedicated to purposes inconsistent with
23 subsistent activities. I think all of us who were here will
24 remember how Mr. Mallott put that dilemma quite frankly and
25 starkly to us.

Now these corporations, if I may move on... These
shareholders are shareholder corporations, not membership corpora-
tions. As I understand the Indian Reorganization Act, corpora-
tions under that act are membership corporations. These are
shareholder corporations and only those Alaska Natives alive
when the act came into force in 1971 are entitled to be enrolled
as shareholders. So all Native children born since 1971 in
Alaska have no right to be enrolled as shareholders, though they

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1 may acquire shares by inheritance. It is evident that this
2 feature of the settlement which leaves their children without
3 any legal interest, direct or indirect, in their ancestral lands,
4 without any right to participate in the settlement, is deeply
5 disturbing to Alaska Natives. That is, perhaps, the most empha-
6 tic note in the testimony heard thus far.

7 In Emmonak, for instance, there are about 200 children
8 in the elementary school and the high school. Those over 12 years
9 of age have shares in the corporations, those under 12 years of
10 age do not. So, of the 200 children in the two schools of this
11 village of Emmonak, which has about five or six hundred people,
12 approximately... of the 200 children, approximately 100 are
13 shareholders and 100 are not. And families, too, see this
14 division between children who are shareholders and those who are
15 not. A brother, 12 years of age, may hold shares. His sister,
16 a year younger at 11, does not. And these are... This is a state
17 of affairs that seems clearly to be deeply disturbing to Alaska
18 Natives.

19 Now, Congress contemplated the possibility, according
20 to Professor Jones, Congress contemplated the possibility of
21 these corporations and the lands and other assets they hold
22 passing from Native control to non-Native control. Professor
23 Jones didn't say this was intended, but he said it was a possi-
24 bility they contemplated, and the machinery of the act, if
25 unchanged, could conceivably lead to such an outcome.

It was provided in ANCSA that the shares in the corpora-
tions could not be transferred for 20 years, that is until 1991.
Congress intended that if these are to be corporations in every
sense, the shares must be tradeable on the open market. And
the shares do become tradeable on the open market in 1991.

Furthermore, the land held by the corporations, as long
as it remains undeveloped, is not subject to state property taxes.
But 20 years after conveyance, in 1991 and thereafter, the land,



1 whether developed or undeveloped, whether devoted to subsistence
2 or to other economic activity, becomes subject to taxation.

3 Now, by one means or another then, unless there are
4 changes made, the corporations and the land may conceivably be
5 lost to Alaska Natives, and this is a palpable fear among Alaska
6 Natives, certainly at the meetings that we have held thus far.
7 That fear has been expressed time and again. And every indication
8 appears to be that Alaska Natives do not want that to happen, even
9 if it means restrictions placed on their right, exercisable in
10 1991, to sell their shares for money or money's worth.

11 The corporations are economic institutions but they have
12 had to serve, in a sense, as political institutions as well
13 because no political institutions were set up under the claims act.
14 Indeed, Native leaders say that the issue of political autonomy
15 was not addressed by the act. But now the question of political
16 autonomy has become an issue in Alaska. Many Native people are
17 urging that the IRAs should be strengthened or that traditional
18 councils should be strengthened. Some urged that the corpora-
19 tions should transfer the lands they hold to the IRAs to insure
20 that the land, the ancestral land of Alaska Natives, remains in
21 Native hands even if the corporations do not. And Mr. Mallott,
22 in his testimony last week, himself, urged that the ancestral
23 lands of the Alaska Natives be transferred out of the hands of
24 the corporations into institutions that would be perpetually
25 under control of Alaska Natives.

So last week there was much discussion about the
advantages and disadvantages of IRAs. In other words, people were
looking for some other vehicle. So they started to talk last
week about IRAs and about the reservation system. And as far
as I can tell, for the first time in 100 years, Native leaders
from Alaska had something good to say about the reservation
system.

So it seemed to us entirely appropriate that we should

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1 have brought all of you together here this week, given the outcome
2 of the discussion last week. I had urged that we should ask all
3 of you to tell us about your own experience with IRAs, the
4 reservation system, by what means native Americans in the Lower
5 48 had struggled with the question of holding and managing their
6 lands, how and with what success they had struggled with issues
7 of self-rule and self-government, how they had rationalized
8 relations with the federal government and the states. All of
9 these questions have arisen here, perhaps in a different context
10 from that in which you are used to them in the Lower 48, but the
11 outcome of the discussion last week seemed to me to bring us on
12 a path that in many ways is a path of convergence with the very
13 concerns I believe you have in the Lower 48.

14 There is, it seems to me, a worldwide movement by
15 indigenous peoples for self-sufficiency and self-determination and
16 we hope that, having had this... very capsule glimpse of how that
17 struggle is developing in Alaska, we hope that you will tell us
18 in the very broadest sense how that struggle is being waged in
19 the Lower 48.

20 Here in Alaska people are talking about various ways
21 of moving toward a greater measure of self-determination. Last
22 week, here at the overview, Charles Johnson, who is president of
23 the Alaska Federation of Natives expressed the desire of Alaska
24 Natives not to be just citizens of the United States of America,
25 but to be recognized as Native people as well, a distinct people
in America with their own institutions. Mr. Johnson felt that
the corporations here in Alaska were perhaps a sufficient expres-
sion of that desire for Native institutions. On the other hand,
Willie Goodwin, Junior, president of the United Tribes of Alaska,
has... not here, but his views are well-known... has taken the
view that those institutions must be political, that is have
law-making authority, authority derived from the limited sovereign-
ty that tribal governments possess as domestic dependent nations.



1 Many non-Natives in the state of Alaska oppose such
2 political institutions for Alaska Natives. They believe that
3 Alaska Natives should, as citizens of Alaska, participate in
4 state-chartered city and borough governments as other citizens
5 do and that these state institutions are sufficient for Alaska
6 Natives. We found in Tununak, where they have a city government
7 chartered by the state, they also have a traditional IRA council
8 that Mr. Mike Albert, the president of the village IRA council
9 said, "We have two governments in this village, a city govern-
10 ment chartered by the state, a traditional IRA government, and
11 one of them must go." And that puts the issue in what might be
12 called pretty blunt language. And Mr. Albert made it clear which
13 one of them he thought should go and which should stay.

14 In any event, arguments about self-rule and sovereignty
15 have arisen here in Alaska and they seem to be intertwined with
16 these 1991 issues. At any rate, they may have been given here...
17 I think they have been given a special kind of urgency by reason
18 of the felt necessity by Native people here in Alaska to make
19 provision to avoid the consequences that, as the act now stands,
20 lie in wait in 1991, sale of shares, taxation of land, the possi-
21 bility of loss of control of the corporations and of the land
22 held by the corporations. And virtually all ancestral land is
23 held by the corporations.

24 I hope that you will consider this in the... in the
25 broadest perspective, that you will feel free to look at the
broad moral and ethical aspects of these matters from the
perspective of relations between the dominant society and indige-
nous, from the perspective of the... the conflict, if that's
the right word, between institutions established by Europeans on
this continent and the persistence of Native culture and Native
institutions. And you might consider how these considerations
bear equally on native Americans in the Lower 48 and, if you
think they do, on Alaska Natives as well. If you see similarities

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1 in the issues that Alaska Natives are grappling with and those
2 that native Americans in the Lower 48 are grappling with, I hope
3 you would make that clear to us.

4 The only other thing I want to say is that this round-
5 table, these three weeks of roundtable discussions are sponsored
6 not only by this commission, the Alaska Native Review Commission,
7 but as well by the Humanities Forum of the state of Alaska, whose
8 chairman, Chris Cook, he was recently chairman and whose new
9 chairman, Ron Scollon, and the executive director, Gary Holthaus,
10 have worked closely with the commission in arranging these over-
11 view meetings and, indeed, without the assistance of the Humani-
12 ties Forum, these roundtable discussions would not be taking
13 place.

14 I can't resist saying that the... the long, written
15 document you received describing the commission, the Project
16 Description, I think it's called, was prepared... for the
17 Humanities Forum and that's why it refers to broad humanitarian
18 considerations. And I, if I may say so, think it is an excellent
19 way of introducing the discussion and I think those broad moral
20 and ethical considerations are appropriate to be considered. It
21 was, I think, if I may be forgiven for saying so, notable last
22 week that those who came here from Washington, D.C., two of
23 the three of them suggested that references to de Toqueville
24 and to Las Casas and to the ancient origin of these questions
25 going back to the Spanish conquests were nice but not the sort
of thing that, you know, really practical men and women in 1984
could get their teeth into and that we had to look, instead, at
the act, specific changes, talk to the power brokers in Washing-
ton, D.C., and get on with it. Well, I was grateful to them for
expressing that view, but I do hope you won't... that you'll
feel free to range widely over history and economics and litera-
ture and race relations and whatever else comes into your head.

Well, forgive me for that long-winded introduction but

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1 I did want to acquaint you with, you know, the story thus far and
2 here we are.

3 And might I, in just a moment, call on Joe Jorgensen.
4 We will carry on, I hope, until about 12:15. If you feel like a
5 cup of coffee at any time, please feel free to get up and help
6 yourself and come back again. This isn't a formal sort of setup.
7 If I've called on Joe Jorgensen, I'll call on Ralph
8 Johnson to carry the discussion from there. And then I'll call
9 on Ada Deer and after that maybe we can just play it by ear.

10 So, Joe, forgive me. You just begin now, if you would.

(TAPE 20, SIDE B)

11 MR. JORGENSEN: Thank you,
12 Justice Berger and distinguished participants. It's, indeed, an
13 honor to be here --

14 MR. BERGER: Just call me
15 Chairman Berger or anything else but Justice. Not Justice
16 Berger, the name is Berger --

17 MR. JORGENSEN: Mr. Chairman,
18 all right.

19 MR. BERGER: There's a reason
20 for making that distinction.

(LAUGHTER)

21 MR. JORGENSEN: Yes, there is,
22 I take it. Sorry.

23 MR. BERGER: Forgive me.

24 MR. JORGENSEN: It's a great
25 pleasure to be with Ada Deer. It's the first time I've seen her
with my own eyes. I've seen photographs. This must seem like
instant replay to you to go through the histories of the corpora-
tion and tribal struggle and redemption. We haven't gotten to
the redemption for Alaska it looks like, but this is a replay of
the Menominee case.

I'm glad that you said that we could run over history

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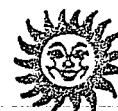


1 and political philosophy because that's what I've prepared, some
 2 history. And I do want to go back to the European discovery of
 3 the continent because the first question posed by the European
 4 discoverers was whether the Natives they encountered were humans,
 5 were God's children, were the progeny of Adam, and that required
 6 the Pope to resolve that, and he did in the favor of Indians.
 7 And it was also determined a few years thereafter by Vitoria,
 8 Francisco de Vitoria, that Indians were the possessors of their
 9 land, that Europeans did not acquire the land by discovery. They
 10 did not have title. Title was vested in the Indians and so any
 11 transfer of title required the honest purchase through the
 12 understanding of Indians about that conveyance. Hence, treaty-
 13 making was established and many, many treaties were made between
 14 emissaries of European powers and Indian tribes. They weren't
 15 always made and land, obviously, was taken from Natives and
 16 resources were destroyed but the policy was intact that that's
 17 the way things should be.

18 The policy held, most nations and their emissaries
 19 observing it, until the Articles of Confederation and the crea-
 20 tion of the United States. And, in fact, they continued on even
 21 then. But two important things happened in the United States
 22 following the Articles of... with the Articles of Confederation
 23 and following thereafter. The first, of course, was the Indian
 24 Nonintercourse Act of 1790, which gave to the federal government
 25 the sole authority to approve business conducted with the Indian
 tribes, hence to oversee the commerce with the tribes. But the
 second important item, I think, was the decision in Johnson
 verses McIntosh in 1823 when the Justice Marshall redefined
 Indian title. And Indian title, in this new definition, was
 impaired. I take it that that was something like usufruct where
 Indians possessed the land for its traditional uses but the title
 became that of the United States government by discovery and that,
 in the future, treaties would be signed with Indians to convey

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1 that title to the United States or some other public agency or
2 business but that Indians would be compensated for that convey-
3 ance by treaty.

4 The federal government continued then as the protector
5 of Indian land. Indians had the right to it for its use but the
6 title was impaired. Over the next several years but especially
7 in the Cherokee cases, there were again the opinions written by
8 the supreme court and Justice Marshall, the nature of tribes and
9 their sovereignty was defined. And it was defined as domestic-
10 dependent nations. They were... Each Indian tribe was considered
11 to be independent of other tribes, of the states, but it had a
12 domestic dependency to the federal government. Other nations
13 could not deal with the tribes nor could states within the United
14 States deal with the tribes. Yet internally, tribes governed
15 their own affairs and their right to do so to be protected by
16 the federal government.

17 No sooner had Marshall written his opinion, the second
18 opinion in the Cherokee cases, then President Jackson, who had
19 approved the Indian Removal Act of 1830, allowed the state of
20 Georgia to take Indian land, which is to say to deal directly
21 with the Natives and to deny them their sovereignty and, in fact,
22 the Natives, many of them East of the Mississippi through
23 tortuous steps, were removed, not all but many, to west of the
24 Mississippi where Indians already resided. And they were pushed
25 into space already occupied, space that they were told would be
theirs forever, so long as the river shall run and the grass shall
grow.

Thereafter followed a period of about 40 years of
treaty-signing, and it went something like this. That the fron-
tier expanded westward and each step of the way required the
conveyance of Indian land to non-Indians, and so treaties were
signed and usually treaties meant that, for the succession of
lands to the United States, Indians would receive annuities or

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1 gifts. They would receive protection and peace, and often there
2 would be other federal aid proposed and offered to the tribes.
3 Tribes would sign as many as four or five treaties over a period
4 of these 40 years, some tribes. Three hundred and seventy were
5 signed in all and, during this period, the tribal estates, of
course, decreased greatly in size.

6 The movement throughout the period in reduction of land
7 was to place Indians on reservations and, as their populations
8 dwindled and as they rebuilt and as warfare was conducted among
9 them, there was still greater interest to constrict and restrict
10 the travels and movements of Indians. When treaties were signed
11 then, they were not all signed from good will or out of good will
12 but the estimate is that a half a billion dollars was spent on
13 the Indian wars in the 1850s, '60s and up to about 1870.

14 The way in which Indians were treated as this limited
15 sovereignty began to change as early as the 1860s... but the
16 clear and distinct change in policy, the federal government toward
17 Indians, was not until 1887. By the 1860s, for instance, the
18 Kansas Kickapoo, who had been moved from the Great Lakes to
19 Indiana where they rebelled, to Kansas and some to Oklahoma...
20 but to Kansas, these people had been given a 792,000 acre
21 reservation. They had had it reduced to 300,000 acres. They
22 had it reduced yet again to 70,000 acres and, finally, in about
23 1868, a bill was passed that gave to each male Indian adult 160
24 acres of land. And it gave to each woman and child 40 acres of
25 land. And so there was about 7,000 acres that was given as
allotments that would be held in trust for 20 years, at which
time the Kansas Kickapoo could be in the mainstream of the
agrarian Midwest, able to sink or swim depending on their own
skills. You'll know this act, of course, as something very,
very similar to the act that was passed in 1887, the General
Allotment Act.

A similar kind... Similar kinds of acts were offered

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1 many times, bills were offered many times in Congress. There was
2 a great push in 1877 to cede the lands of Colorado, especially
3 rich in gold, silver, lead, to the federal government and open it
4 up for mining claims. For ten years there was a struggle in
5 Congress over this act, the General Allotment Act. The argument
6 went something like the argument people listened to last week.
7 If Indians are to... Indians should not be treated differently
8 from citizens of the United States. Indeed, it is their very
9 communal behavior that is the drag upon them that causes them
10 not to be individual, successful, responsible persons. They
11 are being carried by taxpayers, by citizens, and they are not
12 using the resources which they possess. Resources are not there
13 to be looked at alone but they are to make a person and to make
14 a nation great. And so the argument that was conducted on the
15 floor of the House and the Senate over a ten year period saw
16 that there was a solution to the Indian problem.

13 The wars had finally been terminated, or nearly so.
14 The Indian population was dwindling. The transcontinental
15 railroad had been completed. A series of acts had been passed
16 which opened land to the public domain, the Homestead Act, the
17 Timber and Stone Act, the Mining Act... Each of these acts
18 encouraged residents from the East to move west, take up land,
19 develop it and connect to great metropoli East and West.

18 The railroads had been given huge tracts of land across
19 their rights of way across the continent for their own develop-
20 ment and they, too, encouraged residents in the East to buy
21 their land and to locate along the railroad. Each of these
22 things put more pressure on the Indians but also more pressure
23 to relinquish resources that were not being used.

23 And so, in 1887, Congress passed the General Allotment
24 Act. I passed up an important point. In 1871 the Congress had
25 previously passed an act that denied Congress would again allow
treaties to be signed with American Indians, and this was a rider

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1 attached to a bill for appropriations in 1871. And so, after 1871,
2 Indians did not have the treaty-making powers. That is to say
3 they were no longer able to make treaties.

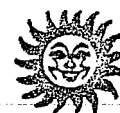
4 Agreements then were signed with tribes and perhaps
5 230 or 240 agreements were used rather than pass a special act
6 of Congress each time the federal government desired some land
7 conveyance or transfer from Indian title to the United States.
8 So by 1887, Indians had already lost these treaty stipulation
9 powers and the General Allotment Act was passed.

10 The act clearly sought to dissociate Indians from their
11 tribes, from their communities, and to transform their persons,
12 their personalities. Indeed, if Indians would but accept an
13 allotment of land, the title to be held in trust for 25 years,
14 and if they would but change that title to patent in fee, and
15 if they would then move to a city, they would become citizens.
16 Until that time there were few ways to gain citizenship, but this
17 was one. The idea behind this then was that, if a person is
18 responsible for soil, if they're responsible also for a family
19 to provide for them from the soil, if the land is on a state
20 tax roll they're responsible for paying taxes for it, that they
21 take on the responsibilities of citizenship, then are entitled
22 to it and entitled to the vote.

23 So the General Allotment Act of 1887, as it was initially
24 framed, thought that you would cut up tribal estates, give them
25 to persons, and in the initial act there were 160 acres for each
adult male, 40 acres for women and for children. The act was
soon revised so that in reservations where there was little
irrigable soil a person might gain 320 acres. The way the act
was actually administered varied widely on reservations. On
some, chiefs were given two or three or even more allotments.
Women received none. Children received none. There were no lands
provided for future generations. On some reservations, all
adults received 80 acres... The way in which it was administered

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1 varied very considerably. But there were no provisions for
2 future generations and there was an act in 1890 passed that
3 encouraged the transfer and the change of title to patent in fee
4 to make those who accepted it citizens.

5 From 1887 to roughly 1934, most Indian policies changed
6 to focus on the individual nature of Indians and dissociating
7 them from federal obligations and responsibilities, to
8 push them into the mainstream. This is a considerable change,
9 of course, to the legislation and the policies that preceded 1887
10 where tribes were treated with... as if they were domestic
11 dependent sovereigns. Some of the acts that were crucial were
12 those that gave to local Indian agents or to the Secretary of
13 the Interior the power to declare competency and, thereby, to
14 allow persons to transfer their title to fee patent. This allowed,
15 of course, for the conveyance of huge amounts of Indian land.

16 In part, this was prompted by heirship problems that
17 had occurred. Many, many of the tracts of land that had been
18 allotted became entangled in heirship. As the allottee died,
19 there had been no provision, no explicit provision, for heirship
20 and no simple way to resolve the problem of who would have title
21 to the land. Also, states intervened and desired to move land
22 in heirship status onto state tax rolls and to use state probate
23 procedures for the land. So that caused a... It caused several
24 disputes between state and federal government, resolved by the
25 federal government on the side of Indians where a trust status
was extended over the land that was held in heirship and states
were denied the right to enter heirship land onto the tax rolls.

By 1924, the Citizenship Act was passed without consul-
tation from American Indians, which gave to all Indians, not just
those who had removed their allotments or heirship land to patent
in fee status, but to all Indians citizenship, the right to vote,
the right to act as any other citizen individual in the United
States. I don't know whether it was hoped that the Citizenship

1 Act would complete and culminate the sweep of legislation from
2 1887 on, but it was focused in that direction. But just two years
3 later, Louis Meriam was commissioned by Secretary of Interior Work
4 to assess the conditions of Indians throughout the United States,
5 that...

6 Indian rights groups had formed earlier and were now
7 unhappy with the conditions of Indians, those they sought to help,
8 and they were influential in causing an investigation of Indian
9 affairs, to look at land problems, to look at the problems of
10 education, of health, of employment, of development on reserva-
11 tions, of the land estate. A hundred and forty million acres
12 possessed by reservation Indians in 1887 had been reduced to 32
13 million acres by about 1932.

14 The Meriam report investigated education, showed it
15 couldn't be much worse, that for America's minorities, the
16 education system was the least acceptable. They had been in
17 the program for 35 years or so of removing Indian children from
18 their families, putting them in Indian schools and giving them
19 trade educations. In the schools, however, the children became
20 sick or if they died, it was not uncommon in the mountain West,
21 parents often sought to have their children returned home. But
22 pressures were put on parents not to do so and the pressures
23 were straightforward. They refused to give annuities, to pay
24 benefits or, in some instances, to recognize Indian leaders who
25 spoke in behalf of tribes. So there were considerable pressures
put on to remove children from homes and put them into Indian
boarding schools.

Meriam thought that that was unworkable and that the
Indian education system should be changed and then Indians should
be returned home. Health must be improved because no population
in the United States measured at that time suffered from so high
rates of tuberculosis, trachoma, gastroenteric diseases nor
had such high morality and morbidity rates and low birth rates.

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1 The Indian service was looked at to find incompetent,
2 often racist employees and Meriam reported that if you would but
3 give more money to the Indian service, you'd get better class of
4 people working for them, that if you would pump money into Indian
5 affairs you would have better help and better schools. And so
6 the Meriam report suggested ways to... to resolve some of the
7 problems, at least the symptomatic problems, that American Indians
8 were suffering, but to bring them back to the reservations or to
9 bring them back to their homes was a very important one.

10 The Meriam report was important in the next swing of
11 legislation which went from this individualization, this program
12 to personalize and to make each person responsible and to dis-
13 sociate Indians from their tribes, to bring them back to the
14 reservations. And with the New Deal government of FDR in 1932
15 and with the appointment of FDR's first commissioner of Indian
16 Affairs, John Collier, Collier worked hard for the passage of the
17 Wheeler-Howard Act, or the Indian Reorganization Act. The act,
18 itself, was intended to draw Indians back to reservations to
19 preserve some aspects of their culture, to restore certain aspects
20 of the culture, but to change other aspects so that they could...
21 Indians on reservations could cope successfully and live adjacent
22 to non-Indians near their reservations.

23 And so the Indian Reorganization Act would do several
24 things. If Indians would but meet and if the eligible voters in
25 the tribe would ratify constitutions, Indian tribes could create
governments, constitutional governments, that would allow them
to control law and order, persons in the tribe, have a right to
tax and so forth, to create then a public agency to direct and
control the affairs on a reservation. The Indian Reorganization
Act also provided for charters so that a tribe could incorporate
and the governing body could promote business for the tribe to
create farms, ranches, railroads, own skyscrapers... I guess the
sky was the limit. There was, however, no money for the tribal

1 corporations and there wasn't any money forthcoming for a couple
2 of years for the corporations although money was made available
3 to buy up heirship land and put it back into trust status, to
4 buy allotment land and put it into trust status and to buy land
5 formerly owned by the tribe, ceded to the government, acquired
6 either from... through the public domain or through purchase by
7 non-Indians, and non-Indians who lost their land to taxes in the
8 1930s or who merely wanted to get out from under heavy debts and
9 would sell land. Between 1934 and 1950, about 18 million acres
10 was purchased and the tribal estates increased to about 50 million
11 acres.

12 During this period of the Indian Reorganization Act, it
13 was clear that the kind of community that was being pushed for
14 Indians was not the limited sovereignty prior to 1887 where
15 Indian tribes ostensibly could make their own decisions and chart
16 their own courses, but it was one that required the Secretary of
17 the Interior to oversee a new form of government that, itself,
18 was built on the model of local, state and federal governments
19 as well as all department of government, executive, administra-
20 tive branch, the legislative and the judicial, but it also included
21 business. By 1954, about three-quarters of all American Indian
22 societies were operating under provisions of the Indian Reorgani-
23 zation Act. The act had been extended, some parts of it, to
24 Alaska in 1936 and a similar act in 1936, the Oklahoma Indian
25 Welfare Act, was passed on to Oklahoma state that had been tribe-
less since 1898 by law.

26 The Indian Reorganization Act did not provide funds to
27 allow for the growth of successful corporate enterprises. It did
28 provide funds for the reacquisition of lands and it provided a
29 new layer, a new level, of authority over tribes that they hadn't
30 experienced in the past and that was the veto of the Secretary
31 of the Interior. It may have provided for more power in the hands
32 of the Bureau of Indian Affairs as they administered funds made

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1 available through Congress in entitlements to Indian tribes, and
2 as they sought to mediate between Congress and the tribes.

3 Soon after the Indian Reorganization Act was passed and
4 soon after Commissioner Collier set out on his policy to acquire
5 land for tribes, he ran headlong into opposition in the Senate
6 and in the House and in the state. And the opposition was to
7 removing land from state tax rolls and putting it into a trust
8 status. It was seen as the worst kind of a socialist enterprise
9 and it caused great grief for Collier and his office. Yet Collier
10 went right ahead, purchasing land and, in some instances, gaining
11 the consent of tribes to pass the IRA provisions on their own
12 reservation, doing so in rather shady fashions. Some tribes
13 approved their IRA constitutions by a vote of five to one, and
14 the best I saw was a vote of something like two to nothing to
15 approve the charter. That had to be the record.

16 The way things could be approved by the voting eligible
17 members who showed up, if they showed up and voted in a majority,
18 the IRA provisions were passed. So there was some acrimony on
19 some reservations over the mere passage of the act and that often
20 increased on some reservations, depending on who gained control
21 of the tribal business committee... a committee not only charged
22 with running the government, law and order, passing legislation
23 and then administering it, but also charged with doing the tribe's
24 business. Land could be assigned for use by persons or by
25 cooperatives. Land could be leased to non-Indians. A person on
a business committee and his family may gain jobs in the tribe
that were not available to other members of the tribe. So the
kinds of factionalism that emerged, most social scientists could
have predicted would emerge.

 And IRA governments had a bumpy career. They had a
bumpy career with limited funds and given the nature of their
origins and also given the nature of the constitutions that were
provided to them. They were boilerplate, written in Washington,

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1 D.C., provided to the tribes, which they accepted. They could
2 modify them and some did. But the IRA governments provided for
3 some external controls and if an IRA government passed legisla-
4 tion or conducted business the tribal members in general disap-
5 proved, there was usually the provision for a general council or
6 a tribal council meeting one or more times per year. And if a
7 quorum met, they could rescind legislation, pass legislation,
8 create new jobs and so forth. So there were some provisions for
9 the disgruntled tribal members to enter tribal affairs on a
10 firsthand basis if they thought they were not being properly
11 represented.

12 Throughout this same period though, there was a struggle
13 in the Bureau of Indian Affairs with Congress and so much of the
14 vision of the Indian Reorganization Act got lost in the war
15 effort, in the fight between Commissioner Collier and Congress,
16 in the reduction of funds to the IRA during the war years, to the
17 removal of the IRA offices to Chicago with just a small group
18 left in Washington, D.C., during the war years so that even the
19 organization was separated. By the end of the war, during this
20 short bumpy history, many members of Congress were ready to spin
21 Indian affairs the direction opposite from which it had gone the
22 previous 12 years or so. It was time to, once and for all, solve
23 the Indian question.

24 So there was a replay of 1887. How do you do that and
25 at the same time be fair? The Indian Claims Commission Act was
the first piece of legislation I think that sought to do that.
It gave tribes several years in which they could make claims
for broken treaties, lands for which they were not compensated
and annuities they hadn't received, injuries to persons, rape,
beating, the destruction of the resources on which they lived,
and they could bring these cases to the Indian Court of Claims.
Previously, their only access to redress was through the Court
of Claims where they were bracketed with foreign nations



1 and where they required an act of Congress to sue the federal
2 government. Many had tried. Several billion dollars worth of
3 suits had been brought. A few million dollars had been awarded
4 by the Court of Claims over the years until the Indian Claims
5 Commission Act was passed. Three hundred and seventy cases were
6 filed with the Indian Claims Commission.

7 If the Indians were to have their day in court and
8 be compensated in cash for the treaty violations, for the loss
9 of their land for which they were not compensated, then the books,
10 the records, would be clean and the federal government would be
11 absolved of its responsibilities to Indian tribes. The Indian
12 Claims Commission set about adjudicating these various cases and
13 the first windfall, as it was perceived by local non-Indians in
14 Utah where I resided as a child, was that it was to a tribe next
15 door to me, a language that I happened to speak, a group that I
16 knew well. And it was 31 million dollars. Unheard of sum in
17 1950, and the 31 million dollars was awarded to three Ute tribes,
18 two in Colorado, one in Utah. They were destitute and they
19 sought a per capita distribution of a large part of those funds.
20 They had pressing needs for clothing, food, health, and so a
21 large amount of those funds were provided after the attorneys
22 took their fee, were provided to the tribe for precisely that
23 purpose... the use of the funds as per capita payments.

24 Soon thereafter, every allocation of those funds that
25 were obvious to non-Indian residents nearby infuriated them...
from alcohol, which was against the law for Indians to purchase
at the time, to new refrigerators, and so the stories told about
the Oklahoma Indians were told in Utah and Colorado as well,
driving Cadillacs and leaving them in ditches. And there was
considerable pressure put in the senator from Utah, Arthur V.
Watkins, the sheep rancher who was instrumental later as the
commissioner of the Indian Claims Commission but at that time
the senator who had been the key person in passing the next act

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1 to come down the road, which was termination legislation and
2 House Concurrent Resolution 108.

3 The public response to the Indian Claims Commission Act
4 to these huge awards as perceived by struggling ranchers and
5 farmers in the West and the Midwest, the reaction was overwhelming
6 and there was no desire to see justice done if that justice
7 somehow precluded themselves, that they were not in unfair compe-
8 tition with Indians around them. They'd been given something to
9 which they were not entitled. How many times do we have to pay
10 for this land that is ours by discovery anyway? After all, Indians
11 but roamed the land. They did not have government. They hadn't
12 achieved a state of grace. The attitude you could know only
13 if you lived near a reservation, but it was widespread and it
14 persists.

15 Indians, again, had received something for nothing and
16 the taxpayer was paying even as he went into bankruptcy court,
17 losing his own cattle or farm operation. Well, Congress and
18 the Bureau of Indian Affairs did some interesting things with
19 these claims awards that were made. They not only were slow
20 to provide them, sometimes the House Committee on Interior and
21 Insular Affairs intervened to say exactly how the money would be
22 allocated and what it could not be used for, and they wanted to
23 review the budgets that were prepared by tribes. In most instances
24 they didn't because that's a headache to do such things and they
25 had the BIA to do it for them. But in the Ute case, they wanted
oversight after their excess of passing out per capita payments.

For the monies used by the business committee and
the tribal council, being the same thing, all business operations
were given rather close scrutiny but only public expenditures of
the income were usually quickly and freely approved. This was
replayed again and again and again by Indian societies and one
thing that nettled them more than most were the offsetting costs
that the federal government began exacting on the Indian claims

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1 awards after they had issued four or five without exacting off-
2 setting costs. For those of you from tribes who have received
3 such awards, you know what I mean when I say that, if there's
4 30 million dollars awarded and the government tallied up, we've
5 spent 20 million dollars on this tribe over the past 70 years.
6 We've built fences for them, we've sent them to school, we've
7 had BIA administrators here, we've given them health, education,
8 one gift after another. That's 20 million dollars. The award
9 might be ten million dollars provided to them after the offsetting
10 costs. They paid for the benefits they received from the federal
11 government.

12 With this in hand, the Indian Claims Commission doing
13 what it was supposed to do, tribes also began to realize not only
14 were the offsetting costs causing them to have really niggardly
15 awards, but the dollar and ten cent, or dollar twenty-five cent
16 or ninety cent an acre also bothered them, which they were being
17 compensated. But, finally, they were bothered when... and they
18 didn't realize this at first, that this claim to title that was
19 being extinguished might not have to be extinguished. What
20 they wanted was land, not money. What they were given was some
21 money and not land. To retain ancestral land in perpetuity for
22 future generations and for the past is what was desired. But
23 where do you turn when all the force is on the other side and
24 has been for so long?

25 They turned and they looked right into the eye of
termination legislation. House Concurrent Resolution 108, a
sense of Congress saying, "We should proceed now in terminating
Indians. We can do many things for them. We can move this
Pathago (ph) Hopi Rehabilitation Act, Navaho Rehabilitation Act
and send the Indians to cities. We can relocate them, give them
on the job training, sever their ties with the tribes." So
that's one thing they did. They created, then, a relocation act
from it. But, "We will terminate them from federal services as



1 they are prepared to be terminated." One hundred and four Indian
2 societies were terminated following several special acts of
3 Congress. We have one resident from a terminated tribe with us
4 so we'll hear about it. The termination worked something like
5 this.

6 Among the small Southern Paiute groups and the groups
7 of Western Oregon... Among the Southern Paiute, for instance,
8 they were not asked whether they wanted to be terminated and
9 under what conditions and how they would deal with the world
10 after termination. But they had provided to them, often tacked
11 at the post office in Cedar City and Kanosh and Kanab, Utah,
12 and Barrel Junction, the nature of the termination act that would
13 be carried to them, that they could see, that they could disagree
14 with, that they could vote on, yes or no. The Southern Paiute
15 were terminated.

16 One little group of Southern Piute, the Kanosh band --
17 (TAPE 21, SIDE A)

18 MR. JORGENSEN: -- had 400
19 acres after termination. They lost the acres for a hundred and
20 sixty dollars to unpaid taxes. So there was a sale and a resident
21 of Southern Utah picked up their 400 acres for a hundred and
22 sixty dollars... one of the more interesting cases in termination.
23 They were one of several Southern Paiute groups that were terminated.

24 The Menominee had the right to vote on the termination
25 legislation that was provided to them but not to create the bill.
The Klamath also were given such a right. A bill was prepared
for them. They could vote on it. Some voted to accept it. One
man refused. I think that was the first case of a person who
absolutely refused to be terminated and to lose his land. He
went in court and he kept his land, and he kept it, I think, in
trust status. But at least one Klamath man absolutely refused.

Between 1953 and 1962 then, 104 Indian societies were
terminated from federal services. Their land was removed from



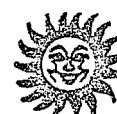
1 trust status but they were not denied being a tribe, we find out
2 later. Other Indian societies were frightened by it and several
3 polls, investigations, showed that they all were. They were very
4 uneasy about when the next shoe would drop, when it would be
5 their turn, what would happen to them, what would happen to the
6 societies they wished to preserve, they wanted to persist?

6 There was a moratorium called on termination about 1955
7 though the last act was enacted in '62, and that's to say that
8 no one did much for awhile because of the pressure and that
9 continued through Kennedy's presidency. Yet the very first
10 commission he set to investigate termination in Indian affairs
11 for him gave, as a bottom line, that the goal is termination.
12 So this is not an old idea... a new idea, it's an old idea and
13 it recurs and it persists, that in 1962 the government still
14 desired, as the final solution to the problem, to terminate
15 Indians from trust status and from federal services.

13 During the Johnson administration, through this period
14 of waffling policies and few policies, the war on poverty brought
15 to reservations community action projects, legal defense projects.
16 It provided expertise to Indians outside of the Bureau of Indian
17 Affairs that had not been available to them beforehand. It
18 showed them in many ways how to deal with welfare offices in
19 their counties and in their states, how to seek rights to which
20 they were entitled, how to deal with the Bureau of Indian
21 Affairs, how to deal with other agencies of the federal govern-
22 ment. The Kennedy and the Johnson administrations set off on a
23 program of encouraging, sometimes strong-arming defense contrac-
24 tors already on the public payroll, to move onto Indian reserva-
25 tions and to produce their goods for the defense industry using
Indian infrastructure and Indian labor. A few such projects
were created. There was also a move to the Commerce Department
and then to the Indian desk of the Economic Development Administra-
tion to create infrastructures for tribes so that they could draw

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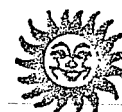
1 private industry to reservations, everything from DOD companies
2 to carpet mills. There was little encouragement and no capital
3 for the creation of Indian enterprises. Capital acquisition
4 information has always been the problem for the development of
5 Indian enterprises, but to make it a safe place for private enter-
6 prise or defense industry was pushed by the federal government.
7 Practically all of the industrial parks that have been created or
8 that were created in the '60s and early '70s lie out of operation
9 now. I know of no single tribe that has had a fully successful
10 economic development plan. The ones that are usually proposed,
11 tell you that they do have a plan, turn out not to, and that
12 includes the energy-rich societies.

13 The resources from the reservation flow off and some
14 come back in the form of royalties, lease agreement payments,
15 rights of way payments and other rents, but the large money,
16 the capital that can be accumulated, flows off. Throughout the
17 1970s though, there was an attempt to develop industry as well
18 as self-government. Legislation was not made available that
19 would provide for self-determination. I think that, contrary to
20 what many learned persons have said, the self-determination with
21 reservations that was created during the Collier period actually
22 increased the power of the federal government and was a stronger
23 statement of dependency than the legislation created by the Nixon
24 administration and the Ford administration. It was started by
25 the Nixon administration, pushed by the Ford administration
thereafter... the Indian Self-determination Act, in particular.

Whereas that act really creates for Indians the control
of the public sector of their economy much as the IRA may have
done over the long haul, it also provides Indians the control
over a private sector if they can get but funds to do it. Some
funds are made available through this... a revolving credit fund
and some agricultural operations and housing developments have
been created on some reservations. It's in a nascent period.

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1 But the Indian Self-determination Act provides for Indians to
2 begin to sever their ties with the Bureau of Indian Affairs and
3 to use the Bureau of Indian Affairs, at the same time, as a conduit
4 for grants, for entitlements. But it gives them the power to
5 move beyond the Bureau of Indian Affairs and deal with other
6 cabinet-level agencies that have funds for them, to be a granting
7 agency themselves, to seek grants, but also to create tribal
8 enterprises if they could but accumulate the capital and the
9 wisdom against tremendous odds to do so.

10 The Indian Self-determination Act of 1975 was slow to
11 take hold but it is taking hold and I've watched remarkable
12 changes on a few reservations from it, primarily in the way in
13 which Indian leaders deal with the Bureau of Indian Affairs and
14 conduct their own public sector. They're marked changes,
15 nevertheless.

16 Another important recent outcome is the way in which
17 several Indian societies have rejected Court of Claims and
18 Indian Claims Commission settlements. They're so interesting
19 I've got to read them to you if you don't have them. For those
20 of you who haven't had advantage to look at some of these
21 figures, I want to read them to you. But we'll start at some
22 of the small ones and move up.

23 Beginning about 12 years ago... I've already talked
24 about this Klamath man, but about 14 years ago when the California
25 claim was awarded, many, many California Indians from many
tribes, from Pit River in the north to the Cahuilla in the south,
refused the checks that were sent to them as their individual
shares. They wanted the land, they claimed the land, they
refused to extinguish their title. Of course, the title was
extinguished, nevertheless. But they did not want, would not
take, the money. They were not organized in such a fashion as
to bring cases, although they tried. I'm not sure that they
ever... I don't think they have anything in court now. I could be

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1 corrected on that.

2 But after their action and through a newspaper that had
3 some influence with Saha (ph)... it was published by Rupert Casto (ph)
4 a Cahuilla man from southern California and Jeanette Henry, a
5 Cherokee woman, they were somewhat influential but their attorneys,
6 the attorneys for these various tribes were very influential in
7 bringing and causing and aiding and assisting tribes such as the
8 Chippewa from rejecting a 10.15 million dollar claim, the Lake
9 Superior-Mississippi Chippeway from rejecting an 11 million
10 dollar claim, the Northern Paiutes from rejecting a 221,000 dollar
11 claim, the Hopi from rejecting a five million dollar claim,
12 Seminole for 16 million dollars... I should say award, not
13 claim... the Western Shoshone for 26 million dollars and, of
14 course, the largest of them all, the Black Hills Sioux for 106
15 million dollars. One hundred and seventy-four million dollars
16 worth of claims have been refused. They've been refused because
17 the tribes want the land and they want their cultures and they
18 want to preserve them and, of course, they want to restore them.
19 So, can you have it both ways, preservation and restoration?
20 Sure, preserve what you have and restore what you don't have but
21 want to have. And that has been the claim.

22 This might be interesting to you, too. I saw the letter
23 from the Bureau of Indian Affairs to the U.S. Attorney, and they
24 treat each of these claims as if the only problem with any of
25 them is to finally get agreement between Indians residing on
reservations and those in cities, and that as soon as you get
agreement among them and you have a full list of everybody entitled
to the funds, then the awards will be made. That flies right in
the face of the evidence from the Shoshone, the Hopi, the Northern
Paiute, the Sioux, who very strongly have told the U.S. Attorney
and the Bureau of Indian Affairs and anybody who will listen that
they want the land back.

Now each of these cases is fascinating... Too fascinating

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ATD

1 I'm afraid. It's 12:25... I'm sorry.

2 MR. BERGER: (INDISCERNIBLE)

3 It's 11:35, isn't it? Carry on.

4 MR. JORGENSEN: Okay --

5 MR. BERGER: Your watch is on
Utah time or something.

6 MR. JORGENSEN: 11:25, I am
7 on California time. Gosh, Utah time it would be 11:25, we could
go for a long time.

8 The Western Shoshone case is an important one and I
9 don't know what this will do. We'll have to ask Professor Johnson
10 here what this might do for other cases, or Tim Coulter. When
11 the Indian Claims Commission Act was passed, one of the stipula-
12 tions of the act was that you had to have an identifiable group to
13 get into court so you know who you're working for, who's claiming
14 what, are they a tribe, how are they composed? The distinguished
15 firm of Wilkinson, Wilkinson, Cragun and Barker created a
16 Western Shoshone identifiable group to enter a claim in the
17 Court of Claims. Wilkinson had had the first great decision in
18 the Ute case, which the first was for 31 million, the next for
19 18, and so forth. The Western Shoshone identifiable group he
20 had were some members of the Timoke (ph) band who had him...
21 allowed him to take the case to court.

22 Immediately when he did so, some other Western Shoshone
23 scattered around Utah and Nevada heard about it and they created
24 an association in opposition to it, in opposition to this claims
25 award because they weren't part of any group that they knew
about and they didn't want to give up their land. Now here's
what's interesting about the case. In 1863, an Indian agent
named Doty trotted around Colorado, Idaho, Utah and Nevada and
he signed a series and he entered into a series of five treaties.
In the last two, one signed in Utah and one still farther west,
he ceded Utah and Nevada to the tribes, not the other way. The

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1 cession was, "It's your land. This is it."

2 I thought that maybe that happened all the time and I
3 studied these things several years ago and was... I didn't know
4 how unique this was, but apparently the Shoshones did. They
5 wanted the land and so they did not get an attorney immediately.
6 They didn't know how to do that or what steps to take, but they
7 simply formed an organization and the organization did not want
8 anything to do with the land claims judgment. Eventually, there
9 was an award and then they knew that they were in trouble. They
10 certainly didn't want an award. Their group had grown and changed
11 it's name from the Western Shoshone Association to one of tribal
12 elders who called themselves the Traditional Council. And the
13 Traditional Council would go to these many, many little rancherias
14 around this area, this vast area of Utah, of southern Idaho,
15 parts of... a huge hunk of Nevada, and they formed the Western
16 Shoshone Sacred Lands Association, and they got the services of
17 an attorney from New Mexico named Tom Lubin, of the firm Lubin,
18 Hughes and Tomeita (ph). Tomeita (ph) is an Aleutian woman, an
19 Aleut attorney.

20 Tom Lubin, in behalf of the Western Shoshone, entered
21 two cases into the federal district court, and the first was
22 to enjoin the payment to Wilkinson, Wilkinson, Cragun and Barker
23 for their fees and the tribes wanted that done because, as they
24 referred to him, he was practicing law without a client and they
25 were sore. There was no Shoshone identifiable group. They had
met, demonstrated who they were, their geneology, that the
Shoshone identifiable group was not them and they were the
possessors of Utah and Nevada. They also entered a suit where
they sought not just the recovery of the lands, but they sought
all of the rent and all of the payment received by the Bureau of
Land Management over 100 years as they had managed, without the
consent of the tribe, tribal land. The United States government
thinks they've got a case and so they're already discussing it



1 out of court, what might the settlement look like. The 26 million
2 dollars has been held aside and it's accumulating interest. The
3 Shoshones don't want it. They do want their land and they want
4 their back rent and, if somebody gets funny about offsetting costs
5 and the like, they have other litigation in mind. They've spoken
6 to the Senate Select Committee and this is one of the things
7 they suggested might be of interest to us here. That the land
8 be recognized as restored to the tribe, that it not be held in
9 trust status, that it be nonconveyable and that it be protected
10 under the 1790 Non-intercourse Act, yet that they receive back
11 rents and all other payments from the Bureau of Land Management
12 to the federal government for the use of that land.

13 The government has come back with both feet challenging
14 the two women who were instrumental in getting this going, the
15 Dann sisters, Western Shoshones, but they're tough and they love
16 the challenge. Usually you sue the government, the government
17 comes after them, and so the battle is joined and it's moving
18 right along.

19 They're emboldened to do this because of many important
20 decisions that have been made in the past decade, not the least
21 of which was the Menominee Restoration Act which demonstrated
22 that there's a point in which it doesn't do you an awful lot of
23 good to go to court any more because when you go to court,
24 they're liable to tell you that Congress can do anything it
25 wants to do. It has its constitutional authority to do so, but
if you go to Congress after it's agreed you have a case, from
time to time you find a willing and helpful Congress that doesn't
give you everything you want but that wants to see fair play and
justice done. And the Menominee Restoration Act, of course, is
the bell weather, I think, for the movement in the past few
years to provide land through congressional statute to Taos
to Northern Paiutes to Passamaquoddy, Penobscot and many others,
and that, through Congress, legislation is possible to rectify

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1 perhaps even the worst problems in ANCSA. That's wearing a very
2 ... That's having a very optimistic look.

3 Yet, over the long haul, the history of American
4 Indian legislation, in my jaundiced view, has always been pulled
5 most strongly by individual forces. Deny them group rights
6 because group rights are not fair. Cause them to be like other
7 citizens, responsible for their own actions. They could be
8 successful or they could suffer like the rest of us. Recognize
9 only commodity values, and not values that are rather foreign
10 to non-Indians. Whereas an environmental movement has demon-
11 strated that a lot of Europeans would be willing to grant rights
12 to rocks and trees, rights are usually seen as individual rights,
13 not group rights, and the push has always been to sever and
14 dissociate Indians from their tribes and recognize only commodity
15 rights. Extinguish title, provide money. That goes for irrigation
16 rights, water rights, and the price that a person is willing to
17 put on sacred places, on memories of 20 generations residing in
18 the same place and the desire for 20 more generations to reside
19 on this place, to keep land and culture in perpetuity.

20 With that, I'll close.

21 MR. BERGER: Thank you, Mr.
22 Jorgensen, very much. We did appreciate that canvass of American
23 history and the policy towards native Americans.

24 I should have said earlier that, besides David Case
25 who will be joining us this afternoon who is working with the
commission, Rosita Worl, an anthropologist here in Anchorage,
well-known to many of you is working with the commission and
she's at the table with us. I apologize for not mentioning that,
Rosita. I was looking at my notes instead of the table.

I was going to call on Ralph Johnson now and then on
Ada Deer, and then if I may, on Russell Jim and then Tito Naranjo
and then on Tim Coulter. Perhaps we could proceed in that way.

And you carry on, please, Mr. Johnson.



1 MR. JOHNSON: May I ask first,
2 what time did you want to break for lunch?

3 MR. BERGER: Well, maybe 12:10,
4 12:15, and we come back about 1:30 and we have to leave here at
5 4:00 because this is the bingo hall. And it works out not badly,
6 actually. It means that we don't convene again in the evening
7 and... normally it means we're still eager to see one another the
8 following morning.

9 MR. JOHNSON: Well, thank you
10 very much. It's a pleasure to be here. I'm excited by the
11 opportunity to participate in this deliberative process to follow
12 the very fine and articulate presentation on the history and
13 development of federal Indian policy of Joe Jorgensen.

14 I will address the chair as Commissioner Berger and I
15 ... Berger, and I believe we can all be grateful that it is
16 Commissioner Berger instead of Justice Berger.

17 I'm sorry I missed the last weeks' presentation and I
18 think would have been much informed by it. What I would like to
19 speak to briefly is the question of federal Indian policy,
20 following up what Joe Jorgensen talked about in the Lower 48.
21 Two of my former students, Bill van Ness and David Case, know
22 a great deal more about the Alaska situation but I've been teach-
23 ing and working in the field of federal Indian law since about
24 1968, and I guess because of that, I'm one of the most longest-
25 tenured professors of law in the field alive today, which is
unusual. It demonstrates how short a time that that field has
been a field... has been a recognized subject for teaching in
law schools. That's quite a remarkable fact that, until 1968,
1970, 1972, that subject was not a subject that was taught in the
law schools, not either pro or against Indian. It just wasn't
taught. It wasn't thought of. Well, it is now.

A number of major changes have occurred in the law 12
or 13 years and, while Joe's presentation largely brought us up to

1 the somewhat contemporary times, I would like to concentrate on
2 those things that have occurred really since ANCSA. And the
3 remarkable thing is the amount of energy or the amount of change
4 that has occurred in that period. It is as if things lay dormant
5 with occasionally a major case, Worster (ph) versus Georgia
6 or Tagamo (ph) or one of the other big-named cases or pieces of
7 legislation occurring every 20 or 30 years. Then between 1970
8 and 1984, you've got the other half of Indian policy. I mean,
9 it's just tremendous grist things that are going on. Every time
10 the supreme court of the United States meets, it leads us sort
11 of astray. We've got to reexamine our basic premises all over
12 again and I'd like to concentrate on some of the changes that have
13 occurred in that period.

14 I think it's especially significant that ANCSA is being
15 reevaluated now in light of the difference in perceptions that
16 have occurred, and while I would disagree with whoever it was,
17 I hope it wasn't my former student, who said that perceptions and
18 ideas were not the most important thing, it seems to me that the
19 perception and the ideas that are created and that this process
20 that we're now engaged in, that the perceptions and ideas that
21 might be developed and created here will be the most important
22 thing. After you get those perceptions and ideas going, then
23 you can hire a lawyer to write them up. But, I mean, it's the
24 idea that's the important thing and that's what we need to worry
25 about. And I'd like to tell you about some of the changes in
ideas that have occurred since 1971 in the Lower 48.

26 First, as to a few specifics. There have been a
27 number of important United States supreme court decisions,
28 substantially a number of these having to do with taxation. The
29 state cannot tax Indians on reservation-earned income. The state
30 cannot require reservation automobiles to have state automobile
31 licenses. Indians can tax non-Indian businesses on the reserva-
32 tion, a major decision that confirmed some indefinite earlier

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1 cases. Indians can tax non-Indian businesses and the extraction
2 of oil or minerals on the reservation. In the 1969 decision from
3 a somewhat ambivalent supreme court of the United States which
4 confirmed that the Indians have fishing rights and have a right
5 to an opportunity to catch up to 50 percent of the harvestable
6 fish in the state of Washinton... I might add that one of the
7 perceptions that didn't exist in 1970 was that the Indians were
8 entitled to 50 percent of the fish. That existed in the minds
9 of Russell Jim and a few other people, but the perception did not
10 exist in the legal, political community and somehow that percep-
11 tion became reality. And I can remember going out and giving
12 speeches before the steelhead club and other clubs where I was
13 somewhat not welcome but they wanted to hear the other side
14 on behalf of the Indians and I would get criticized as being way
15 too far over there. Well, ultimately when the case was decided,
16 it was way beyond me. I mean, 50 percent... and, in fact, it is
17 almost surprising that the Indians didn't get 70 or 80 or 90
18 percent, which is what they were catching in 1855 to 1900. A
19 perception change.

20 One of the major perceptual changes that occurred in
21 the 1970s is the exercise of governmental power by Indian tribes
22 in the Lower 48. There were many latent powers of government
23 that were around there somewhere. They were not being exercised.
24 Now, during the 1970s, they began to realize that these were
25 powers that were there, they should be exercised and the courts
have said, the supreme court as well, has said that the lack
of exercise of those powers is essentially a vacuum, the state
moves in or somebody moves in. When the tribe exercises those
powers then it becomes a factual reality that the states must
accommodate to. If you look at the tribal codes, for example,
of the Yakima and the Menominee and a number of the other tribes
that have moved ahead more aggressively, you see very substantial
civil and criminal codes that have been developed in those

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1 periods. They're now being developed all over the western
2 United States on the reservations because those codes now reflect
3 the multitude of activities that tribal governments are legitimately
4 engaged in.

5 Of course, there were some lost battles, too, and that
6 is the Oliphant (ph) case in which Indian tribes, who are just
7 governed by the supreme court as not having jurisdiction... criminal
8 jurisdiction, I specify criminal jurisdiction, over non-Indians.
9 And the cigarette tax cases which denied to the Indians important
10 sources of revenue for tribal government.

11 One of the important perceptual changes though that
12 occurred in that period was that the Major Crimes Act and Public
13 Law 280 probably only bestow concurrent jurisdiction and they
14 leave the tribes with jurisdiction that they had before. The
15 basic rule of statutory construction is that Indian sovereignty
16 will not be denied unless Congress explicitly or clearly says it
17 will be denied. Well, there's nothing in the Major Crimes Act
18 that says anything about the fact that tribes are to lose their
19 sovereign powers to punish people for crimes. It simply adds
20 a... It's a major crime, it becomes a federal crime for an Indian
21 to do something. That does not mean that the tribe loses its
22 jurisdiction over Indians. So that leaves the tribe with con-
23 current jurisdiction over major crimes. I can develop some of
24 these ideas further later. I don't want to go into the detail
25 of them at the present time.

26 The same thing with Public Law 280. There seems to be
27 a widespread assumption in Alaska in some of the literature I've
28 read that when the state assumed exclusive PL 280 jurisdic...
29 assumed PL 280 jurisdiction, it was exclusive. That's not true
30 in the Lower 48. There's a widespread perception now in the last
31 seven or eight years that the most that the states got was
32 somehow concurrent jurisdiction, leaving the tribes with all
33 the jurisdiction they had before, which, I should add and I hope



1 we can develop, is a much better situation to be in.

2 Another very important case that came out recently,
3 in 1981 the United States supreme court decided Montana versus
4 United States and in a sense, although the Crow tribe lost the
5 case and it looked like a bad case for Indians, the way it is
6 being interpreted by the lower federal courts seems to be just
7 the reverse. It seems to say, for example, that Indians have the
8 power to zone, to control water use, to control building regula-
9 tions, health regulations, all those things. The case has very
10 important language in it. It is a recognition of tribal sovereign
11 power in civil matters over non-Indians, in civil matters over
12 non-Indians even in fee patent, fee simple land on the reservation.

13 Another thing that has occurred during this period of
14 time and a very important event, it seems to me, is that the
15 Indian judges, the Indian courts, have organized into a National
16 American Indian Court Judges Association. About 200 tribal judges
17 have organized and have a training program that is unmatched in
18 the non-Indian society anywhere for non-Indians... I mean, for
19 non-lawyers. Now, there are lawyer training programs that most
20 of the Indian judges are non-lawyers, just the same as about
21 10,000 non-Indian judges are not lawyers. But the Indian training
22 program, under the National American Indian Court Judges Associa-
23 tion is a sophistica... the most sophisticated, highly developed,
24 highly articulated training program. Each one of the judges has
25 an average of about 18 to 20 days of training each year. It's a
model that could be looked at for many other places.

There's another aspect, another perceptual change that
has occurred. There's been a lot of talk in the literature and
in the background papers about IRA tribes, the IRA organization.
One of the interesting phenomenas occurring in the Lower 48 is
that many tribes which were and are IRA tribes are pulling back
from that and are asserting inherent sovereignty as the source
by which they develop new laws by which they operate their courts.

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1 By that I mean this, that under the IRA they were
 2 required to get secretarial approval for amendments to constitu-
 3 tion and sometimes for their amendment to their codes. They are
 4 now saying, "We don't have to have your authority. We operate
 5 on the basis of inherent sovereignty. It was always there. When
 6 we became an IRA tribe we did not give up inherent sovereignty,
 7 we simply complied with the federal rule that said you get
 8 certain powers if you do this." What that means and what that
 9 has meant is that the Secretary of Interior no longer, in those
 10 cases, has the power to say no or yes or anything else with regard
 11 to the change in a tribal constitution or a code with the excep-
 12 tion of tribal trust property where the United States holds the
 13 property in trust for the tribe. Then the tribe does not have
 14 the legal power to go ahead and change their code except by the
 15 consent or the participation of the Secretary of the Interior.
 16 But in all other aspects of tribal government, they need no longer
 17 go to the Secretary of Interior for approval. That is a little-
 18 known fact. It is, though, part of the infrastructure of what
 19 is going on in the tribal government in the Lower 48.

20 A number of pieces of important legislation have
 21 occurred during the 1970s. You've heard some of them mentioned
 22 here, the Self-determination Act of 1975, the very important
 23 Indian Child Welfare Act, a major perception of Congress that
 24 something was wrong in the way that the society, the welfare
 25 agencies, were dealing with adoptions and custody problems with
 Indian children and they enacted it into federal law. And an
 area that has been very, very local has now been usurped, pre-
 empted by federal policy. The American Indian Religious Freedom
 Act, another act that is important. And then, lastly and
 most recently, the Indian Tribal Government Tax Status Act which
 gives Indian tribes a status for tax purposes, a favorable
 status much like state government.

There's another very interesting perception that has



1 occurred in the 1970s. It goes along with the idea that there
2 weren't any law school courses before 1970. And that is that
3 Indian tribes have discovered lawyers, they've discovered how
4 you fight legal battles, how you fight battles in this society.
5 We're very litigation-oriented, courtroom-oriented and legislation-
6 oriented society. You use lawyers. You watch how the Indian
7 tribes in the Lower 48 are able to utilize the expertise of
8 lawyers, give them direction, give them conviction, ask them to
9 do this. They are the protagonists in this society whether
10 they're Indian or not. I mean, they are the people that move the
11 pieces in the right direction. And that has been a major change.

12 One of the things that has gone along with that has
13 been the Indian Law Center training program at the University of
14 New Mexico. Before 1968, I've never seen any responsible figures
15 but I would guess, there were probably less than 25 or 50 Indian
16 lawyers in the United States. The training program in New
17 Mexico has generated hundreds of Indian lawyers. Many, almost
18 all of which have gone back and had some association with
19 Indian tribes around the country or with legal services programs
20 around. So there's a major infusion of Indian lawyers capable
21 of handling Indian questions with really personal knowledge and
22 cultural background. A major difference.

23 There's another specific thing that I'd like to mention
24 and I would hope that possibly Ada Deer would comment on it
25 further, and that is in the restoration of the Menominee Reserva-
tion, which is, again, a reaffirmation of sovereignty principles
that has occurred during this period of the 1970s, one particular
thing that should be noted, and that is that the Menominees went
from a stock-ownership situation back to a reservation and trust
relationship situation and it did not raise, or at least it has
not and I'm satisfied it won't, constitutional questions that
might have been raised in that situation. I think it is a
precedent by which, if Congress decided to go back and change the

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1 situation of individual stock ownership, it could do so without
2 any affront to the constitutional principles.

3 More fundamental questions are being asked in the last
4 five years or so and Tim Coulter and others will comment on those
5 and especially next week we'll hear more about them, about
6 whether the legal system in the United States is adequate to
7 handle the change in notion and perception and idea that is
8 critical to Indian future in this country. Should we be looking
9 more to international agencies, to international organizations of
10 one sort and another? And it seems to me very clear that we
11 should be working on both of those fronts. We should be working
12 in the courts, we should be working in Congress, we should be
13 working in those international agencies. Very important new
14 ideas are coming out of those efforts.

15 Well, I hope that we can discuss many of these points
16 in detail. I've just touched on them very, very quickly here.
17 It's a pleasure to be here and participate in this process.

18 Thank you.

19 MR. BERGER: I was just going
20 to ask you, Mr. Johnson, before we move on... Do you have any
21 comment about what Mr. Jorgensen said about the Shoshones' propo-
22 sal for... I think, establishing... insuring that their land is
23 inalienable but yet not subject to trust supervision. That's
24 what they're trying to do, I think. Did you catch that or do
25 you have any comment on it?

MR. JOHNSON: I heard what he
said, and of course as I understand, you're suggesting that
Congress would take some action to do this. And I have no doubt
that's within the power of Congress to do but I don't know the
particular... I don't have any particular feeling on it. Obviously,
one of the questions that would have to be confronted is like
the Maine land claims, Passamaquoddy and Penobscot cases, and
that is the existence of villages and towns and farms that are now

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1 presumably owned or claimed by non-Indians. And, of course, they
2 resolved that there by saying, "We're interested in the federally-
3 owned lands, or lands owned by large timber companies at least,
4 and not places that are owned by cities and towns." But there
5 shouldn't be any inherent difficulty in making an accommodation
6 of that sort.

6 MR. BERGER: Just one comment
7 that I have. Mr. van Ness, who spoke last week, regards ANCSA
8 as a great success. That is the language that he used. And I
9 think he was looking at ANCSA from the same point of view as
10 Mr. Huhndorf, president of Cook Inlet Regional Corporation, whose
11 views I read from the article he wrote in the "Anchorage Times."
12 And I think it was that that lead Mr. van Ness to say, "Well,
13 all that's needed is to make a few changes in the way the thing
14 works," and that's why I think he felt we were, perhaps, paddling
15 all over a vast ocean of ideas here and it wasn't altogether
16 necessary. But I think that is a perception that Mr. Huhndorf
17 and Mr. van Ness hold.

15 And there's another reflection that I thought I
16 reflected --

16 MR. JOHNSON: I might comment
17 to that if I could, and that is... No discredit to Mr. van Ness.
18 He's a very bright and able person but he was one of the principal
19 architects of ANCSA --

19 (OVERLAP TAPE NUMBER 6)

20 MR. JOHNSON: -- as the staff
21 of Senator Jackson at the time and obviously has an interest
22 in having a success in something that he worked so hard at and
23 tried so very hard to make into a successful product. But I
24 don't think there's any doubt but what ANCSA was concerned at
25 that time, and this goes back to the history that existed in
1970-71, Indian governments was not the major thing that was in
the minds of either Congress or the Indian communities at that

1 time, at least not articulated outside those communities. And
2 so ANCSA tended to reflect that notion that we were dealing with
3 a land settlement, whereas increasingly it has become apparent,
4 in the Lower 48 at least, that some of the most important things
5 to the tribes there is the power to govern. And that power of
6 governing is easily as important as the land base that's in ques-
7 tion and I think that's the question that was not adequately
8 addressed in ANCSA and is left in somewhat disarray and confu-
9 sion by all the events that have occurred since then.

10 MR. BERGER: Well, thank you,
11 Mr. Johnson. That was an excellent supplement to what Mr.
12 Jorgensen said.

13 We can turn to you now --

14 MR. JORGENSEN: Commissioner
15 Berger?

16 MR. BERGER: -- or if you'd
17 like to start after lunch, whatever suits you...

18 MR. JORGENSEN: Commissioner
19 Berger?

20 MR. BERGER: Yes?

21 MR. JORGENSEN: Is John Stevens
22 going to be here?

23 MR. BERGER: No.

24 (TAPE 21, SIDE B)

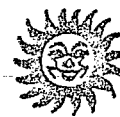
25 MR. JORGENSEN: Well, then, I
passed over the Passamaquoddy because I thought that he would
be here but I would like to say a couple of --

MR. BERGER: All right.

MR. JORGENSEN: -- things
about it and others can join in. It's crucial and I think it's
important to Alaska Natives.

MR. BERGER: Please do.

MR. JORGENSEN: When the first



1 district... When the first court of appeals affirmed the district
2 court's decision, they did the following. They said that the
3 Passamaquoddy were a tribe, that the Non-intercourse Act applied
4 to the Passamaquoddy, that the federal government had a trust
5 obligation to the Passamaquoddy and that the United States could
6 not deny Passamaquoddy's request for litigation against the state
7 of Maine on the sole ground that there was no trust relationship.

8 Now, the courts didn't decide the legality of the claim
9 to the land or for its value but it was put at 12 and a half
10 million acres and several billion dollars, those 12 and a half
11 million acres. And it was recognized by President Ford that the
12 Passamaquoddy had a real case here and it was carried on to
13 Carter. How do you deal with this? If a tribe has lost its land
14 through treaty after 1790 and the federal government never entered
15 into those treaties, then the Non-intercourse Act had been
16 violated so the federal government had a trust obligation to
17 them. The solution was not to go back to the courts and deter-
18 mine whether they should have the 12 and a half million acres,
19 what do you do with all those private land holders inside and
20 who do you give the money... The first discussion... Well, it
21 was passed from the Carter administration to a former supreme
22 court justice in the state of Georgia for him to help them
23 arrive at some decision and his help was such that it was a
24 sort of take it or leave it help. He gave them a plan.

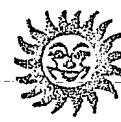
25 What he recommended was not that they receive 12 million
acres or 25 billion dollars, the value of those 12 and a half
million acres. But the Justice Gunter, former justice, suggested
the following, that the Passamaquoddy and Penobscot receive
100,000 acres and that they be given 25 million dollars for the
land that they had lost and that money was to be appropriated by
Congress. He gave the tribe an option to buy another 400,000
acres with the monies that had been provided to them and he told
the state of Maine that they would have to convey some acreage.



1 So he peeled it back then to perhaps 500,000 acres with
2 100,000 acres thrown in by the state of Maine, but only 100,000
3 acres for sure. That's all he wanted to give them. And both
4 the state of Maine and the Passamaquoddy-Penobscot were displeased
5 with this suggestion by the former justice.

6 William Cohen, the senator from Maine, called for a
7 bill to extinguish the claim of aboriginal rights that were asserted
8 by the Passamaquoddy and Penobscot. This snowballed with several
9 other things that were going on in the nation at the time. The
10 steelhead association on the West Coast and fly fishing associa-
11 tions were furious at the Judge Boldt's decision, 1974 decision,
12 that they were going to allow Indians to grab all the anadromous
13 species. The commercial fishermen were furious that they were
14 going to get all the fish. The states and farmers in the Midwest,
15 particularly on the over-allocated rivers such as the Missouri,
16 were furious that they were going to lose the water allocations
17 that were already provided to them. In the Southwest, and
18 particularly people along the Colorado, were also very anxious
19 about winters doctrine rights that were being asserted along
20 the Colorado and in the Utah water compact and so there was
21 this large group that came together and several bills were
22 advanced to outdo Cohen. There was a bill put into the House
23 to deny all aboriginal title of all Indians within the United
24 States. This was Congressman Lloyd Meeds of your great state of
25 Washington at the time. And he was followed very soon by
Representative Cunningham who wanted to outdo the General
Allotment Act. So he had a grand act to finally sever Indians
from their tribes.

Well, all of this was spinning around at the time of
this Passamaquoddy-Penobscot deal. Saner heads seemed to come
together but I suspect that there must have been incredible
pressures put on Passamaquoddy and Penobscot. That's why I
wish that we'd had a representative here today to find out how



1 they arrived at this. But in any event, the state of Maine passed
2 an act. It took until 1980 to do it. And what they agreed to
3 do was to provide land from state forests to the tribes. Now,
4 they would provide the land but the money had to come from
5 someplace else. It had to come from the federal government.

6 So, with encouragement from Senator Cohen and others,
7 they beat down the backlash in Congress to pass any of this
8 very extreme legislation and in... the Maine Implementing Act
9 was passed in the state of Maine. And it did the following.

10 It... When or if and only if, federal legislation was
11 passed extinguishing Indian claims to title and if that legisla-
12 tion also provided funds to the tribes so that it would supple-
13 ment the state's support without modifying the state act, they
14 would provide land for purchase by the Passamaquoddy and Penobscot.
15 There were several issues that hadn't been resolved. Like, the
16 Maliseet band popped up late in all of this but they hadn't
17 been involved in any of the cases. But they, too, had a claim
18 to land and that had to be resolved in this case.

19 Well, the Passamaquoddy case, after the Maine Implement-
20 ing Act was passed, was resolved by Congress in two acts. In
21 the Main Indian claims settlement fund they allocated 27 million
22 dollars. Half was held in trust for the Passamaquoddy and half
23 for the Penobscot. But they put real restrictions on how that
24 money could be used, and they required that a million dollars
25 of that money would be used for the elderly members of each
tribe and only off of the interest that was produced from that
million dollars that was set aside. They also allocated 54 and
a half million dollars in the Maine Indian claims land acquisi-
tion fund, 26.8 million for each tribe and 900,000 dollars to
the Maliseet. And that money was to be used to purchase land.
And here's how much was available to them. They would receive
150,000 acres that would be purchased by that land and 150,000
acres for the... one for the Penobscot and one for Passamaquoddy.

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1 So, 300,00 acres, and that land would be held in trust. There
2 was an area designated in the state of Maine. If either tribe
3 wished to purchase more land, if it was within the area designated
4 by the state of Maine, they could do so and that, too, would go
5 into trust. So they could have more than 300,000 acres. If they
6 chose to purchase land outside the area designated by the
... by Maine, in fact they could do so but it would be fee simple.
The land would be held in fee simple.

7 The funds that they were given were to be used for
8 the development of commerce and industry and to run the tribe.
9 Their tribal status... They were federally acknowledged so they
10 were... the tribe then had the right to create an IRA government,
11 or each of them did if they wished, and to have benefit of all
12 of the recent legislation that has been passed by the federal
13 government, including the Indian Child Welfare Act, the Indian
Education Act, the Indian Self-determination and Educational
Assistance Act and so forth.

14 So the outcome for them was not 12 and a half million
15 acres, 25 billion dollars, but it was a hamburger and that's,
16 I'm sure in their view, a lot better than what they went in with.
17 It gives them a basis for the perpetuation of a culture that they
deeply want to retain.

18 An interesting outcome and a very significant case.

19 MR. BERGER: Well, thank you,
20 Mr. Jorgensen. I think this would be a good time to stop for
21 lunch and to come back and 1:15 and then carry on on the order
22 that I indicated earlier, if that's agreeable.

(HEARING RECESSED)

(HEARING RESUMED)

23 MR. BERGER: Well, ladies and
24 gentlemen, we'll begin again and we've been joined by David
25 Case, sitting next to Tim Coulter. David is legal advisor to
the commission. And we've been joined by Al Goozmer of the



1 United Tribes of Alaska who's sitting next to Joe Jorgensen.

2 This afternoon we'll hear from Ada Deer and Russel Jim
3 and Tito Naranjo and Tim Coulter. And take as long as you wish,
4 ladies and gentlemen, and if you want to say very little and
5 reserve what you might think appropriate to be said tomorrow or
6 the next day or the day after that, do whatever you think appro-
7 priate.

8 Tim Coulter said to me that when we reach him this
9 afternoon, we should all feel free to interrupt him with questions
10 and observations, and so I hope you'll all bear that in mind.
11 And we'll carry on from there.

12 Ada Deer, would you like to begin then this afternoon?

13 MS. DEER: Commissioner Berger,
14 distinguished Indians and others, colleagues, it's really a
15 tremendous opportunity for me to speak to you this afternoon to
16 relate to you some of the problems and the successes of the
17 Menominee tribe. Many thoughts went through my mind as I
18 listened to the summary and the review, the comments from the
19 other speakers. What I hope to do is speak briefly and then have
20 a lot more discussion because in telling you about my tribe, the
21 Menominee tribe, will take a long time and I do want to get to
22 the issues and to the concerns that we all have as we discuss
23 ANCSA.

24 First of all, I want to commend the ICC and others for
25 their leadership and their foresight in calling together a group
such as this to share information and to learn from one another.
In order for you to understand where I'm coming from, I'd like
to explain to you a little of my own background. You can hear
my own biases and my own perceptions.

I'm the oldest of five children, a member of the
Menominee tribe, white mother, Indian father, with a degree from
the University of Wisconsin and also a masters degree in social
work from Columbia University in New York. I've been involved in



1 Indian affairs for many years because as I grew up on the reserva-
2 tion, I often asked myself, why are Indians poor? Why do people
3 have these problems? And I was the only college student who
4 received the only tribal scholarship at the time. This was in
5 1953 when I entered the University of Wisconsin, and I was so
6 appreciative and so excited about going to college and having the
7 opportunity to get out of poverty that, in the back of my mind,
8 I thought, "Well, some day I wish to repay the tribe in some way
9 for this opportunity." I didn't really realize at that time what
10 this would mean later on but this was my thought at the time.

11 The Menominee Termination Act was passed in 1954 and it
12 did not become final until 1961, as many of you do know. Now,
13 in 1954 I was a college student trying not to be a dropout. I
14 knew that some extremely important actions were being taken but
15 I didn't know there was almost no information transmitted to the
16 people of the tribe and I felt the best thing for me to do would
17 be to continue through school and understand more about the larger
18 society, get the tools and knowledge necessary to become involved
19 in Indian affairs in some capacity later on.

20 Termination is a cultural, economic and political
21 disaster and my people, the Menominee people, suffered a great
22 many injustices as a result of this act. Many people today still
23 do not understand the details of termination. They have only
24 suffered the hardships and the injustices. Now, being a social
25 worker, I'm very concerned about the impact of policies and
26 programs on people and I wish to, again, commend all of those
27 responsible for this meeting because this is what we're talking
28 about, the impact on people. We're not talking about the fine
29 theories and abstractions. We're talking about the lives of
30 everyday people.

31 Now, one of the myths that has followed the Menominees
32 over the years is that the Menominees consented to termination,
33 and I wish to correct that because that's not really true.



1 First of all, for those who may not know, the Menominees
2 are located in Wisconsin. We have a beautiful reservation of trees,
3 lakes, forests, streams and we are one of the few tribes in the
4 entire nation that is in our aboriginal homeland. We were not
5 removed because of the foresight of our leaders at that time, and
6 I have my book here... Not my book, it's the Menominees book,
7 "The Menominees' Struggle" and this is a picture of Chief Oshkosh
8 who was involved at that time in negotiating and working with the
9 government people to not remove the Menominees west to Minnesota.
10 Now, this is called "Freedom With Reservation, The Menominee
11 Struggle to Save Their Land and People," land and people, a
12 universal theme that American Indians and Alaskan Natives have
13 had throughout time, land and people. And this is what really
14 prompted and gave impetus to the restoration movement.

15 I won't go into all of the injustices of the termination
16 era. I will highlight a few of them. First of all, this began
17 as a simple piece of legislation in Congress. The Menominees
18 had carried out a suit against the federal government for mis-
19 management of the trust. They had won. They had been awarded
20 a sum of money, approximately eight and a half million dollars,
21 and our congressman at that time was Congressman Melvin Laird.
22 He introduced a simple per capita bill and this required... or
23 requested that a 15 hundred dollar per capita payment be given
24 to each enrolled Menominee. And it got through the House in
25 that form. When it got the Senate, it was changed and basically
Senator Watkins, that Professor Jorgensen spoke about earlier,
stated that, if the Menominees wanted their money, they would
have to agree to termination. And there was a meeting out in
our area. I didn't go because I was rather young and I wasn't
that involved at that point. But at any rate, most of our people
showed their opposition and their displeasure and their lack of
understanding by not even going to the meeting. There's this
meeting where 169 people voted for the idea of termination and

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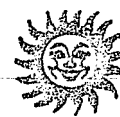
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1 five people voted against it. That was only the idea. But
2 this was only after Senator Watkins, you know, threatened and
3 said that this was what was going to happen no matter what the
4 Menominees wanted. A few weeks later, after more of this had
5 become disseminated and people got a better idea of what this
6 could mean, another meeting was called and, again, many people
7 did not go because they did not understand the importance of it
8 and 197 to zero voted against it. However, Senator Watkins
9 took that first vote to Congress and said that there was approval
10 by the Menominees for this and if you know that at that point
11 there were approximately 3,000 people in our tribe, 169 to five
12 or 197 to zero is a very, very small percentage of people and
13 they certainly were not informed.

14 Now, the Termination Act became final in 1961 and there
15 are several things I want to say about this. First of all, all
16 the major policies on Indians have come from the top down. They
17 have not come from the bottom up. They have not been based on
18 the needs, the wishes and the aspirations of the informed people
19 at the grass roots level. And if we look at all of the examples
20 that have been mentioned today, and I assume also last week, you
21 can see that this is true. Now in contrast, the Menominee
22 Restoration Act came from the people, came from the bottom up
23 and I'm very proud to say that it's my tribe that worked to
24 demonstrate what can be done by a small group of people who
25 utilized the political process and who keep in mind their
convictions and their dedication and their desires. I'm getting
a little ahead of my story here. I like to talk. I don't
like to give written speeches, so as the thoughts come to me,
I'm going to talk with you about them.

But to return to termination, what this meant, this
meant the end of federal supervision of the Menominees. The
Menominees would no longer be recognized as a federally-recognized
tribe, no longer eligible for services such as health services and



1 education services, our rolls were to be closed and it was
2 really a devastating act to the people of the tribe. A great
3 social disorganization and great psychological devastation
4 resulted from termination. Many of our youngsters could not go
5 on to vocational school and could not go on to college. Our
6 hospital was closed. Now, this hospital had been there for many
7 years. It did not meet state standards and with the closing of
8 the hospital, medical services became a serious problem. Many
9 people suffered serious illnesses and, I don't know if this will
ever be brought out, but I'm certain that a number of people died
because of the lack of medical care.

10 In 1961, the Menominees became a county and this again
11 was another expression of the tribal feeling of the people. They
12 did not want to become merged with the surrounding counties and
13 we became Wisconsin's newest and poorest county, seventy-second
14 county in the state of Wisconsin. One of the continuing themes
15 that the majority culture never seems to hear is that Indians
16 want to be Indians. Indians want to retain culture, want to
17 retain land and want to live as Indians live. Now, of course,
18 this does vary from tribe to tribe and from region to region but
19 I really want to emphasize that, despite many policies of the
federal government over the years from removal to putting people
on reservations to allotment to assimilation, the continuing
wish and desire of Indian people is to remain Indian and this
never seems to get across.

20 Now, in thinking about the Dawes Act and the Termination
21 Act, again important parallels can be drawn at some well-meaning
22 ... and I'm not so sure they were all well-meaning... do-gooders
23 figuring out what should be done for Indian people. Now, as a
24 social worker and as a human being, I have very strong values.
25 I feel that we have to respect one another, that we have to work
with people and not do things to people or for people. Now that,
of course, requires a lot of work, a lot of sensitivity, a lot of



1 understanding which has never really been adequately demonstrated
2 on behalf of the government in working with Indians.

3 At any rate, we have these power brokers there deciding
4 again what is going to be done for people without their consulta-
5 tion, really, and without their understanding. Another policy of
6 forced assimilation. Now, under termination, many of our people
7 moved away from the reservations. They moved to some of the
8 urban areas, Milwaukee and Chicago and, you know, various other
9 places, and they had a lot of serious problems. If you talk with
10 the people of the urban areas at that time they can tell you the
11 hardships.

12 I remember an old man, a traditional man from one of
13 the rural communities on our reservation saying, "I remember
14 looking at myself on... One day I'm an Indian and the next day
15 I'm not, but yet I'm the same person," and he didn't understand
16 all of the legal complexities. And I have to tell you that I do
17 not fully understand myself, all the provisions and the functionings
18 and the implementations of ANCSA. I venture to say that a lot of
19 other people up here don't either. Probably many of the Native
20 people don't understand the complications of the ANCSA legislation.

21 During this termination time, a number of people tried
22 to do something about this but they didn't know what to do and
23 they didn't know how to do it and they got discouraged and didn't
24 really focus the necessary energies, get the necessary resources
25 to do something about this. So I want to bring this out because
there was always this opposition to termination. There were a
number of committees that were formed and various other activities
such as a petition was sent in and that was the last most people
ever heard of it again. But people didn't really understand what
could be done about it.

Now, I have met a number of people who were in
Washington at that time and who tell me that some of the people
from my tribe went to Washington and more or less acquiesced to



1 this idea of termination. I'm not sure about this, but I think
2 it's important to understand that the perceptions of people... I
3 think that it's often easy to look back at something with hind-
4 sight, but if we recall and we all remember and understand the
5 force with which this government has thrust policies onto Indians,
6 it's easy to see why some people may acquiesce too easily and we
7 may misinterpret this. I think the fact that many of the leaders
8 went to boarding schools, went to these mission schools and did
9 not have a sufficient education resulted in some of this acquies-
10 cence.

11 One of the points I want to bring out here for every
12 one of you, Native and non-Native, scholars and academicians
13 and others, is that, you know, the government is there to be
14 influenced. Who is the government? We're the government. And
15 I think that the years of dependence and oppression under which
16 many Indian people have lived results in an undue acquiescence
17 to people in the power structure.

18 Now, I have to tell you that I am enjoying a great deal
19 getting older. I'm 48 years old, I can hardly wait until I'm 50
20 and I'm going to give myself a blast-off party when I'm 50 to
21 blast myself into the, you know, second half. I'm not under-
22 whelmed by anybody. I'm not overwhelmed by anybody. I respect
23 all people and I demand respect from all people. And I think
24 that, in too many instances, the bureaucrats, the lawyers and
25 the professional people intimidate Indians and others and I want
to especially emphasize to the Alaska Natives and other Indians
who may be attending and who will be observing and reading these
transcripts that we live in a democracy and that the government
is there to be responsive to our needs. I'm getting a little
off the subject, but these all relate to one another.

At any rate, in 1969 I came back to Wisconsin after
working in Minnesota in a number of capacities there, including
the Bureau of Indian Affairs, and which I decided after three

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1 years that I didn't want to be a BIA Indian, that my various
2 memos and things weren't really paid any attention to and I
3 knew that I wanted to be involved with Indian affairs and trying
4 to rectify some of the injustices. And so I left. At any rate,
5 I came back and started getting involved with my tribal affairs
6 and activities. And I won't go into all of this except to say
7 that I started going to meetings trying to find out what this
8 all meant.

9 Now, I had a bachelors degree, a masters degree and
10 almost ten years experience and I'm trying to find out and under-
11 stand what termination was. And the more I found out about it,
12 the angrier I got, and I felt that there was a lot of jargon that
13 was injected, a lot of academese that was foisted on our people
14 and there was very little attempt to help people understand.
15 Now, you cannot understand the feelings that people had about
16 closing the rolls. If I had been in a position of power at that
17 time, I would have kept the rolls open anyway. But at any rate,
18 the rolls were closed and no one could be enrolled as a member
19 of the tribe.

20 Now this is something that's coming up here in Alaska
21 in 1991 with the shares being thrown open and the children after
22 1971 not being enrolled. Our land became subject to taxation
23 and... Let me briefly sketch for you what resulted after termina-
24 tion.

25 First of all, our tribe had a general council. Every
adult was eligible to come and to vote and there was an advisory
council consisting of 12 members and they met from time to time
during the year to carry on the business of the tribe. Well, from
1954 to 1961 there was a Menominee Coordinating and Negotiating
Committee consisting of people from the tribal leadership, people
from the federal government and the state government, and they
had many, many meetings which, again, people did not understand.
At any rate, termination became final in 1961.

1 For those of you who want a lot more information on this
2 there's this book here, "Freedom With Reservation," and Rosita
3 Worl has a copy of this. I'm not sure if there are any other
4 copies up here in the libraries, but there should be. And it
5 briefly sketches the problems of termination.

6 Now, some of the speakers have talked about the impor-
7 tance of sovereignty and the political institutions. Also the
8 corporations and the application of the termination act becoming
9 the rolls were closed, our land became subject to... that was in 1961... and we
10 were no longer eligible for any services. Now many people think
11 that the Menominees were rich people. As a tribe, we have
12 resources. We have land and we did have large amounts of money
13 from the suit, but individually the Menominees were very poor
14 and, yes, 15 hundred dollars seemed like a lot of money. I took
15 my 15 hundred, borrowed more, and went to graduate school. Other
16 people did other things with their money.

17 Now, the structure of the governing body was drastically
18 changed. First of all, at the bottom we have the Menominees.
19 We were called certificate-holders. This boggled my mind,
20 certificate-holders. Okay. Then we have the Menominee Common
21 Stock and Voting Trust and they, in turn, elected the board
22 of directors of Menominee Enterprises, Inc., which is a state
23 corporation. So we went from being a tribe to being a state
24 corporation. Now that may not sound so complicated to you but
25 it certainly was because there was another trust established.
26 This was the First Wisconsin Trust Company of Milwaukee. This
27 was a white institution that voted the shares for the minors
28 and the incompetents. Now, when termination occurred, each
29 Menominee was given a bond worth three thousand dollars in the
30 year 2000 and a certificate of beneficial interest.

31 Now, I talked to our lawyers about the certificate of
32 beneficial interest and I was informed that we are the only entity

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1 that has ever been issued a certificate of beneficial interest.
2 This is another example of the creativity in the minds of men,
3 especially some lawyers.

4 Now you have to understand, I have kind of a love-hate
5 relationship with lawyers. On one hand, we need some of their
6 legal expertise. On the other hand, we have to keep them in
7 line and I don't think that Native people often keep their
8 lawyers in line enough and, as a result, we get bad law and bad
9 precedents that affect all tribes, not only one tribe. So when
10 we... When I was trying to understand all this, I knew I needed
11 a lawyer. So being in the Upward Bound Program, which is a part
12 of the OEO Program, I decided to look around for an OEO lawyer,
13 which I found. Joseph Prelausnick (ph) of Madison, Wisconsin,
14 was the director of Wisconsin Judicare at that time, and we
15 started meeting.

16 I told him who I was and what I wanted and he said
17 that he would be happy to meet with me, that he would need...
18 however, he would need more than one client. So I said, "Oh,
19 okay, that's easy." And I said, "I'll promise you two more."
20 And he said, "Who are they?" And I said, "My brother and my
21 sister." See, every now and then I exercise my prerogative as
22 the oldest person. Then he said, "Well, a lot of Menominees have
23 come to me over the years and they've gotten pressured out."
24 And I said, "Listen, nobody pressures me. When I decide I want
25 to do something, you know, I do it, and first of all I want to
understand what all this is because it's a very important matter
for all of our people." And we started unravelling all of this
and, like I say, the more I understood this, the angrier I got
and it took us quite a... It took me a long time to understand
the implications of this and the structure of this.

One of the things that continually infuriates me is
the paternalism and the racism with which the government has...
acted toward Indians. Now, the First Wisconsin Trust Company was

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1 appointed trustee. They had over 40 percent of the votes. Now
2 the parents were competent to take care of these youngsters,
3 their children, during the year but they were not competent to
4 vote the shares. People were declared incompetent without due
5 process of law. Some lady on the reservation kind of drew up a
6 list of people it was said that were... maybe they weren't taking
7 care of their kids the best way and some of them had alcoholic
8 problems and so on. Anyway, there was this long list of people
9 that were declared incompetent without due process of law and so
10 the control was not in the hands of the Menominees. The control
11 was in the hands of this First Wisconsin Trust Company of Milwaukee
12 and they met from time to time and decided who was going to be
13 on the board of directors... first of all, the board of trustees,
14 and then the board of trustees would decide who's going to be on
15 the board of directors. And there were... There was a mixture of
16 people, both Indians and non-Indians, on these boards but I
17 contend they weren't the right kind of Indians. They weren't
18 the right kind of people who really looked to see what the impact
19 of their decisions was on the people and what was in the best
20 interests of the tribe.

21 And again, I feel that there's too much acceptance of
22 people of what the government does and what the lawyers say and
23 I think that everyone, lawyers and others alike, we have to have
24 more vision, we have to have more sense of what's right and what's
25 wrong as these kinds of policies and bills are enacted.

At any rate, what happened was the board of directors,
without the consent of the Menominees, voted to get into a partner-
ship with a land developer, and started a... I think it was a
joint venture. At any rate, pretty soon there were bulldozers
up there bulldozing the trees down on one of our most beautiful
lakes... And you have to understand we had a reservation that
was about 235,000 acres, beautiful lakes, and it was a... It was

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1 not allotted and people... If they felt like going to the lake,
2 they went to the lake. If they felt like going fishing, they
3 went fishing, and you didn't have to ask anybody if you could go.
4 Wherever you wanted to go, you could go.

5 At any rate, what happened spontaneously was, a number
6 of youngsters were thrown out from one of the lakes and this made
7 the parents very angry, and so demonstrations started occurring.
8 And I thought, "Oh, wow, this sounds interesting." Now, I have
9 not been to Sol Olinsky's (ph) school in Chicago but I have a
10 lot of anger and one of these advantages of going to school is
11 to learn how to analyze and to discuss and discover strategies.
12 So about that time, it started having discussions with our
13 lawyer about what could be done and we started meeting with other
14 people, too. We started meeting with other members of our tribe
15 because, again, I want to say that many people wanted to fight
16 termination. They weren't quite sure how they could do it or
17 what should be done but they wanted to do this. So when demon-
18 strations started occurring, we went up there. We were only a
19 very short distance away and so we started taking part in these
20 demonstrations.

21 We formed a movement called D.R.U.M.S., Determination
22 of Rights and Unity for Menominee Shareholders, and our thrust
23 was to stop the land sales, to work for restoration and to
24 have Menominees in positions of power. Now, this movement all
25 started about 1969, 1970, and when you think about how long it
takes to get a law through Congress, a bill through Congress, it
was a very short time. Our Menominee restoration legislation
was signed into law on December 22, 1973.

But, again, I want to emphasize the long discussions and
the opposition to termination that our people had.

At any rate, we had many meetings, we drafted up a
legislation and there's still people that are unhappy with the
restoration legislation because they didn't understand the



1 legislative process, that there has to be compromise. Some
2 people thought that because they came to a meeting and they
3 gave their ideas that they would be automatically included and
4 that's what would happen. At any rate, for those of you who are
5 interested, you can certainly study the restoration legislation.
6 But we did get the Menominee tribe restored, we opened up the
7 rolls, we started a whole new relationship with the federal
8 government. And people ask, "Well, how are the Menominees doing
9 now?" I say, "Well, we have to learn how to get along with one
10 another now but the land is safe and the control is back in the
11 hands of the Menominees."

(TAPE 22, SIDE A)

10 MS. DEER: We organized an
11 extremely sophisticated proxy campaign to regain control,
12 even before restoration occurred. A number of us ran for the
13 voting trust. Several of us were voted in and this meant a
14 lot of work on the parts of people. We had to call up people,
15 we had to go and track them down, we had to get their proxies,
16 their signatures. And the other side was willing to fight, too,
17 and so we would go... Oftentimes, we would get one proxy and
18 the people would come in right after us and get their proxy, so
19 we never really knew completely, accurately, what the proxy
20 count was. But we appealed to the sense of tribalism, we
21 appealed to the love of land which we know is in the hearts and
22 minds of all Indian people.

20 And so, to make a long story short, you know, we won.
21 Now, we had to undergo a lot of opposition. We were called, you
22 know, agitators, outsiders, and unemployed, and so on and so on,
23 and a number of us eventually ended up in more leadership
24 positions. But many of our people gave money, they marched...
25 We had a big march from our reservation down to the capitol,
Madison, Wisconsin. Now, before then, I had never walked more
than three or four miles in my life. Well, that day I walked ten

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1 miles and a lot of our people really got behind us.

2 Now, I should say that there were people who didn't
3 think anything could be done, including some of our own tribal
4 members. They didn't want to be involved in anything controver-
5 sial. They didn't want to be involved in any conflict and we
6 had numerous demonstrations in which we all were quite concerned
7 what would happen.

8 I remember the first time, we had approximately 200
9 people demonstrating against our land sale. We had this joint
10 venture with this developer coming in and they were importing
11 people from Milwaukee and Chicago and they had big steak dinners
12 and airplane rides and the whole whoop-de-do and we would show
13 up at these dinners with signs. We carried on demonstrations
14 outside these fancy restaurants. We learned to utilize the media
15 just as well as the others. And some of our own people did not
16 appreciate this. Some of our own people did have jobs selling
17 land. Even now, I wonder how they could do it, but on the
18 other hand, people are people and people need to survive and so
19 ... We did not have 100 percent support from our people in all
20 of these efforts.

21 Nevertheless, we did regain control of the voting trust
22 and when there were only two or three of us that were on this
23 11 member trust... I was elected chair of the voting trust
24 more or less by default because it takes a lot of work to be in
25 a leadership position, as many of you know, and no one would
really believe that I would drop out of law school and come back
and work for the tribe, which is what I did. I had been wanting
to be a lawyer for a long time. I'm very happy to say that...
I did not go back to law school but I have a sister who's a nurse
and a lawyer. At any rate, I figured you could always go back
to law school but you couldn't always get involved with the
social movement.

At any rate... The restoration did occur. We set up a

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1 whole new tribal governmental structure. We have a nine-member
2 tribal legislature with three people elected each year so we have
3 continuity. We have the tribal legislature electing the chair
4 of the tribe on a one-year basis so it's not a popularity contest
5 among the tribal members. We have a trust and management agree-
6 ment... We decided not to call it a treaty. We have a trust and
7 management agreement that maximizes tribal sovereignty, that
8 tells and spells out what the Secretary of the Interior can do
9 and what he can't do, and we are on the road now toward economic
10 development.

9 We got a health clinic, a million-dollar health clinic.
10 We got a grant from Economic Development administration to
11 renovate our tribal lumber mill, and our land base is secure.
12 Our tribal government is set up and I feel that we have demon-
13 strated to the Indian people of the country and to all the
14 citizens of the country what can be done utilizing the political
15 process.

14 I think, with that, I'll stop and then have additional
15 comments and questions from you later on. But what I want to say
16 is that the people were mobilized. They could see how important
17 it was to make a change, and they didn't acquiesce in what the
18 government laws were. We did exercise our rights of civil
19 disobedience. Some of our people did spend a couple days in
20 jail for trespassing, but that was a small price to pay for
21 regaining the tribe.

20 We could all see that, if we had done nothing, if we
21 had acquiesced, that our control of our assets would have
22 continued to decrease. This white financial institution would
23 have exercised their judgment, making decisions for us, and
24 our land was going to be overrun by white people. As it is now,
25 the land project was stopped and there are still people up
there who bought vacation homes but they are definitely in the
minority.

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1 We also have a county and a reservation. Now, I
2 think that this is very difficult for people to understand but
3 really it isn't. We became a county in 1961. All the members
4 of the county board of directors have been Menominees. I think
5 there may have been one person that wasn't. And we have a tribal
6 legislature. So the county and the tribe do cooperate. As a
7 matter of fact, the county administrator is a member of the
8 tribal legislature.

9 The control has been returned to the Menominees. The
10 Menominee people directly elect the members of the tribal legisla-
11 ture. The Menominee people directly elect Menominee tribal
12 enterprises board of directors. We have two entities, the
13 legislature and a business organization in the tribe, and we
14 felt that it would be to the tribe's advantage to separate the
15 business operation from the legislative operation.

16 We have a court system, one of the newest buildings
17 going up there is now a jail. Another interesting fact is that
18 we decided, again, to maximize self-determination, to maximize
19 tribal sovereignty. We finessed the Public Law 280 issue in
20 the restoration legislation.

21 We didn't say much about it and I should say that it
22 requires a great deal of discretion and judgment to finesse a
23 piece of legislation of this magnitude through the Congress. I
24 should say that we started out in the Congress with a Democratic
25 congressman as our congressman, David Obe (ph) and he stated
that he believed, after we battered the door down and got past
his aides, which took quite awhile... He said he believed that
we had a cause but... and he would introduce the legislation but
he didn't think it would get very far. But we said, "Fine, you
know, just introduce the legislation and we'll proceed from
there," which is what we did.

Well, after awhile there was a change and we ended up
having as our congressman in 1973 a very conservative Republican



1 congressman who, as it turned out, and as I found out through
2 some sleuthing up on the Hill, had a vacation home in our
3 reservation, and he was not necessarily in favor of restoration
4 but we prevailed and pressured him and he finally came on to
5 the legislation. So it's important to keep in mind the political
6 climate and the cultural climate and the legal climate.

6 And, again, I want to emphasize the moral and the
7 ethical considerations here. I think too often they get forgotten
8 as we discuss the policies and the procedures and the legalities
9 of all of this. We all need to ask ourselves what's right and
10 what's wrong and what's best for the Native people. And I feel
11 that, even though the restoration act is not 100 percent satis-
12 factory to all members of our tribe, we did something that was
13 never done before in the history of Indian affairs in this
14 country, and that is a grass roots movement, a major policy
15 reversal that started at the bottom and then resulted in the
16 passage and the implementation of the Menominee Restoration
17 Act.

15 The chapter is not done and we're proceeding, but to
16 get back to Public Law 280, we decided not to mention that as
17 we went through the legislative process because we had it in the
18 back of our minds that we wanted maximum tribal sovereignty and
19 so, once we got the restoration act passed and so on, we sat down
20 and we discussed how this could be done. Well, of course, at that
21 time it could be done through an act of the legislature. So
22 we looked around and said, "Forget that, we'll never get that
23 through. What else can we do? Well, we can get the governor.
24 Get the governor? Yes, get the governor to do this." So, we
25 marched in... Well, we had some meetings... Anyway, we got the
governor to issue an executive agreement saying that he retro-
ceded jurisdiction and we were not under Public Law 280.

Now, of course, people say, "Oh, you got the governor
to do this?" Well, he's the governor, he's supposed to do these

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1 things. So I want to tell you all. You know, you have to figure
2 out what you want to do and then go to it.

3 MR. BERGER: Well, thank you,
4 very much, Ada Deer. Could I ask a couple of questions before
5 we move on? The tribal land after termination was held by
6 Menominee Something-or-other, Inc.?

7 MS. DEER: Menominee Enterprises,
8 Inc.

9 MR. BERGER: After restoration,
10 is the land held by the tribal corporation or the tribal govern-
11 ment, or in some other way?

12 MS. DEER: Well... Hm... I guess
13 I'll have to call up and find out. But, actually, it's back
14 in trust.

15 MR. BERGER: Oh, I see. I see.

16 MS. DEER: The whole area is
17 back in trust. Some Menominees... Oh, I should mention this.
18 Some Menominees have individual portions of land that they've
19 put back into trust, and some have not done this. I should say,
20 again, getting back to this land issue. People had to pay
21 taxes on their land and a lot of people could not pay taxes.
22 A lot of the area was surveyed and people were given... or bought
23 certain portions of land and so a lot of people had a lot of
24 difficulties. And I know that this is an issue here. The land
25 is going to become subject to taxation, and it was a serious
problem and it is a serious problem. Because the county was
composed of Indians, they did not foreclose on a lot of it and
they just kind of let it go so when the restoration committee
came and the tribal legislature came, they started to deal with
this. And so very little land has been lost to tax foreclosures.
And I think, again, this demonstrates having a government that
is culturally sensitive.

I also want to say that we were successful in doing this



1 because we had excellent legal assistance. We had Mr. Prelausnick
2 and we had assistance from the Native American Rights Fund. He
3 soon called them and we had the excellent help of Evonne Knight,
4 Ponka (ph) Indian. She was the first Indian woman to graduate
5 from the University of New Mexico law school, and we had
6 Professor Charles Wilkinson of the University of Oregon School
7 of Law, and I'm sorry that neither of them are here. But those
8 three people really listened to us and they fought into the
9 night when they were having all these long legal discussions
10 amongst each other about some of these items and without their
11 excellent legal assistance we would not have the model legisla-
12 tion that we had. So I want to make special commendation... I
13 notice that we have two representatives from NARF here today
14 again taking part in the very historic action here on behalf of
15 Natives.

12 MR. BERGER: Thank you. If
13 we... Yes, Alma Upicksoun.

14 MRS. UPICKSOUN: Ada, I had a
15 question and it goes to the termination. In the 1960s there
16 were many tribes subject to those sort of acts and many more
17 disasterous consequences, for instance the Klamath. One of
18 the things, as I understand, that made the Menominee different
19 was that the land, itself, after termination was held together
20 under the corporate structure of the bank and trust and that made
21 a difference as far as the relationship of the members from
22 the tribe and the lands. Now, would you say that that made
23 Menominee more unique, or unique in the sense that restoration
24 was more possible because of that?

22 MS. DEER: I suppose one could
23 say that. The idea behind... This was not... This corporate
24 model was not the idea of the Menominees and I doubt... I don't
25 know that much about the ANCSA legislation. I doubt that that
was the idea of the Native leadership at that time. Correct me if

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1 I'm wrong.

2 MR. BERGER: Well, they can
3 correct you if they want.

4 MRS. UPICKSOUN: My point was
5 not directed to the corporate mode as being a... recommending
6 that, but just the fact that the land was held in one piece. It
7 wasn't broken up by taxes or sold in other means, and it was...
8 in a sense made it easier for the people, living on the land, to
9 come together as a tribe again.

10 MS. DEER: Yes, I think you
11 could say that.

12 MR. BERGER: David Case, you
13 had a question?

14 MR. CASE: Thanks. I don't
15 know if we want to hold these off until...

16 MR. BERGER: I think it would
17 be a good time to ask a few questions before we move on.

18 MR. CASE: I just want to be
19 sure I understood. You said that there was a county and a reserva-
20 tion and I assume --

21 MS. DEER: Yes.

22 MR. CASE: -- they have the
23 same boundaries?

24 MS. DEER: Yes.

25 MR. CASE: And is there also a
county government and a tribal legislature?

MS. DEER: Yes.

MR. CASE: How does it work?

MS. DEER: Well, it's working.
We have... I haven't checked the latest composition of the
county, because I think at one time there was one of the lake lot
owners that was on the county board --

MR. BERGER: A non-Native.



1 MS. DEER: -- A non-Native
2 person, yes. There may have been one. But the point I want to
3 bring out is the Menominee control both bodies and there are
4 white people that live within the county and they are a problem.
5 For example, the tribe wants to have some housing units built,
6 not all in a cluster, in a square and in a rectangel the way HUD
7 wants it, but more compatible with the land, separate houses
8 around some of these lake shores. Now it always astounds me...
9 these people, they come in and, you know, they want to have
10 vacation homes and they want to get rid of the Indians and
11 occupy the Indians' land. However, we stopped that and so now
12 some of these people have to live right alongside some of the
13 Indians and they don't like that. But at this point, the
14 Menominees have control of the county and the tribal government
15 and even though we try to make, you know, reasonable accommoda-
16 tions, they still do oppose some of the initiatives that the
17 tribe wishes to carry out, and that's one of them.

14 MR. CASE: Does the... Is there
15 a fair practical assurance that the Menominee will always have
16 control of the county government because it is also reservation?

16 MS. DEER: I can fairly pre-
17 dict that because Menominees have received a lot of attention
18 nationally and statewide and I do not foresee a large influx
19 of white people coming in.

19 MR. CASE: But because it's
20 a reservation... Because it's a reservation, can you also control
21 the influx of non-Natives into the county reservation?

21 MS. DEER: I would say yes
22 because, first of all, most of the land is back into trust
23 and tribal members can put their land back on an individual basis
24 if they choose, and a lot of people have. So there is not a
25 lot of land available. As lake lots become available, as some
of those white property owners make changes in their lives, then

1 individual Menominees have bought some of those properties and
2 the tribe is always interested in doing this, and I think they
3 have done this in some instances.

4 MR. CASE: Can you share with
5 us some of the thinking behind establishing both a... I mean
6 maintain the county and reestablishing the reservation tribal
7 government?

8 MS. DEER: Well, we thought it
9 would be helpful and practical to have the advantages of both
10 the tribal structure and the county structure.

11 MR. CASE: Do you also get
12 money from the state of... from the state to the county?

13 MS. DEER: Whatever counties
14 get, Menominee County gets.

15 MR. CASE: I see, okay. Thank
16 you very much.

17 MR. BERGER: Yes, Mr. --

18 MR. JOHNSON: One or two
19 questions along the same line. I assume the non-Indians vote in
20 county elections and do not vote in the tribal elections?

21 MS. DEER: Correct.

22 MR. JOHNSON: And I assume
23 that... Is there zoning on the reservation?

24 MS. DEER: I'm not sure about
25 that. I know they have a land use committee. I should tell you
also that I was involved with the tribe from approximately 1969
until 1976 and so I have not been directly involved in the ongoing
activities of the tribe since then. See, I'm a social worker and
I'm into creating independence, not dependence. After we got
restoration, after we got the economic structure set up, we got
the health clinic, we got the tribal government, we got the
trust and management agreement, I said, "Okay, I quit," and let
somebody else take over.



1 MR. JOHNSON: Well, I'm sure...
2 I'm sure, from what we know already from outside areas, that
3 the county cannot zone the trust land so the tribe must have
4 zoning power over the trust land and that the fee land, that's
5 the question, I guess. I don't know how that would be handled.
6 Maybe I can find out later in some way or another.

7 MR. BERGER: You mean the non-
8 trust land within the reservation?

9 MR. JOHNSON: The non-trust
10 land within the reservation, on the normal reservation in the
11 United States, the Ninth Circuit and other courts have recently
12 held that the tribe has the power to zone that land. And I
13 assume that same reasoning would apply on the Menominee reserva-
14 tion but because the two are exactly co-terminus, the county
15 and the reservation, well, then, I guess I... I'm curious to
16 know what actually is done there.

17 MS. DEER: I would assume that
18 would be the case, but I don't know for sure.

19 MR. BERGER: Ralph Lerner?

20 MR. LERNER: Just a small
21 question.

22 MR. BERGER: Would you use the
23 mike so it goes on the transcript.

24 MR. LERNER: Just a small
25 question, but you piqued my curiosity by something you said.
26 You spoke of the disgruntlement of the white folk who owned
27 vacation homes on the lake, that they didn't like the kind of
28 housing that was being projected or was in fact built... I have
29 no idea. Was this public housing that you were talking about?
30 I see, okay.

31 MR. BERGER: Sherrry... Patty,
32 forgive me, Ginsberg and then Al Goozmer and then Rosita Worl.

33 MS. GINSBERG: Ms. Deer, I'm



1 with the Alaska Federation of Natives and a couple of questions
2 come to mind.

3 First of all, the Menominee Indians all had stock even
4 though many of them apparently didn't really have control of that
5 stock.

6 MS. DEER: We have certificates
7 of beneficial interest and a bond. We have two pieces of paper.

8 MS. GINSBERG: Okay, when you
9 went after restoration, were there any members of the Menominee
10 tribe who actively opposed restoration, who supported the
11 corporate status?

12 MS. DEER: Yes.

13 MS. GINSBERG: And what was
14 the basis of their opposition to restoration?

15 MS. DEER: Well, I think they
16 didn't think that... They thought we were a bunch of crazies
17 and they didn't think we could get this type of legislation
18 through. And also, some of the people were profiting from...
19 You know, they were selling land and they had nice big salaries
20 and... You know, they were doing okay. So not all of them, some
21 of them.

22 MS. GINSBERG: Then did anybody
23 raise the question of an unconstitutional taking? I mean, what
24 I'm getting at is whether this whole issue of the constitution-
25 ality of it, of giving people shares and then taking them back,
whether that issue arose at all?

MS. DEER: Well, it may have
in some discussions but not... Actually, I really shouldn't...
I can't say that 100 percent sure. I know that that's a theoretical
question but we actually never had to confront it because we
knew what we were doing was what the people wanted and, as I
said earlier, when some of these legal questions would come up,
we would get different interpretations from some of our lawyers



1 and we would just tell them what we wanted to get done and they
2 would do it.

3 Now, I know that this question of the stock was a
4 question but, again, it was the lawyers that were discussing
5 all of this and we didn't let them do what they always wanted
6 to do, which is another point I want people to really under-
7 stand, that these lawyers were very responsive to what we wanted
8 and there were honest differences and honest philosophical
9 differences in some of their approaches but they listened to
10 what we wanted and did it.

11 Now, I should say... This gets to be real technical,
12 but MEI still exists, Menominee Enterprises still exists as a
13 state corporation and they have some people that have to be
14 appointed every year but it's kind of a paper corporation and,
15 I think, later on as we get down the pike maybe we'll do something
16 about that but at this point there is the state corporation that
17 still exists for some... for some reason and I think that this
18 will have to be settled later on. But it is, in my opinion at
19 least, it's a minor problem at this point.

20 MR. BERGER: Before we go to
21 your question, Mr. Goozmer, Professor Johnson, do you have any
22 comment on the question that Patty Ginsberg raised about the
23 constitution?
24

25 MR. JOHNSON: No, I don't think
there's any doubt but what such a restoration, just hypothetically
... Well, the best answer is that the Menominees had shares of
stock in the state corporation which were then dismantled and
they then acquired an interest as members of the tribe in the
tribal government and the tribal trust land. This is one of those
few cases in which one could argue that the Indian Commerce
Clause, the portion of the commerce clause of the federal
constitution that says that Congress has the power to legislate
over interstate commerce and with Indian tribes, and that power

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1 would be used if it were on behalf of the tribe, as it was here.
2 It's used for the tribal purpose and to pass legislation that
3 would authorize the reconstitution of the tribe, the dismantling
4 of the stock ownership, and I suppose first that would be
5 constitutional. I don't have any doubt about that. Secondly,
6 there might be some question... Somebody might raise the question
7 about the right to compensation for such a taking. It would be
8 exchanging one kind of interest for another kind of interest.
9 They'd be exchanging a property interest in a piece of stock,
10 which has variable value, an uncertain value, and especially if
11 this occurred before a period like 1991 or something like that.
12 They'd be exchanging that value for an interest in the tribal
13 government and a tribal governmental entity that had ownership,
14 beneficial ownership, in property.

15 So I guess my conclusion from all that conversation is
16 that it could be done constitutionally and probably no compensa-
17 tion would be due anyone.

18 MR. BERGER: Just before we
19 move on, any comment, David Case?

20 MR. CASE: Well, that's the
21 normal result when we're dealing in the field of federal Indian
22 law with this kind of an issue and the trouble that I think we
23 all have with the claims act, and it may go that way... that
24 may be the argument and it may be very successful, but it sounds
25 like it is a... Argument can be made that it does create a
present property interest in the stock in these corporations
and... On the other hand, I don't know of a case in the Indian
field where, when this issue has come up, it hasn't been
decided exactly the way that Ralph outlined it.

MR. BERGER: Well, just in case
we return to it, I assume that the Menominees each received
shares in their state corporation and since the corporation still

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1 exists on the books, those shareholders were not bought out,
2 the corporation wasn't dismantled, and I assume it was an assign-
3 ment from the corporation by Congressional fiat to the tribal
government or to the tribally-held corporation.

4 At any rate, without getting submerged in a sea of
5 technicalities, we might just keep that in the back of our
6 minds and return to it later.

7 Al Gozmer, you had a question?

8 MR. GOZMER: Yes. During your
9 presentation, you said something an awful lot like what we are
10 going through up here. From your point of view, you have your
11 county, your tribal government and the federal government. So
12 you have a trilateral agreement between the state, federal and
13 yourself. My question is... two questions, really. First of
14 all, on your county legislature or assembly, do you confront
15 problems that we confront up here such as the state's artificial
16 barriers pertaining to your funding programs for your different
17 projects? Is there artificial barriers such as waiver of your
18 sovereign unity, the non-discriminatory clause in who you've
19 got to hire and what the money is going to be used for? For
20 instance, if I get a... say, a quarter-million dollar grant from
21 the state, that I have to waive my sovereign immunity and open
22 that particular property up to the public... that is one question.

23 And another thing that we are going through up here is
24 as in the case of Akuchak (ph) dissolving the municipal govern-
25 ment, and from what I see, this is the same thing that's going
on in the Menominee reservation. You have the tribal government,
you have your municipal government and you have your federal
government, and that did pose and awful lot of problems up here
as far as the funding source to recognition of the state, the
government to government relationship. Do you have those
problems down there also?

MS. DEER: Actually, to answer

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1 your first question about the problems of the county government,
2 I'm not as fully informed about that because I've been away
3 from the tribe now for a number of years. And whatever problems
4 the Menominee County government would have would be basically
5 due to the fact that they're a county government. So I can't
6 really full answer your question.

7 The fact that both bodies, the tribal legislature and
8 the county, are Indian though does result in less conflict.

9 MR. GOOZMER: Do you have a
10 relationship with the state of Wisconsin on a government-to-
11 government basis?

12 MS. DEER: The county govern-
13 ment does. The governor of the state, Governor Anthony Earl,
14 has just issued a policy statement and he stops just short of
15 issuing a government-to-government statement. He is supportive
16 of Indian governments but I would like him to issue, you know,
17 a proclamation at this point. This hasn't been done but I think
18 that his interest and his support has been demonstrated. He
19 did address the National Congress of American Indians' national
20 conference which was just held in Green Bay, Wisconsin, in
21 October. We do have a governor's policy advisor on Indian affairs
22 that sits in the governor's office and so we have a sympathetic,
23 liberal governor in Wisconsin that wants to negotiate rather than
24 litigate a number of the Indian issues and I think that with that
25 type of attitude by the governor that the Indians of Wisconsin
will be able to work out a much better relationship than some
other states.

MR. BERGER: Just before we
go on, might I just say that... ask some of you who are still
to speak to bear Mr. Goozmer's question in mind, because as I
understand it, and I'm subject to correction, the state does
provide funds and assistance to traditional tribal councils and
to IRA councils here but does ask them to sign a waiver of

1 sovereign immunity and does, as well, ask them to agree that
2 the funds will not be distributed on a basis that discriminates
3 in favor of Alaska Natives. I think that's... I hope I do under-
4 stand what we're talking about. Some of you might, as we come
5 to you, tell us whether in your states you run into anything
quite like this.

6 Did you have another question, Mr. Goozmer?

7 MR. GOOZMER: Yes. You said
8 you had a tribal corporation. I assume that you also go through
the proxy war every year?

9 MS. DEER: No, we don't have
10 proxy wars any more. We have absentee ballots and you can vote
11 by absentee ballot, either in the tribal legislative election or
in the tribal corporate elections.

12 MR. GOOZMER: Just one more
13 quick one here. In your tri-government, do you come up with
14 a problem such as... getting projects and funds for your tribe?
15 Do you have problems coming up with agreement between the tribal
legislature, the county assembly or...

16 MS. DEER: As I indicated
17 earlier, I know there's been consultation and cooperation and
18 there has not been confrontation that could be. I'm not saying
everything is rosy, but generally speaking it's one of coopera-
19 tion.

20 MR. GOOZMER: Thank you. I'd
like to get back to you further on that a little later.

21 MR. BERGER: Yes, Mr. Lerner?

22 MR. LERNER: You mentioned in
23 passing that you would welcome a proclamation from the governor
but you didn't say what you had in mind.

24 MS. DEER: Well, I would like
25 the people of this country, the state governments and the federal
government, to recognize the government-to-government relationship

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1 between the Indian tribes and state governments and the federal
2 government. Throughout history there's always been this thrust
3 to, you know, assimilate Indians, to try to force them to conform
4 and if I had my way, I would like to see the textbooks of this
5 country rewritten so that the school children, all children,
6 would learn about the tribal governments, the federal government
7 and the state governments. I think that would eliminate a lot
8 of problems that we have.

9 MR. LERNER: I need another
10 second.

11 MR. BERGER: Yes, please.

12 MR. LERNER: You're not talking
13 about the rewriting of textbooks. When you say recognition of
14 the government-to-government relationship, you don't mean recog-
15 nition of the relationship of the state of Wisconsin to the
16 county of Menominee, corresponding to its relation to the county
17 of Kenoshe, or whatever?

18 MS. DEER: I'm talking about
19 the recognition of tribal government as equal units of government.

20 MR. LERNER: Equal to?

21 MS. DEER: Well, actually,
22 that's another whole legal question of, you know, what the tribal
23 governments are equal to. One of the... Let's see, what's the
24 word I want?... One of the designs that I've seen is that, you
25 know, the federal government and the tribal and the state govern-
ments are on an equal level. Of course, as we know, tribal
governments existed before many of the state governments.

MR. LERNER: So your answer is,
equal to the states.

MS. DEER: At least equal to
the states. I think, since the tribal governments were in
existence before the state governments, I would even put them
above state government.



1 MR. BERGER: President Reagan,
2 in his statement on policy toward native Americans, issued in
3 January 1983, said that the federal government, under his
4 administration, intended to recognize Indian governments on a
5 government-to-government basis as sovereign entities. You may
6 think that's an unlikely source for that sort of policy, but it
7 is plainly stated.

8 Ralph Johnson and then Rosita and then Dalee.

9 MR. JOHNSON: I don't know how
10 much you want to cover at the moment. Mr. Goozmer raised the
11 question of sovereign immunity. The federal act restoring the
12 Menominees did not remove Menominee tribal government sovereign
13 immunity. The enterprise is subject to suit because it's a
14 business corporation. There are really two questions. One is
15 the waiver of sovereign immunity in federal or state courts and
16 the other is waiver in tribal court. The Menominees, in their
17 constitution, have a special provision by which they waive
18 sovereign immunity for certain circumstances in tribal court
19 and that was a voluntary act of the Menominee people to waive
20 that sovereign immunity. For example, when a police officer
21 abuses his powers, then sovereign immunity is waived for that
22 kind of conduct, or any tribal official abuses their power. But
23 otherwise, it's a natural product of the fact that there is...
24 the sovereign immunity is there and it is the natural product of
25 the fact that the tribe is the sovereign governmental power.

There's a lot more we could talk about and maybe should
do so later about sovereign immunity. But maybe that speaks
to the question you were asking.

MR. BERGER: We might return
to that. Perhaps we could... Rosita Worl and then Dalee Sambo
and then we'll move on.

MRS. WORL: No, my question has
already been asked about corporations and shareholders.

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MR. BERGER: Dalee Sambo?

MS. SAMBO: I was just curious about the... for my own understanding, the division of services or division of authority or division of jurisdiction between the tribal legislature and the county, itself. Is there... It sounds like there's quite a bit of cooperation between the two, but what is the division? Or is there... I'm sure there must be.

MS. DEER: Yes, that's kind of a long and detailed answer and since it's been awhile since I've thought about this, generally, you know, the tribe does what tribes do, the county does what counties do and... Without really consulting the county authorities, I don't think I can fully answer, you know, that question. I think it's an excellent question and I think probably more research needs to be done, you know, by the commission on this matter. But, again, they've been cooperating and... For example, they've been cross-deputization of the tribal police and the county police and that has facilitated law enforcement on the reservation, and, again, I want to point out that when people use their creativity and their imagination and are willing to look at what the problem is and to cooperate, you can do new and different things.

MR. BERGER: Yes, Alma Upicksoun?

MRS. UPICKSOUN: Ada, you had mentioned two areas that might parallel Alaska. One was the taxation and that, you'd said, had more or less been resolved because land was not lost in that way. And that roll closure was a problem that termination resulted in. What happened after the restoration effort? Were there problems with re-enrolling those who had, during that ten year period, not been?

MS. DEER: The Menominee Restoration Act provided for the opening of the rolls and setting up a new tribal constitution and bylaws and for, again, the



1 recognition of the Menominees as a federally-recognized tribe.

2 As long as I have the floor, I have to say something
3 about this recognition. I find it really insulting that the
4 federal government has, you know, decides they're going to recog-
5 nize you or they're not going to recognize you. You know, we
6 are all human beings on this earth, whether we're Indians or
7 Alaska Natives, or whatever, and, again, this is another legal
8 theory and concept that has come forth. And I think we have to
9 keep this in mind, that we are all here and that we don't really
10 need to be recognized. Yes, in terms of some governmental
11 services or something like that, but this whole concept of
12 recognition and power I find really irritating.

13 At any rate, the restoration act provided for the
14 enrollment. We set up an enrollment committee and we started
15 enrolling people. And I should say that, when termination occurred,
16 I think we had 3,270 people in the tribe and when we completed
17 our first enrollment we had, like, almost double the number. So
18 even though termination was a devastation on our tribe and many
19 people suffered, our tribe increased and I think that that, again,
20 shows the continuity and the persistence of Indian people and
21 Indian culture. So enrollment has all the problems that enrollment
22 has.

23 Now, in terms of being able to prove one's ancestors
24 and so on... but for the most part, this has gone well.

25 Now, what was your other question? Terms of enrollment
and what else?

MS. SAMBO: No, I... That was it.

MR. BERGER: Yeah. Tito

Naranjo?

MR. NARANJO: How do you define
membership, presently?

MS. DEER: How do we define
membership? Basically, a person must be one-quarter Menominee.

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1 That's another whole issue, as we all know. You know, blood
2 quantum and who decides membership and this kind of thing... but
3 at this point, that's what it is. Our tribal people can modify
4 this in the constitution if they wish to but they would have to
5 then get a certain number of signatures and go through the whole
6 revision... or, pardon me, modification of the constitution, which
7 they can do.

8 MR. LERNER: And how many
9 Menominees are there?

10 MS. DEER: Oh, there are
11 approximately 6,000 at this point.

12 MR. BERGER: My impression is
13 that the county government... that the Menominees found it useful
14 to keep the county government going as a vehicle for obtaining
15 state aid, but that the governor of Wisconsin is now moving
16 towards recognizing the state... Menominee government-to-government
17 situation that might, I gather, eventually make the county
18 government an unnecessary vehicle. That was the impression I
19 drew from...

20 MS. DEER: Well, I... Now, what
21 we want him to do is to recognize the tribal government on a
22 government-to-government relationship. No, I don't really fore-
23 see the county government melting away because I feel that the
24 county government has been in existence now since... well, 1961,
25 and people have become accustomed to it and it's not harming us
in that... to a great extent. Now, perhaps if it becomes, you
know, a real detriment, then we would go through the process of
changing that, but --

(OVERLAP TAPE NUMBER 6)

MS. DEER: -- out of the
Indian business of saving money and, actually, it ended up
costing a lot of money. The federal government had to make a
number of appropriations for health services and for other kinds

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1 of services on the reservation. I know it was millions of dollars.
2 I don't recall what the exact amount was at this point, but
3 the Menominees basically were a self-sufficient tribe, paid the
4 salaries of the Bureau of Indian Affairs people and maintained a
5 minimum level of services, such as the hospital and some other
6 services, and then to go from that status to one of termination
7 where the land was starting to get lost and where people didn't
8 have any services and where the federal government continually
9 appropriated millions of dollars shows the fallacy of the thinking
10 of the terminatin act.

11 MR. BERGER: Patty Ginsberg,
12 last question, before we move on.

13 MS. GINSBERG: Last question.
14 I don't know if you're aware, in Alaska the shareholders in the
15 regional and village corporations often live in a completely
16 different area from where their corporation is headquartered.
17 On the Menominee reservation, when you started your reenrollment,
18 did the members have to live on the reservation? Were there
19 any provisions for people who lived off it?

20 MS. DEER: No, one does not
21 have to live on the reservation to be enrolled as a member of
22 the tribe. You have to have the required blood quantum, which
23 is one-fourth.

24 MR. BERGER: All right. Well,
25 Mr. Russell Jim, we're looking forward to hearing now from you, sir.

(TAPE 22, SIDE B)

26 MR. JIM: (SPEAKS IN NATIVE
27 TONGUE) Justice Berger, fellow colleagues, honored hosts of
28 this land, as dramatic as it may seem to you, I think it should
29 help make a point. In the assimilation process that has been
30 practiced throughout the world against indigenous people, they
31 still do not believe that there is such a thing as biculturalism.
32 I truly believe that biculturalism is a reality and the indigenous

1 people can develop the possibility of retaining their culture,
2 which is intricately tied to the language and tied to all the
3 resources of the land.

4 I fully appreciate being invited to this forum and what
5 I said in my language was that, on this day, on this land, where
6 the sun now stands as witness to you being here and hears what
7 we say, among these honored hosts of these people, of this land,
8 I think needs to be developed an understanding and rid the
9 logic of the uninformed of their mental capacity or mental block
10 in regard to the misunderstandings that have been purveyed upon
11 the indigenous peoples of this land.

12 I am a member of the Yakima Indian Nation and, as has
13 been explained, a past tribal councilman. I am a past member
14 of the National Congress of the American Indians as an area
15 vice-president. I am a past president of the Affiliated Tribes
16 of Northwest Indians. I am a member of the World Council of
17 Indigenous People. I was one of the delegates to Peru in 1979.
18 And I find it extremely satisfying, what I have heard here today,
19 and I am hoping that out of this forum much misunderstandings will
20 be quelled and quashed. And I also understand that there is a
21 significant contribution by the Alaskan Humanities department
22 towards this forum. I am also a member of the Washington State
23 Commission for the Humanities, and in that group alone, the
24 minorities, one Spanish, one black, one Indian, has contributed
25 to that humanities project to make it more meaningful and under-
standing, especially towards the indigenous people of the United
States of America.

The Yakima Nation, like many tribes throughout the
United States, the Lower 48, have contributed vast amounts of
land, have ceded vast amounts of land to the state of Washington
and felt and still feel that we have paid our taxes for all time.
For instance, the Yakima Nation consisted, prior to 1855, of 12
million acres in the state of Washington. In the treaty of 1855,

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1 we ceded to the state of Washington 10.8 million acres and we
2 retained 1.3 million acres. To govern ourselves, to advance
3 ourselves in the manner which befitted our people, that was the
4 understanding, much of it unwritten. But the understanding was
5 fully... fully discussed and it took weeks and weeks by the
6 people of the Yakima and of the federal government. And there
7 shall be the understanding among the people as long as the sun
8 shall shine, the mountains stand, the rivers flow and the grass
9 shall grow, that treaty will remain in effect. So the federal
10 government has this fiduciary obligation.

11 But there is the... either the misunderstanding or
12 the misinterpretation, or the blatant disregard of the term
13 trust responsibility. And what is built around this term is a
14 bureaucracy and I have been on record to call this bureaucracy
15 inept. I have been told by a learned person that worked for us
16 at one time that it seems that bureaucracy is made up of rejects
17 of the corporate world. These people hold your destiny... part
18 of your destiny in their hands. Many times I feel that this is
19 true and I come away with meetings with the bureaucracy with
20 great dissatisfaction many times.

21 So when I hear the... for instance, the government-to-
22 government basis that the present administration has promoted,
23 I think it is somewhat insidious. Under this present administra-
24 tion, Indian tribes, for instance, were under the Office of
25 Public Liason under Morton Blackwell. The Office of Public
26 Liason is responsible for AFL-CIO, Veterans of Foreign Wars...
27 entities such as that that are nongovernmental, and we are under
28 that same... We were under that same committee. In our first
29 meeting of heads of national Indian organizations in Washington,
30 D.C., we quickly advised Mr. Blackwell that he was dealing with
31 the oldest governments on this land, and it is just within the
32 last year or so that we have been moved out of the Office of
33 Public Liason into a more meaningful committee that deals with

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1 federal... that deals with governments. But yet, much of the
2 long-awaited government-to-government basis and understanding
3 and promotion of rights through the documents, agreements and
4 treaties have never been fully implemented. Instead, they have
5 been eroded gradually.

6 Perhaps many of you, as I do, feel that education
7 for instance, is a great thing. I do feel that education is very
8 necessary for all people, but the process implemented upon the
9 indigenous people of this land for the last 60 years has been a
10 travesty and has contributed to the genocide... eventual genocide
11 of the people by sending them to boarding schools and I'm sure
12 you've heard the stories of beatings in school when you spoke
13 your own language, which I have personally witnessed. But I
14 was fortunate to be raised by two aunts that spoke no English.
15 But yet, when I was five years old, I was sent to one of these
16 boarding schools. They get you away from your every-day teachings
17 of momma and daddy, auntie and uncle, grandma and grampa, and
18 you are not allowed to listen to your songs and your language on
19 that particular day, that seventh day which is Sunday.

20 The Yakimas, as many indigenous people are throughout
21 the world, have always known when this sacred day has been. It
22 wasn't taught to us by Christianity. The "religion" of the
23 Yakimas far exceeds Christianity by thousands and thousands of
24 years. Indigenous people were left... or, put on this earth,
25 were put on this earth with laws to follow and we follow those
laws and, at the same time, try to wallow through the in excess
of 6,000 laws that is implemented upon the indigenous people of
the Lower 48, created by man on this earth.

I would like to continue on and on and on and address
about and elaborate on just about everything I have heard here
on this forum so far and I am somewhat grateful that we have
another three days to go in case I forget something. But let
me try to digress back a little bit from the questions that have

1 arisen here and I appreciate them very much.

2 The Yakima Nation has been asked to waive its sovereign
3 immunity in dealings, especially economically. When we try to
4 promote, for instance, our own enterprise of road building and
5 economically... try to economically participate in state road
6 building, we had the capacity, we had the people, we had the
7 machinery, and yet we had to... We were asked to waive our
8 sovereign immunity so that we could go off the reservation and
9 help build roads. We refused. We feel that if you allow one
10 little toehold, then you are gradually going to see a foothold
11 and eventual gradual takeover and loss of your sovereignty.

12 Many of you know in this room the protection we have
13 from the Martinez decision in sovereignty, and on the other hand
14 the Oliphant decision that has been handed down. But they seem
15 to balance out for now. But it is evident to me, in following
16 nationwide and worldwide happenings, the dilemma under which the
17 indigenous people of this world are under and each and every
18 administration of the United States of America has contributed,
19 in one form or another, another step towards the genocide of a
20 people. No different then there is, in the time that I have
21 spoken, approximately seven acres of forest destroyed somewhere
22 in the world. So I am hoping that this forum and those of you
23 that will one day write books or gather this necessary informa-
24 tion and dissect it and see what will come out, I hope that
25 an understanding of the need of the indigenous people to retain
their culture and their land and their resources, and to remain
a unique people... It is very discouraging to me to wonder about
my children. What are they going to be faced with when I am gone?
And by right, the worry is upon all the elders that are aborigines
to their special lands.

 The uniqueness that we have, that we retained so far,
I think is necessary for all humankind to realize. We can't all
be alike but it seems that the mainstem of society feels that

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1 assimilation process must come about. Perhaps that is an inter-
2 pretation of the greed that has been taking place, and especially
3 at a time when the resources of this world are becoming more
4 limited and the dependency upon the indigenous people... take
5 the Yakima, for instance. I have personally chastised the
6 Bureau of Indian Affairs in regard to the harvesting of our timber.
7 On that 1.3 million acres we have 600,000 acres of timber, some
8 of the best timber in the country, prime Ponderosa pine and
9 a diversity of different types of trees and species.

10 More important is the foods and medicines, the animal
11 habitat, the aesthetics, the environment that is dependent upon
12 that certain stand, the certain type, in its own little environ-
13 ment of that timber. And, in turn, the indigenous people depend
14 upon culturally for the use of that timber. And, no different
15 on the rangelands, which contributes more food and medicines.

16 My forefathers were very wise to pick this piece of
17 real estate out of that 12 million acres. It is very diversified.
18 It goes from sand dunes on the east to mountains on the west.
19 In 1972, with the support of Alaskan people and other tribes
20 throughout the United States, the Yakimas were returned Mount
21 Adams and 21,000 acres that was erroneously filed some 60 years
22 prior. We are still grateful for this, for the support nationwide
23 and the brotherhood that was purveyed, purveyed at that time
24 among indigenous people.

25 We also, incidentally, worried a few more people around
there when rumor got out, this year Mount Adams, next year Rainier.
No different than the Penobscot, perhaps, and the Passamaquoddies,
and especially in this leap year, ladies... this leap year also
is a significant election year and the scene still is, as Maine
goes, so goes the country.

So in the return of the 21,000 acres, it showed somewhat
we thought, good faith but I think, personally, I think President
Nixon was pressured at the time to somewhat get the Indians off

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1 his back and sign back the return of the Mount Adams. No different
2 at the time than the Washington 100, 100 people from the state of
3 Washington were allowed to go to Washington, D.C., and meet with
4 the cabinet of the President of the United States, who was Carter
5 at the time. And that was just about the time my involvement
6 with the World Council of Indigenous People took place, and our
7 lawyer happened to be one of the 100 picked and he asked Mr.
8 Brezinski, "What is your policy to the indigenous people of this
9 land?" At a time when Carter was promoting human rights in
10 Russia, and Mr. Brezinski had to think awhile and say, "Well, as
11 far as I know, I'll have to get back to you. As far as I know,
12 we don't have a policy for the indigenous people of this land.
13 I assume you mean the American Indian?" We said, "Yes." He
14 said, "I'll have to get back to you."

15 I truly believe also at this time, to get the Indians
16 off his back or for some type of good showing, Mr. Carter signed
17 the Native American Freedom of Religion Act. But as you know,
18 it has no teeth without consignment from the legislative body
19 and as of two years ago, we lost eight major cases so far
20 because it is a toothless tiger to this day.

21 Now, we are confronted with all types of battles and
22 we can assure lawyers years and years of work. The water issue,
23 for instance, is going to make the fish issue miniscule one
24 of these days. Any water rights the Yakimas have won so far is
25 because the fish were in there. Now, a fish is a cultural por-
tion of the Yakima Indian Nation. In our feast, as the food
was put here on this earth by the Creator, the fish was first
and then the deer and the roots and the berries. So it is a
very significant portion of our culture and I'm sure it's a very
significant portion of many cultures throughout the world, in-
cluding Alaska, here. So, as I see and as I fear to win the
major water cases in the future... and they have time on their
hands. When I say they... the administrations, the mainstem...

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1 They have time on their side if they can get rid of the fish for
2 perhaps maybe ten, 15 to 20 years. And no different than in
3 Columbia when they used to shoot the adults and allow the children
4 to roam untaught and would eventually provide the multinational
5 corporations with labor force. Then the children, up and coming,
6 when the fish was gone would lose that major portion of their
7 culture. This is, perhaps, foresight. Perhaps it will never
8 come to be. I hope not, but we have much hindsight also, as was
9 mentioned by Ada.

10 Our past is necessary and to retain the... the unique
11 people of this earth there is much schooling needed to be done
12 by historians and the textbooks do need to be changed. For
13 instance, there was a ninth grade non-Indian, a white boy, came
14 to me about six months ago in the town of Yakima, which is just
15 off our reservation, and his father was a historian and a research-
16 er. But the book, in excess of 25 years old, mentioned the
17 Yakimas in one small paragraph which also included the Yakima
18 wars. The Nez Pierce were mentioned in three-quarters of a page.
19 So there has to be taught in the schools a better history of the
20 indigenous people of that respected area, taught to all children.
21 And some of you I saw in Sun Valley.

22 There was a history teacher cornered me there and asked
23 "Why am I teaching history of Indians to these kids because one
24 day they asked me this. 'Why do we have to learn about these
25 dead Indians? What good is it going to do me?'" I said to
her, "The best I can answer you is in the long run," and I used
my son and his neighbor friend as an example. My son is nine
years old and when they are home from school and they are close
by they are inseparable. They play, they are the same size,
they're the same age, they go to the same school. But it's quite
a contrast when my son has a long braid and his neighbor friend
is blond as can be. But one day, perhaps that blond little
non-Indian will be a mayor or a congressman or a president and

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1 perhaps a certain type of legislation will come down and this
2 president, if he be, will think back and say, "This legislation
3 may affect my friend because I know he has some certain inalien-
4 able rights indigenous to his being, his land and his people."

5 So creating this understanding will... will lift much
6 of the burden of all of us I believe. And as I mentioned earlier,
7 I don't think we are very well informed on the basis of the unin-
8 formed. I don't think we are very well informed on what happened in your
9 own little part of the world but I feel, "How can I help pre-
10 serve my people if we do not understand the problems of indigenous
11 people throughout the world?" This eventual genocide I speak of
12 here is very subtle. The genocide in Columbia and in Central
13 America is very direct and abrupt.

14 They are promoting perhaps another Viet Nam in Central
15 America and another reason I worry about my son, in nine years
16 when he must register, is he going to go down there and fight
17 fellow Indians? We had a Mesquito representative in Wisconsin
18 and their stories were much different than what you read in the
19 papers. In your home newspapers they are perhaps very much
20 uninformed. But they are taken from the AP Press, AP polls.
21 I won't get into much of what I have heard and learned from
22 Central America, but I assure you the annihilation of indigenous
23 people that are Indian in Central America is a reality and it
24 makes you wonder and it adds to my paranoia, who is profiting
25 from all of this? The present administration, conservatives,
but yet the supporter of multinational corporations that make
these weapons that send your sons and daughters to Lebanon,
Grenada and Central America. The price of a few hundred lives
seems to be nothing to create some type of... especially in
this recessionary period... some type of support for a multi-
national corporation. Read the "Wall Street Journal" and how
the World Bank will not lend a corporation any monies to
develop in indigenous countries unless they control those people.

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1 On a smaller scale, here in the United States of
2 America a federal agency, the Bureau of Reclamation, cannot come
3 onto a Indian reservation and develop a water resource develop-
4 ment project, even if it is the most feasible project in the
5 world, unless they control and administer the water. The Yakima
6 Indian Nation refuses to give up control, administration and
7 title to its water so, therefore, we don't get a project.

8 The federal government is responsible for erosion of
9 treaties in more ways than one. Take, for instance, the Faustian
10 bargain that science has made with society and the proliferation
11 of nuclear weapons and power. There is enough tailings from
12 uranium mining and waste from nuclear power plants to build a
13 four lane highway from coast to coast one foot thick, and these
14 tailings radiate radon, which is deadly eventually. But because
15 of the latency period of 15 to 20 years, nothing ever happens
16 immediately and so you develop a false sense of security and,
17 at the same time, there is mass deception promoted by the
18 nuclear industries and those that support it. The Yakima Nation
19 got into this foray of nuclear issues in 1979. We were the
20 first tribe to pass a resolution that banned the transportation
21 of nuclear materials across the reservation. At the same time,
22 we were still in the fight, being a 83-280 state, and we said,
23 "Even though we may be a toothless tiger, if you want confron-
24 tation we will stop you at the borders... those of you that
25 haul nuclear material." That was the beginning and now we are
involved in the direct confrontation with the NRC and the DOE
regarding Hanford, which is just right next to us and, incidentally,
is inside our ceded area. In that ceded area, we gave to the
state of Washington the 10.8 million acres but yet we retained
the right to gather our food, to hunt and fish in all usual
and accustomed places on that ceded area. But with the promotion
of the nuclear industry around Hanford and the mishandling of
the tailings and the waste, even though it be low-level nuclear

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1 waste now, has contaminated much of that land... to the non-Indian
2 to pick that area because it... To the non-Indian, he looks out
3 there and he said, "It's wasteland, sagebrush, rocks." But
4 to an Indian, he looks out there and he sees medicines, food,
5 berries, birds, animals, specifically the food that comes out
6 of the ground. And because of its low geographical location,
7 that is where the first foods get ripe. And there is one par-
8 ticular food there that only goes so high in elevation and it
9 stops, and it's a camass-type of food that is in danger of...
10 If that becomes fully contaminated and we cannot use the area,
11 we lose this one food and it's like a vitamin B. You can eat
12 one or two of these and it gives you much energy. Incidentally,
13 there are 72 different types of food we have on our reservation,
14 almost as many types of medicine. There is a medicine for every
15 malady, every sickness. So it has been quite a battle, quite an
16 issue and seems to have put us in this Alice-In-Wonderland
17 concept of running faster and faster to stay in one place.

18 So I have touched upon just... just a small portion of
19 the worries and the troubles befronting the indigenous populace of
20 the Yakima and other peoples throughout, and I will reserve
21 now the rest of the time for some questions.

22 MR. BERGER: Thank you, Mr.
23 Jim. Rosita Worl, you have a question?

24 MRS. WORL: I don't have a
25 question but I'd just like to, for the record, indicate that
the Yakima people extended a substantial loan to the Alaska
Natives when they were pursuing their legislative claims in
Congress. And after hearing Mr. Jim talk, it's easy to under-
stand that he understood our... our concern about our land. On
a personal note, I would just like to extend our thanks. Alaska
Native people would like to thank you and thank the Yakima Nation
for their support in our efforts. (SPEAKS IN NATIVE TONGUE)

MR. JIM: Thank you. I

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1 appreciate that very much. I... My brother, Robert Jim, was
2 chairman at the time. He passed away in 1973, attending another
3 large meeting, and like his father, our father, succumbed to
4 the weight of this problem to protect their people and other
5 aboriginal people. I spoke with the present chairman of the
6 Yakima Tribal Council just prior to coming up here, whom,
7 incidentally, is Roger Jim, a cousin. He was just newly
8 elected a week ago yesterday in the reorganization process and
9 I said, "I do not go to speak for the Yakima, but to speak as
10 a representative of the World Council of Indigenous People, and
11 should you want to send someone to speak for the Yakima, it would
12 be fine." He said, "No, you go ahead, and you remind them...
13 remind them and wish them luck in their quest to hope to resolve,
14 or at least preserve and protect, for your people in regard to
15 what you do today and in regard to ANCSA." He sends his
16 greetings, as does some more that were on the council at the
17 time, Jons Manyonek (ph), Bill Yellow. They're still on the
18 council and I appreciate you bringing up that loan that the
19 Yakimas provided to the Alaska Natives, and there's quite a
20 little story behind that. Maybe Don Wright told you some of
21 the story.

22 Thank you.

23 MR. BERGER: In fact, Mr.
24 Jim, Don Wright, who was president of the Alaska Federation of
25 Natives back in 1971, was here last week and he did pay tribute
to the help recieved from the Yakima people, as did John
Borbridge, Junior, who was here, too.

Did you have a question... sorry. Mr. Lerner, forgive
me.

MR. LERNER: I was struck by
Mr. Jim's account of the anecdote involving Secretary Brezinski.

Two questions growing out of that. You said that your
business with the White House was moved from the Office of Liason

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1 to some other office or committee but you didn't identify what
2 it was. You said it had to deal with government.

3 MR. JIM: I can't name it right
4 off... I'll have to --

5 MR. LERNER: Okay, fine. But
6 it wasn't the Department of State though?

7 MR. JIM: I don't believe so,
8 no.

9 MR. LERNER: Okay, so maybe
10 he was excusable. And the other question was, in speaking about
11 the murderous treatment of Indians in Columbia, I think you
12 mentioned in Central America, do you also include Nicaragua,
13 the Indians living on the eastern side there?

14 MR. JIM: Yes, I have... I
15 have... I think you would have to include a lot of Central
16 America. Much of what is going on down there doesn't get out,
17 as you well know, and so I have, for instance, a little friend
18 here and he'll be here, perhaps, next week. He is the interpreter
19 for Jose Carlos Morales, the president of the World Council of
20 Indigenous People, and he's a Guatamalan Indian, and he speaks
21 the Indian language, Spanish language. When I first met him in
22 '79 in Peru as an interpreter, he could barely speak English.
23 When I last saw him a year ago January in Washington, he spoke
24 excellent... better English than I, and he also... He says, "Now
25 I speak French, also." But he said, "I cannot go home." He
said... "They know my work out here now, what I have done, what
I have said throughout my dealings around the world." He said,
"Were I to show my face at home, I would be shot on the spot."

MR. LERNER: So, to that extent,
the wholesale killing of Indians is not all done by, to use
my favorite Maoist language, running lackey dogs of the multi-
national corporations.

MR. JIM: No, it sure isn't.

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1 But it makes you wonder, you know, where does the support come
2 from? We know that the arms that are sold to much of the
3 Central America come from Israel and Israel gets their arms
4 from the United States of America, so...

5 MR. LERNER: And Nicaragua must
6 get it from somewhere, too?

7 MR. JIM: Exactly. Right.

8 MR. LERNER: Okay. That's
9 really quite tangential to Alaska.

10 MR. JIM: Oh, yes.

11 MR. BERGER: I think we've
12 exhausted that particular aspect of that particular subject, but
13 I think it is right for Mr. Jim to remind us of the condition of
14 indigenous peoples everywhere in this hemisphere.

15 Any other questions for Mr. Jim before we move on?

16 Mr. Naranjo, if you'd like to say something now, you're
17 welcome. And if you don't complete it before they come bustling
18 with with their bingo cards at 4:00, we'll certainly make you
19 first up tomorrow morning.

20 MR. NARANJO: I think the kinds
21 of things that I have to say with regards to matters that are
22 related to Alaska Natives is by contrast because the Pueblo
23 people are very different from the Natives of Alaska, and I
24 think that I may have to give some background.

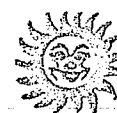
25 MR. BERGER: Please do.

MR. NARANJO: I left New
Mexico in a snow storm. I dropped into Anchorage and it was
very warm.

The Pueblo people of New Mexico are about 34,000 strong.
They occupy two states, in New Mexico and in Arizona. There's
19 pueblos in New Mexico. The 19 pueblos range from Taos in the
north to below Albuquerque in the south. Those are the 19 pueblos
in New Mexico. Interestingly enough, when the Spanish first came

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1 to New Mexico, there were some 38,000 peoples... Pueblo people
2 there. In some 100 years' time, the population had dwindled to
3 10,000 Pueblo Indians. The Spanish came in 1540.--

(TAPE 23, SIDE A)

4 MR. NARANJO: -- and the Pueblo
5 peoples had been in contact with alien governments for 40 years,
6 and I think the kinds of things that might be of interest is
7 the persistence of the Pueblos with regard to some of the things
8 that they have been doing, primarily religion that they have pursued
9 because they're an agriculture society founded on certain
10 philosophies and these things are very strong, as you can see
11 in some of the... the fight by Blue Lake for 64 years for land
12 that was lost.

13 It was very difficult for the people of the United States
14 to understand why Taos Pueblo wanted Blue Lake back so badly.
15 The Pueblo people never quite told them why they had to have Blue
16 Lake back, but essentially what was happening was that the Pueblo
17 people have an origin myth that they came out from underneath
18 lakes, certain lakes, and they came out on top and made journies
19 and then settled in certain places. And the earth is... The
20 land that they dwell upon is sacred.

21 For example, with the Tiua Pueblos in New Mexico,
22 there's six Tiua Pueblos, and of these Pueblos there are four
23 sacred mountains, Truchas Peak to the east, San Antonio Peak to the
24 north, Secuma, to the west and the one right above Albuquerque
25 Sandia Peak to the south. In between that area is sacred to
the Pueblos and I think that that bounded the world immediately.
This is our land and it's sacred, and every time we go out of
here, some kind of ritual must be done, some kind of cleansing
ceremony must be done.

Immediately, there was a boundary around Pueblo country,
religious boundary, but the Spanish didn't realize this. Neither
did they realize that the Pueblos had a government to begin with

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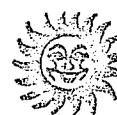


1 because when the Pueblos came... I mean, when the Spanish came
2 in 1540, they settled Pueblo country and gave the Pueblos a
3 government. And this government, they said, was going to be
4 for your own good. Well, it... The Pueblos, as they were, said,
5 "We'll accept it." They always say, "We'll accept it, " because
6 along the way you will see that they also accepted the Indian
7 Reorganization Act and incorporated it into the same system that
8 they had, a system upon a system upon a system upon a system,
9 but always at the base is religion and always at the base is a
10 philosophy that really guides them.

11 I think that, because of this, there is persistence
12 that is really tenacious, a kind of thing that I think maybe has
13 a message for people who want to get something done. Ada Deer
14 was talking about... community organization, social action. I
15 think that, in terms of means and ends that Olinsky talks about,
16 that the Pueblos really had an end and that was that this world was
17 ... this world was only a place that they were coming onto for
18 awhile but that they were going back to the Lake of Emergence.
19 The U.S. Congress could not realize, when they were giving Taos
20 Pueblo 48,000 acres or 3,000 acres around the lake solely that
21 what they were saying was, you know, "This is... We'll give you
22 this." Taos Pueblo was saying, "No, we cannot take that,"
23 because they did not realize that it was only a part of a whole
24 area that was defined in their world, in their mythology, as
25 being useful, functional. As they came out of the Lake of Emergence
they... defined places that were sacred and with this... It was
such that the Pueblos are secretive. Knowledge is only for the
elderly. Knowledge is for the societies. Knowledge is not for
the everyday man and knowledge is not, certainly, for the Spanish.
Knowledge certainly is not for the English. That kind of
knowledge is not for peoples of... alien worlds because it is
said that anytime that this information is given out, it loses
it's power, there is no longer a life to live.

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1 So for 440 years, the Pueblos have been dealing with
2 foreign governments and these foreign governments have been doing
3 all kinds of things to the Pueblos. Yet, they've survived.
4 They survived the Indian Reorganization Act. They survived the
5 Martinez case. They survived... so on and so on, but I think
6 that this base, the religion, really combined with family,
7 combined with government, those three kinds of things that they
8 put together, had put together even before the Spanish came,
9 enabled them to survive government, enabled them to survive all
10 kinds of things that were happening along the way.

11 Just to give you an idea of the kinds of things that
12 are happening, Taos Pueblo... I think I'd probably have to retreat
13 and I would need a... first of all, a cooler here so that...
14 Anyway, Taos Pueblo felt that the lands were really theirs and
15 that they were sacred. The Indian lands were really never defined
16 by the Spanish. Anthropologists really say that Spanish gave
17 Pueblos land that was four leagues from the church door. This
18 was never true because land was never defined. The only people
19 who defined their land were the Pueblos, and as they defined the
20 land, the Pueblos came and said... the Spanish came and said,
21 "You can use this land because you're settled and because you
22 have used it ever since before we came." So from 1540 to 1900,
23 there were no relationships, absolutely no relationships, almost
24 with the U.S. government.

25 Some kinds of interesting things happened. The Pueblos
had been dealing with the Spanish for about 300 years before the
Americans came. In 1802, Zebulin Pike passed by Pecos Pueblo
and as he passed by Pecos Pueblo, he saw a cross on top of the
church and he said, "These people are Christians," and he was
surprised. Where in the world did Christianity come from, you
know? But the place was in ruins and they thought, well, gee
whiz, you know, Pueblo people had been dealing with the Spanish
for 300 years prior to the coming of the English, so that...

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1 Some kinds of relationships had stabilized, but they
2 had never defined the land, who the land belonged to. The land
3 was always used in common. The Spanish called it "comun,"
4 common land, and the Pueblos also took up the term and the
5 Pueblos always knew what their land was. So it was not until
6 1891, when the surveyor general began to define some of their
7 lands, that they had vague feelings for boundaries. So they set...
8 used some of these boundaries for planting, for grazing, those
9 kinds of things. But in 1926, the Pueblo Lands Board Act began
10 to determine what land belonged to the Pueblos, because in the
11 meantime, Spanish people had moved into what was considered
12 Pueblo land, even four leagues from the church door that was
13 said to be Pueblo land was being infiltrated. People were coming
14 in... Alien people were coming in and settling right on Pueblo
15 land. Well, the Pueblo really didn't care, you know. They said,
16 "We have been here for 300 years. We'll share this land with
17 you. Besides, there's a lot of land. We don't need any
18 boundaries." And that sort of feeling was taking place.

19 So the Pueblo people really didn't begin to interact
20 with the U.S. government probably until the 1900s when the U.S.
21 goverment came and said, "We want to educate your children and
22 we'd like to put a day school on the reservation." And then
23 some interactions began to take place with that. I think that
24 it really didn't pick up, in terms of relationships with federal
25 government and Pueblo peoples, until 1926, the U.S. government
and Pueblo people. Because in 1926 they developed the Pueblo
Lands Board Committee which began to define what lands belonged
to the Indian people, what lands belonged to the Pueblo peoples.
And it was not until recent... very recent, and still land is,
you know, is being determined. So land is really still in
question.

 In 1976 through '78, for example, Santa Clara Pueblo,
where I'm from, had a petition before the claims commission and

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1 and the claims commission said that property at that time was
2 worth something like about a dollar fifty an acre. "So, we will
3 give you 26 thousand dollars for that land," but some of this
4 land included the shrine... the mountain shrines to the east
5 that bounded this world as the people had defined it as they
6 came out from the Lake of Emergence. And so they dare not give
7 up that piece of land and they weren't about to accept any kind
8 of money. So they said, "Take the money, we don't want it,"
9 you know, "It's always been our stand that this land is really
10 where we live and since before you came, this was sacred land
11 to us," and so money wasn't accepted by the Santa Claras either,
12 turned down, so the Santa Claras are still on record.

13 Taos Pueblo, in the meantime, had land that they had
14 been using, their Lake of Emergence. In 1906, the land was put
15 into Forest Service jurisdiction. Taos Pueblos said, "That
16 belongs to us," and, you know, they couldn't say... Taos Pueblo
17 couldn't say to the U.S. Senate, "That's where we go back to when
18 we die," as a matter of fact. You know, to those of you who
19 are Christians here, to those of you who have another belief of
20 where heaven is, where hell is, where those kinds of things are...
21 You know, the Pueblo people believe that they came out of the Lake
22 of Emergence, returned to the Lake of Emergence again after
23 death, and supernaturals dwell there who were there before the
24 emergence and who are always going to be there. As a matter of
25 fact, impersonations take place of this good life that happens
between the supernaturals and the people... the Pueblo peoples.

So a religion has always been there before the coming
of the Spanish and is continually being defined on a yearly basis.
Taos Pueblo started asking for the land in 1906. The... In
1926, the U.S. government offered them 279... 279 thousand
dollars and said, "This will compensate you for the 50,000 acres
that have been incorporated into national forest land." They
turned it down. They said, "We don't want it," you know. "How

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1 can anybody..." you know... They never voiced it but the thinking
2 always was, "How can anybody think of taking away the place where
3 we go back to when we die?" So Congress couldn't get it through
4 their heads that, you know, people have a reality of their own,
5 a way of looking at the world which is as valid as Genesis 1:1
6 and, which is as valid as John 3:16, or those kinds of things,
7 you know? And it's beyond me that people are not able to see
8 another person's point of view. But that's what keeps happening
9 in federal government relationships with the Pueblo people.

10 So the Taos Pueblo people turned down the 297 thousand
11 dollars and from 1966 to 1969, five bills were introduced through
12 Congress, not by litigation but because Taos Pueblo was able to
13 define this as a religious issue. And I think that one of the
14 things that happens is that the U.S. people, maybe, can under-
15 stand when it's refrained as religion, you know, as something
16 that's meaningful to me, like the Bible, you know, like mother,
17 God and country, that sort of refrain.

18 So churches began to give them support but they got
19 massive support on a national level from friends and changes
20 began to happen. In 1970, after 65 years of fighting with the
21 U.S. Congress under President Nixon, Taos Pueblo received title
22 to 48,000 acres, which included Blue Lake. Finally, something
23 had happened, but for the U.S. Congress to realize that these
24 people were not going to stop and were not going to accept money
25 and that this religious belief that was there was important
enough to pursue as long as they defined themselves as a people.

As a matter of fact, that was the only way that they
could define themselves as people in relation to the land. They
could not define themselves as a people without the land in...
in the context of everything, because as the emergence legend
says, you know, it structures how they're supposed to live, it
structures what they're supposed to do when they're here before
they return back to the Lake of Emergence, and it tells them

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1 what's going to happen after they die. So, you know, how can
2 any people give up heaven? As a matter of fact, they can't.

3 I'm going to close off by saying that, in 1934, Santa
4 Clara Pueblo... accepted U.S. government overtures through the
5 Secretary of the Interior through the Bureau of Indian Affairs
6 Office to have a constitutional government. In 18... In 1689,
7 they had also said to the Spanish, "We will take and have a
8 governor, we will have a lieutenant governor, we will have a
9 ah-wah-seelis (ph), vee-see-calais (ph), meyer d'omos (ph),"
10 and so on and so on. They accepted the government.

11 All the time, the kasikis (ph), the religious
12 leaders who are both the centralized heads of the Native govern-
13 ment, priests, knowledgable men, who guide the Pueblo, two of
14 them, Wandering Summer Solstice and Wandering Winter Solstice,
15 said, "We will accept it as a face." They accepted Spanish
16 government as a face. They lived with it and they learned how
17 to use it. The kasisis (ph) still made the decision about who
18 was to run for governor, who was to run for lieutenant governor,
19 ah-wah-seelis (ph), vee-see-calais (ph), whatever. Okay, in
20 1934, they said to the U.S. government, "Okay, fine. We'll
21 accept a constitution." A constitution was drawn up. "This
22 constitution," they said, "will include those religious
23 parties that are defined as existing right at the present in
24 the pueblo." And a system was worked out where the religious
25 base became the decision-maker for the constitutional govern-
ment. As a matter of fact, the constitution is there and it
defines how the tribal council is to operate. But guess who
nominates the slate of officers? The kasiki (ph) nominates
the slate of officers. Okay, not only that, but, you know,
this face government, the constitutional government and the
Spanish government systems, do business with the outside world.
But the kasikis (ph) have ultimate veto power on what happens
in those societies. So, you know, anthropologists, when they

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1 first came, Adolph Bandalier came in the 1890s, said, in
2 Spanish, "Mas or manos, it's going to be 50 to 70 years before
3 these people disappear as a group, as a cultural identity."
4 In 1900, in the early 1900s, Elsie Parsons, the most-noted of
5 ethnologists came by and said, "How long will it be, 50 or 60
6 years, before these people are no longer Indians?" To this day,
7 Taos Pueblo... right this very day, Taos Pueblo... and you've
8 seen pictures of Taos Pueblo, has no electricity within the
9 confines of the pueblo and you can argue that religious govern-
10 ments are not democratic or maybe a theocracy, but I think
11 the point that the Pueblo peoples are making is that, you know,
12 we have the right to define how we're going to live and, you
13 know, either you have to kill us off en masse, or we're going to
14 live this way as long as we choose to live this way because this
15 is how we define ourselves as a people.

16 MR. BERGER: Excuse me, Mr.
17 Naranjo, I hate to interrupt you. I think we all find this
18 fascinating but I would like to hear more and to continue the
19 discussion tomorrow. I got bawled out last week when we didn't
20 adjourn soon after 4:00, so I... Forgive me, I think I should
21 call the proceedings to a --

22 MR. NARANJO: I wonder if I
23 can have two minutes --

24 MR. BERGER: Sure, please.

25 MR. NARANJO: -- and I'll end
it.

But, anyway, in 1984, the Pueblo was taken to the
supreme court in Martinez versus Santa Clara because Santa Clara
said... "Only those children who are born from male members shall
be considered members of the Pueblos." It went through state
supreme court to the U.S. district court of appeals in Denver
and on up to the supreme court, challenged all the way by DNA,
the Navaho legal assistance, because the Martinez were half Navaho.

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1 In that decision, which began to support sovereignty
2 of Indian tribes, the U.S. government briefly said to Santa
3 Clara that Santa Clara had the right to determine who its members
4 shall be, had the right to define its membership. Again, this
5 religious society, because of its persistence, won. That doesn't
6 say that the Pueblo members are satisfied with membership
7 ordinance the way it is. All it's saying is that again and again
8 the theme comes through that we are a people, we define how we're
9 going to be. I think, by comparison, only by persistence, these
10 kinds of things might have a message, I don't know... some kinds
11 of contrast in... message from one people to another.

9 Gee, it's terribly hot under these lights when you
10 talk. I'm glad I'm done.

11 MR. BERGER: Well, I hope you
12 are not done. I think we would like to pick up the discussion
13 tomorrow morning and then carry on with Mr. Coulter and then, if
14 we may, Mr. Lerner, turn to you and go on from there.

14 And could we try to be here at 9:00 a.m. and let's
15 try to get started at 9:00 a.m. and then we will be in good
16 shape. So, we'll see you at 9:00.

16 (HEARING ADJOURNED)

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C E R T I F I C A T E

1 UNITED STATES OF AMERICA)
2) ss.
3 STATE OF ALASKA)

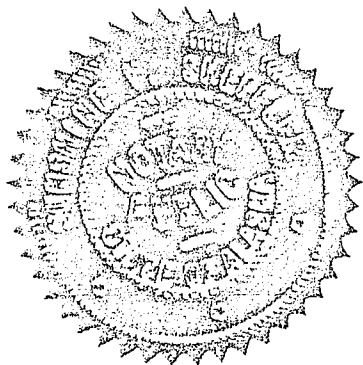
4 I, Sunshine V. Sheffler, Notary Public in and for
5 the state of Alaska, residing in Anchorage, Alaska, and Certified
6 Electronic Court Reporter for Accu-Type Depositions, do hereby
7 certify:

8 That the annexed and foregoing pages numbered 513
9 through 624 contain a full, true, correct and verbatim transcript
10 of the proceedings in the matter of the Alaska Native Review
11 Commission, Overview Roundtable Discussions, as transcribed
12 by me to the best of my knowledge and ability from cassette
13 tapes provided by the Alaska Native Review Commission.

14 That the original transcript has been retained by
15 me for the purpose of filing the same with Don Gamble,
16 Coordinator, Alaska Native Review Commission, 429 "D" Street,
17 Suite 304, Anchorage, Alaska, as required by law.

18 I am not a relative, or employee, or attorney, or
19 counsel to any of the parties, nor am I financially interested
20 in this this proceeding.

21 IN WITNESS WHEREOF, I have hereunto set my hand and
22 affixed my seal this 2nd day of April, 1984.



23 *Sunshine V. Sheffler*
24 SUNSHINE V. SHEFFLER
25 NOTARY PUBLIC IN AND FOR ALASKA
MY COMMISSION EXPIRES 8/06/84

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