

Volume VIII  
Pages 749-832  
Transcript Of Proceedings  
Alaska Native Review Commission  
U.S. National Policy  
March 08, 1984  
Anchorage, Alaska

KF  
8208  
.A46  
1984  
v. 8

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

VOLUME VIII  
PAGES 749 - 832  
TRANSCRIPT OF PROCEEDINGS  
ALASKA NATIVE REVIEW COMMISSION  
U.S. NATIONAL POLICY  
MARCH 08, 1984  
ANCHORAGE, ALASKA

Accu-Type Depositions, Inc.

550 West Seventh, Suite 205  
Anchorage, Alaska 99501  
(907) 276-0544





ACKNOWLEDGEMENT

The Overview Roundtables and this transcript were made possible through grants from the Alaska Humanities Forum and the National Endowment for the Humanities. This support is most gratefully acknowledged.



PARTICIPANTS

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

4 Joseph Jorgensen

5 Professor of History and Anthropology, University of California  
(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

18 Organizer and Representative of the Menominee Indians through-  
19 out period of Restoration.\*

20 Kim Gottschalk

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

23 Russell Jim

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

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

Accu-Type Depositions, Inc.

550 West Seventh, Suite 205  
Anchorage, Alaska 99501  
(907) 276-0544



ATD

1 Alma Upicksoun

Inupiaq law school graduate currently working with the  
Native American Rights Rund (NARF), Boulder, Colorado.

2 Don Mitchell

3 Former vice president and general counsel, Alaska Federation  
4 of Natives (AFN) (Or substitute suggested by the AFN).

5 Dalee Sambo

Assistant to the President, Inuit Circumpolar Conference,  
Alaska.

6 Al Goozmer

7 President, Native Village of Tyonek and Treasurer, United  
8 Tribes of Alaska (U.T.A.)

9 Sheldon Katachatag

Vice president of the U.T.A.

10 Walter Parker

11 Consultant (Anchorage) and author of the overview paper  
for session 2 (March 1 & 2).

12 Alfred Starr

13 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  
17 a movement to restore the rights and recognition of the tribe  
18 as a tribe.  
19  
20  
21  
22  
23  
24  
25

Accu-Type Depositions, Inc.

550 West Seventh, Suite 205  
Anchorage, Alaska 99501  
(907) 276-0544



TABLE OF CONTENTS

1	EXPLANATION	PAGE
2	Tape 29, Side A-----	749
	Mr. Berger Speaking-----	749
3	Mr. Chamberlin Speaking-----	749
	Mr. Case Speaking-----	756
4	Mr. Coulter Speaking-----	756
	Mr. Case Speaking-----	757
5	Mr. Naranjo Speaking-----	760
	Mr. Case Speaking-----	762
6	Mr. Naranjo Speaking-----	762
	Mr. Jim Speaking-----	763
7	Tape 29, Side B-----	764
	Mrs. Worl Speaking-----	768
8	Ms. Sambo Speaking-----	771
	Mr. Case Speaking-----	772
9	Ms. Deer Speaking-----	772
	Mr. Chamberlin Speaking-----	773
10	Mrs. Worl Speaking-----	774
	Mr. Johnson Speaking-----	775
11	Mr. Berger Speaking-----	776
	Mr. Johnson Speaking-----	777
12	Ms. Sambo Speaking-----	778
	Mrs. Worl Speaking-----	778
13	Mr. Case Speaking-----	778
	Mr. Berger Speaking-----	779
14	Hearing Recessed/Hearing Resumed-----	779
	Tape 30, Side A-----	779
15	Mr. Johnson Speaking-----	780
	Mr. Parker Speaking-----	781
16	Mr. Lerner Speaking-----	783
	Mr. Parker Speaking-----	783
17	Mr. Case Sepaking-----	785
	Mr. Lerner Speaking-----	786
18	Mr. Parker Speaking-----	786
	Mr. Case Speaking-----	787
19	Mr. Lerner Speaking-----	787
	Mr. Coulter Speaking-----	788
20	Mr. duBay Speaking-----	790
	Overlap Tape Number 8-----	797
21	Mr. Berger Speaking-----	797
	Mr. Lerner Speaking-----	798
22	Tape 30, Side B-----	798
	Mr. Johnson Speaking-----	798
23	Ms. Deer Speaking-----	798
	Hearing Recessed/Hearing Resumed-----	799
24	Mr. Gerger Speaking-----	799
	Mr. Lerner Speaking-----	800
25	Ms. Upicksoun Speaking-----	805

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1	EXPLANATION	PAGE
2	Ms. Deer Speaking-----	807
	Mr. Gottschalk Speaking-----	808
3	Mr. Berger Speaking-----	812
	Tape 31, Side A-----	813
4	Mr. Jim Speaking-----	813
	Mr. Case Speaking-----	814
5	Mr. Gottschalk Speaking-----	814
	Mr. Lerner Speaking-----	818
6	Mr. Case Speaking-----	820
	Mr. Gottschalk Speaking-----	820
7	Mr. Berger Speaking-----	821
	Mr. Gottschalk Speaking-----	821
8	Ms. Sambo Speaking-----	821
	Mr. Gottschalk Speaking-----	822
9	Mr. Jorgensen Speaking-----	822
	Mr. Johnson Speaking-----	824
10	Mr. Jim Speaking-----	826
	Mr. Lerner Speaking-----	827
11	Ms. Deer Speaking-----	829
	Mr. Parker Speaking-----	830
12	Mr. Berger Speaking-----	830
	Tape 31, Side B-----	831
13	Mr. Berger Speaking-----	831
	Hearing Adjourned-----	832
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		



(MARCH 8, 1984)

(TAPE 29, SIDE A)

1 (MARCH 8, 1984)  
 2 (TAPE 29, SIDE A)  
 3 MR. BERGER: Well, let's get  
 4 underway, shall we? We'll begin with Ted Chamberlin this morning  
 5 and then we'll turn to Alma Upicksoun, Kim Gottschalk, Dalee  
 6 Sambo and Alfred Starr. We were expecting Browning Pipestem  
 7 after that. He can't come this week but he is coming next week,  
 8 so his presence next week will, perhaps, offer a kind of transi-  
 9 tion between this discussion of what are essentially Lower 48  
 10 perceptions and experiences and international perceptions and  
 11 experiences and experiences next week.

12 We have an hour-long documentary on the Navajo Nation  
 13 that we will show sometime this afternoon, if that's agreeable,  
 14 just at a time if discussion is flagging at all. It hasn't thus  
 15 far, but it may.

16 So, maybe we could begin then with Ted Chamberlin.  
 17 Ted, will you proceed?

18 MR. CHAMBERLIN: (OPENING  
 19 REMARKS INDISCERNIBLE)

(LONG PAUSE)

20 MR. CHAMBERLIN: I'll just start  
 21 right in. I have a few things to say that I hope will be of  
 22 some help to the commission in its review of ANCSA. I... I'm  
 23 presenting it, obviously, from the perspective of someone work-  
 24 ing outside Alaska and outside the United States but within the  
 25 broad framework of Native land claims in North America. I think  
 Tim Coulter's right in emphasizing that, at least the panamerican  
 character of the situation Native people find themselves in but  
 my ignorance gets the better of me when I get outside of Canada  
 and the United States.

I should add that I've been one of those that have  
 been very skeptical of the Alaska Native Claims Settlement Act  
 as the model for land claims settlements for Native people in



1 Canada, mainly because, in the Canadian situation at least, I  
2 think that land claims settlements hold promise for the future  
3 only if they constitute a beginning rather than an end, and it  
4 has been all too easy, for outsiders at least, to see ANCSA as  
5 representing a tidily packaged end of the story, a final legisla-  
6 tive settlement of an awkward and somewhat anomalous claim for  
7 compensation, a closing of the file.

8 This review commission contradicts that, of course, which  
9 is one of the reasons it's so important, and not just for people  
10 in Alaska. I think the need for the review is urgent, and not  
11 only because 1991 is coming soon though obviously that's of  
12 prime importance. As an example, in November I was in Inuvik  
13 giving some testimony to the Canadian government's Beaufort Sea  
14 Environmental Assessment Review Panel on the effect of the pro-  
15 posed hydrocarbon development on Native land claims across the  
16 north of Canada. During the hearings, the proponents of the oil  
17 and gas project, Esso, Dome and Gulf, brought in someone to speak  
18 about the Alaskan experience. He presented, on the whole, a very  
19 cheerful picture of Native and non-Native Alaskans, happy with  
20 their new prosperity and welcoming more industrial development.  
21 During the questioning period that followed his presentation, I  
22 asked him whether all was as promising as he'd indicated and why  
23 some of the communities in Alaska were concerned about what the  
24 future held in store for them. I was interrupted by the chairman  
25 of the environmental assessment panel, who instructed the person  
giving testimony not to answer my question and told me to sit  
down and shut up since these were matters that he deemed irrelevant  
to the panel, which, at that moment according to its schedule,  
was supposed to be considering socio-economic impact.

It's a silly move and a silly situation, but I think  
it's indicative for it's a small part of a much larger pattern  
in which every effort is being made to reduce Native claims to  
questions of land and money and to reduce Native claimants to

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 supplecants. Things are changing, at least in some jurisdictions,  
2 but not enough and perhaps not quickly enough. ANCSA is such  
3 a prominent part of the recent history of land claims, this  
4 review has a particularly important role to play in focusing  
5 attention on some of the crucial issues. I realize that many of  
6 these are urgent community issues that need practical attention  
7 and the devising of new institutional structures congenial with  
8 community priorities. I want to speak to that in a general way  
9 and specifically about a dilemma that seemed to me to arise out  
10 of yesterday's discussion.

11 I'm going to begin with the question of sovereignty  
12 raised by Mr. Naranjo and the limitations of the statement that  
13 to be sovereign is to have authority over the land. It is not  
14 so, as Tito Naranjo said, and it is not so not only for the  
15 reasons outlined by Professor Lerner, but for other reasons,  
16 reasons that will continue to complicate any simple resolution  
17 of land claims issues. For one thing, there is the sense, as  
18 Gloria Brennan said, that Native people belong to the land more  
19 than the other way around. In those same... same set of hearings  
20 in Inuvik, one of the Dene who was giving testimony, asked the  
21 panel, in really quite startling terms, whether anyone was listen-  
22 ing to what the earth was saying, and it... it was a striking  
23 kind of comment consistent with some of the points that were made  
24 yesterday and reinforces for me the limitations of any notion  
25 of having any simple measure of sovereignty or authority over  
the land when the relationship is of that sort.

Also, of course, is the profound religious attachments  
which bind Native people to the land, whether they are actually  
living on it at one particular time or not. And that, I think,  
is an important point. I'm just going to quote very briefly  
from a report that's just come out. In fact, I'm not sure  
it's released yet, by Mr. Justice Toohey in Australia. It's  
called "Seven Years On" and it's his report seven years after the

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 passing of the aboriginal land rights in the northern territories.

2 MR. BERGER: Let me spell Toohey  
3 for the record, T-O-O-H-E-Y. Forgive me.

4 MR. CHAMBERLIN: He's talking  
5 about the... the land rights act and the provision for community  
6 living areas and some of the limitations on the act and quotes  
7 from the Central Land Council's report about the need to define  
8 particular areas to which... which would be living areas within  
9 large agricultural leases. "Even with excision," even with the  
10 defining of these areas, "there will be important sites and  
11 hunting areas and favorite camping places not included in the  
12 excised areas. There will be old men who now live on the former  
13 government reserves and around Alice Springs who would like to  
14 sit down for a year or two at places in their country where they  
15 grew up." Toohey... Mr. Justice Toohey, then moves to take  
16 that comment very seriously, indeed, and to recommend provision  
17 in a revised act that would allow for that return to those places  
18 which weren't specifically inhabited.

19 And I mention that because I think that one needs to  
20 extend, where possible, the notion of attachment to land beyond  
21 residency on the land, extending the notion to include those  
22 whole series of values involved in that attachment which are  
23 spiritual and not specifically material, though they're often  
24 located in property rights, and which are inconsistent with any  
25 simple notion that one can exercise any easy form of sovereignty  
over that land, since the powers residing in that land are not  
subject to such temporal sovereignty.

Now, these aren't small matters. They may seem... to  
be irrelevant to the practicalities of negotiating new arrange-  
ments or redefining or defining the possibilities within ANCSA,  
but it seems to me they're important because of that dilemma  
that faces many Native people, which is the dilemma... the dilemma  
of how to use structures, legal in particular, which aren't

1 specifically indigenous in order to protect indigenous values and  
2 indigenous rights. There... And, here, I'm going to move  
3 away from land claims just for a minute and then immediately  
4 back to them.

5           There's a Northern Irish poet by the name of Seamus  
6 Haney (ph) who, as with a lot of poets writing in colonial or  
7 postcolonial situations, finds himself in a similar sort of pre-  
8 dicament. He has the language, which is not his, to use in order  
9 to celebrate the things which are his. The language is English,  
10 the things which are his are the places to which he's strongly  
11 attached. And Haney talks, at various points, about the tension  
12 between what he calls territorial piety and imperial power.  
13 The power resides in the language, which is for him the English  
14 language, a language of... of considerable oppression, a language  
15 which is alien, a language which is inconsistent with the values  
16 of the land, and yet the only language, the only instrument, he  
17 has at his disposal. Somehow he has to find a way of accommodating  
18 within that language what he calls the piety which attaches him to  
19 his land, to his homeland, to his place, to his inheritance.  
20 These two, that territorial piety and imperial power or plenary  
21 power or the power of the law, however one wants to read that,  
22 they aren't easily reconciled but they must be made to coincide,  
23 to come together, because the power, whether it resides in language  
24 or the law, is a necessary condition for maintaining that terri-  
25 torial piety, just as it's a necessary condition for Seamus Haney  
in celebrating his land and his inheritance, or it's a necessary  
condition for a West Indian poet or for an African poet writing  
out of an English literary inheritance. And I think the analogy  
is fairly close since Alaska Natives, as Natives in the Lower 48,  
belong, as Professor Lerner has said, within an American inheri-  
tance which has value to them and which they want to be able to  
use in order to protect those other sets of values to which  
they're committed.

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1           The poets obviously try through... through that language  
2 to generate images, ways of celebrating their attachment to the  
3 land. Native people have been trying with laws, in a sense to  
4 get beyond laws to a protection for their... for property rights  
5 and liberty, to use the language of the Northwest Ordinance. It's  
6 not easy to reconcile the two. That... And, again, I'll use  
7 Haney's words here, that piety involves, in some measure, a  
8 surrender to the rhythms of life and of nature, a kind of humility,  
9 a... a relax and almost casual attachment to the land and to its  
10 mysteries, a sense of place in which a place... and the place in  
11 the community are combined. The power, on the other hand, which  
12 resides in the language of the law, insists on a self-conscious  
13 independence of the rhythms of life and nature, an intense exercise  
14 of authority, individual or corporate, a commitment... and this  
15 is one of the most difficult things, a commitment to a certain  
16 kind of clarity of expression, whether that clarity is expressed  
17 in legislation or in plans or in programs, which isn't always  
18 easily suited to the indefiniteness of the land or of the attach-  
19 ment to the land or of the sense of community or of the spiritual  
20 values that are part of all of those.

21           The only way that I can see, and that I think history  
22 shows, of making these two coincide is by somehow generating a  
23 view of the future, which I'll call a vision of the future just  
24 for want of a better word, in terms that are indigenous, that  
25 come from the people themselves and from their land rather than  
from the legislators, the lawyers or the advisors, though the  
legislators, the lawyers and the advisors, in whatever order,  
can be used to give shape to that vision. That vision has to  
be informed by the imaginations of the people in the communities  
and by their desires, both material desires for a better way of  
life and spiritual desires for a stronger attachment to the land  
and to their tribes or to their communities, by the dreaming, if  
you want to use a notion that certainly the Australian aborigines

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 would find congenial, a dreaming of health and happiness, of peace  
2 and prosperity, as well as a number of other things... by the  
3 dreaming, by the imaginations, by the desires of those to whom  
4 it really matters, the Native people themselves. It must come  
5 from the communities. It must come from that attachment to the  
6 land.

7 And I use the word visions deliberately. Visions are  
8 not impractical, visions are what make things happen... visions  
9 of a free republic or visions of a garden blooming in the  
10 wilderness. That was the vision that dispossessed the Indians  
11 of Oklahoma... or visions of pipelines across the tundra. Those  
12 are all visions and they need to be matched, it seems to me, by  
13 their own kind of vision, a vision of their own kind of develop-  
14 ment. It may be industrial, it may be governmental, it may be  
15 whatever, but the key thing is that it be their own and that it  
16 inform the language and the laws and the institutions and the  
17 institution structures that flow from it. That, it seems to me,  
18 is the only way in which the Native people of Alaska are going  
19 to, in the long run, make things happen rather than simply  
20 letting them happen. It's the only way to use Tim Coulter's  
21 description, to avoid making decisions on someone else's terms  
22 under legal duress, as it were, under the broad framework of  
23 duress that he was describing yesterday.

24 It's the only way to establish a pattern of relations,  
25 relationships between individuals and the natural world, between  
individuals and their communities and between those communities  
and the larger group, and to incorporate these relationships  
and institutional structures, whether they're political or economic  
or social. That's why I think ANCSA and this review are so  
important for all Native people and, indeed, for all people.  
They provide an opportunity to do this, to transform the princi-  
pals, the anxieties and the aspirations of the Native people of  
Alaska from the late 1960s into terms appropriate to and generated  
by the Native people themselves.

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 by the Native people themselves.

2 I think I'll stop there. I have some other things  
3 that, in a sense, follow from that, but perhaps I can leave those  
4 for now and... and close with... with those comments which, as I  
5 said at the beginning, may seem of an extraordinarily general  
6 nature but seem to me to be... to be specific to the particular  
7 need of Alaska Natives right now to find a way of turning ANCSA  
8 to their own advantage, of transforming it or reshaping it or  
9 whatever into an instrument for their own future.

10 Thank you.

11 MR. BERGER: Thank you, Mr.  
12 Chamberlin.

13 Any observations or questions arising out of Ted  
14 Chamberlin's remarks?

15 David Case.

16 MR. CASE: Thank you. I have  
17 some questions but they... I mean, he's touched on some questions  
18 that I think have come up throughout the first couple of days  
19 here. I don't know that it's necessary to go into it right now  
20 but I think we have to go into them at some point.

21 I would certainly like to ask, at some point I'll have  
22 Mr. Jim and Mr. Naranjo and Ada Deer and Kim give us your thoughts  
23 on the degree to which, the necessity you've found, to use  
24 Western institutions for your own purposes. And I've heard you  
25 discuss your experiences that seem to raise this question. I  
don't know if now's a good time to go into it or not, but I  
think we should go into it.

MR. BERGER: Well, that seems  
to arise out of what Ted Chamberlin was saying, so carry on, if  
you wish, to... Tim Coulter? You're on the verge of something  
here.

MR. COULTER: Yes, I... was  
very pleased to hear you suggest that... that it may not be

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 necessary, in fact may not be advisable at all, to take hold of  
2 and use models for development, models for organization developed  
3 by others. I know I'm not saying it really the way you did, but  
4 that applies, as well, to models for activity. It's not, of  
5 course, necessary to rely alone on the processes of the law,  
6 the processes of Western political interaction, even, and, in  
7 fact, Indian people, indigenous people, in many places have been  
8 quite successful in resisting that type of approach and insisting  
9 upon and managing to hang onto some of their rights and interests  
10 by deliberately staying out of the courts.

11 I, for years, represented... in fact, still do... a  
12 community of Mohawk people that took over several thousand acres  
13 in the Adirondacks in New York state, their original homeland  
14 that they'd never given up. And they just kept it and they held  
15 off the state police for years with weapons, managed to convince  
16 practically everybody that they were sincere and had a just  
17 cause and they're still there. And they have a thriving and  
18 successful community, living peacefully with their neighbors and  
19 they never had to go to court. In fact, they were sued... millions  
20 of efforts... well, dozens of efforts were made to get them into  
21 court, none of them successful. And they have done extremely  
22 well by using their own model for asserting and defending their  
23 rights and by avoiding what they felt was a very serious trap.  
24 And there are many kinds of practical approaches that might be  
25 useful and valuable here.

26 I know I'm expanding very much on ideas that you only  
27 mentioned, but it did spark something that I thought was some-  
28 thing that had been left out entirely yesterday and that needs  
29 to be mentioned and talked about.

MR. BERGER: David Case?

30 MR. CASE: Well, that's... That's  
31 sort of what I'd like to go into, what are... You know, avoidance,  
32 either by force of arms or demeanor on your face or otherwise,  
33

1 can... It certainly seems to be one tactic to... Well, Ada Deer  
2 has asked, I think... suggested that one thing that Native people  
3 share is the desire to remain Natives, native Americans. And  
4 Professor Lerner asked, "What is an Indian," and I'm not sure  
5 that's the point you were making in that question but I hear  
6 the same issue. What does it take to remain an Indian? And  
7 I think this is, I guess, what I see as being summed up, and I'm  
8 not sure it is, in the idea of self-determination, the ability  
9 to determine, yourself, and who you or we... The concept applies  
10 to any human being, I suppose, or any group, community of people,  
11 potentially.

12 So, I guess my question is, what are some other  
13 strategies in the experience of Native communities to... that have  
14 been used or tried to maintain or to remain Native and how well  
15 have they worked. And maybe that's enough. I have some specific  
16 things in mind but maybe I should just let it go now for the  
17 moment and --

18 MR. BERGER: You might let us  
19 have those specific items because I have one or two myself.

20 MR. CASE: The... The strategies  
21 that have come to my mind over the last few years are, I think,  
22 two and then Mr. Naranjo suggested, I think, a third. Just that  
23 last second, Tim Coulter suggested another. So I'm less than  
24 convinced that I've got all of the categories here.

25 But... Control of economic resources has often been  
characterized or seen as essential to self-determination for  
Native people, and I think that's particularly the focus of the  
claims act to the extent that it may be self-determination sort  
of legislation.

Another strategy seems to be that of political control  
what I hesitate to call sovereignty. and so won't, but at least  
the ability to govern oneself. Now, I'm not sure that means  
governing land in the sense of controlling land in a way that

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 is offensive to Native Americans, but at least controlling social  
2 relations among a community of people. Community control of  
3 some kind... I separate that from ownership of property in the  
4 Western sense, and, of course, this is a Western mind, you know,  
5 categorizing things. And so... But I think that political control,  
6 I'd be interested to know to what extent political control is  
7 viewed as important, necessary or whatever to achieving self-  
8 determination.

9 And then, Mr. Naranjo seemed to me to suggest that it  
10 was... One strategy to remain Native was to maintain a sense of  
11 cultural integrity, for lack of a better term... It's not his term  
12 ... but that the Pueblos have persisted over a long period of  
13 time because of... and, forgive me if I'm wrong and misinterpret-  
14 ing you... because they have a sense of community and a very  
15 cohesive religious philosophical base that has been able to  
16 essentially, I think, co-opt other institutions to their own  
17 view, but that... that cultural, that sense of who we are, who  
18 they are, has been important, maybe all that's necessary. If  
19 there was no economic resources, no electricity in Taos Pueblo,  
20 it is simply sufficient to have a sense of who one... who you  
21 are.

22 But I'm interested to know in what... you know, what  
23 institutions... Are there institutions that are necessary to do  
24 that or can it be done without institutions. And another strategy,  
25 I suppose, is isolation, keeping apart, and that can be physical  
isolation as is possible in a lot of Alaska. It can be political  
isolation in some sense. It can be, in the case of the Mohawks  
I suppose, some kind of demeanor or repartition that keeps people  
away.

So those are the things I guess I had in mind and I'd  
like to explore the extent to which any of these or other  
strategies have been important in maintaining Native American  
communities in remaining Indian in your experience.

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 MR. BERGER: Mr. Naranjo, do  
2 you want to respond?

3 MR. NARANJO: Yes, I would. I  
4 think that one of the kinds of things that maybe we haven't talked  
5 about is how a people... see themselves as a beginning. I talked  
6 about the emergence legend, how the people came about and how  
7 the people are going to live. But the Pueblos actually do  
8 perceive an end, meaning that when we no longer are Indians and  
9 we no longer can define ourselves as a people, then we should  
10 give everything back to the river, then it should... this life  
11 should end, this way of being should end. When we can no longer  
12 nourish the sun to go on its journey in the summer time and in  
13 winter time, then life should end. When all of this web of life  
14 is no longer meaningful to people and people, by... I guess...

15 There were Pueblo prophets who said there will come a  
16 time when this way, which is termed a heavy way, this life that  
17 we carry is no longer meaningful, then we must end it. And I  
18 think... I was talking to Ray Hudson this morning. Some Pueblos  
19 have done this, as a matter of fact. Pecos Pueblo, in New Mexico,  
20 in 1829, 1830, thereabouts, vacated the pueblo, a reservation...  
21 a trust piece of property, moved to Pecos... moved to Jemez,  
22 excuse me, and said, "This is the end, the lights are out. We  
23 no longer are a people." The land reverted back to... is now a  
24 museum and the Park Service runs it, sort of thing.

25 So it's not that, you know, these people want to go on  
living for the sake of owning a piece of land alone. I think  
they can only live in the sense that the culture defines living,  
at least for the Pueblos this is the way it's defined. It may  
be defined other ways by coming generations of Pueblos, but for  
the time being, for those who carry on this tradition and this  
culture, they say there will come a time when the end will come  
and we will return back to, again, the lake, you know, and the  
forms of life will continue.

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1           So there is an end and maybe if the U.S. government  
2 waits long enough, this may happen. The other things, I guess,  
3 in terms of this membership... The Pueblo peoples have never  
4 really had trouble with defining who they are. I think Santa  
5 Clara versus Martinez is very important because one thing was  
6 it reaffirmed that people know who they are and that the people  
7 define that they are... we are we. How can... How can anyone  
8 ask who the group is in the Pueblo sense because we sanction each  
9 other, because we know who influences us, we know who we inter-  
10 act with, we know who is a member by participation. We know who  
11 is a member by culture. His skin may be white, his hair may be  
12 part blond, but if these things are working, these kinds of things  
13 that we identify as being a part of what we consider... for  
14 example, a taywah (ph), then he's a member of the group.

15           And I think probably some... there are other facets of  
16 that... of exchange with each other within this... within this  
17 message that we carry in our heads about who we are that defines  
18 membership, and it's not by blood. It's because of the consti-  
19 tution, you know... we define it as down the father's line and  
20 one-half blood, but that was forced on us at a point in time...  
21 There was a German school teacher who lived long enough there  
22 and they said she is a part of us. We should give her the right  
23 to be us, and there was debate in council whether or not she was  
24 to become part of us. So there wasn't a rigid written system.  
25 When people, I think, are forced to write and to make it rigid,  
then this kind of cultural identify with regards to membership  
loses its viability... if that's... you know, according to that  
way. But in terms of ongoing kinds of identity, there's no  
problem with identity.

          Again, I've got to go back to a religious philosophy,  
and this religious philosophy is so important that it's an  
umbrella over everything else, this religious philosophy that  
says who we are, where we came from, where we're supposed to live,



1 that also determines government, that also determines the family,  
2 that also determines how we make money and so on and so on...  
3 That sort of thing is... It just infuses all of life, as far  
4 as Pueblos are concerned, spiritual, sacredness, whatever you  
5 want to call it. And all kinds of infringements can occur upon  
6 that but as long as that basic structure is standing of this  
7 philosophy that people carry around in their heads... And we  
8 don't even know that what we're carrying around is philosophy  
9 except that we talk about it in terms of seeking life. We're  
10 in the process of seeking life. They say... (NATIVE TONGUE)  
11 "We are seeking life," and that determines that we're still in  
12 process here. But when that process ends, whatever... you know,  
13 if ultimately all the kids decide to watch television forever,  
14 you know, and decide that seeking life is no longer meaningful,  
15 maybe then it... and... whatever... immense kind of other influences  
16 come and destroy this philosophy, then I think then there is  
17 no more identity.

14 MR. CASE: I don't want to  
15 really get into discussing --

16 MR. BERGER: David Case.

17 MR. CASE: -- cases... forgive  
18 me... but I think we should. What would have happened, what  
19 would have been the effect on the membership interest that you  
20 mentioned if Santa Clara Pueblo versus Martinez had come out  
21 the other way? In other words, the court had held that the  
22 equal protection language of the U.S. constitution controlled the  
23 determination of pueblo membership, would that have had a signifi-  
24 cant negative effect in your opinion?

25 MR. NARANJO: The Pueblo people  
... this thing has remained intact. I can't answer for you  
specifically because some kinds of group processes go to work  
immediately, and these processes always take time, and that's  
why I am struck by what Ted Chamberlin said. A vision... and that

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 it informs the institutional structures, you know. Well, people  
2 develop visions as things happen of how to cope with this kind of  
3 thing. But if there's some kind of institution there to cope  
4 with that... Santa Clara either was going to subvert it and  
5 incorporate it, nominally or was going to handle it in fashions  
6 that they had handled the Indian Reorganization Act, the Spanish  
7 imposition, the going into the kevah (ph) of the sacred dances,  
8 what is really meaningful is going to be protected. But I...  
9 specifics, there can't be any specifics. It's only what Ted  
10 Chamberlin said because these kinds of things when... inform  
11 the institution and the institution begins to protect and to  
12 cope and it... I think it implements a process and where this  
13 process goes is that I think it, again, reaffirms this philosophy  
14 that's there, to seek life and to seek life as we know it.

That's not very specific answer to the question but...  
you know.

MR. CASE: That's fine. That's  
your answer.

MR. BERGER: Russel Jim?

MR. JIM: Thank you, Mr.  
Chairman.

One comment on the Martinez... perhaps it would not  
have caused the negative while it... the negative effect is  
dependent upon which organization you belong to, ERA, for  
instance.

But I wish there were... I wish these questions were  
brought up a hundred years ago, how do we preserve and protect  
a people, and, as of now, how do we sort this road to eventual  
genocide? And it is approached in many ways. Take Western water  
law, for instance. The Yakimas are not an agriculturally-  
oriented people, and yet in Western water law, first in time,  
first in right, use it or lose it. And we had somewhat an  
abundance of water and so we said, "Well, how do we save our

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 water?" and 50 to 60 years ago we put it under irrigation, put  
2 our land under irrigation.

3 What has eventually resulted is that fertile valley  
4 which is raising contemporary crops is now devoid of much of  
5 the natural foods that were there, and the natural foods are  
6 an integral tie to the culture, no different than the languages.

7 And I appreciate, also, Ted Chamberlin's thoughts where-  
8 in the... the laws that were given to the indigenous people dealt  
9 clear down to the smallest microcosm. The institutions that need  
10 to be advised from here on are, perhaps, the educational process.  
11 The present method is to... is set to assimilate. As I mentioned  
12 in my first talk two days ago, the textbooks must be changed.  
13 The attitudes must be approached differently towards the preserva-  
14 tion of a culture, quote unquote. And I appreciate the oppor-  
15 tunity to speak of visions, to speak of rights of... as someone  
16 mentioned, perhaps in a flip way a couple of days ago, the rights  
17 of rocks. They were, perhaps... chastizing the environmentalists  
18 for going overboard in many ways, but let us step back, take a  
19 couple of steps back, and look at the indigenous world. Let us  
20 look at other indigenous countries where corporations have...  
21 have... taken all the resource they can out of the land and then  
22 moved. But they have also allowed these people to become dependent  
23 upon a different way of life, and then when they say, well,  
24 how did we live here for the last 10,000 years, let's go back  
25 that way, but when they try the resource is not there to support  
that cultural way of life. Which brings me, again, back to my --

(TAPE 29, SIDE B)

21 MR. JIM: -- chastisement of  
22 of the bureaucracy, the Bureau of Indian Affairs, and I would  
23 like to perhaps clarify it in my statement, which may come back  
24 to haunt me again one day in regards to the Bureau of Indian  
25 Affairs and the ineptitude of people that are there. There are  
very good people in the Bureau of Indian Affairs, but not enough

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 good people. The statement of our new... at the time a year  
2 and a half ago... our new area director for some reason or  
3 another stated, "I'm proud to say that 78 percent of the Bureau  
4 of Indian Affairs employees are Indian." Ah, but the methodology  
5 in which these people create our... obtained these jobs created  
6 by the bureaucracy, in order to climb up this GS ladder you had  
7 to move. You had to move from place to place, reservation to  
8 reservation, and this is, I felt, one of the methods to devoid  
9 you of your culture eventually, no different than the relocation  
10 efforts which created, perhaps, the many Indians in Chicago  
11 that are still remaining there. The relocation process was a  
12 fallacy. It was disasterous to Indian country.

13 So perhaps I tread on dangerous waters here but I think  
14 it has to be said. Let us not disregard the contribution the  
15 demise of cultures promoted by Christianity. I hate to go into  
16 detail, it takes some time, but for instance, in the Yakima  
17 some years back... not too long ago... where they would come  
18 into the long houses and break the drums and incarcerate the  
19 Indian leaders, publicly beat them, sometimes even hang them  
20 to rid us of this... of these visions that Mr. Chamberlin spoke  
21 of and Mr. Naranjo, because they misinterpret exactly what these  
22 cultural people were trying to do.

23 And on top of all this, it seems to be a vicious cycle  
24 wherein, in my religion, religion, I guess, to utilize this  
25 borrowed tongue that I... without a better way of defining it...  
This English language is limited in order to define what my  
people say... But in this religion of ours, I was taught to not  
criticize another demonination lest when I am laying cold, my  
body is cold and my heart is cold, that criticism sticks to my  
body and how do I rid myself of it in order to be clean to get  
into that Great Land? So... But I think time has come that  
perhaps it would be a sin for me not to say something in order  
to preserve and protect the indigenous ways and the culture of my

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 people.

2           So, the institutions are perhaps here, but they need  
3 restructuring. They need to turn their ways of thinking. They  
4 need to be... They need to be made aware, but you can only be  
5 made aware to a certain step because take for example, my  
6 people will not allow you to come into the long house on Sunday  
7 or when there is a body there and have all this paraphernalia  
8 you have running here, all this equipment, video tapes and  
9 recordings, because they feel that it is not ours to be given  
10 away in this manner. Perhaps an example would be the Watusi,  
11 the dance that was so popular 20 years ago, made popular across  
12 the United States, sold millions of records, made a lot of money  
13 for certain individuals. But how do we know that it was not a  
14 sacred dance out of Africa and here they brought it out and  
15 modernized it. That's what the fear of the Yakima is in regard  
16 to our sacred songs.

17           And it gets down to another little intricacy. These  
18 sacred songs that we sing were not made here on this earth. You  
19 ... The songs were brought back from the other world. About  
20 three or four years ago, perhaps, you remember on television  
21 when someone said, "Well, I think I truly died and I could see  
22 my body laying there and I went to this place and there was this  
23 door and they said, 'No, you go back. You're not ready to come  
24 in here yet.'" Well, they were sent back and they said, "Well,  
25 what a strange phenomena." Well, the Indians have known this  
for thousands and thousands of years. They were not made here  
on this earth.

          And the... The major problem we have in this regard,  
another contribution to the culture genocide, is that contemporary  
society says whenever a person dies, "We must know why that  
person died." So they drain your blood, they break your jaw  
so you don't grimace, they cut your muscles so you don't sit  
up and et cetera. But you are... They make sure you are dead and

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 so the elders of today say, "Who's going to bring back these  
2 songs in the future? When you die today, you die forever."

3 I appreciate this opportunity and the questions that  
4 you raised, Mr. Case. Perhaps in the eyes of my elders, I have  
5 overstepped my bounds. But like I said, allow it to be my sin.  
6 I think it has to be said sometime or another. Not to... Not to  
7 ... Try not to allow this continuation of tom-toms beating and  
8 calling rain and these... these methods of... or, this way of  
9 thinking about the indigenous people and their strange ways.

10 Our people had many visions. They visualized this  
11 "tao-taoli"... It's a metal object that will come down the trail  
12 with big eyes that can even see you in the dark, eventually  
13 that's coming. And they said this hundreds of years ago. One  
14 day there will be a people coming, round eyes and very pale and  
15 hair all over their faces. And my father was a little boy and  
16 he say the first people come down on the wagon train with hair  
17 on their faces and he was terrified, he was petrified, hiding  
18 in the trees way up there in the brush, petrified to move when  
19 he saw the vision come true. The metal object that can go into  
20 the big water with people inside and stay for days and days and  
21 it would come back up and those people would still be alive.

22 But also, there is this. Man is made to destroy him-  
23 self and one day the earth will burn and turn over and man will  
24 have caused the destruction of himself. But as I try to... As  
25 I speak to the younger generation, do not allow the thought that  
two men in this world sit with their fingers over a red button...  
do not allow this to deter you from seeking a way to perserve  
and protect your culture and your way of life because many of  
the children today are lost as a result of many of the institu-  
tions that I spoke of awhile ago. They... It is no different  
than prior to the... The Indian Child Welfare Act was implemented  
and passed and supposedly enforced. Many of the children were  
taken and put into homes of non-Indian. But eventually, in their

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 adult stage, they began to look at themselves and say, "I'm  
2 different. Who am I? I have this feeling inside of me." And  
3 many of them found their way back to the land and their homes,  
4 their origins and wanted to know who their people were. No  
5 different than the people of the last few generations that start  
6 out, perhaps, on these two roads that must be walked today,  
7 the indigenous road and the white man road. But perhaps in an  
8 influential year, the early teens perhaps, they, coupled with  
9 the ridicule provoked by their peers, they wander away from  
10 this road. But through either happiness or sorrow or maturity,  
11 they come back to this road. But there is this void here that  
12 they left. For instance, they can't sing the songs and they  
13 can't speak the language, but they have this feeling inside that  
14 they must. And I think everyone... I won't speak for the atheists  
15 ... but everyone needs to have some type of spiritual assistance  
16 and help.

17 So what do they... What do many of the children do  
18 today? They turn to a denomination they can understand or they  
19 create their own, the Native American Church. They use peyote  
20 up here in Northwest, which they really don't even understand  
21 what it's supposed to do, but they're trying something to perhaps  
22 ... that has some semblance of the Native rights. And all  
23 these institutions, methodologies, that have been imposed upon  
24 the indigenous peoples, is causing us to raise a generation of  
25 culturally-deprived people.

If you have any specific questions, more, I would attempt  
to answer. But I thank you for this opportunity.

MR. BERGER: Rosita Worl and  
then Dalee Sambo.

MRS. WORL: Ted's commentary  
this morning reminded me of when I first went to the North  
Slope to study the political development of the Inupiaq and I  
spent the first year looking at the development of the borough.

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 And it lead me into looking at the traditional political elites  
2 who were whaling captains. So I started to take my field work  
3 out in... I said I would start looking at whale hunting. And  
4 the captains called me into the... their organization and said,  
5 "Well, if you're going to study... If you're going to study  
6 whaling, you're going to have to learn Inupiaq because we don't  
7 whale in English." I think it... I think that Ted and David are  
8 really pursuing a course that I think can be of some value to us,  
9 and that is, how do Native people utilize Western institutions  
10 to protect cultural elements.

11 We have some good examples of some things, you know...  
12 I think one of the points that Byron Mallott said was that Native  
13 people put all of their hopes, dreams and aspirations on Native  
14 corporations and then expected the Native corporations to respond  
15 to all of those needs, and he was suggesting that Native people  
16 needed to look out at other institutions that could possibly  
17 respond to some of those things.

18 We have an example in the North Slope where they formed  
19 the North Slope Borough. They also formed the Inupiaq Community  
20 of the Arctic Slope with... Well, under ANCSA they knew that they  
21 were going to get their five million acres. With the North  
22 Slope Borough they knew they were going to get zoning and planning  
23 powers and, perhaps, you know, through their planning protect  
24 subsistence areas and then... and then, like through the Inupiaq  
25 Community of the Arctic Slope, there was that... that desire...  
that objective to maintain the trust relationship that is... exists  
with IRAs.

26 We have the Tlingit and Haida who, under Public Law  
27 93-638, began to contract educational programs. The Tlingit and  
28 Haida people have always valued education. In fact, when they  
29 first met the Westerners, they said, "Why is it that you're  
30 so knowledgeable? Why is it that you have this science and  
31 technology? Is it, perhaps, of your God?" And so they adopted



1 Christianity and it took them some years to learn it was really  
2 education that they wanted. And so they demanded, you know,  
3 that educational institutions be developed in Southeast.

4 Under 93-638, they contracted for higher education  
5 programs and when they first started off, they had 30 Tlingit  
6 and Haidas in college. And they began to change --

7 MR. BERGER: What year was that?

8 MRS. WORL: Oh, 1968. They  
9 began to change some of the rules in... in the educational  
10 programs, the scholarship program. One other thing they knew  
11 was very important that was, upon the death of an individual,  
12 they had to come home, not only for the funeral but also for  
13 the 40-day party. And what happened before that was, when kids  
14 went off to school and when they had cultural obligations, they  
15 usually came home right in the middle of the year and didn't go  
16 back just because of lack of finances. So they developed the  
17 educational programs so that they could bring kids to meet these  
18 educational needs and then send them right back to school.

19 There were a couple of other things that they did but,  
20 you know, that suffices for an example. When ANCSA was passed,  
21 the part of it that I became very interested in was in corpora-  
22 tions. Now, how can corporations be compatible with Native  
23 cultures? One of the things that I looked at was Japan. And  
24 "Aha," I said, "here's a model. It looks like a model for us  
25 where we have, in Japan, instead of the large, large multinational  
corporations..." or, "they have large multinational corporations  
but they also have these very small family-based corporations,"  
and those family based subsidiaries take care of all of the  
housing needs, you know... provide loans and, in a very modern  
capital way, take care of the needs of the smaller families. It  
looked like a viable model to me. But then there was one thing  
that was missing and that was in terms of the values.

Now, most Alaska Native economic systems... their

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 subsistence systems are developed on reciprocity, redistribution  
2 and exchange, and so they have the value of sharing, and which,  
3 really, is very different than... you know, all you need for  
4 capital and acquiring wealth and acquiring that surplus so you  
5 could reinvest in that one particular corporation. So there  
6 has been some suggestion, you know, that Native people don't  
7 like to work hard. Well, when you look at their traditional  
8 economic pursuits, there was considerable expenditure of energy.

9 And I haven't come to any resolution about it but I  
10 do think it's one of the... one of the areas that we might pursue,  
11 either in this hearing or, perhaps, you know, at some other  
12 point in time. But I think it... the question to ask is, is  
13 it possible for corporations to be compatible, you know, with...  
14 It seems to be the thing that is at odds is... is the value  
15 system and that's the sharing versus the accumulation of wealth.

16 MR. BERGER: Thank you, that's  
17 a most thought-provoking statement. Dalee Sambo?

18 MS. SAMBO: Well, I wanted to  
19 get back to what David was talking about in terms of the  
20 strategies and is it possible to have more than one... or, to  
21 have a combination of the strategies that were discussed rather  
22 than a choice of one or the other. Like traditional self-  
23 government of Alaska Natives before the coming of the white man  
24 where there was a combination of the control and management and  
25 the full and wise use of resources and also political control,  
and also the maintenance of cultural integrity, all combined and  
also including, not quite avoidance but moreover isolation, where  
they're... where they were able to keep all of these things intact  
because of isolation. And isn't it possible to develop a new  
vehicle that... its a combination of all these strategies?

MR. CASE: That's a question  
to me? or is that --

MS. SAMBO: Or... to everybody.



1 MR. CASE: Yeah, okay. I...  
2 I mean, I didn't mean to imply that these were exclusive options.  
3 I look around and I see these various strategies being suggested  
4 and I guess I suspect that the mistake is to put all the, so to  
5 speak, eggs in one basket. But I'm just not sure what everybody's  
6 experience is with any of these, strategies whether in combination  
7 or in isolation, and that's what I'm most interested in learning.

8 MR. BERGER: Ada Deer?

9 MS. DEER: Sorry to have  
10 missed the earlier point in your discussion. I hope to catch  
11 up with that later.

12 But I wanted to respond to this issue of corporations  
13 and their interaction with the cultural needs of the people.  
14 After termination, a state corporation was set up. They hired  
15 white managers to come in and run our tribal mill and, of course  
16 ... I shouldn't say of course, but, really, what happened was  
17 they fired a lot of people. There was an extremely high rate of  
18 unemployment, although the effort was to become more efficient  
19 and be... and utilize modern business methods. This caused a  
20 great deal of disruption in the community, needless to say. I  
21 should say that our main economic base on our reservation is the  
22 lumber industry. We have now a modern lumber mill with computer  
23 operation and so on. But at the time of termination, there were  
24 no Menominees that were trained to be managers and supervisors  
25 and I feel that this is certainly due to the lack of the Bureau  
of Indian Affairs' training people to assume managerial and  
administrative functions.

At any rate, over a period of time, many of our people  
did suffer a great deal due to the lack of employment there and  
over recent years now, with the Restoration Act, the tribal...  
corporation has a board of directors composed of all Menominees  
and people are slowly learning about business practices. But I  
think it will take a longer period of time and we need to diversify

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 the economic base.

2 So, we're still in the evolving stage, utilizing this  
3 corporate model and I hope that, over a period of time, it will  
4 be modified to maintain the cultural integrity that I feel is  
so necessary.

5 MR. BERGER: Thank you.

6 I was just going to ask Ted Chamberlin if he had any-  
7 thing to add in light of the discussion that has ensued.

8 MR. CHAMBERLIN: Thank you.

9 Just a couple of points.

10 Without getting into the details, and I... I suggest  
11 that it may be a mistake to see the strategies for... for protect-  
12 ing indigenous values, to see them as separable. I think that  
13 there is a hazard in separating out economic control and political  
14 control and notions of cultural integrity and isolation, and  
15 seeing them as distinctive. I think that they need to be seen  
16 as part of the same seamless web and that property rights, for  
17 example, need to be recognized as economic and political and  
18 cultural and spiritual, together, and that whatever strategy is  
19 devised incorporates all of those values. That's part of the  
20 reason why I used that... used the term vision. It seems to me  
21 that that sense of... of how to move... that that sense of the  
22 way... to hold to the things that are of value has to... has to  
23 bring all of those things together.

24 And related to that, though it's a separate point, is  
25 the question of the extent to which Western institutions, laws  
or whatever, are a necessary part of this process. What I was  
suggesting is that, necessary or not, there is a tension that  
is there for most Native communities between those Western  
institutions, the language, the laws, the structures, corporate  
or otherwise, and indigenous values and attachments to the land  
and combinations of material and spiritual rights and so forth,  
and that... that the process is one ultimately of trying to go



1 beyond the... those laws or those institutions, just as... And  
2 here I'm picking up the analogy I began with... just as the  
3 poets, such as Seamus Haney, write their poetry and attempt to  
4 go beyond language to say the things that can't be said, to  
5 somehow reach past the limits of language. I think, for the  
6 Native groups, the attempt has to be to move beyond the laws and  
7 beyond the institutions. The fact that they may never get  
8 there makes it all the more important to move in that direction,  
9 just as the poets are never going to get beyond language but keep  
10 trying. And it seems to me that that instinct to accommodate  
11 both the possibility of it and the possibility needs to be...  
12 needs to be kept to the center of... of things and of thoughts,  
13 especially now as the Alaska Native move to taking stock of what  
14 the next decades hold in store.

Thank you.

MR. BERGER: Thank you.

Rosita Worl?

14 MRS. WORL: Well, I just, first  
15 of all, wanted to say that I forgot to mention that, under that  
16 Tlingitization of that bureaucracy, in terms of education, that  
17 I think right now we have... every year we have about 400 Tlingits  
18 in college. So, I mean, I'm saying that it can be successful, at  
19 least in terms of one element. But I do agree with Ted that  
20 the difficulty comes in trying to merge all of those values...  
21 all of those systems under one system or under one institution  
22 and I don't think that they are separable in many instances.  
23 But, I guess the point is that... and I guess here is the,  
24 maybe, the cynic or the realist in me, is that we have to keep  
25 trying, you know, to find as many different ways that are  
possible while maintaining that, you know, that always in our  
mind and heart.

MR. BERGER: Ralph Johnson,  
you've been writing away there. Did you want to add something?

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 MR. JOHNSON: One of the diseases  
2 of an academic is to write.

3 Well, responding to Dalee Sambo's question, it seems to  
4 me that... and responding also to the very profoundly important  
5 statements by Russell Jim and Tito Naranjo and others about what  
6 ... what we're trying to do here, and applying that to institu-  
7 tional structure, it seems to me that a few observations are  
8 relevant on the kinds of institutions that might be considered in  
9 Alaska.

10 First, history... I think in whatever form, whatever  
11 culture, shows that moving slowly and incrementally from past  
12 practice and from past institutions is... is really the way to  
13 go, that looking for brand new institutions is often a hazardous  
14 occupation and does not accomplish the vision that the people  
15 who seek that new institution are looking for. So I think that,  
16 looking at gradual transition from what is now in existence from  
17 traditional forms to something that seems to fit or be compatible  
18 with those forms is called for.

19 There are three kinds of organizations at the village  
20 level, to speak specifically and get down to some of the nitty-  
21 gritty here, that the IRA corporations which offer certain powers  
22 and advantages under the federal incorporation... The traditional  
23 form of government which surely --

24 MR. BERGER: Excuse me, sorry.  
25 You said IRA corporations?

MR. JOHNSON: I mean, the IRA  
... Well, it's the IRA... It's an IRA form of government,  
constitutional. I don't mean an IRA corporation, I mean the IRA  
form of government, constitutional government, the traditional  
form of government and then the municipal form of government.  
And each one of those... The municipal form of government has the  
advantage of relating specifically to state government, of poten-  
tially obtaining state revenues and support, of obtaining state

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 power, in a sense, but the disadvantage of probably bringing in  
2 non-Indian or non-Native voters under the equal protection  
3 clause to participate. That may or may not be a problem, depending  
4 upon how many non-Natives are living in the area, whether that  
is important.

5 Each one of these, it seems to me, has some slight  
6 ... some slight advantage or disadvantage. There's also ... and  
7 I think that David Case might speak more knowledgeable to this...  
8 more knowledgeable to this, and that is there are definite  
9 undercertainties as to whether each of these can exist together  
10 as to what the legal effect of having one or two or three of these  
11 is at the present time. They were each dev... They were each  
12 defined originally as something that would be complete. They  
13 would be the sole form of institutional structure and when you  
14 stack one on top of the other, there is a good deal of uncertainty  
15 as to what the end result would be.

16 I would think that one of the things that might be a  
17 sub-part of the commission's work would be a careful study...  
18 even a more careful study than the very excellent work that David  
19 Case did in 1978... a contemporary study of the legal effect of  
20 those, not only legal effect but clearly the more profoundly  
21 the more social and economic and religious effect of laying,  
22 overlaying, layering those structures on top of each other, and  
23 a recognition of the specific kinds of uncertainty that are  
24 provided by that layering.

25 MR. BERGER: Before we turn  
that subject over to David Case, could you comment, Professor  
Johnson, on the question that John Havelock raised here last  
week? He served as attorney general in the Egan administration  
in Alaska and he offered the opinion... I... in the course of  
discussion that the state of Alaska might be disabled from provid-  
ing programs and funds to Native governments, traditional govern-  
ments or IRA governments, because this would be in violation of the

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 Alaskan constitution... Is that a... and Ada Deer adverted to that  
2 in the course of her discussion of the institutions established by  
3 the Menominees in recent years... Is it possible to tell us what  
4 the position is in the Lower 48? How... What is the relationship  
5 between Native governments, using that term broadly --

6 MR. JOHNSON: Well, there's no  
7 fundamental constitutional disability of... by a state government  
8 dealing with a tribe in the Lower 48. There was a constitutional  
9 disability, or a federal law disability, under... I guess prior  
10 to 1975, but now federal law has been enacted which authorizes  
11 the tribes and the states to contract with each other so that it  
12 is perfectly possible for the tribe in the Lower 48... using the  
13 tribe as the entity... and the Yakima Nation, for example, to  
14 negotiate with and contract with the state of Washington for  
15 certain services.

16 So, legally, you can get over that hurdle I think and  
17 accomplish many of the same results that would be accomplished,  
18 for example, by the state of Washington dealing with the town of  
19 Puyallup or the city of Seattle or something of that order,  
20 the county of King, the county of Pierce or whatever. You could  
21 do it by contract, but at the same time there's a recognition of  
22 the political problem that the state frequently views an Indian  
23 tribe as something, "Well, if they aren't part of the state,  
24 why should we support them?" I mean, if they're really on the  
25 federal role, then why should we support them. So you've gotten  
over the legal hurdle, possibly, but there is that feeling that,  
"Well, if they aren't part of the state and they aren't part of  
the institutional structure of the state and don't pay state taxes  
or in lieu money," and there is a lot of that paid, but "if they  
don't pay that, then why should we allocate state funds for that  
purpose?" That may be a misperception but it is surely a percep-  
tion and I'm sure Ada Deer has seen that in many circumstances  
as well as others.

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1           But I think the legal answer is that they can do it.

2                           MR. BERGER: Dalee Sambo?

3                           MS. SAMBO: Ralph was talking  
4 about the different layers and mentioned IRA governments, tradi-  
5 tional governments and municipal governments, state charter. I  
6 think ANCSA added another layer in village Alaska with the village  
7 corporations and then, also, the nonprofits that are regionally  
8 based that provide some of the same services that municipalities  
9 and... local traditional governments or IRA governments would  
10 provide. So there is another layer added to that.

11                           MR. BERGER: Rosita Worl?

12                           MRS. WORL: Yes, I just wanted  
13 to ask David a question, insofar as our constitution saying that  
14 we, you know, the state can't contract to... on an ethnic basis  
15 or for Alaska Natives in this case. The state does serve as a  
16 trustee for our... for municipal lands for communities that don't  
17 have organized municipalities. How does that relate to the  
18 problem in our consitution?

19                           MR. CASE: Well, I've never  
20 been convinced that there is a problem with the constitution.  
21 It often seems to me that the attorney general's view of that,  
22 the equal protection language of the Alaska constitution, is  
23 a political decision that is dressed up in judges robes, dressed  
24 up in a legal opinion. But it's really, I think... underlying  
25 that is what Ralph talked about, is this political... antipathy  
of the states towards the tribal governments.

Now, as far as your question goes, the municipal lands  
trustee, I suppose, sees this as a trustee for... as the function  
of being a trustee for a state municipality, or a future state  
municipality, and that state municipality is not going to have  
any ethnic basis or bias. Of course, the... the legal theory  
of Native political communities and powers is that they are not  
ethnically oriented either. You know, it's sort of now you see

1 it, now you don't. It's one of these things that the law is  
2 always good at manipulating. But the theory and the legal reality  
3 is that Native American communities are distinguished or  
4 discriminated for and against on the basis of a political rela-  
5 tionship, as Ralph Johnson discussed yesterday. And that political  
6 relationship is the process... is the product, in my view, of a  
7 rather long history, which we discussed, I think, yesterday in  
8 the course of Ralph Lerner's remarks.

9 So the point is, it is not ethnically based. That's  
10 the point. The distinction or the status of Native Americans is  
11 not at law an ethnic status. It is a political status and that  
12 is what distinguishes Native Americans in law from other ethnic  
13 minorities, and accounts for, you know, Title 25 of the U.S. Code.  
14 And however that may have been the doctrine that was ginned up  
15 in 1973 to support the code, that's still the law and I have no  
16 doubt that it is going to remain the law... I mean, because  
17 the government is not about or the court is not about to jettison  
18 the last couple of hundred of years of law-making in this country.

19 MR. BERGER: Excuse me. I  
20 thought that we might take about a five minute break now. And  
21 when we return, Ralph Johnson, we'll turn to you, then to Alma  
22 Upicksoun, Kim Gottschalk, Dalee Sambo and Alfred Starr, if you  
23 wish to speak. And there were one or two others in the hall  
24 who had wanted to participate, and maybe we can arrange that.

25 So we'll just take a five minute break and have a  
cup of coffee.

(HEARING RECESSED)

(HEARING RESUMED)

(TAPE 30, SIDE A)

MR. BERGER: Well, I thought that  
what we would do now is just pursue this for a little while, this  
discussion that we initiated just before the break about the  
rationalization of relations between Native governments, to put

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 that very broad label on them, and state governments, particularly  
2 here in Alaska. And Ralph Johnson was going to say something and  
3 Walter Parker was going to add something... and then, perhaps,  
4 any others. And after that, we might ask Bill duBay and Vernita  
5 Zyles, both of whom wish to say something, to make their contri-  
6 bution. And after that, Alma Upicksoun and Kim Gottschalk, both  
7 here from NARF, have got some extended remarks each of them wants  
8 to offer. And then we'll turn to Mr. Starr and then we'll go  
9 back to some of those who... so fascinated us yesterday and the  
10 day before.

11 So, perhaps we could just start off, Mr. Johnson, with  
12 you and then go to Walter Parker?

13 MR. JOHNSON: Yes. I'd like  
14 to emphasize one thing I said before the break, and that is that  
15 I would like to be involved, and hope that others here would  
16 also, in a more intensive study of the potential different insti-  
17 tutional structures that exist both in the Lower 48 and in Alaska  
18 to see what the advantages and disadvantages of various ones are.  
19 It's not a subject that can be exhaustively explored in a plenary  
20 session. It takes some very hard, careful work and I'm sure that  
21 is on the agenda of the commission.

22 But in a broader sense, I wanted to make one comparison  
23 and a very brief one, between the Lower 48 and Alaska. In the  
24 Lower 48, and especially in the Pacific Northwest where I come  
25 from, there is a deeply-held feeling by the states that the  
treaties were signed between the United States and the... the  
United States federal government and the Indian tribes and the  
states were not part of that and they don't want to have anything  
to do with it. And they have a general antagonism toward Indian  
tribal governments, Indian tribes... They don't understand, they  
have forgotten that in 1856 to 1860 that the Indians gave up about  
41 million acres in the state of Washington, which is the state  
of Washington, in return for about two million acres and a few fish,

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 a fairly bad bargain on behalf of the Indians but nonetheless  
2 they bargained. In the state of Alaska, that exchange is much  
3 fresher and I sense up here, but as still a new comer, I sense  
4 that the state does recognize that the Natives have certain  
5 economic powers, some bona fide political legal claims, and  
6 there is more of a willingness to deal back and forth, maybe  
7 with some hard terms, but to deal and exchange and negotiate  
8 than there is in the Lower 48. So I would be a little bit wary  
9 of making too many comparisons in the Lower 48 where views have  
10 fossilized and hardened and become rather difficult to deal with.

MR. BERGER: Walter Parker.

MR. PARKER: The conven...

10 When the claims settlement was passed, the conventional wisdom  
11 of the legal establishment and those in government and so forth  
12 was generally against forming the village corporations. It was  
13 Alaska Natives who insisted on the village corporations and the  
14 reason, of course, that the insisting on the corporations was,  
15 as I said, in the paper last week, that it was one of the few  
16 options that was offered at that time as an institution. But  
17 it was the wisdom of Alaska Natives and, you know, recognizing  
18 that the village is the institution which maintains that seamless  
19 web that Ted referred to... that seamless web of continuity  
20 and that is the handhold to which you can reach out and grab hold  
21 and hope that you can hang on into the future.

22 Now, we've interjected all these other institutions  
23 and coping with them has been recognized as a problem ever since  
24 statehood but with an increasing degree since the passing of the  
25 act. In every village, you've got several institutions at play  
now and, as you found out, Mr. Chairman, in Tununak, of course,  
they expressed some desire to get rid of at least one or two  
of them so that they don't have to deal with all of these  
institutional conflicts that exist, and it's...

I agree with David Case that the constitutional barriers

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 that have been raised against forming institutions which have some  
2 form of ethnic base or which relate to the totality of the  
3 village of an institution, I think those barriers are more  
4 perceived than real. I don't particularly read the Alaska con-  
5 stitution that way. We've gone back and forth over it for the  
6 last dozen years in trying to deal with subsistence and most  
7 unsatisfactorily, simply because it hasn't been approached with  
8 any really good faith effort to eliminate those perceived barriers.

9 I have, you know, some confidence that, within the  
10 framework of the federal constitution and the Alaska constitution,  
11 that the village, as an institution, can truly be creative and  
12 without trust relationships or any kind of imposition. The  
13 question, I think, is... and this is where, not being a lawyer,  
14 I can say this... I say the... you know, the question has been  
15 simply that tie partly with the legislative process that needs  
16 to be explored but more, it has been the legal process which has  
17 intruded time and time again into the core of the village as an  
18 institution. Because, as I said in the paper, you know it's  
19 all based on Western law and the village simply did not evolve  
20 from there. And how do we resolve that particular conflict?  
21 We don't have to write a whole new code of law because the code  
22 of law which the villages, in many parts of Alaska, still make  
23 some of their most basic decisions based upon, exists there and  
24 it's not necessary for us to codify that, I don't think, in any  
25 Western law. It's necessary just to establish the... a recogni-  
tion that these things do exist.

21 The other two elements that intrude, the village has  
22 handled them themselves. The intrusion of Western religion is  
23 something that is, as I perceive it, being handled reasonably  
24 well. And the intrusion of Western business through the cor-  
25 porate structure, or any other means, is being handled. But...  
the villages presently... as presently... in their present situa-  
tions, just have this extreme difficulty in coping with Alaska

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 statutes, with the federal statutes, as they impose upon them.

2 So the... I think that's all I'd want to say at the  
3 moment, other than we simply have to make the kind of leap of  
4 faith that Alaska Natives made when they approached the Congress  
5 for the claims settlement that, you know, good faith did exist  
6 and that... in the United States on trying to resolve that and  
7 the corporations were simply the best option that anybody evolved  
8 at the moment, and sit down, think hard, and take the next step  
9 in evolving an institution which truly reflects the village.

10 In Alaska, I tend to use village rather than tribe  
11 because it did more aptly express the situation for most people,  
12 recognizing that in Southeast Alaska, why, tribe is sometimes  
13 the more accurate description. But whether it is tribe or village,  
14 it's the same situation... same remarks that pertain to either.

15 MR. BERGER: Thank you. Mr.  
16 Lerner?

17 MR. LERNER: Just a point of  
18 clarification, please. What do you mean when you say that the  
19 village handles the intrusion of Western religion fairly well?  
20 What does handled mean?

21 MR. PARKER: I mean that, in  
22 Western religion, in dealing... because it is fragmented, at  
23 least as it approached Alaska, a very different situation from  
24 that in Latin America or other areas of the world, why, because  
25 it has been fragmented, there is more of an ability in the  
village to choose to accept or reject, whereas, you don't have  
that same ability to accept or reject in the law. The law is  
imposed with some force, if necessary, and so accepting, you  
know, that the acceptance of religion was under, in some...  
many cases, under false pretenses, why, at the same time at this  
moment in history, I think the capacity exists in Alaskan villages  
to make their... to establish a concordant with... concord it  
with whatever form of Western religion is in the village at the



1 moment... or religions. In most villages... or, in many villages,  
2 there are several religions present. Why, you know... They can...  
3 Because they are not dealing with a massive institution, they...  
4 massive institution that is accompanied by some force, they can  
5 handle that.

6 MR. LERNER: May I come back?

7 MR. BERGER: Yes, Mr. Lerner.

8 MR. LERNER: I take it you're  
9 speaking about proselytizing?

10 MR. PARKER: Mm-hm.

11 MR. LERNER: And you're dis-  
12 tinguishing, say, proselytizing with a sword in the spirit of  
13 the Spanish conquistadores or... or Islam, in earlier times,  
14 from a situation where a missionary comes or some sect or other,  
15 and tries to persuade people to give up their old ways?

16 I'm trying to understand how, from the standpoint of  
17 someone living in the village, isolated somewhere, having this  
18 perhaps rare, unique confrontation with the white man speaking  
19 very different language... I mean, language not in the sense  
20 of the dialect but to use the earlier term that was his vision...  
21 how they are better able to decide freely for themselves?

22 MR. PARKER: The... I think...  
23 You know, what I'm saying is that... you know, what has gone  
24 before has gone before, and at this particular time in history,  
25 the typical situation in Alaska village is that the religious  
presence that's there has modified itself in many cases to the  
needs of the village as... Just as an anecdotal expression of  
that, the... There are two villages in Western Alaska who are  
served by the same priest, and at the time that birth control  
measures were being taken out to the villages by the Public Health  
Service, why the health aides were right in the middle of this  
situation and, you know, under some trauma as to how to handle  
this. The Public Health Service was saying, you know, "Pass out

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 the pills to your clients," and the priest was saying something  
2 else. Well, the same priest served the same two villages and  
3 one health aide perceived the priest as giving her carte blanche  
4 to pass out the pills and the health aide in the other village  
5 perceived the priest as imposing an absolute prohibition against  
6 passing out those pills. That's why I say that because the priest  
7 had no legal authority to say, "You will pass out those pills,"  
8 the situation with religion is very different from that dealing  
9 with law and that's why I feel that the villages have the ability  
10 to cope with the imposition of Western religion on their own terms.

11 MR. BERGER: The health aides  
12 being Native in both cases?

13 MR. PARKER: Yeah.

14 MR. BERGER: David Case and  
15 Tim Coulter.

16 MR. CASE: Just a short,  
17 kind of historical question. You said that the conventional  
18 wisdom opposed the idea of village corporations. I wondered if  
19 you had recalled that there was another institution then that  
20 the conventional wisdom had in mind, or was there no other  
21 institution?

22 MR. PARKER: Well, they started  
23 out with, you know, the statewide corporation and kind of worked  
24 down from there as my... as far as the corporation went. The...  
25 There was a great jump forward at that time in the '60s against  
using anything that had anything to do with reservations or the  
... which included the IRA councils at that time, because...  
at least, in the... When I'm saying this, I'm not talking  
about Alaska Natives. I'm talking about those in the state and  
federal government who are dealing with the issue. That was...  
There was no strong support for using the conventional institutions  
that were in use in the other states.

So they very much wanted to create a new institution and

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 I think, considering the scope of the task, moved to the corpora-  
2 tion fairly quickly. And hindsight is always easy, but had there  
3 been more intensive roundtables throughout the state, and had it  
4 have been possible to take more time, why a better institution  
5 could probably have been evolved. However, in that case Alaska  
6 Natives might have missed the window in history which made possible  
7 the passage of the claims settlement. So that's... you know,  
8 the imponderables that you have to deal with on that one.

9 MR. BERGER: Yes, Mr. Lerner  
10 and then Tim Coulter.

11 MR. LERNER: I'd just like to  
12 remind you that the notion of the village is not all that alien  
13 or remote from either American experience or American law. The  
14 oldest forms of self-government, in New England, and not only in  
15 New England but many of the original 13 colonies, were township  
16 governments which were basically cases of the... whatever the  
17 politically relevant part of the population was there, governing  
18 itself. I mean... That's probably the oldest political institu-  
19 tion in this country. That it doesn't everywhere have the  
20 vitality and significance that it once had, or maybe that has  
21 nowhere the vitality and significance that it once had, has to  
22 do with dramatic changes that have occurred in American society  
23 and the economy, as well as the fact that we've got a constitution  
24 of the United States.

25 But it's by no means something fanciful, to think of  
a recurrence to that form, adapted, to be sure, to the peculiar  
circumstances of Alaska. Alaska isn't Connecticut or Massa...  
or Massachusetts Bay Colony, but it's by no means outlandish  
to think that that oldest of American political form, derived in  
part from English law, should have a life and significance here.

MR. BERGER: Did you want to  
add anything to that, Walter?

MR. PARKER: No, I'm... I'm glad

1 that Ralph Lerner brought that up because I believe that also and,  
2 you know, the village exists throughout the world. Only about  
3 30 percent of the world's population lives in this highly mobile  
4 urban state and moves around. The other 70 percent still live  
5 in villages under village institutions. These... Probably the urban  
6 areas, if they were wise, would, you know, look for reinstituting  
7 the village as a more reasonable institution to live their daily  
8 lives under.

7 MR. BERGER: David Case?

8 MR. CASE: Just another comment  
9 on that point, and I think Walt suggested it. Villages, I don't  
10 think, are really... We have to question whether they're the  
11 product of American experience at law, a United States immigrant  
12 experience in law. As near as I can tell, many, if not most, Native  
13 American societies lived in villages and certainly Pueblo... I  
14 believe, is translated into the word village. And so these... I  
15 guess I would say yes, indeed, the village is the oldest form  
16 of government on North America and it was probably here before  
17 the Europeans arrived.

18 But that's not really a function of law or politics.  
19 It's probably a function as much of population and vocation and  
20 convenience and other things that I'm probably not qualified to  
21 discuss.

22 MR. LERNER: I was only  
23 stressing it to suggest that, to the extent that you're looking  
24 for forms that others can relate to out of their own experience,  
25 that's something that one might think about. These aren't merely  
addivisms... you know, like our wisdom teeth or our appendixes.  
You drive on the roads of Massachusetts today and you see that  
the boundaries are all township boundaries and they tell you  
when it was founded, 1688, 1642, whatever. So... I... I was...  
trying to think of ways in which matters... arrangements that  
are native, so to speak, to the Natives might be rendered

1 intelligible to the non-Natives, that's all.

2 MR. BERGER: Tim Coulter?

3 MR. COULTER: Well, before we  
4 pass to something else, I wanted to just quickly list for the  
5 record, some of the other examples of alternative forms of acti-  
6 vity outside of strictly legal ones. One example has to do with  
7 law and order jurisdiction where the Onondagas near Syracuse,  
8 New York, simply insisted on being responsible for that themselves.  
9 They simply didn't permit the local law enforcement authorities  
10 to do that and their cohesiveness won the day and local law  
11 enforcement authorities, despite their supposed right to exercise  
12 jurisdiction there, just decided not to.

13 Hunting and fishing rights have, everywhere, been  
14 maintained to the extent they have been maintained largely because  
15 Indian people have gone out and exercised those rights, usually  
16 in violation of the law and, in some instances, like Washington  
17 state, that's been followed, and I emphasized followed, by  
18 judicial decisions recognizing some of those rights. The  
19 Shoshone example, the Dann sisters, who simply continued to  
20 run cattle on their ranch and exercise their right to use their  
21 traditional land, has also been quite successful. They did  
22 that despite the legal pronouncements of all the non-Indian  
23 authorities and the legal victories have followed that exercise  
24 of that right.

25 The Hopis fought a long time to avoid the imposition  
of an IRA constitution back in the '30s. There's a rather well-  
documented history of that. After a very few years, the Hopis  
were successful in killing that constitution simply because they  
didn't take part in it and the whole tribal council that was set  
up died a natural death because people just didn't go. They  
never had a quorum. It was totally destroyed in that way until  
finally the oil companies and the BIA set it back up again. But  
they were successful for moral and practical purposes.

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 Bridge crossing, up by the... International Bridge  
2 crosses the St. Lawrence River near the Mohawk Reservation has  
3 been another point of contention. The bridge authority started  
4 trying to charge a toll and since the Mohawks don't recognize  
5 that reservation.... don't recognize the border, they didn't like  
6 to pay a toll to travel back and forth from Canada to the United  
7 States. The bridge people took the name of one Mohawk and issued  
8 him a citation or fine for running the toll gate. When other  
9 Mohawks found out that this little confrontation was brewing and  
10 found out that they, too, had an opportunity to run the toll  
11 gate, they lined up for the chance. The bridge people just had  
12 to cave in. There was nothing they could do and they invented a  
13 way to permit the Mohawks to pass back and forth without paying  
14 a toll.

15 The rejection of land claim awards has been another  
16 area where the law has been successfully resisted. There was an  
17 instance on one of the Seneca reservations where the Clam Mothers  
18 came out and literally forced the BIA officials to pack up their  
19 gear and leave. They had to hold a hearing, you see, before they  
20 could distribute a claim award. The Clam Mothers simply said,  
21 "Don't even bother to unpack." They unpacked anyway. There  
22 are some famous things put in the transcript about, "We want  
23 you off the reservation now and don't dilly-dally." It worked.  
24 The Bureau was totally unable to carry out their legal duties.  
25 The award has never been paid.

Language and the insistence upon use of Native language  
has also been important, especially where it regards education  
and governmental rights. There have been several examples of  
successful Indian schools where Indian parents have decided to  
set up their own, supposedly illegal schools, schools operated in  
violation of state and local laws, so that they could teach their  
children their proper language and carry on their instruction as  
much as they wanted to in their own Native language.





1           John Havelock made the statement last week that a lot  
2 of perceptions among Natives perhaps about the performance of  
3 the profit corporations has to do with the fact that they expected  
4 the profit corporations to perform in the sense of tribal organiza-  
5 tions and offer a much larger umbrella for the Native peoples,  
6 especially in rural areas. And he said what, in fact, happened  
7 and perhaps with the intention of Congress was for responsibilities  
8 to be passed from the... not from the federal government to the  
9 profit corporations, but to the state. And, certainly, this is  
10 what, indeed, did happen with ANCSA. It unleashed a whole slew  
11 of activities which kind of overwhelmed the activity... or, I  
12 should say, the impact of the profit corporations upon the  
13 villages and what gave all of this a big kick in the pants that  
14 nobody expected was OPEC, which, in 1974, upped the price of  
15 oil from three dollars to 30 dollars a barrel and brought tre-  
16 mendous revenues into the state which was then able to, through  
17 new political manipulation, the Native caucus and things like  
18 that, to pour tremendous amounts of money and programs into  
19 the villages and which a lot of villagers see as both benefits and  
20 a kind of intrusion, you know, of white structures upon their way  
21 of life. It's also brought improvements of situations, for  
22 example medical care, made the villages much more amenable to  
23 nice places to live and white people began moving out there  
24 because there were jobs available and... All of a sudden, the  
25 Natives saw themselves and their land as moving out of their  
own control.

          And I might suggest... You know, a lot of the discontent  
has to do, not with the failure of ANCSA, but of its complete  
success and in ways that nobody had envisioned. And that very  
success is what's causing a lot of the discontent, that Native  
peoples are looking for other ways to insure what they expected  
from ANCSA to actually take place... In other words, having more  
control over their land, especially, and their relationship to the

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 land.

2 Secondly, I'd like to address some comments made by  
3 Mr. Lerner, and I hope I understood you right yesterday. And I  
4 can really sympathize with what he had to say regarding the  
5 difficulties in a democracy of recognizing Native sovereignty. It  
6 seems to go against the general democratic principle of avoiding  
7 classes of privilege and dual citizenship and this whole idea of  
8 being equal before the law. And these are questions that I had.  
9 These are questions, certainly, that a lot of Alaskan Natives have  
10 had. This is one reason that so many Natives in Alaska have  
11 embraced American institutions so vigorously, including people  
12 in the North Slope Borough, you know, as ways of protecting their  
13 Native rights.

14 You'll see that, you know... Mr. Chairman, as you go  
15 up to the borough, you'll see how much the North Slope Borough  
16 has done in terms of language and study and subsistence protection  
17 and has lead the way, not only in Alaska, but oftentimes nationally  
18 and internationally in the protection of aboriginal rights.  
19 But still, a lot of Natives have questions about this, you know,  
20 because of conflicts in the nature of the structures, itself.  
21 And I'd like to point out to you... Well, Mr. Martin, Guy Martin,  
22 last week said that he thought a lot of this discontent was based  
23 on a vague sort of cultural insensitivity of the corporations to  
24 Native interests. And it's not that at all. It's very concrete  
25 complaints.

26 And one good example of that was in the 1979 Beaufort  
27 Sea oil and gas lease sale. It was challenged by the North Slope  
28 Borough in court along with several villages who joined with the  
29 borough in attacking that sale as being against the law because  
30 it violated provisions of the Environmental Protection Act, the  
31 Marine Mammal Protection Act and other legal... instruments of  
32 the federal government which gave special recognition to aboriginal  
33 peoples and subsistence uses.

1 At the same time, there was at least one corporation and  
2 perhaps two or three, NANA Corporation, I think Calista and  
3 perhaps Cook Inlet Regional Corporation, which were actually  
4 entering in the sale with other oil companies. And I think...  
5 you know, I might... I think that the other corporations would  
6 have done the same thing had not they come... They came under  
7 tremendous political pressure from the North Slope Borough not  
8 to do so.

9 In these areas, you find a real poverty of leadership  
10 and a lot of times you have the same leaders on the heads of the  
11 village corporations who are opposing the sale who are also,  
12 you know, on corporation boards who are placing bids in that  
13 same sale. And I think Rosita can come up with other indications,  
14 you know, of these real cultural conflicts. As Byron Mallott  
15 pointed out last week, there are real conflicts having to do with  
16 the nature of the animal, and it has to do with a lot more than  
17 just the structure of the thing, but the whole constellation of  
18 symbols and values that go up to make the human side of that  
19 organization.

20 If I may, I'd like to make the point that --

21 MR. BERGER: Before you go on,  
22 Bill, could I just say for the record, because people will be  
23 reading this who are not intimately acquainted with the North  
24 Slope Borough that it is a borough encompassing the northern  
25 30 percent of Alaska and whose... where the populace is predominant-  
ly Eskimo and, thus, Eskimo people have... I think it's fair  
to say, dominated that government from its inception.

MR. DUBAY: We often say,  
"The Eskimo-run municipality," right.

Mr. Lerner talked about the Natives eschewing the idea  
of individualism and individual rights, and he questioned the  
idea of giving special rights to groups and I certainly have to  
agree with him. That's certainly very offensive to me, but what



1 we're dealing here with, it's not so much... questions of  
2 privilege but questions of dual citizenship, which is something  
3 quite different. And this might be better understood if we  
4 analyzed better this term sovereignty, which has created so much  
5 problem in the discussions of the past two weeks.

6 The idea of Native sovereignty is not something that  
7 we've invented or even that Natives have invented, but it was  
8 something that, you know, was kind of imposed on us by our  
9 ancestors and it certainly came from our European background,  
10 this concept that the right to self-government as relating from  
11 attachment to the land, is very old and certainly very universal,  
12 going back... way back into probably prehistoric times, and it  
13 certainly well-developed during the Roman empire. In fact, much  
14 of their legislation was based on that fact and this was like a  
15 universal concept... you know, of all people, certainly up to  
16 the 15th century. And because of our mobility as Americans, you  
17 know, we've lost the sense of landedness, the sense of rights,  
18 individual rights as well as social and political rights, as  
19 developed and directly depended upon, and also, not only that...  
20 identity, both social and cultural and political identity and  
21 personal identity is radically based on your attachment to the  
22 land... is foreign to us, mm? But certainly wasn't foreign to  
23 the explorers who discovered this land.

24 You have to remember that, by the 15th century, human  
25 beings successfully occupied every section of this globe quite  
26 successfully and there was a belt of what's called the Hoe  
27 Culture all around the world where people were successfully  
28 cultivating the land and when the Europeans arrived here, they  
29 saw civilizations that were not too much different than their  
30 own. The only way that the explorers, who were kind of rednecks,  
31 you know, and renegades and adventurers, could justify the moving  
32 in on these people, the sovereignty they didn't question, was to  
33 question the humanity, itself, because they knew if they recognized

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 that these people who were different and spoke different languages  
2 were really human beings, they were sovereign.

3 And we have problems with the word sovereignty because  
4 it's got two very distinct and even opposing meanings. One mean-  
5 ing of sovereignty has to do with a ruler. This comes from the  
6 obvious latin term, you know, "super reigus", which meant, as  
7 you said, the guy who has the last word. And this has to do with  
8 relationships between individuals in a group. Who heads up this  
9 group, that's the sovereign. And as you said, we have a hard  
10 time delineating and defining who the sovereign is in our state,  
11 our country, because we did away with sovereign. We divided that  
12 thing up. We put some sovereignty here and some sovereignty over  
13 here. We have a tri-part government and we've got federal, local  
14 and state government and all this kind of stuff, because we  
15 don't want sovereigns. That's why the best thing we can say  
16 about ourselves is that the people are sovereign. And it's  
17 more correct to say there is no sovereign in this community, in  
18 that sense of dealing with the idea of sovereignty.

19 But there is another sense of sovereignty, especially  
20 as in reference to the term sovereignty as a noun, which deals  
21 not with individual relationships but with group relationships,  
22 and the meaning of that sovereignty is freedom from external  
23 control. We established our sovereignty when we threw off the  
24 bonds with England. We defined ourselves as a sovereign nation,  
25 and in that sense of sovereignty and of dealing with groups  
between one another, there are limitations. We can't admit of  
degrees... In the older sense of dealing with sovereign as a king,  
you don't admit a degree. If a person is sovereign, he's got  
ultimate sovereitnty without any limitations. You can't say  
diminished sovereignty in that sense.

But in the sense of sovereignty meaning the group over  
which a sovereign has power, that certainly does admit a degree.  
Some groups are more sovereign than others. In other words, the

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 state is less sovereign than the federal government, and in this  
2 sense, certainly is the sense in which our ancestors saw the  
3 Native government... as being sovereign, having some measure of  
4 internal control and freedom from imposition of the crown's  
5 control, some way of looking upon themselves.

6 Now, the Greeks had a word for all of this, you know,  
7 which I think is very interesting because the French use it in  
8 their reference to aboriginal. The French, I think is "autotone"  
9 and we say "autophone"... autoph... autochthon... It comes from  
10 a Greek word which is very revealing because it's made up of  
11 two words meaning self and land... or self and earth. And it  
12 contains a lot of this Indian idea that the person doesn't own the  
13 land but the land owns the person, and it's the land that defines  
14 self-hood and self-concept and responsibility and defines the  
15 nature and the identity of the group, too. And the word came to  
16 be understood as meaning a person regarded as being sprung from  
17 the earth on which he inhabits, and all of his dignity, and all  
18 of his methods of thinking about himself and his relationship  
19 from the world is rooted in that attachment to the land. And this  
20 is very universal among mankind. This is not something new, this  
21 is not something that was invented by Charles V or Vittoria de  
22 Las Casas when they were asked to comment on this. This is  
23 something that came from long, traditional background. The  
24 church recognized it, the Roman empire recognized it... the Romans  
25 in their going out and developing, you know, a law which can  
encompass all of these different peoples recognized that and they  
not only saw that, you know, you can't rule peoples. We can go  
over there and set up a governor who acts as kind of a peace-  
maker and he can exact the tithes for the empire and all that,  
but you have to respect local leaderships because of the fact  
those people have been living there from time immemorial.

And it's interesting to note that the French also used  
that term in reference to themselves. They see themselves as

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 autochthon, mm?... as to most but not all European societies...  
2 as having residing there and having right to self-government  
3 because of their long, long tenure in the land that we were  
4 discussing before hand. The English got a way of this precisely  
5 because they were overrun so many times by so many peoples, the  
6 Romans, the Danes, the Normans, the Saxons, everybody else, and  
7 they're the ones that started developing concepts of dividing  
8 up this idea of property and land tenure and all this kind of  
9 stuff because they knew they had to establish some kind of  
10 identity, some kind of relationship to the land, as divided.  
11 And that's where we get our ideas of property, with the division  
12 of those concepts. But still, in our own culture and in our  
13 own society, we still think of ourselves and our identity in  
14 terms of property. It might just be your home or something else,  
15 but this is one reason we defend capitalism so vigorously...  
16 because our identity and our self-concepts are so rigorously  
17 attached to ideas of property and land.

18           And so, you know, these terms of... these terms of...  
19 you know, collectivisation or tribalization of laws really are  
20 not opposed to tradition --

(OVERLAP TAPE NUMBER 8)

21           MR. BERGER: -- Might I also  
22 just indicate that the North Slope Borough was incorporated as  
23 a first class borough, first July 1972. A home rule charter was  
24 adopted by the borough on 30th April 1974. The borough is the  
25 regional local government of northern Alaska with mandatory  
powers of taxation, assessment, education, planning and zoning.  
Within its boundaries are eight Inupiat Eskimo communities,  
population 4,693, seven military installations, population 193,  
and Prudhoe Bay Resource Development District, population 7,843.  
The borough encompasses 88,281 square miles of land and nearly  
800 miles of Arctic coastline, constituting 15 percent of the  
state and is the largest municipality in the U.S.

1 I got the impression that Mr. duBay was addressing his  
2 remarks to you, Mr. Lerner, and seemed most supportive of what  
3 you had said yesterday. Do you want to add anything?

4 MR. LERNER: I shall, but I'm  
5 not going to now. I... One of the few things I heard about  
6 Indians before I got here, and maybe it's apocryphal, was that  
7 in those negotiations between whites and Indians in the Eastern  
8 United States, when the whites made a proposal it was regarded  
9 as rude to respond to someone's proposal on the same day that he  
10 heard it. It would suggest that you were flippant and took it  
11 casually. If you slept on it, then you showed that you had  
12 thought about what was said rather than sort of giving something  
13 off the top of the head.

14 I don't know that I will sleep on it, but I want to  
15 think about what you said some more before I respond.

16 MR. BERGER: Just before we  
17 adjourn then for lunch, Ralph Johnson, did you want to say  
18 anything about Mr. duBay's explanation of the genesis of notions  
19 of sovereignty?

20 (TAPE 30, SIDE B)

21 MR. JOHNSON: Well, I'm not  
22 going to add anything. I thought it was a highly articulate and  
23 accurate description of the various ways that sovereignty can be  
24 defined, and it is important to keep in mind that sovereignty is  
25 a many splendored thing. He described that historically and  
practically and very capably. Delighted to see it.

MR. BERGER: Well, that seems  
to be a... Oh, Ada Deer?

MS. DEER: I have many thoughts  
but I particularly wanted to address something that Mr. Parker  
said having to do with the roles of religion and the legal  
system, the intrusions into the villages.

I feel that... and I'm sorry that he's not here at the

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 moment... I feel that his characterization is somewhat over-  
2 simplified in stating that the villages can be selective, for  
3 example, in their relationship with the religious groups in  
4 particular. I view the role of the church and of religion as  
5 something that has been extremely detrimental to Native cultures  
6 across the world, and I think that it's important for everyone to  
7 question the roles and the functions of churches today. And in  
8 my opinion, the... Christian religions, in particular, have done  
9 severe damage to many Native cultures in separating and alienating  
10 individuals from the Native religion and culture and are respon-  
11 sible for a lot of the factionalism that exists today.

MR. NARANJO: Amen.

12 MR. BERGER: That was Mr. Tito  
13 Naranjo who made that last observation.

14 Well, we'll adjourn until 1:15, and then we'll hear  
15 from Alma Upicksoun and Kim Gottschalk, of the Native American  
16 Rights Fund, NARF.

(HEARING RECESSED)

(HEARING RESUMED)

17 MR. BERGER: Well, let's get  
18 together again.

(LONG PAUSE)

19 MR. BERGER: What I thought we  
20 would do this afternoon, if it's agreeable, is hear from Ralph  
21 Lerner if he has anything to say by way of rejoinder to Bill du-  
22 Bay, and then from Alma Upicksoun and Kim Gottschalk and Alfred  
23 Starr and Dalee Sambo. And if it's agreeable, Tito Naranjo has  
24 brought a film that is about the Navaho Nation, America's largest  
25 and most enduring Indian tribe, have kept their native language,  
40,000 of them still speak no English. Only recently has their  
language been written since their culture has been handed down  
verbally through the elders of the tribe, and so on. Mr. Naranjo  
says this is really a film illustrating progress towards

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 self-determination. So since Tito has to leave tomorrow, I think  
2 we might show this at 3:00 and cluster in here around the tele-  
3 vision set to watch it. Perhaps some of you have seen it, but  
4 I haven't and... You've seen it? Well, I think we should...

5 Well, did you have anything to say, Mr. Lerner, in  
6 response to Bill duBay's remarks?

7 MR. LERNER: I don't want to  
8 say it's in response to it in the sense that I'm answering, though  
9 he set me thinking in a... about some matters... though I can't  
10 say, and you will confirm it, that I had much chance during lunch  
11 to turn my thoughts to it, since we talked about faraway places  
12 very far away from Alaska.

13 The connection between peoplehood and the land is a  
14 very provocative one. The American people, under the constitution,  
15 constitute... No, let me step back from that. The American  
16 people, in their primary foremost national act, constitute  
17 themselves a people in the Declaration of Independence. And in  
18 the first paragraph of it, they talk about a people, separate  
19 from other peoples... "When in the course of human events it  
20 becomes necessary for a people to assume that separate and equal  
21 station..." Yes?

22 Who are the American people? Why don't they include  
23 the people from your country, Mr. Berger? Why did they stop  
24 short of New Brunswick? Prince Edwards Island? Why didn't  
25 they include other English-speaking peoples in the Barbados,  
the British West Indies? I don't think that you can say that  
it was a pattern made up in heaven that the American people would  
consist of 13 colonies and only 13. There were probably around  
16 British colonies, English-speaking colonies, on the eastern  
coast of North America at the time. I'm leaving the Quebecers  
aside. And yet, the Declaration starts from the premise that,  
of course, the Americans are a people... you know, the usual  
way in which lawyers like to argue. You assume the thing to be

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 proved and take it from there.

2 I sometimes wondered about that and the remarks that Mr.  
3 duBay made and that others have stirred in talking about this  
4 brought back some of my earlier wondering and misgivings about it.  
5 The American people, in 1776, seem to have been a people...  
6 surely not, as Mr. duBay spoke of, autochthonous people, people  
7 that grew up out of the earth. That's utterly impossible. They  
8 were all greenhorns. They're all people who just got off the  
9 boat, so to speak, either the day before or the year before or  
10 the century before. They're all newcomers. So they're not a  
11 people by virtue of their having grown up out of the soil. They're  
12 a people by virtue of their proclaiming themselves a people,  
13 seeing themselves a people, thinking of themselves as a people,  
14 acting as a people.

15 It doesn't turn on race. It doesn't turn on religion,  
16 because they weren't a uniform people on either of those  
17 respects. But it turned on a certain political self-definition  
18 that they were in a position to do something about, and they  
19 thought that the basis of that lay in certain rights, founded  
20 not on their peoplehood, but on their individual character,  
21 the inalienable rights that were owing to them as individuals  
22 and by virtue of which they could constitute themselves a people  
23 and form a government that would secure those rights to them,  
24 each and every one of them.

25 That was, to use the language that was mentioned earlier  
by Mr. Chamberlin, a vision... quite at odds with the prevailing  
notions of the time, and they tried to act on that vision. I'm  
very far from... being disdainful of visions though I'm wary of  
them. Maybe we live by visions that we have, maybe to the extent  
that we're incapable of having any, we're already dead. But  
you know, there are visions and visions. If I put my hand in my  
jacket, button it up and go around proclaiming myself Napoleon,  
you're not obliged to believe me. There might be a social worker

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 around who would be prepared to commit me somewhere.

2           So I'm really struck by things that Mr. Naranjo and Mr.  
3 Jim have raised. The fact that another doesn't see it doesn't  
4 mean that it isn't there, doesn't mean that it is there, either.  
5 So one has to be pretty careful about the kind of visions one  
6 pursues.

7           Can I get in the spirit of this place, which has been  
8 to tell stories? I'll tell a story. I haven't told stories,  
9 really, since my children were little.

10           There was... There was a famous Jewish general who lost  
11 the battle and a war during the revolution of the Jewish people  
12 against the Roman empire, and his fame rests not in his having  
13 lost the battle and the war, but on the history that he wrote of  
14 it, kind of participant's account. So when the conquering Roman  
15 general entered the temple in Jerusalem in the year 76 and strode  
16 in, as I'm sure a conquering Roman general would... not amble in  
17 but strode into the temple, where, of course, only Jews were  
18 admitted, and strode into the holy of holies, in which only one  
19 person was admitted on one day of the entire year, and that only  
20 for a special prayer at a special moment, namely the high priest  
21 on the Day of Atonement... This Roman general strode into the holy  
22 of holies in the temple and looked in and he said, "It's empty.  
23 There's nothing there."

24           Well, I guess the moral of that story is, a vision isn't  
25 necessarily everyone's vision and one can be blind to things if  
one is only looking for the tangible, the material, the trans-  
portable.

So all that is a round about way of saying that the  
Native peoples have visions of their own to pursue, but they have  
to be careful in only... in a way that only they can tell about  
which visions they mean to pursue. I suppose Hansen Lake had a  
vision and the prophet had a vision. I wonder whether, in talking  
about the vision of the Inuit and the Aleuts and the Indians in

1 Alaska, one runs the risk of taking rather diverse people with  
2 diverse visions, diverse and maybe equally legitimate wants and  
3 hopes and fears, and squeezing them into a convenient little  
4 package which will then be marketed to the world at large or  
5 to the BIA or to Washington or to Congress as what "the Inuit  
6 want." Somewhere I seem to recall having read that the whole  
7 notion of tribe... I'm speaking now of, say, Eastern United  
8 States Indians, was a construct of anthropologists. Am I mistaken  
9 of this? I don't know... I mean, you can't... I may have heard  
10 it. That doesn't mean it's either right or wrong... That it was  
11 easier to think and deal with the complex interrelations among  
12 various Indian groups and families and clans and Lord knows what  
13 else by putting them in this thing which is called a tribe.  
14 You now have a handle. You can deal with someone. You can sign  
15 paper.

16 From the things that I had read in the earlier papers,  
17 especially Ms. Fienup-Riordan's summary of the earlier testimony,  
18 I was impressed by the variety of Indians and Aleuts and Eskimos  
19 and the variety of their hopes, not only their contradictoriness  
20 in some way, because that could be quite human within one person  
21 ... Yes, that you want things that don't go well together, but  
22 that they may really be different peoples. And if you're talking  
23 about... If we are talking about self-government now, self-  
24 determination, avoiding that whole baggage of misleading and  
25 possibly terrifying and possibly unproductive overtones of  
sovereignty, if we're talking about self-determination of peoples,  
of a right of a people to institute such governments as to them  
seem proper to secure their inalienable rights, their pursuit of  
happiness, then I suppose we want to be careful that we don't take  
those subgroups and ride roughshod over them, fit them into what-  
ever prevailing notions a temporary majority might have of what's  
the right way of thinking and the wrong way of thinking. One  
wants to avoid the tyranny of the white man over the red man,



1 but I suppose if these are all, indeed, human beings, as I take  
2 it we're all agreed they are, one wants to avoid any kind of  
3 tyranny, whether it bears a red hand or a white hand. It's not  
4 better for being red.

5 A final thought I would raise about this is... that to  
6 add to the complications and the human dilemma that's involved  
7 here, it may be that the legitimate aspirations of one group to  
8 make X out of themselves, whatever that is, to pursue the tradi-  
9 tional life of subsistence and living in perfect harmony with the  
10 world, as removed as possible from the world of plastic, or the  
11 legitimate aspirations of another group to enter into the main-  
12 stream of Western life, retaining such elements of tradition as  
13 to them see... as they see fit... It may be that those competing  
14 aspirations and programs, if pursued, will have terrible conse-  
15 quences for others with other aspirations and other hopes and  
16 other plans for themselves. Even if you've got 44 million acres,  
17 or whatever it is, to sort of work it out... one people says  
18 let's go for oil and in doing so, make it impossible for other  
19 people far, far away to do what they've been used to doing. I  
20 don't know how one resolves that. I'm saying that that's yet  
21 another aspect of the sense in which we've got a problem of the  
22 Native peoples for the Native peoples to decide, and where it's  
23 not going to be appreciably easier than it would be... or, more  
24 comfortable, I should say, than it would be for the white man to  
25 decide it for them.

20 All this is not to say that it's hopeless, but to say  
21 that it seems to demand every resource of thoughtfulness and  
22 introspection that you can muster, and it's an area in which lawyers  
23 are a late and limited resource. The problems begin at home and  
24 they have to start... The resolution of those problems, it seems to  
25 me, have to start there. And probably it's an area in which you  
have very little guidance from the experience of mankind.

MR. BERGER: Thank you, Mr.

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 Lerner. Well, I think that we should hear now from the representa-  
2 tives of Native American Rights Fund, Alma Upicksoun and Kim  
3 Gottschalk. So, Alma, if you'd like to proceed now?

4 MS. UPICKSOUN: As a means of  
5 introduction, I am Inupiaq. I grew up here in Anchorage, recent  
6 law graduate and have been working for NARF for about five months.  
7 I'm an Arctic Slope shareholder and would like to get back to some  
8 of the questions we had talked about earlier, about Western  
9 institutions looking at the corporation as a means of implementing  
10 that.

11 First, I would like to come back to the discussions we  
12 had yesterday, partly from Mr. Lerner's presentation, the questions  
13 about individual and group rights. To begin, in talking with  
14 Mr. Lerner and others, federal Indian law, U.S. federal Indian  
15 law, as a field, is something that is very unique and often times  
16 misunderstood, and those concepts and ideas have been a basis in  
17 many instances for looking at ANCSA. ANCSA was the development,  
18 in many instances, of federal Indian law and policy and it has  
19 to be viewed in that way.

20 As well... looking at the legal aspects of ANCSA, look-  
21 ing at the policy from which it's developed, I think it also needs  
22 to be undersood in other aspects, how the law has affected the  
23 people. I think Mr. Chamberlin and Rosita and others have  
24 emphasized that and looked at those aspects. And that is one area  
25 which I want to talk about specifically in regard to some of Mr.  
Chamberlin's comments about corporations. He had inferenced that  
it was the people's visions that should more or less influence  
those institutions, the language, and it's something that I think  
is very difficult for... for people outside Alaska, people even  
in Alaska, to understand.

ANCSA imposed a corporate system as a means of settling  
the land and money issue and I first had contact with the idea of  
a corporation, what it was and how it was set up, when I went to

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 Barrow, and went there specifically to work for the corporation  
2 and find out more about what ANCSA was, how it was being implemented  
3 and what it actually meant. And I knew very little of this, and  
4 this was a time when I was in college. I think that's the case  
5 with many people, lawyers and non-lawyers, that there is a lot  
6 of misinformation, a lot of things are not understood... how  
7 the land is held, et cetera. And I was very disillusioned in my  
8 exposure and frustrated about many things I saw. And in speaking  
9 with one of our attorneys, I was told that the frustrations I  
10 had about the role of the corporation, what it was doing in many  
11 instances, could be answered in this way, that the corporation  
12 was set up as a business entity to make profit. And I think that  
13 is the view of many Native leaders, many of the attorneys who  
14 work with the corporation, work with the individual people in  
15 the corporation.

16 And we had talked... The discussion had gone into look-  
17 ing at institutions, other means of fulfilling the goals and the  
18 dreams of Native peoples, when they looked at the corporation,  
19 what it was. I think we talked about the North Slope Borough,  
20 as well. I think the Arctic Slope might be a unique situation  
21 where you have a regional corporation. You also have a local  
22 government composed of Native people which is able to offer,  
23 through tax monies from oil development, services which other  
24 areas could not provide. That may not... That is not the situa-  
25 tion in most parts of Alaska and I think the contrast there  
between what the corporation is doing and how it's meeting some  
of those goals is a much... much more of a struggle.

26 Apart from those problems, I think, looking at the  
27 corporate mode in the village sense, you have a much... a problem  
28 which is even more intensified. My village corporation, for  
29 instance... and I'm sure many others have had this problem... even  
30 in complying with state laws to stay incorporated, has posed  
31 problems. And I think it's... it's hard to understand, looking at

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
19071276-0544



ATD

1 a peoples with a new idea and how that's being implemented.

2 And I wanted to come back to Ada Deer and talk more  
3 about the corporate system that was set up there. They had a  
4 state chartered system... What has been the effect of a corporation  
5 as a means of implementing policy or a means of implementing actions  
6 that are directly tied with people?

7 MR. BERGER: Did you want Ada  
8 Deer to respond to that?

9 MS. UPICKSOUN: If she would.

10 MS. DEER: Again, I want to  
11 emphasize that the corporate model was imposed on our people. The  
12 Menominee people did not understand the corporate structure and  
13 the... termination plan, as it was finally implemented, had  
14 several layers and boards. I'm sorry I don't have my book here.  
15 Another person is using it at the moment, but at any rate, there  
16 were foreign structures superimposed over the former tribal  
17 structure, and so the people did not, from the beginning, under-  
18 stand the corporate structure and all during the termination  
19 period, in my opinion, most of the people did not understand the  
20 corporate structure.

21 I mentioned earlier the... mill and how it was being  
22 operated and the lack of administrative and managerial expertise  
23 that is needed to run an operation. And now, efforts are being  
24 made to train people but this, again, is under the direction and  
25 the will of the Menominees. We want to have our own people at  
all levels in the structure of the mill, which has been converted  
from a state corporation, now, back to a tribal corporation.

The problems still are with us in terms of the unemploy-  
ment, but... the people have, through their board of directors,  
made the basic decision that it's more important to employ people  
and not make such a high profit, or even lose money, than it is  
to have a high rate of unemployment, as first occurred when  
termination took place in the early years.

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 We're not through yet, in terms of making this more  
2 responsive to the needs of the people, and I think that this is  
3 something that the Native people here and others that are involved  
4 need to keep in mind... how to make institutions more responsive  
5 to the needs.

6 I'd be happy to answer some specific questions, if I  
7 can.

8 MR. BERGER: Anything further,  
9 Alma? Kim Gottschalk, would you like to carry on from there?

10 MR. GOTTSCHALK: Well, I'd like  
11 to start off by making the same disclaimer that Mr. Lerner made  
12 when he started off, and that is, I... this is my first trip to  
13 Alaska and so I don't purport to have any special expertise. As  
14 I understand it, one reason we're here is to see if there is  
15 anything we can offer about our background from the Lower 48 that  
16 might be relevant, and so given the understanding, I realize  
17 everything I say is subject to different application up here  
18 because of circumstances of which I'm not fully aware.

19 I'd like to address a few comments to, I guess, a  
20 subject from the Lower 48 that I may have the most experience  
21 with, which is the General Allotment Act and how that might  
22 be relevant up here.

23 And I want to say, also, it's been a privilege to me  
24 to listen to the eloquent statements given by Mr. Naranjo and  
25 Russell Jim this morning, and to hear the other people talk about  
the Alaskan vision, or visions. There is, however, one thing  
that has me worried and that is there almost seems to be an  
underriding presumption that ANCSA is a mutually agreed upon  
temporary arrangement and that we're... Alaskan Natives should  
stop and think about what their vision is and then let's implement  
it. Also related to this is Mr. Lerner's comment that attorneys  
are a late and limited resource. And I feel that, in one sense,  
that's very true. I think lawyers can just muddy the waters if

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 they're brought in too soon and if the presumption is that we're  
2 looking just at a long-term solution of what the Native vision is,  
then I agree with that statement.

3           Unfortunately, ANCSA is a reality and 1991 is very close  
4 at hand. And I think the response that happens to ANCSA before  
5 1991 may have a lot to do with whether any vision, whatever it may  
6 be, has any hope of succeeding. And I base my statement on that,  
7 in a large part, on the history of the General Allotment Act in  
8 the United States. The parallels that I see between the General  
9 Allotment Act and ANCSA... and, once again, there may be factors  
10 up here which are going to render whatever I have to say irrelevant  
11 but for whatever value it does have I would like to discuss it a  
little more. I realize it was covered by Mr. Jorgensen but I'd  
like to go into a little more detail.

12           The General Allotment Act, of course, was... similar  
13 to ANCSA in that it provided for restriction on alienation of land  
14 which was allotted to individual Indians and the reason land was  
15 allotted individual Indians was, I suppose, to a large extent  
16 similar to the reason behind ANCSA, namely make land available for  
17 Anglo society, because once the allotments were issued, any  
surplus land was available for sale then and settlement by the  
Anglo population.

18           They were also similar in that there was a problem with  
19 after born, so to speak, because land became more and more  
20 fragmented and the same problem is faced here with those children  
21 who are not eligible for shares. So you have a real continuity  
22 problem.

23           They were also similar in that there were limited  
24 restrictions on alienability and taxation during what was felt to  
25 be a transition period. There was one important difference which  
gave the Indians under the General Allotment Act actually more  
protection than the Natives have under ANCSA which was that  
the president of the United States was given discretion to

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 unilaterally extend the trust period on allotments and, in fact,  
2 did so and probably thereby saved what few were saved. And --

3 MR. BERGER: Excuse me, Mr.  
4 Gottschalk. That was a 20 year period, was it?

5 MR. GOTTSCHALK: 25.

6 MR. BERGER: 25.

7 MR. GOTTSCHALK: Yes.

8 MR. BERGER: And the president  
9 was given discretion to extend the 25 year period?

10 MR. GOTTSCHALK: That's right,  
11 and did so. And ultimately, it was then extended by Congress.

12 MR. BERGER: And... I see.

13 MR. GOTTSCHALK: Now, for  
14 whatever reason, prior to the expiration of the 25 year period,  
15 some Indians wanted their land in fee and they would go to  
16 Congress and Congress would pass special bills granting an  
17 individual Indian a patent in fee.

18 Also about this time, the supreme court, in a case  
19 called In Re Heff, ruled that an Indian became a citizen of the  
20 United States at the time of the issuance of the allotment and  
21 not at the time of the expiration of the trust period, which had  
22 been the intent of Congress. And that decision was subsequently  
23 overruled and Congress, immediately after the Heff decision, made  
24 clear that it had not intended to grant citizenship at the time  
25 of the issuance of the allotment but, rather, at the time time  
the fee was issued. And this had important jurisdictional  
ramifications as to whether an Indian was a citizen or not in  
those days.

To counteract In Re Heff, Congress, in 1906, passed  
the Bruke Act, which was to eliminate the supreme court's  
decision as to when an Indian became a citizen, and also was to  
do away with the need for individual Indians to come to Congress  
for a special bill to obtain a patent in fee. And so what they

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 did is, they stated that the secretary of the Interior had the  
2 authority to issue fees when he felt that the person was ready  
3 to handle that. And it's obvious from the congressional debates  
4 and the overall surrounding circumstances that the act was only  
5 intended to apply to Indians who wanted their patent in fee.  
6 Although there wasn't application language in the act, that seemed  
7 clear and, in fact, that's how the act was interpreted for ten  
8 years after it was passed by the secretary of Interior. So, if  
9 an Indian applied, then a determination was made of competency.

10 Even at that point, there were terrible consequences of  
11 allotment. No one knew what it meant to say that the Indian was  
12 ready to have the patent in fee. There were examples of fraud  
13 and duress, overreaching by Anglos who desired land to induce  
14 Indians to apply for fee patents and then they immediately bought  
15 it at a very low price and turned around and made a profit on it.  
16 But things got worse because as the pressure for increased land  
17 grew, the policy was changed to, "Well, let's go out and find the  
18 competent Indians. Whether they want a fee patent or not, let's  
19 go find them and then issue them." And so that went on for awhile  
20 and then that was perceived as too slow a process so then they  
21 said, "Well, if you stop and think about it, I guess we can all  
22 agree that if someone has more than half white blood, they must  
23 be competent." And so they just got a blood roll, went down the  
24 list and looked at blood quantum, and if a person fell on one  
25 side or the other, they got issued a patent or didn't. And then  
it was changed to, "Well, if it's exactly 50 percent white blood,  
that's sufficient," and many Indians were fighting in World War  
I in France for their country and came back to find their land  
was not held in fee but, not only that, was on the block soon to  
be sold. And so they would take out mortgages or whatever to  
stave that off and then, eventually, the mortgages were fore-  
closed.

The result of the policy, which I guess is really the

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 point of this whole thing, is that millions of acres... of land  
2 were lost. Many people were issued policy patent fees... in  
3 other words, based on the quantum of blood that they had even  
4 when that person had individually applied for a patent previously  
5 and been determined not to be eiligible for a patent. In other  
6 words, they were found not to be competent to handle their own  
7 affairs. But under the policy patent, then they would automatically  
8 be issued one nevertheless. People in Washington were telegraphing  
9 friends in South Dakota of who was going to be placed on the list  
10 to receive patent in fees so those people could approach those  
11 people and sign contracts even before the patents in fee were  
12 issued. Of course, the contracts were illegal under the allot-  
13 ment act.

14 Not only were millions of acres lost, but it also  
15 created a jurisdictional nightmare and what I am worried about is  
16 the frightening parallel between ANCSA and it's very limited  
17 restrictions on stock and etcetera, and the General Allotment  
18 Act and what happened. And if I were to guess, without having  
19 all the facts available to me on the situation in Alaska...  
20 Well, let's put it this way, I'm very frightened at what's going  
21 to happen and I think if something is not done before 1991, many  
22 of the visions that have been talked about will become geometrically  
23 harder an achievement because the tribes in the Lower 48 who were  
24 submitted to allotment have not yet and I doubt ever will recover  
25 from it.

20 MR. BERGER: Could I ask you a  
21 question, Mr. Gottschalk? The... When a reserve... reservation  
22 was... When the reserve was allotted, carved up into allotments  
23 for each adult male, you said the surplus was then available for  
24 sale to the general public. Do you mean that if the... if once  
25 there had been allotments to all the male adults in the tribe,  
that didn't take up all the land they had, then the surplus was  
available?

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 MR. GOTTSCHALK: That's right.  
2 (TAPE 31, SIDE A)

3 MR. GOTTSCHALK: I mean...  
4 Allotments were not just issued to the adult male, but that was  
5 the whole purpose of the allotment act, was to free up those  
6 ex... quote, unquote, excess lands.

7 MR. BERGER: So that the lands  
8 were... were lost to Indian ownership through sale of the surplus  
9 and then, by one means and another, through assignments of the  
10 allotments in fee?

11 MR. GOTTSCHALK: That's right.

12 MR. BERGER: And, Mr. Jim?

13 MR. JIM: If I may elaborate

14 a little further. I appreciate very much Mr. Gottschalk's  
15 analysis of the General Allotment Act, the Dawes Act of 1887.

16 To be somewhat frighteningly specific, many of our  
17 people still hear the stories of non-Indians getting some Indian  
18 drunk and the next morning he wakes up with money in his pocket  
19 and his thumbprint on a piece of paper which is in the possession  
20 of the non-Indian who says, "You sold me your land last night."

21 The jurisdictional nightmare should be elaborated on  
22 somewhat wherein land that went out of trust status because of  
23 the General Allotment Act... since 83-280, continuously haunts  
24 and plagues many of the tribes in the Lower 48. The enforcement  
25 of certain types of laws on the fee patent, the checkerboard  
of the reservation, is very difficult.

And in regard to the allotment of 80 acres, or if it  
was in a supposedly semiworthless area, like, for instance the  
area I grew up in was in a canyon and the mainstream looks at  
that canyon as rock, sagebrush and semiworthless land so  
instead of 80... "Ah, let him have 120." They expand it a little  
bit. Or, if it's way out there in the wilds in the timbered area,  
"Let's give him 160 to make up for the difference." But there was

1 so much surplus land there left and not enough Indians, not enough  
2 Yakimas to give land to, so we had visitors from the coast, from  
3 the Nez Perce, from the Coeur d'Alenes, from the Colville and  
4 the Warm Springs, the Umatillas, that were living on our land,  
and so they gave them allotments, which creates another problem.

5 And I'm sure somebody will address this problem one  
6 of these days, the inheritance problem that comes along with that.  
7 It's very complex. And, again, I agree with Kim that it's  
somewhat frightening.

8 Thank you.

9 MR. BERGER: David Case?

10 MR. CASE: Yeah, Kim, I wonder  
11 if you could be a little more specific about the relationship you  
12 see between the pattern of difficulties with the allotment act  
13 and, particularly the heirship issue and the claims act. And, I  
14 guess... Are you talking about the analogy between allotments  
and stock in the corporations, or something else?

15 MR. GOTTSCHALK: Yeah, that's  
16 ... What I'm talking about... I guess the overriding analogy is  
17 that there's a time certain at which the Indian interests are  
18 fair game and you will be... If it stays the way it is, I think  
19 people will look back with grudging admiration at the ability  
of white society to get huge hunks of that in amazingly short  
periods of time. I think... I think it's an emergency.

20 MR. CASE: Let me just carry  
21 this a little bit further. Suppose the... stock were perpetually  
22 restricted but could be passed only, as it is now, by inheritance.  
What, if anything, would be the consequences of that?

23 MR. GOTTSCHALK: Well, you get  
24 me into an area that I'm really not that capable of talking about  
25 because I think it gets into the area that Coulter has raised and  
many others about what is the ultimate vision. I don't know if  
this is even the ultimate system that they want. All I'm saying

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 is, if you can't come up with an alternate system by 1991,  
2 certainly some type of... continuation of the restriction buys  
3 you some time as far as... It has nothing to do with the after  
4 born situation, which I think would seem to me as an outsider  
5 as an extremely serious problem. And to me, that's going to  
6 require more than just a slight modification of some time  
7 periods. Obviously, there's... To me... There's... A major  
8 overhaul needs to be done. I'm worried about the impending time  
9 periods and I don't know... I think maybe all types of strategies,  
10 not just in the sense that they've been talked about earlier, but  
11 in the sense of timewise, all different levels of strategy need  
12 to be pursued, short-range, mid-term and long-range. What the  
13 specifics of those are... I mean, that's where I agree with the  
14 observation that, in the long-term, perhaps lawyers should be  
15 latecomers to the whole thing. Lawyers cannot be latecomers to  
16 the 1991 problem because it's here right now.

13 MR. CASE: What, in case of  
14 the allotments, is the consequence of the land being restricted  
15 and passed by heirship?

16 MR. GOTTSCHALK: Okay... Well,  
17 it's not as analagous in that situation because stocks are more  
18 easily divisible. But the... What has happened is... a whole  
19 new set of problems that have also given rise to lawsuits, called  
20 secretarial transfers... you end up with a piece of land with,  
21 maybe, each person owning 1/64th interest and so what do you do?  
22 So, Congress passed an act that said, well, the secretary, upon  
23 application of the heirs, or if one heir was found to be incom-  
24 petent, not in... in the mental sense, then he could sell the  
25 allotment. So many of those have been sold without the applica-  
tion of the heirs and there's many lawsuits brewing in the Lower  
48 at this very moment based on that. There have also been  
provisions passed saying... I can't remember the precise formula  
but if a piece of land is of a certain size... you know, small size,

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 if its income-producing ability is very small, it automatically  
2 escheats to the tribe, and so now there are lawsuits by individual  
3 Indians suing over that, arguing that that statute is unconstitu-  
4 tional because it's taking their property away.

5 But the heirship problem has just been devastating. I  
6 mean, you have lands sitting there that so many people own such a  
7 small interest in it that no productive use can be made of it.  
8 There are all kinds of arguments over what's going to be done with  
9 it. It's just a total disaster.

10 MR. BERGER: Just before we go  
11 to Mr. Lerner, David Case, would you like to supplement in any  
12 way what Mr. Gottschalk has said by referring to allotments in  
13 Alaska?

14 MR. CASE: Well, the heirship  
15 problem is the same with allotments in Alaska except, of course,  
16 the allotment act that was primarily implemented up here was a  
17 public domain allotment act. It did not divide up reservations.  
18 It... Well, it took land out of the so-called public domain and,  
19 theoretically, largely, made it available for Alaska Natives.  
20 But you have the same heirship problem in Alaska that arises out  
21 of the fact that one person obtains an allotment and then passes  
22 it on by inheritance to several people who then pass it on by  
23 inheritance to several other people who then pass it on to several  
24 other, and, of course, within two or three generations you have  
25 sometimes 100 people owning the same 160 acres of land, or less,  
and no division of... Well, it just makes it very difficult to  
deal with the land as an economic unit, for one thing, and  
usually often ends up in the land being leased to an outside  
economic interest, which then can return cash as a payment for  
the lease, which can be distributed among 100 people, whereas  
the land can't. So, you see, the institution, itself, sort of  
divides up and does very... often devastating things to people  
in their relationship to the land.

1           You want to say something, and I don't want to...

2                           MR. GOTTSCHALK: Well, I was  
3 just going to say there's a side issue to that that's even  
4 compounded further. In Minnesota, where I was mentioning they  
5 have the secretarial transfer problems where the secretary of  
6 the Interior transferred land without the consent of the heirs,  
7 they've estimated that the probate work to go back and find out  
8 who all the heirs are, alone, would cost 40 million dollars.  
9 No one knows who the heirs even are, it's been so long since  
10 work has been done on it.

11                           MR. CASE: And just... I mean,  
12 to tie this... Maybe it's obvious, but nobody ever says this,  
13 but I suppose maybe it's important to say this, that what's...  
14 You sort of have to look at the result of inheriting ANCSA stock,  
15 and the way the claims act, of course, is set up, one... every  
16 person got 100 shares in a particular corporation, or, maybe,  
17 100 shares in each of two corporations. And then, those people  
18 will pass those 100 shares on, perhaps to multiple heirs who  
19 will then pass them on to multiple heirs, and you will have the  
20 same multi... increasing division of these 100 shares into...  
21 They're more easily divisible but the question, then, becomes  
22 what is the value in any term, and maybe there is some value, of  
23 owning one share or two shares or five shares, in a corporation.  
24 Whatever the value is, it is probably not economic value.

25                           MR. GOTTSCHALK: I agree with  
that. Before, when I said it wasn't quite as analagous, I meant  
the precise point you made, that since it's 100 shares, it is  
somewhat more easily mathematically divisible but, ultimately,  
you reach the same problem.

                          MR. BERGER: I'm... Mr. Lerner  
and then Dalee Sambo and then Joseph Jorgensen. Sorry.

                          I'm told that some of the corporations are down to  
fractions of less than a share on their roles, and that's only 12

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 years after... Did I say Ralph Lerner? Yeah.

2 MR. LERNER: I first raised my  
3 hand because I... There was something I didn't understand in what  
4 you had mentioned. You said under certain conditions the... the  
5 land escheated to the community, to the tribe?

6 MR. GOTTSCHALK: That's a very  
7 recent statute and it's being tested now. If a person's interest  
8 in land fell below a certain percent and it's income-producing  
9 ability fell below a certain dollar amount, they just declared  
10 it escheated to the tribe and that's now being challenged in  
11 court.

12 MR. LERNER: By individuals who  
13 don't want to give up what they own --

14 MR. GOTTSCHALK: Right, right.

15 MR. LERNER: -- they thought.  
16 Now... nice.

17 Let me just raise a question and this is something that  
18 lawyers would know about. In a big city, you could have an  
19 apartment building that is run, not as a condominium but as a  
20 cooperative. Okay? Where, strictly speaking, you don't own the  
21 apartment in which you may be living, but a fraction of the build-  
22 ing of which that apartment is a part. And, that apartment build-  
23 ing, or the owners of the cooperative, has an interest in maintain-  
24 ing the character of that building. They might not want to have an  
25 apartment taken over by young swingers... okay?... who are going  
to have party time at 3:00 a.m., or they might have other kinds  
of motives. They want to have some control over who lives there  
and how that person or that family will comport itself. So  
they have an arrangement... I've heard of it, I don't live,  
myself, in such an arrangement... They have an arrangement whereby  
if you want to move out of that apartment and you're going  
somewhere else and you want to sell your apartment, before you  
can sell to a ready buyer, that buyer must have the approval of

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 the board. Or, if the board turns down that potential buyer, the  
2 board reserves the right, the cooperative, as it were, reserves  
3 the right to be the first buyer of that apartment.

4 Now, there are all kinds of arrangements that lawyers  
5 have concocted for people who want to have some control over their  
6 neighborhood. In the old days, people used to worry about black  
7 people moving into white fancy neighborhoods. They had restric-  
8 tive covenants which have been struck down by the law, but have  
9 contrived other devices whereby they have some kind of control  
10 over who buys... not over your right to sell, but over the identity  
11 of the buyer. Now, that's under a cooperative arrangement. Your  
12 individual right to your property remains in the sense that it  
13 is your title, but the community, whether it's a cooperative or  
14 an apartment building or what have you, preserves some leverage  
15 in maintaining the special character that it wants for that  
16 building or that neighborhood or that something or other.

17 I wonder if that's out of the question? That's one  
18 question. The second is very brief.

19 The fact that one had only a share or 100 shares, it  
20 doesn't matter, in a corporation, or in a cooperative, for that  
21 matter, and that that becomes divisible and divisible and re-  
22 divisible... I mean, after all, it's the division of property  
23 that lead all those younger sons to leave the easternmost settle-  
24 ment of the United States and go west. The farms became so  
25 small they couldn't live off them in eastern Massachusetts and  
Connecticut and so on. But the fact that the share is divisible  
doesn't mean that it must be worthless.

I would have been very happy if my father had had both  
the means and the foresight and wit to buy one share of General  
Motors or General Electric in 1924. That one share would... You  
know, there's such a thing as splits. Okay. Now, it may be that  
some of those shares and some of those corporations, because of  
good luck and good management and whatever else goes into it,

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 become very, very valuable, indeed, and maintain a multitude of  
2 descendents. It may be. But it may also be that they'll be very  
3 small.

4 point --  
MR. CASE: Well, right, and the

5 MR. BERGER: David Case.

6 MR. CASE: -- the point that  
7 I meant to make is not that this is necessarily bad that shares...  
8 100 shares will be divided up down through generations. It kind  
9 of depends on your expectancy, though, as to what is going to be  
10 the economic benefit of owning shares in ANCSA corporations. And  
11 the expectancy may have been that owning 100 shares of a corpora-  
12 tion would result in some fairly substantial income to individuals  
13 ... to the individual that owns 100 shares, and the fact that  
14 the shares then, in later generation, become further and further  
15 reduced, reduces that likelihood. So it depends on the expec-  
16 tancy that you have of this institution.

17 And, you know, there's a great deal that is also left  
18 to chance and later development. That's my only point. I'm not  
19 saying that this is bad or good. It's just that there are some  
20 consequences to the restriction on shares and the restriction  
21 that they can only be passed by heirship, at this point.

22 MR. BERGER: Kim Gottschalk.

23 MR. GOTTSCHALK: To answer your  
24 question as to whether something like that is possible, it's  
25 already in there to a certain extent in 43 USC 1606. The cor-  
poration can, by the cutoff date of 1991, if it so chooses, in  
addition to any other legally permissible restrictions, of which  
I have no idea what they are, have a restriction denying voting  
rights to any holder of stock who is not a Native or a descender  
of a Native, and the granting to the corporation or to the  
corporation and a stockholder's immediate family, the first  
right to purchase.

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1           Okay? So some of what you've said is in there. I leave  
2 it to other people to say whether it's adequate. I guess my  
3 reaction is, based on my experience in the 48, and the reason  
4 I rebel against this provision and your suggestion is, I'm  
5 opposed to the whole idea of an economic entity as opposed to a  
6 governmental anyway. That's what sovereignty is all about, is  
7 government, not... in the 48, okay? I don't want to make a value  
8 judgment for the people up here, but for the tribes I've worked  
9 with, they've been membership entities, not economic entities.  
10 They've been governmental entities first and so, in a certain  
11 sense, I would reject the premise.

12                           MR. BERGER: Could I ask you a  
13 question, Mr. Gottschalk? In a... You prefer what you... what  
14 really are political entities with certain law-making functions.  
15 What about the land, where you have land that the tribe or people  
16 consider to be theirs? How should it be held? And by what  
17 entity?

18                           MR. GOTTSCHALK: I don't know if  
19 I want to answer how should it be held, but I can answer how it is  
20 held with the tribes... Mostly, I've worked with the Mescalero  
21 tribe, okay? I've been with NARF for a year and a half. I was  
22 with the Mescalero tribe for eight years and their leader is  
23 Wendall Chena, whom I consider to be one of the finest Indian  
24 leaders in the country, or one of the finest indigenous leaders  
25 in the world, as far as that goes.

                          I... I know him well enough to know what his response  
would be to that and that is, the tribe owns every last acre.  
At least, no non-Indian owns any, and the land is essential and  
it's held by the tribe as a governmental entity and the people  
hold membership in the tribe.

                          MR. BERGER: Dalee Sambo, and  
then Ralph Johnson and... Joe, and then Ralph. Sorry.

                          MS. SAMBO: Under the General

1 Allotment Act, it seems that it's taken... in terms of allotting  
2 land to people on an individual basis, has broken down the tribal  
3 institution or... and severed the land that once belonged to the  
4 tribe in common, or communal, or held within the tribe. So what's  
5 the responsibility of the tribe as... as a tribe to the individual  
6 allottees? And it seems to have broken down an essential part  
of an Indian community by allotting on an individual basis.

7 MR. GOTTSCHALK: Without men-  
8 tioning a specific tribe, but it's a tribe that I'm aware of,  
9 they have a real problem having their own people accept the tribe's  
10 right to tell them what they can do on the reservation. They have  
11 a hard time with the idea of tribal government because the whole  
12 reservation has been so decimated by allotment. It's a terrible  
13 problem, and to compound that there are Anglo holdings within  
14 and...

15 I don't know. To me, it's just... This whole idea of  
16 allowing Anglos to have their foot in the door by getting some of  
17 your stock is just devastating.

18 MR. BERGER: Joe Jorgensen?

19 MR. JORGENSEN: One problem about  
20 allotments and their aftermath that hasn't been discussed yet but  
21 should be is, what does happen when, through secretarial transfer  
22 or through purchase, funds made available by Congress for tribes  
23 to buy back allotments or land tied in up heirship... What does  
24 it do to the former allottees, or those who presume to be the  
25 heirs? And one problem is that, when the IRA governments then  
received this land back, they were authorized to assign land for  
use by Indian persons who desired to use the land. This would  
allow them to farm, to raise livestock, to engage in any small  
enterprise. Here are some of the kinds of problems that have  
emerged from that on several of the reservations on which I've  
worked over the years.

The former allottees, or heirs, have been unclear about

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 the nature of the transfer even if they received payment back for  
2 the transfer. Many of the transfers of allotment and heirship  
3 land on some of these reservations were made to pay back debts  
4 incurred in irrigation projects put on those reservations that  
5 had not been desired or voted upon or agreed to by the allottees  
6 or their heirs or the tribes, themselves, as a matter of fact.  
7 When they knew that they had land that would be theirs, they  
8 assumed in perpetuity... of course, it was a 25 year trust...  
9 that first wedge, a wedge perhaps that Ralph Lerner could talk  
10 about, was made. That's to say, they now became individual  
11 property owners, which was what was desired by some framers of  
12 the General Allotment Act in the first place. If a person would  
13 but assume land, he would become responsible for his family and  
14 for the continuation of that family through time. And if they  
15 were witty and wise, and used their resources well, they could  
16 purchase more land on their own.

17 But what I saw in the 1950s and the 1960s were such  
18 things as fist fights, challenges to the authority of the tribe  
19 to assign land. I saw land assigned to people and the tribe  
20 afraid to take it away from them, even if it was not in use for  
21 several years when someone else wanted to use the land and have  
22 it assigned to them... That there were these conflicts about  
23 who owned the land, for what purposes it should be used and  
24 whether the tribe, by its authority, could control land that  
25 was presumed to belong to former allottees or former heirs.  
It could be awfully devisive.

The contradictions, then, that emerged have continued  
on and they haven't gone away, that there would be corporate  
resolve among all members of the community without factional  
disputes or catch-as-catch-can wrestling matches, is not a  
foregone conclusion. I think that, without a larger land base,  
without some way to take care of future generations, that ANCSA  
will run into precisely the same kind of problems that have



1 emerged on these various Indian reservations, especially in the  
2 Western United States.

3 Sometimes these problems on allotments and assignments  
4 can be compounded, particularly if oil and gas happens to be on  
5 those reserves. Allottees or heirs control the subsurface rights.  
6 They lease their oil and gas, they receive directly the benefits  
7 from it. Assignment land next door, once owned by Indians now  
8 still residing on the reservation, also have oil and gas wells  
9 in place but those monies go back to the tribe and they feel that  
10 they have been deeply deprived.

11 Those kinds of problems are very serious and very real  
12 on several of the reservations.

13 MR. BERGER: Ralph Johnson?

14 MR. JOHNSON: I'd like to call  
15 forth an analogy from the other field that I spend most of my  
16 time in, and that is the field of public land law. Just as an  
17 introduction, about a week ago, a federal judge in Portland,  
18 Oregon, enjoined all herbicide spraying in all national forest  
19 lands and all BLM lands in all of Oregon and all of Washington  
20 because of the failure of the National Forest Service and the  
21 BLM to prepare what is known as the worst case analysis. The  
22 National Environmental Policy Act was enacted in 1969. In 1979,  
23 the president issued an executive order... President Carter did...  
24 saying that the only way we're going to find out the important  
25 information about the impact of federal projects, for example,  
spraying herbicides on national forest land, is to have the  
agency prepare something explicitly identifying the worst possible  
results that could come from that. The agencies don't like to  
do that. In fact, they refuse to do it. They refuse to do it  
time and time again, even though ordered by the court to do so.  
In 19... As I said, about two weeks ago, the Ninth Circuit simply  
ordered the agency to stop all herbicide spraying in all of those  
two states until such a worst case analysis was prepared.

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 Now, a worst case analysis it different than what some  
2 of you might think. It doesn't... You can't brush aside the  
3 possibility that the disaster that has been alluded to here by  
4 Kim Gottschalk and David Case and others might occur. You can't  
5 just say, "Well, there's not very much chance of that so we don't  
6 have to consider it." The worst case analysis requires that you  
7 spell out what that worst case possibility is and some idea of  
8 the chances of that occurring. You have to write it out. You  
9 have to say, "This might occur and this might occur and this  
10 might occur," and I suspect that revealing that information might  
11 affect those who are making decisions about it. And, as I say,  
12 if you just shut if off and say, "Well, there isn't very much  
13 chance of that happening," then people blank it out of their  
14 minds. But there is a whole methodology now that requires you  
15 to spell that out, say what would be the worst case.

16 For example, on the herbicide spraying there is some  
17 chance that 50 women will have spontaneous abortions in the area  
18 that is sprayed. There is some evidence that is true. Forest  
19 Service and BLM said, "Well, that isn't... We don't think that's  
20 true and that isn't likely," but they couldn't prove it wasn't  
21 true and so they had to... They must reveal, in their analysis,  
22 that this could be the result. Then the public, the federal  
23 agencies, the Congress, the people who all are going to decide  
24 that question, will be able to decide, "Do we want to go ahead  
25 with that?" And that, it seems to me, is where we are here.

One can ask for an explicit revelation of what is the  
worst case analysis of 1991? Not whether it might likely occur  
or not, but what is that analysis and then let's consider, "Do  
we want to take the chance? Is there any way we can reduce the  
chances of that happening? Is there any way to plug those holes  
so that won't happen?" And then think of the avenues to go about  
it. I think that methodology is available. It's a question that  
fits very appropriately here and should be asked and should be



1 analyzed here.

MR. BERGER: Yes, Russell Jim?

2 Oh, sorry... It's... Yes, Russell Jim.

3 MR. JIM: Thank you. I... I  
4 certainly agree with Professor Johnson but I think it warrants  
5 a little elucidation in regard to some of these worst case  
6 analysis... and that is, in regard to the allotment on the  
7 Yakima Nation.

8 In 1953, with the fast pace or fast changing of value  
9 system by the Yakima people, themselves, in selling off their  
10 allotments to anyone, non-Indian alike, the Yakima Nation exercised  
11 its sovereignty in 1953 through the general council body and  
12 passed a resolution that said no more land will be sold to non-  
13 Indians.

14 But as I mentioned earlier, there are these allotments  
15 that are up in the timbered areas which is a closed area to  
16 non-Yakimas on the Yakima reservation, especially during the  
17 fire season. But these allotments are inherited eventually  
18 under the laws of the United States of America, and the one  
19 allotment specifically... I'm sure Professor Johnson knows the  
20 case of the Yakima versus Brendale. Mr. Brendale was that...  
21 about a sixteenth or a sixty-fourth short of being enrolled a  
22 Yakima member. But he inherited this 160 acres from his mother  
23 whom was enrolled and passed on, and through the laws that were  
24 created here not too long ago, the gentleman inherited. And so  
25 eventually he wanted to develop... he wanted to divide ten acres  
up there into two acre plots and sell them to non-Indians up in  
the closed area, which is a beautiful area up there in the timber.

And we argued, "You can't do this. The Yakima Nation,  
through its own sovereignty and through its zoning ordinance and  
code controls all lands within the exterior boundaries of the  
reservation." Of course, you know the ramifications and the  
court cases that have always come out of that. But we did

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 eventually have to go to court and first, the county commissioners  
2 in Yakima said, "Well, we grant Mr. Brendale the right to develop."  
3 I'll make it short as I can, but eventually the Yakima Nation won  
4 the case. The question still is among the county commissioners,  
5 "Should we appeal?"

6 But this is one of the worst case analysis that could  
7 be thought about, and thought hard about. The... The development  
8 and the manner promoted inside the closed area was going to  
9 affect the resource, the important resource, itself, the  
10 environment, the aesthetic, animal habitat, and the bottom line...  
11 the natural foods and medicines that are very essential to the  
12 culture of the Yakima Indian Nation.

13 I could elaborate further, but I think I'll let it stop  
14 right there.

15 MR. BERGER: Yes, well... I  
16 wonder if I could make a suggestion now. It's about five minutes  
17 to 3:00. Tito Naranjo brought this movie with him and I suggest  
18 that we turn now to watch the movie and then everyone in the hall,  
19 I repeat, is invited back to the commission's offices for  
20 refreshments at 4:30. Tito Naranjo has to leave tomorrow morning,  
21 so I think we should show the movie now and invite Tito to say  
22 a few words to us afterwards.

23 And I have some more hands up. Yes, Ralph Lerner?

24 MR. LERNER: Could you spare  
25 three minutes?

MR. BERGER: All right.

MR. LERNER: Okay. This  
appalling narrative you gave... I mean, of these allotment frauds,  
encouraged, I think, under... You know, because of the individual's  
inability to work within the confines of white property law.  
I mean, it's just simply dreadful. I wonder whether that example  
of the Lowr 48... I'm talking like a native already... Okay, I  
mean Alaskan... okay... I wonder whether that experience of the

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 Lower 48 is so... necessary or... or... or fearsome up here.

2 Let me just suggest a couple of things that strike me  
3 as putting Alaska in a special and maybe more favorable light.  
4 First of all, the very thing that seems so ominous, that you've  
5 really got only seven years and the clock is running, might  
6 actually be working in your favor rather than against your favor.  
7 I'll explain that in a second. And the other thing, that you've  
8 got so much territory, an immense amount of land... What's that?

UNIDENTIFIED: (INDISCERNIBLE)

9 MR. LERNER: You may say not  
10 enough, but it gives you room for maneuver and error.

11 Let me suggest a possibility. When you have more time,  
12 you have more time for the division of minds. Maybe it's possible  
13 that, with some tribes or some corporations or some boroughs,  
14 there's something approaching unanimity. We don't want that...  
15 X. Okay? We want to be able to control it according to a certain  
16 vision that we have. That would be the moment, it seems to me,  
17 to act on that before people have had a chance to divide to  
18 form the kind of factious behavior that Mr. Jorgensen described.  
19 To the extent that you're talking about a community, a community  
20 meaning having a common mind about the most important things,  
21 whatever those things are for those people, is it out of the  
22 question that that community... that those individuals vested by  
23 the law with these individual shares should contract with one  
24 another to form some kind of an organization, some kind of a  
25 community, and even if it has to be called corporations, so be  
it, whereby their common purposes, their common interests, their  
common dreams might be served? That community, recognizable by  
the law, corporate law, property law, whatever it is... the  
law of associations, that's a recognizable and falling under the  
protections of white law for such arrangements, might then make  
what arrangements it pleased.

For example, I would imagine that the first thing that

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 they might want to to is to provide for all their children. The  
2 11 year olds as well as the 12 year olds. I mean, I can't imagine  
3 a human being that would settle for saying yes for this kid and  
4 not for that. And, again, talking not about giving him a parcel  
5 which will then be inadequate in the third generation, but giving  
6 him a share... that corporation could then arrange for the use  
7 of that land, distributing it and arranging for its use in any  
8 fashion that it saw fit. Probably there would be all kinds of  
9 division of minds. Probably you'd have politics, the sort of  
10 thing that Ms. Deer alluded to in talking about the Menominees  
11 because the Indians and Aleuts and Eskimos, like other people,  
12 are going to have divided minds about what's good and how to go  
13 about it.

14 But if you've got actually a moment, and it'll only be  
15 a moment, probably, when you have some kind of clarity and agree-  
16 ment about it, maybe that's the monent to strike and settle for  
17 that, and at least foreclose the possiblity, insofar as human  
18 beings can foreclose anything, that the whole thing will just  
19 be frittered away in devisiveness and mutual recrimination.

20 There is the place where I think a lawyer could be  
21 helpful.

22 MR. BERGER: Ada Deer?

23 MS. DEER: This will be short.

24 In terms of analogies between the Dawes Act and ANCSA, some  
25 framers of the Dawes Act had the vision that this would solve  
the Indian problem. It has compounded the lives of thousands  
of people and didn't solve anything from the Indians' point of  
view. One of the speakers talked earlier about the object of  
getting the land. That was a masterful way to separate Indians  
from the land. I look at ANCSA and I see this corporate model  
that has been referred to as model legislation, as an economic  
instrument that will shatter the lives and the lands of the  
people up here unless something is done. I see cultural arrogance

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 in the drafters of the Dawes Act and I see the same arrogance...  
2 you know, pettiness, smugness and self-satisfaction in the minds  
3 of some of the drafters of the ANCSA legislation. Perhaps  
4 they... they, I mean the white drafters, the aides and some of  
5 these other people... were not as clear in telling everyone what  
6 they had in their minds, and I know that this is a major piece  
7 of legislation. I don't know if all the people that were involved  
8 in drafting this legislation fully understood the implications  
9 of this but I'm certain that some of the major drafters of this  
10 legislation knew exactly what they were doing in getting the  
11 land. And I think it's imperative on parts of all concerned to  
12 look with vision in rectifying this before it gets to late.

13 MR. BERGER: Well, I think  
14 Walter Parker, the last word this afternoon.

15 MR. PARKER: Just as a quick  
16 add on to that, and of course it was in the overview statement,  
17 at least one of the drafts, one of the business leaders in Alaska  
18 made it quite clear that he felt the business community should  
19 get behind the act because the land would be in private hands,  
20 ergo transferable.

21 And a brief comment on the allotments, and I've been  
22 waiting for somebody who's been more involved in the last few  
23 years in allotments in Alaska than myself to speak up but  
24 nobody's come forward. There are probably around 8,000 allotments  
25 filed in Alaska, only probably less than 1,000 of which have  
been processed. Most were filed immediately prior to the  
passage of the act on the fear of Alaska legal services and  
many Alaska Natives that the act would not pass, therefore got  
some land while it could still be gotten, and those are still on  
the books and whether it is a major problem or not depends, you  
know, on how vigorously the applicants want to pursue their  
rights.

MR. BERGER: Yes, just following

*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



1 up on what Mr. Parker said, there is a point of view in Alaska  
2 that the... the passage of Native lands from the hands of the  
3 Native corporations, that is if the corporations come under the  
4 control of non-Natives and, thus, the land under the control  
5 of non-Natives, that, nevertheless, is entirely in keeping with  
6 the purposes of the act because the act was really an event in  
7 the mighty struggle between the state of Alaska and the federal  
8 government to bring federal lands under state jurisdiction. And  
9 by that reasoning... And it's quite explicit and regarded by  
10 many, I'm sure, as perfectly legitimate... By that reasoning,  
11 the land held by Alaskan Native corporations today is land in  
12 private hands under state jurisdiction. What was formerly federal  
13 land is now in private hands under state jurisdiction. If the  
14 corporations cease to be controlled by Native persons and their  
15 land ceases to be controlled by Native persons, it is, neverthe-  
16 less, still land in private hands under state jurisdiction.

17 That's a view expressed last year by Governor Hickel,  
18 who was, I believe, the secretary of Interior, at the time of  
19 ANCSA in --

(TAPE 31, SIDE B).

MR. BERGER: -- or, just before.

At any rate, it comes from a man who's credentials are well-  
known to Alaskans.

Well, could we start at 9:30 in the morning? I know  
some of you... At least, Tim Coulter has to leave and I thank  
Tim for coming. Tito Naranjo will have to leave, too, and I  
thank him for coming. Kim Gottschalk will have to leave. Thanks,  
likewise to him. I'm not being more flowery about this because  
you are, of course, going to be enjoying our hospitality later  
this afternoon.

I think you can leave it to David Case and Rosita  
Worl and me to come up with an agenda for tomorrow. And if  
Dalee Sambo and Alfred Starr wish to lead off the proceedings

Accu-Type Depositions, Inc.

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
(907)276-0544



ATD

1 tomorrow, if I may say so, perhaps the most senior and the most  
2 junior representatives at our little table here, they will be  
3 most welcome and we will carry on perhaps until noon tomorrow.  
4 And that may very well furnish a sufficient examination of  
5 these questions for the time being.

6 I haven't forgotten what Ralph Johnson said, that is  
7 that we ought, at some time, consider alternatives to ANCSA and  
8 IRAs. That is, what instruments might be devised... I think  
9 others have adverted to this... that might enable us to consider  
10 a wider ranging of alternatives than those that have dominated  
11 our discussions last week and this week. And we might join with  
12 people in the Lower 48 in working together on such an examination.

13 Well, let's watch that movie now.

14 (HEARING ADJOURNED)

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
  
*Accu-Type Depositions, Inc.*

727 "L" Street, Suite 201  
Anchorage, Alaska 99501  
19071276-0544



C E R T I F I C A T E

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

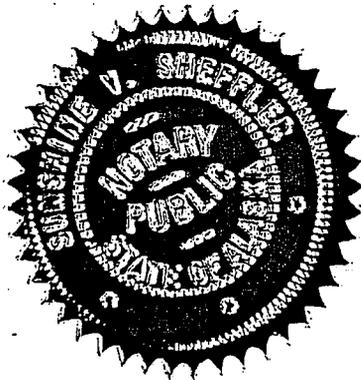
4 I, Sunshine V. Sheffler, Notary Public in and for  
5 the state of Alaska, residing in Anchorage, Alaska, and Certified  
6 Electronic Court Reporter for Accu-Type Depositions, do hereby  
7 certify:

8 That the annexed and foregoing pages numbered 749  
9 through 832 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 proceeding.

21 IN WITNESS WHEREOF, I have hereunto set my hand and  
22 affixed my seal this 3rd 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

Accu-Type Depositions, Inc.

550 West Seventh, Suite 205  
Anchorage, Alaska 99501  
(907) 276-0544





