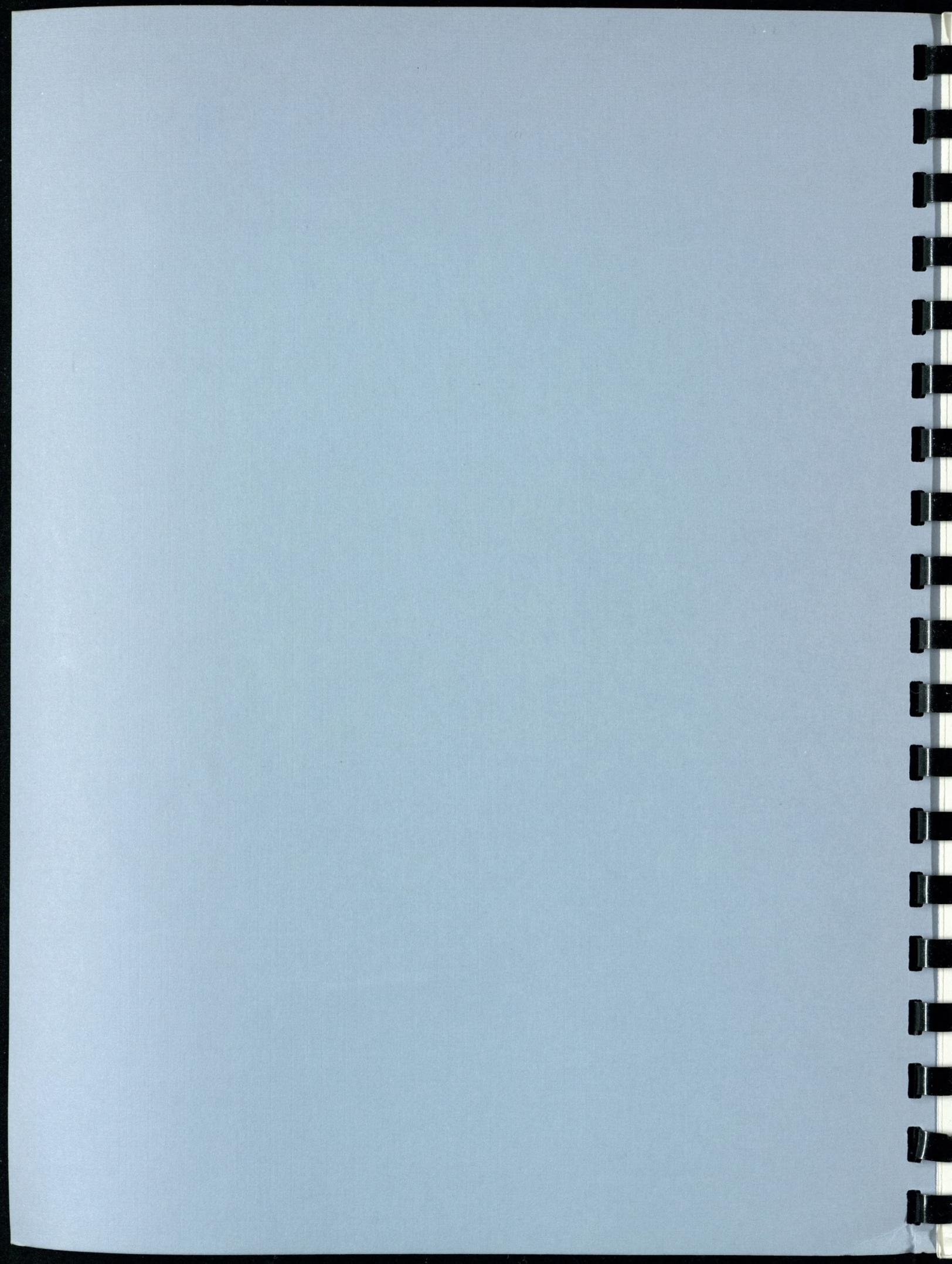


Volume XIII
Pages 1229-1338
Transcript Of Proceedings
Alaska Native Review Commission
International Overview
March 16, 1984
Anchorage, Alaska

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VOLUME XIII

PAGES 1229 - 1338

TRANSCRIPT OF PROCEEDINGS

ALASKA NATIVE REVIEW COMMISSION

INTERNATIONAL OVERVIEW

MARCH 16, 1984

ANCHORAGE, ALASKA

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Anchorage, Alaska 99501



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ACKNOWLEDGEMENT

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Anchorage, March 13, 14, 15, 16, 1984
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- 18 Norway
- 19 Alf Isak Keskitalo
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- 21 United States
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23 invited the following:
- 24 Don Mitchell
Former Vice President and General Counsel, Alaska Federation
25 of Natives (AFN) (Or substitute suggested by the AFN).



- 1 Dalee Sambo.
2 Assistant to the President, Inuit Circumpolar Conference,
3 Alaska.
- 4 Al Gozmer
5 President, Native Village of Tyonek and Treasurer, United
6 Tribes of Alaska (UTA). (Sheldon Katchatag, UTA Vice
7 Chairman,
8 will also participate).
- 9 David Case
10 Law Professor, Native Studies Program University of Alaska,
11 Fairbanks (also Special Counsel to the ANRC).
- 12 Alfred Starr
13 An Athabaskan elder who was involved as an early proponent
14 (decades before ANCSA) of land settlement to preserve
15 Native rights.
- 16 Charlie Edwardson, Jr.
17 Early land claims activist in Alaska and a key figure in
18 the movement for congressional action on Native claims.
- 19 Rosita Whorl
20 Anthropologist and consultant to the Commission.
- 21 Chuck Smythe
22 Anthropologist and consultant to the Commission.
- 23
24
25



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(MARCH 16, 1984)
(TAPE 45, SIDE A)

MR. BERGER: Well, maybe we could begin this morning, and the first... Might I first of all say that Dr. Robert Petersen of Greenland has to leave this morning and I just want to thank Dr. Petersen for his attendance here. I know we all appreciate his contribution to the proceedings and I know I speak for all of you in extending to him our gratitude for coming here. And, Dr. Petersen, would you like to say a few words before we...

MR. PETERSEN: Thank you. I'm sorry that I am alone who came from Greenland. But in the very cold winter, we had a heated political climate in Greenland that made it difficult for other persons to join this hearing.

And in Greenland, as I tried to tell about it, so-called fundamental rights without having any definition of it. And we maintain that collective land ownership and collective ownership of renewable resources. In practice, we distinguish between full-time fishermen and hunters, half-time fishermen and hunters and leisure fishermen and hunters.

UNIDENTIFIED: What was the last category?

MR. BERGER: Leisure.

MR. PETERSEN: Leisure, yes.

In connection with nonrenewable resources, we have today a joint control administration of them. A full control by Inuit of nonrenewable resources is today politically impossible as the home rule Greenland has economy that is dependent on support from Denmark. And the Danish Anti-discrimination Act is of importance in connection with this question, and in this way an act that should protect the weak groups but also protect the strong groups.

In Denmark, there is an understanding of treating weak individuals better than strong ones in some connections, but when



1 we speak of group rights, this understanding disappears. When we
2 speak of special ownership right for the Greenland Inuit, it is
3 called racism, even though we by racism mean the situation in
4 which a strong group prevents the weak group in taking part in the
5 benefits of the strong groups. But beyond this, we have no
6 money conflicts on this question and the lack of concrete impulses
7 contributed to a situation where we often learned the areas on
8 the land ownership and the implementation of them from different
9 other areas.

10 I got a lot of impulses here and got a possibility to
11 compare them with each other. I am grateful for this situation
12 but I am also glad for meeting a lot of new friends besides old
13 friends, all engaged in the important question of land ownership
14 and self-government. And I have read reports on Berger's hearings
15 about the Mackenzie Valley project. We are great impression of
16 the ability of channelizing the strong argument from many dif-
17 ferent places affected by the pipeline plan.

18 I hope that the Alaska Native Review Commission will
19 have success in its work and I wish you good luck in your work
20 also this time. Thank you very much, all of you, for those
21 useful days and have a good day.

22 MR. BERGER: Thank you, Dr.
23 Petersen, very much. We're all indebted to you for the contri-
24 bution you've made to the proceedings and we wish you a good trip.

25 I think that brings us to the first item of business
this morning, which is the presentation to be made on behalf of
the Dene Nation and the Metis Association of the Northwest Terri-
tories, and Bill Erasmus, Rick Hardy, Steve Iveson, Steve Kakfwi,
are going to make that presentation and I think each will speak
in turn and then we will question them as a group afterward... is
that... That's the arrangement, I think.

So, would you proceed then, Bill, if you're first?
Bill Erasmus.



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MR. ERASMUS: Thank you.

I will make a quick or a general presentation on historical aspect of the Dene-Metis situation. I'll concentrate mostly on who we define... I'll concentrate mainly on who we defined as Dene and I think Rick Hardy will... spend more time discussing the Metis aspect.

The Dene are a hunting and gathering people who have subsisted in the Mackenzie Valley for thousands of years. They have lived in that area with an economic, political, a social system that originated from their own being and continued to live that way of life until... unmolested until generally the turn of the last century when the gold rush in the Yukon first began to take place, when developments of natural and nonrenewable resources began to take place in the far North.

What happened at that time with our people was the first signing of a formal treaty with the federal government in 1899. At that time, in the southern part of our region, some of our peoples made a formal agreement with the crown, understanding that we still had rights to the land, we still had rights to political institutions and that basically we were making an agreement that acknowledged the non-Dene presence and welcomed them to our part of the country within a friendship and a peace arrangement.

And we continued to live that way for several years until the next major development took place. Again, development, major development, lured people to the North. This time it was in the heart of Mackenzie Valley, the Norman Wells area where oil was struck in... around 1921 and, again, as part of Canadian policy, the federal government had to deal with the Indian peoples, the Dene people. And so we, again, formed a treaty with the federal government, this treaty being number 11, and that covered the rest of the Dene area and allowed, at that point, access of non-Dene peoples formally into our traditional homeland.



1 We continued to live our way of life and until the
2 Second World War, around 1945, when the fur prices began to
3 decline drastically, the federal government was forced to begin
4 attempting to get us into communities. And the next major change
5 in our lives took place, families moved from the land into
6 communities. Schools were built. The welfare system began with
7 our people. Social assistance began to take place. Our families
8 began to be split up, whereas the children had to stay in school
9 and where once we had extended families on the land as a complete
10 unit, we began to only have the men going onto the land and the
11 mothers, the females, generally stayed with the children or in
12 the communities. So it was a drastic shift in our economic order.

13 Until the late '60s, that type of arrangement continued
14 to exist. With the introduction of the treaties, we began to
15 have a system of government in Canada which is called the band
16 council system. In the late '60s, when Yellowknife became the
17 capital of the Northwest Territories and the administration of
18 government moved to the Northwest Territories, the development of
19 local government began to take place in our communities. The
20 settlement council system, the hamlet system... there's different
21 terms for the communities... began to be initiated at that time.
22 So we had a competing element next to the band structure that was
23 in existence since the treaties.

24 And generally, much of the control of the legal system,
25 the political system, the major... areas that make sense to a
people, were out of our hands. We had very little control in
education. We had very little control in running our own lives.
And around the early '70s, we began to organize as political
entities. A major development at that time that helped to get us
organized was the famous Canadian white paper that was presented
by the Trudeau government which basically was set up to eliminate
any kind of special rights that Native people had in Canada and
to have them assimilate into the Canadian mainstream.



1 At that time, as descendants of the Dene, we wanted to
2 form one political organization. We wanted to form an organization
3 that could represent the descendants of the Dene. But because of
4 the policy in Canada where there are distinctions between treaty,
5 non-status and Metis people, the federal government would only
6 fund the treaty people, the people entitled under the Indian Act.
7 And consequently, we formed the Indian Brotherhood of the Northwest
8 Territories, representing only the status people represented by
9 the 16 chiefs. And at that time, our major concern was to clarify
10 the misunderstanding between the crown and the descendants of the
11 Dene, meaning the signing of the treaties where the government,
12 in their understanding, believed that we signed away and ceded
13 any kind of interest to the land and other aboriginal rights.
14 We wanted to clarify that arrangement and most of our energies
15 were towards that end.

16 We managed to file a caveat which basically is proving
17 interest in lands that... proving an interest in lands that we
18 subsisted on, and presented a... prepared our case before Justice
19 William Morrow. At the same time, there were other very impor-
20 tant things happening in Canadian context where we had, in
21 British Columbia, the Calder case where the Niska people were
22 presenting their grievances in a court battle. The significant
23 thing that happened there in 1973 was that six out of seven
24 justices of the supreme court of Canada ruled that there was such
25 a thing as aboriginal rights. Prior to that, there was no such
statement in Canadian history that supported the notion of
aboriginal rights. The Canadian government continued to not
recognize aboriginal rights and said that, if there was such a
thing, it was so vague that no one really knew what aboriginal
rights was and that we didn't have any special interests.

 So the Calder case, in effect, forced the Canadian
government to recognize that there were aboriginal rights. It
forced them to deal with grievances that Native people had within



1 the country of Canada. In the same year, the federal government
2 came up with a policy statement presented by the minister of
3 Indian affairs at that time, Jean Cretieu, who claimed that
4 the Canadian government had a legal obligation to deal with
5 outstanding grievances and that aboriginal rights could be
6 negotiated. And this is where the whole notion of land claims
7 began. It began in 1973.

8 In the same year, the ruling came out by Justice William
9 Morrow that the Dene, indeed, have an interest in the lands that
10 they were attempting to file a caveat over and that the intent
11 of the treaties were, indeed, a friendship arrangement, and that
12 there was some question to... towards some of the signing, signa-
13 tures on the treaties, whereas we claimed that some of the signa-
14 tures were forged. And the way we could present our case was
15 quite unique because, as I said, the treaty was in 1921. It was
16 unique in that many of our people who were signators at the time
17 were still alive in 1973. They were still alive where they could
18 produce the evidence. They could interpret what happened in 1921.
19 So we were very fortunate and I think it played a big... a major
20 role in the decision made by Justice William Morrow.

21 So that, again, helped the whole process of aboriginal
22 rights with the Dene. At that time, when the policy statement
23 of 1973 came out, part of the policy stated that we had to prove,
24 as aboriginal people, that we did have an interest and by proving
25 it, we had to illustrate that we do, in fact, use the land, we do,
in fact, have a traditional land base. And so, what we did was,
we organized the communities so that we could have our hunters
and trappers illustrate the land that they used. We attempted
to get the maximum extent of traditional land use and... by
getting a 30 percent sample of all hunters and trappers, we
marked out all the lands that we have used since memory and so it
covers an area, in time span, from the 1890s to the 1970s, almost
a hundred years of traditional land use, and since that time, we've

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1 used that as our traditional land use base... that we use as a
2 base for negotiations.

3 At the same time, there were other major developments
4 taking place. We had the James Bay Agreement, we had the Alaska
5 claims settlement in 1971, the Inuit-Tapirisat of Canada were
6 presenting their claim. So there were many people discussing
7 aboriginal rights with the federal government.

8 By 1976, after and during the Berger inquiry where
9 Justice Thomas Berger travelled through the Mackenzie Valley
10 assessing the economic and social impact of a proposed pipeline,
11 we presented a model of self-government that we felt would justify
12 our needs in our traditional homeland. And in October, 1976, we
13 proposed the metro model, which basically was a three-tiered type
14 government that requested representation for the Dene, descendants
15 of the Dene, representation for the non-Dene, and a special
16 representation for the major areas, such as Yellowknife. And
17 when we made the presentation, the minister of Indian affairs at
18 that time, Warren Allman, accepted the proposal as a unique
19 presentation and was prepared to support the Dene in achieving
20 that type of a settlement. But the Trudeau administration
21 regarded the model as an ethnic... as a racial piece of... piece
22 of legislation or... as a discriminatory proposal because it
23 separated the Dene from the non-Dene and rejected it on those
24 terms.

25 So we continued to attempt to negotiate and in the end,
by 1978, because of different circumstances, the federal government
cut our funding, ended our funding for negotiations, with the
main excuse being that the Dene and the Metis couldn't get along
and present one claim. Prior to that, they had assured the
Metis that they could present one claim and the Dene could pre-
sent another claim. Later they said, "No, you can't do that
anymore. You have to present one." And when we couldn't arrive
at a quick solution, they said, "We'll cut off your funding until

1 you can get together because it's a waste of time." So the
2 cutoff of funding continued until about 1980.

3 But, in the meantime, they presented another policy, in
4 1978, that outlined a little more clearly their intentions of
5 settlement of claims. And, basically, they outlined at that time
6 that, in exchange for aboriginal rights, they would acknowledge
7 certain benefits to the Dene people... Well, to the Native people
8 who were eligible to negotiate. And the major difference in that
9 policy at that time was that, the difference from 1973 was that, in
10 1973, they were basically convinced that the Indian way of life,
11 the Native way of life, was basically a thing of the past. It was
12 a way of life that wouldn't continue, and by 1978 you could see
13 in their policy that they were changing that notion that... they,
14 in fact, stated that it was... the Indian way of life was unique
15 and that it required protection. So there was a major shift.

16 But it still included the idea of extinguishing
17 aboriginal rights in exchange for certain benefits. By 1980,
18 funding resumed under the present minister, John Monroe, and he
19 appointed a head negotiator, who is still the head negotiator
20 for the federal government, David Osborne. And after he was
21 appointed, we attempted to work within the Canadian policy and
22 began to try and negotiate the whole idea of self-government, the
23 idea of establishing a political arrangement in our traditional
24 land use area. And they were not prepared to discuss political
25 rights on a large area. They were more prepared to talk about
regional political rights. In other words, at a municipal level
where we could discuss band councils and more minor political
arrangements. And we threw that around for... for, I think, a
good year, trying to have the government bend and discuss our
total political package, which included aboriginal title and
different areas that we thought were negotiable.

It turned out that the government wasn't prepared to
speak about these political rights because there were non-Dene



1 in our area and, in their view, they had to be included in the
2 process. They were not prepared to speak with only an ethnic...
3 or a part of the population, even though we're a majority, our
4 population is a majority in our area.

5 So a unique thing began to develop where we agreed to
6 discuss political rights at a separate forum. We agreed to
7 negotiate land rights, economic rights, social rights and so on,
8 at the negotiating table and discuss political rights at a separate
9 table, which ended up to be called the Western Constitutional Forum.
10 A similar forum is set up for the Eastern Arctic which our friends
11 from the Eastern Arctic will discuss later, I suppose. But, in
12 effect, what happened was our negotiating position on aboriginal
13 rights was moved to another table. So that's the forum that
14 we've been using to negotiate.

15 At our negotiating table, we have been concentrating
16 on land and resources, we've concentrated on exactly who was
17 eligible for a claim, and we've done some work in other areas.
18 We're at the beginning stages compared to the Yukon, the COPE
19 settlement and most likely with the Inuit people in the Eastern
20 Arctic. As the Yukon people mentioned yesterday, they have an
21 agreement in principle signed whereas we're still at the stage
22 where we're negotiating some of the fundamental issues.

23 In some ways, we're fortunate because we have the
24 Alaska claims settlement, we have the COPE settlement, James
25 Bay settlement, Yukon settlement, as examples and we can see
where they began and what they've ended up with. And at the
same time, it's unfortunate that we can't sit down with the
government and negotiate a total package at one time because
there are major developments going on. We have the... the
foothills pipeline that is being build right now from Norman
Wells to Zama, Alberta, and some of our people have compared it
to having a gun at our heads as we're negotiating because, in
one breath we're saying we own the resources, the nonrenewable



1 resources, while on the other hand, they're being extracted out
2 of the territories. So it's a very sensitive issue.

3 I think I'll end with that and if there are questions...
4 What we want to do is to finish as a package, presenting our
5 position, and then at the end we'll have... we'll address the
6 questions.

6 MR. BERGER: Well, I think that's
7 a good idea. Well, Rick Hardy, would you pick up the story from
8 there?

8 MR. HARDY: Okay. I'll be
9 going back a ways and coming to the same point where Bill has
10 left off then.

10 Perhaps before I get started, I'd just briefly like to
11 provide you with some of my own personal background. I think
12 it's important that you understand that, although I'm here as
13 legal counsel to the Metis Association of the Northwest Territories,
14 I want you to understand that I'm Metis, myself. I'm not an
15 outside lawyer that's come in to work for them. In fact, I'm
16 one of these persons that Mr. Justice Berger referred to as
17 distinctly Metis in his Mackenzie Valley Pipeline Report. I was
18 born and raised in a small community of about 250 people called
19 Fort Norman. It's about half-way down the Mackenzie River and
20 I spent all my early years in the North. In fact, I was telling
21 someone at breakfast this morning that the first neon sign I'd
22 ever seen was in another small community in Fort Smith when I
23 was 18 years old. So that gives you some indication as to what
24 has created some of my thinking, and understand that some of the
25 things I'm talking about I view from a legal perspective but
also from a deeply personal, emotional perspective, as well. And
the whole issue of the Metis people tends to be confused and
emotional and has been a cause for concern for a number of years
in Canada.

So what I want to do is, perhaps, begin with some

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1 perspective from a national viewpoint from the Canadian experience
2 as to the development of the Metis as a people and the legisla-
3 tive treatment of the Metis people by the Canadian government.
4 Now, it's my understanding, and I could be wrong on this, but I
5 think that the development and the treatment of the Metis people
6 is probably unique to the Canadian situation. I don't know of
7 any other situation in the world where people of mixed blood have
8 been treated differently from the other aboriginal people. The
9 Metis generally arise out of a result of a union between European
10 men and, in our situation in the Northwest Territories, Dene women
11 and as a result of this union, the Metis have developed as a
12 distinct entity within Canada.

13 The area... The physical area of the development of the
14 Metis Nation is probably restricted to Northwestern Canada,
15 Western Ontario and the provinces of Manitoba, Saskatchewan,
16 Alberta, Northeastern British Columbia, and the Mackenzie River
17 District of the Northwest Territories. That is viewed by the
18 organization that came into existence recently called the Metis
19 National Council. They refer to that area of Canada as the
20 Metis homeland.

21 Now, our organization, the Metis Association of the
22 Northwest Territories, is not, at this time, formally affiliated
23 with the Metis National Council but our people do feel some strong
24 ties with the Metis people who live in the provinces.

25 In regard to the question of self-determination of
aboriginal people, I think I would refer the commission to the
Metis National Council. They have been developing positions
recently that call for the development of Metis self-government
based on a Metis land base and I cannot talk on their behalf
because our organization is not yet affiliated with them, but I
think that they may have some materials that may be of some
assistance to the commission.

Okay. Now, Bill Erasmus talked about the treaty-making



1 process in the Northwest Territories, treaties eight and treaty
 2 11, and what I would like to talk about now is how the Canadian
 3 government treated the Metis people during that treaty-making
 4 process. As I've mentioned, the Canadian government has had
 5 special legislative treatment for the Metis people which started
 6 in 1870 with the Manitoba Act. The Manitoba Act was the federal
 7 legislation that brought the province of Manitoba into existence
 8 and within that act there were special provisions for the creation
 9 of Metis lands. And I suspect that this was probably a result
 10 of the fact that the Metis actually were involved in an armed
 11 rebellion against Canada. The Metis people, in 1870, had evolved
 12 to a state that they had declared their own nation in existence and
 13 had taken up arms in protection of their nation. And as a
 14 result of this, the province of Manitoba was created as part of
 15 Canada and there were special provisions made for the Metis people
 16 in the Manitoba Act.

UNIDENTIFIED: (INDISCERNIBLE)

MR. HARDY: 1870, yes.

15 And following the Manitoba Act, as expansion moved
 16 westward in Canada, the government of Canada initiated the treaty-
 17 making process with the Indians of Western Canada and, in con-
 18 junction with that, they created what were called half-breed
 19 commissions, and... I won't get into the details of it but I
 20 would say that generally they followed the model of the Manitoba
 21 Act and created an ability for Metis people to acquire land. And
 22 this was done pursuant to the Dominion Lands Act. And each treaty
 23 was accompanied by what we would call a half-breed commission
 24 and as the years went by, the method of recognizing the Metis
 25 land rights gradually changed.

When the treaty-making process reached the Northwest
 Territories, first of all with treaty eight, in 1899, that treaty
 was accompanied by the Athabasca District Half-breed Commission,
 and as the treaty party proceeded to enter in treaty with the



1 various Indian bands, they offered individual Metis families...
2 I believe, and I stand to be corrected, probably by Douglas
3 Sanders. He's probably got more historical background that I
4 do have at my fingertips here... but I do believe that they were
5 offered 160 acres of land or 160 dollars in cash per person.

6 And then when treaty eleven came in 1921, along with
7 that came the Mackenzie River District Half-breed Commission, and
8 at that time there was no land offering to the Metis people through
9 that half-breed commission. They were offered a straight cash
10 settlement of 240 dollars per person. And I think that there's
11 an important point I should make out here.

12 I think we have some disagreement in Canada over the
13 interpretation of historical facts surrounded with this situation
14 but it is my view that the Metis people were given a choice as
15 to whether they could take the script payment or enter into the
16 treaties and, in fact, it is my information, certainly from my
17 own family background... My grandfather took script payments
18 but at the time they took it, certainly the government treaty
19 commissioner and the Catholic church bishop who accompanied the
20 treaty parties, actually did encourage the Metis people to take
21 the terms of the treaty rather than the script payments. But
22 in spite of this, many of the Metis families chose the script
23 payments. And there's many reasons for this. I think we realized
24 at the time, some of the... the restrictions that could possibly
25 be imposed on us by taking treaty, and to be absolutely frank
about it... you know, this is a historical matter... One of the
reasons why our people did not want to take treaty because it was
their understanding that the taking of treaty would prohibit
them from being able to have liquor. And as sad as that may be,
that is a historical fact.

The other restrictions that caused them not to take
the treaties was we felt... Well, certainly we did not want to
live on reserves. We were quite clear on that matter. That was



1 what the treaties made provisions for, was reserves, and we did
2 not want to be in that situation. We wanted to have the rights
3 of private property ownership and we wanted to be able to
4 exercise the franchise as other Canadian citizens in elections.
5 And these... among other reasons, are why the Metis people did
6 not enter into the treaties but rather took the cash offering.

7 Now, the current situation today... I would say that
8 after the script process was finished, the Metis... The Metis
9 people were never really organized as a group. We tend to be
10 very individualistic in nature, and after the script process was
11 completed, life carried on as normal. We had our cash and spent
12 it and life went on.

13 Then, in the late '60s, we seen other Native people
14 beginning organizing around the issue of land claims and so we
15 began examining our own situation and in 1972, we formed the
16 Metis Association of the Northwest Territories, which was followed
17 by the establishment of a joint working relationship with the
18 Dene Nation in 1974. We held a... what we would call a joint
19 assembly with the Dene people in Fort Good Hope and decided to
20 begin working together towards the establishment of a claim that
21 would cover both groups of people.

22 And then came the Mackenzie Valley pipeline, which
23 caused a certain amount of disagreement between the two organiza-
24 tions and, in fact, the Metis Association, to some extent, sup-
25 ported the construction of the Mackenzie Valley pipeline and
because of that, there developed a very serious rift between the
Metis Association and the Dene Nation. And that is historical
fact. I was president of the association at that time and
my tenure practically coincided with Mr. Justice Berger's commission
in the territories.

As a result of that, as Bill explained, the government
of Canada had taken the position that they would accept a claims
proposal from the two groups and, in fact, in 1977 the Metis

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1 (TAPE 45, SIDE B)

2 MR. HARDY: -- Association
3 submitted a comprehensive claim proposal to the government of
4 Canada and that proposal was accepted by the government of Canada
5 for negotiations. And, basically, Bill has explained what has
6 happened since then with the change in... the shift in policy by
7 the government and what has finally happened in the Northwest
8 Territories, we are back together, working on a joint basis,
9 trying to establish a single claim in the Valley. It was in the
10 fall of 1983 our two organizations established what is now called
11 the Dene-Metis Joint Negotiations Secretariat. And that secre-
12 tariat is working on behalf of both organizations.

13 And I just might note that it's... The current ter-
14 minology these days is now Dene-Metis, and...

15 But that is... The fact that we have established this
16 joint working relationship is probably a good first step but
17 certainly we still are faced with a unique challenge in the
18 Mackenzie Valley of trying to accommodate the aspirations of the
19 two groups. And I believe it's possible and, based on our
20 past experience of the difficulties between the two organizations,
21 I think that we now know that we have to get along together and
22 we are, in fact, accommodating to each other much more so than
23 has been the case in the past.

24 This is probably evidenced by, first of all, we, as a
25 Metis Association, I believe it was in 1980, adopted what we
called the Metis Declaration which, in essence, said through the
land claims process it was our desire that this process would lead
to our recognition as Metis people and this declaration has been
adopted by the Dene Nation so that has certainly helped bring the
two groups closer together.

The other thing that has made a stronger case for the
Metis is, in fact, the Canadian constitution which now recognizes
them as a distinct aboriginal group in Canada.

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1 So that's basically the history of our situation with
2 the Metis in the Northwest Territories. Before I go on, pass
3 the mike over to Steve Iveson, I'd like to perhaps touch on some
4 current issues, some of the questions that have been raised here,
5 and just generally talk about some of the ideas that the Metis
6 have for the comprehensive claims package. And what I'm going to
7 talk about fits in with some of the questions that have been going
8 on here, the question of corporate structures and so forth, but I
9 don't want anybody to be mislead and think that the Metis total
10 concentration is on corporate structures. In fact, I would say
11 that our position would be that, before we start to negotiate
12 corporate structures, titled lands or cash compensation, it is our
13 position that the whole question of hunting, fishing, trapping
14 rights must be firmly identified before we move on to the other
15 areas.

16 The question of hunting, fishing and trapping rights is
17 something that is probably dear to the Metis people in the North-
18 west Territories. As I mentioned earlier, we tend to be a bit
19 individualistic but if there's one thing that pulls us together,
20 it is that question. In fact, about ten years ago, the legisla-
21 tive assembly of the Northwest Territories made some attempts to
22 remove our system of general hunting licenses and that was
23 certainly a unifying force at that time and the legislative
24 assembly certainly heard from us about it. And that was before
25 your time, Dennis.

 We... Although we do not have a comprehensive package
together as yet and therefore we don't have a claims agreement
with Canada, we have been, since... We established what we called
the Metis Development Corporation, Limited, in 1977, and since
that time, we have been working on developing its corporate
structure and so we have had seven years to work different
models and it is our hope that certainly any monetary benefits
Metis people may receive from that claim will be channeled through

1 our existing Metis Development Corporation, and I found it quite
2 interesting listening to Mark Gordon yesterday. Some of the ideas
3 that we have developed in isolation of what they've done in
4 James Bay, in fact, is very similar to what they have done there.
5 And we've managed to avoid a couple of the problems that you've
6 got here in Alaska with your corporate structures. One of them
7 is the issue of share alienation. The way we have established
8 the corporation is that each member of our organization is entitled
9 to purchase one share in that corporation and it is his or hers
10 for their life. And when they die, that share reverts to the
11 corporation and it cannot be sold or pledged or bargained or
12 anything. It's yours. It's your share in the Metis Development
13 Corporation. And the issue of the after born, the way we struc-
14 tured it is that anyone that wants... that is a member of our
15 organization, once they reach the age of majority, are entitled
16 to purchase their one share. In other words, there is not cutoff
17 and there's no possibility of the shares being pulled into the
18 hands of one person. All we can do in own one and then when we
19 die it's no longer ours. Those shares that are held by the
20 individuals are non-voting shares in the corporation. The only
21 two rights they carry is the right to dividends and the right
22 to share in the assets of the corporation if we ever wind it up.

23 Now, the voting shares in the corporation are in the
24 hands of our local organization. Now, the Metis Association,
25 itself, is comprised of 11 local organizations and each of those,
once they have become a body corporate, are entitled to purchase
one class A share and it is only those class A shares that
carry any voting rights in the corporation. So each of the
locals would have one vote in it. And we're working on some
changes right now and the board of directors will be established
in such a way that there will not be an election for the board.
Each class A shareholder... that is, the locals, will appoint
one person to the board of directors. And that is the structure

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1 that we currently have in place.

2 The other issue that has been raised here and I imagine
3 we will probably get into a bit more during the question period
4 but it is this whole question of status, non-status. And it is
5 a problem for us, not only in Canada but particularly in the
6 Northwest Territories. My personal view is that eventually the
7 issue should disappear in the Northwest Territories and what we
8 will have are Dene people and Metis people, not status or non-
9 status. And I wish that were the situation today, but, unfor-
10 tunately, because of the way things have happened historically,
11 we still have a fair number of people that cling to this thing
12 called non-status.

13 The other future problem though is that even after the
14 settlement is in place, we are going to have aboriginal people
15 living in the Northwest Territories that will not be participating
16 in the benefits of the settlement with Canada. Native people in
17 Canada tend to be mobile and we have... I don't have an exact
18 figure, but there are a number of Native people from southern
19 Canada that have moved into the Northwest Territories and right
20 now it is unclear as to how many of those would be allowed to
21 participate in the benefits of the settlement. There's one
22 school of thought that says it should be restricted to only those
23 people that participated in the treaties in the half-breed com-
24 missions in 1921, and there is another school of thought that
25 would like to expand that formula to include people that moved
from other parts of Canada. And we're currently in the process
of trying to resolve that question.

MR. BERGER: Do you mean that
the people who would participate would be those that could trace
their ancestry to the people who signed the treaties and were
represented at the half-breed commissions in 1921?

MR. HARDY: That's basically it,
yes.

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1 Now, the only other comment I would like to make at this
2 time is, I'd like to acknowledge a certain feeling of indebtedness
3 that I have for other Native people, particularly in Alaska. You
4 know, it's unfortunate you're having the problems that you're
5 having now but I must say that... you know, had you not gone
6 through the experience that you have, we may not be in the situa-
7 tion that we are in the Northwest Territories. We certainly are
8 learning from some of the mistakes that you've made here. And,
9 again, as I say, it's a rather unfortunate situation but we
10 certainly owe, you know, a debt of gratitude to you here.

MR. BERGER: Thank you, Rick.

Steve Iveson?

MR. IVESON: Yes, my name is
Steve Iveson and I'm a staff person with the Western Constitutional
Forum. I'll talk a bit more about the forum, itself, its makeup
and mandate later. But I thought a bit of demographic informa-
tion might be useful for this discussion, as well, for those
not familiar with the Northwest Territories.

UNIDENTIFIED: Could you move
that mike a little closer?

MR. IVESON: Sure.

Historically, the Northwest Territories have been that
part of Canada that has not become part of the confederation
by being included as a province in confederation. And as Mark
Gordon mentioned yesterday, Northern Quebec was part of the
Northwest Territories before 1912, for instance.

The current Northwest Territories really came into
existence north of 60, not including Northern Quebec and Northern
Ontario, in 1905 when Saskatchewan and Alberta were created as
provinces. However, the colonial administration, the government
for that region, continued to stay in Ottawa until 1967. So it
gives you a bit of a sense of where power lay and how far that
aspect of government, at least, was from the people who were

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1 being governed, although it's not clear how much impact in those
2 early years that government actually had on peoples' lives in the
3 Northwest Territories. It was somewhat irrelevant, in many
4 respects.

5 Currently the Northwest Territories is approximately 1.3
6 million square miles of land, with a lot of sea water between the
7 Arctic Islands as well, and in the Hudson Bay. The population is
8 ... and these figures aren't cast in stone, they're rough... but
9 there's approximately 47,000 people in the NWT. Of those,
10 roughly 8,500 would be status Dene. Roughly 4,000 would be Metis
11 and non-status. Approximately 16,500 would be Inuit. That's
12 for a total population of 29,000 Native people or aboriginal
13 people in the NWT, leaving approximately 18,000 non-Natives in
14 the North. Now, these figures may be off by a thousand here and
15 there but that gives you a rough picture, I think, that's fairly
16 accurate. And with that non-Native population, the vast majority
17 are in the western half of the Northwest Territories, perhaps
18 as much as 90 percent of it.

19 Having done that, now perhaps I can talk a bit about
20 the Western Forum and how it came into existence, the reasons
21 behind it. As is obvious, the government which was created, the
22 colonial government, was largely an imposed system and it was
23 colonial in the extreme, originally, stayed in Ottawa, no elected
24 persons from the North participating in it and imposing its will
25 and whatever jurisdictions it actually had on the North from
there. Over the years it's changed, and it's changed quite
dramatically in the last few years. Now, of course, it's in
Yellowknife. It is the capitol. There is a legislative assembly
of 24 members who are all elected, and the membership, itself,
in the assembly is fairly representative of the Northwest
Territories in terms of how it breaks it down, both regionally,
obviously, and by aboriginal background and non-aboriginal back-
ground, as well.

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1 However, there was a sense, and certainly during the '70s,
2 it was very much true that the government of the Northwest Terri-
3 tories was very much the government of the non-Native population.
4 Primarily, that's how it was perceived. It had not been accepted
5 by the Inuit or the Dene and Metis as their own government. It
6 hadn't sprung up from their own history. It had been imposed and
7 there was a sense of alienation from it, both for where it came
8 from, how it operated, what it represented and so on, and par-
9 ticularly during the mid and late '70s when there was a lot of
10 struggle going along, particularly in the Western territories,
11 over the Mackenzie Valley pipeline. For instance, the legislative
12 assembly, at that time, was much more dominated by non-Native
13 people and it was seen as more of a tool of that particular group
14 to try to represent its interests whereas the Native associations
15 were representing the views of Native people, of aboriginal people.

16 It's already been pointed out how the political element
17 or the attempt to negotiate political self-government through the
18 claims process has largely been denied one way or the other by the
19 federal government. Each aboriginal group in the North, and there are
20 three groups who are attempting to negotiate claims, has tried
21 at one point or the other to build in political development as a
22 major component in their claims process. And in all cases, that
23 has been denied, with some modifications, of course. There is
24 participation in boards of management, which you could call
25 political to a certain degree. And there is... Bill mentioned
some talk about some political conditions that might be in a
claim at the local level, community level, a band council or
whatever. But by and large, political issues were denied as
part of the process. I think a good deal of the --

23 MR. BERGER: You mean boards
24 of management relating to fish and game?

25 MR. IVESON: Yes, things like
that, and land use, perhaps.



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MR. BERGER: Sorry.

MR. IVESON: Some of the...

When the ninth assembly came into being in 1979, they created a unity committee of MLAs who toured the North to get the views of people in all communities as to how they did perceive the government of the Northwest Territories.

MR. BERGER: Excuse me, Steve.

You mean the legislative assembly?

MR. IVESON: Legislative assem-

bly, yes. Sorry. And... In very brief summary, by and large the reaction they found was that most of the aboriginal peoples in their communities did not perceive this current government as its legitimate government. They saw it as an interim government and, obviously, as the vehicle that controlled a lot of funds and had a lot of power and, therefore, was a very important part of their lives. But the current government they saw as an interim administration until they had had the opportunity to negotiate a change, something new, a government which they felt actually reflected their values and aspirations.

As a result of that, a... the Constitutional Alliance of the Northwest Territories was formed, and that was made up with representatives of all the major political aboriginal associations in the Northwest Territories and the legislative assembly. It included the president of the Inuit-Tapirisat, of COPE, of the Dene Nation, of the Metis Association, and four MLAs. Now, two MLAs from the East and two MLAs from the West.

MR. BERGER: MLAs are members

of the --

MR. IVESON: Members of the

legislative assembly.

UNIDENTIFIED: Not missing in

action.

(LAUGHTER)



1 Now, one important element of that was that at least
2 two of the MLAs were chosen on the basis to represent the non-
3 Native population in that area, particularly in the West where
4 that was the most relevant.

5 One of the conditions for that alliance being formed was
6 that it support the holding of a plebiscite in the Northwest
7 Territorites regarding the issue of division of the Northwest
8 Territories into two political jurisdictions. That vote went ahead
9 in April of '82. The vote was roughly 56.5 percent in favor of
10 division, 43.5 percent in opposition to division. Geographically,
11 the Northwest Territories... if you were trying to split it down
12 the middle in half, the community of Cambridge Bay would kind of
13 be on a line. And the voting patterns based on that line were
14 that the people east of Cambridge Bay primarily were all Inuit
15 communities with a couple of government centers that had non-
16 Native population as well. But voter turnout was extremely high
17 and the support for division was very high, as well, something in
18 the range of 85 percent, I believe.

19 The voting patterns from Cambridge Bay west were quite
20 different. The voter turnout was generally much lower and the
21 overall vote in the West was actually against division, and that
22 represents something... I think it's a feeling that still exists
23 today and I'll talk perhaps a bit more about that later on.

24 MR. BERGER: Steve, sorry to
25 interrupt again but in the eastern half of the Northwest Terri-
tories, the population is predominantly Inuit and they voted
in very large numbers, by a massive majority, to divide so that
they would have their own political jurisdiction. Is that a
correct statement?

MR. IVESON: Yes, that's right.
In the West, the population... From Cambridge Bay west, the
population is a rich mixture of Inuit, Inuvialuit, Dene, Metis
and non-Native people, and actually the Inuit from Cambridge Bay



1 west actually voted against division because they saw themselves
2 torn in two directions, I suppose. The Dene voted marginally in
3 favor of division. The non-Native population that voted, voted
overwhelmingly against division.

4 UNIDENTIFIED: (INDISCERNIBLE)

5 MR. IVESON: This is just...

6 You're talking about... I won't get into the form the governments
7 are going to take right now. We're just talking about dividing...
8 we'll say at this point, one government into two... cloning it,
9 let's say. That's not what each... our group is arguing about...
10 actually forming... Each group is talking about creating new
11 governments. But division, per se, is simply the creation of
12 two political jurisdictions with... you could say as the same
13 form of government that already exists for one only, hopefully,
14 more accessible. You know, it's not such a big area to deal with.

15 MR. BERGER: But in the...

16 Could I answer Charlie's question? In the eastern half of the
17 Northwest Territories, if you divide it, it would be predominantly
18 Inuit on an ethnic basis with a small minority of whites. In the
19 western side, it would be, as far as the aboriginal populations
20 are concerned, predominantly Dene and Metis, with a small popu-
21 lation of Inuit and the population of whites would be quite
22 large. I think that's about right, isn't it?

23 MR. IVESON: Yes. If division
24 took place, you would actually find that the non-Native popula-
25 tion and the aboriginal population would be just about even, or,
in fact, the non-Native population might actually become a
majority right off the bat, once division occurs.

MR. BERGER: On the west side.

MR. IVESON: On the west side.

And that's a very important issue, of course.

With the results, then, of the plebiscite, the legisla-
tive assembly then passed a motion recognizing the plebiscite and

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1 giving unanimous support to division in principle, and the Con-
2 stitutional Alliance decided that, since they were talking about
3 the creation of two new governments, one in the East and one in
4 the West, maybe they should divide themselves into two forums so
5 that the eastern group could look at government for the eastern
6 territory and the western group could look at government for the
7 western territory.

8 UNIDENTIFIED: Territory or
9 province, which one?

10 MR. IVESON: Well, initially,
11 both sides aspire to becoming provinces down the road. Neither
12 side expects to become a province immediately after division, and
13 see it more as a staged approach and a long-term goal with some
14 road blocks in the way and steps to be taken to reach there... not
15 one leap. Does that answer your question?

16 UNIDENTIFIED: No.

17 MR. IVESON: That is the political
18 reality, I think, of what is going to occur.

19 If you want to... The... Both forums, the Constitutional
20 Alliance, in its negotiations with the minister of Indian affairs
21 and other ministers to have its mandate recognized and affirmed
22 by the federal government, stressed the fact that it was not
23 simply looking at restructuring government within the North and
24 altering relations within the North. It was also very much look-
25 ing at how it would renegotiate its relationship with the federal
government to the end of having much more power and authority in
the NWT in a similar sense, if not the same, as other provinces
have in Canada. The federal government's response is... was to
attempt to argue that the restructuring of the government and
the establishment of governments in each new territory was not
part and parcel with the creation of the provinces in the two
territories. And we differ on that, of course.

UNIDENTIFIED: This would not

1 wipe out DNA, mm?

2 MR. IVESON: No, it won't...
3 immediately. Other actions taking place in Ottawa might. The
4 Penner Report may get rid of Indian affairs before the division
of NWT does.

5 MR. BERGER: Sheldon, you might
6 share that microphone with Charlie, but maybe we could just
7 hold the questions, because Steve Kakfwi will follow and talk about
8 the kind of government they want to establish and then Dennis
9 Patterson and Peter Ittinuar will talk about what they want to do
in the Eastern Arctic.

9 Peter, you wanted to interrupt here?

10 MR. ITTINUAR: Very briefly,
11 Mr. Chairman. Our presentation is in two parts. I will give an
12 introduction and with me are Mr. Andy Ames, the senior negotiator
13 for Tungavik, Mr. Dennis Patterson, chairman of the NCF, both of
14 which are under the umbrella or parent organization, ITC. So...
just to clarify.

15 MR. BERGER: Okay. Well, we'll
16 look forward to that.

16 Carry on, Steve.

17 MR. IVESON: Just a comment
18 again on the makeup then of the forums.

19 The Nunavut forum, which Dennis and Peter will talk
20 about, includes Dennis, as minister of aboriginal rights and
21 constitutional development, includes Elija Urkloo (ph) another
22 MLA from the Eastern Arctic, it includes Bob Kadlun, of the
23 TFN, the Inuit claims organization, John M. McGualic (ph), presi-
24 dent of ITC, and Peter Ittinuar, member of parliament for the
Eastern Arctic for the Nunasiak (ph) writing, and Peter Green,
of COPE.

25 The Western Constitutional Forum includes Steve Kakfwi,
for the Dene Nation, Larry Tourangeau, president of the Metis

1 Association, Nick Sibbiston, associate minister of aboriginal
2 rights and constitutional development, and Bob McQuarrie, a MLA
3 from Yellowknife whose job it is to represent the non-Native
4 population in the Western NWT in these negotiations.

5 The people of the... of COPE, the door is open to them
6 to participate in both forums, since where their area may end up
7 after division takes place is not clear. They, to date, have
8 chosen to work with Nunavut Constitutional Forum, and that's how
9 things stand at this point in time.

10 The... I guess one of the most interesting things is
11 the fact, itself. The creation of those forums, is that instead
12 of the legislative assembly as the government of the Northwest
13 Territories taking on... seeing itself as having the responsibility
14 for constitutional development, it has been acknowledged that that
15 simply is not the case. They do not have that singular responsi-
16 bility for constitutional development. The makeup of the organiza-
17 tion is that the aboriginal organizations and the assembly members
18 on the forum operate as equals. Decisions are reached on a
19 consensus basis. Each party has a veto and any decision that...
20 might be put for, or any suggestion put forth, and that is of
21 critical importance in the structure of the forum. Its very
22 existence is important and unique.

23 I should also point out that any decisions reached
24 by the forum are not... are only tentative. They... They're not
25 official until they've actually been ratified by the public in one
26 form or another. Final ratified proposals then would go to the
27 federal government for negotiation.

28 Now, the mandate of the Western forum is basically to
29 deal with all issues related to the creation of a new constitu-
30 tion for a Western political jurisdiction. Tied very much into
31 this is the issue of aboriginal self-government and what that
32 can mean in a public government jurisdiction. By public govern-
33 ment jurisdiction, I mean in a region where, instead of by virtue



1 of the southern system of the treaties that operated there and
2 the Indian Act, there were reserves created and the political
3 structure at least is one of separate development rather... the
4 price of separate development in the Northwest Territories may be
5 far too high and, in effect, it means cutting oneself off from
6 a large portion of the Northwest Territories, if one opts for
7 that route. And it... At this point at least, aboriginal associa-
8 tions are looking at ways and means whereby their distinct
9 interests and their future as collectives, as peoples, can be
10 protected and enhanced in a public government system.

11 Some of the issues that relate to that, then, are the
12 ... the style and structure of government, how decisions are made
13 and who makes them, what the recognition of, again, collectives
14 in governments and not simply the matter of recognition of
15 individual rights vis a vis a central authority, how that becomes
16 reflected in the government system, itself, looking a redistribu-
17 tion of powers to regional and local levels in such ways that
18 at that area, at that more local level where many of the differen-
19 ces between groups show up most highly. People are allowed,
20 a, to set up government structures and ways of making decisions
21 that are different from one area to the other so that Yellowknife's
22 view of local government is not imposed upon Fort Norman's and
23 vice versa, and looking at... concurrent power, sharing of power
24 between local and regional councils and the more central level
25 of government, as well, so the region gets heard and the local
area gets heard. And also, looking at the... what rights are
exclusive to aboriginal people by virtue of who they are as
aboriginal rights and how that gets reflected in a public govern-
ment system, as well.

Now, obviously, the claims process ties in very much
to this. The two go hand in hand to a certain degree. Those
things defined in the claims process are exclusive by definition
and the constitutional development cannot override anything that's



1 in that.

2 But above and beyond is the potential to establish
3 principles of aboriginal self-government in the public government
4 jurisdiction which can be entrenched and protected as well in the
5 long run. That's what we're talking about here. Languages are
6 important, as well, of course.

7 Maybe the final thing I'll say is that that sets the
8 major task, then, of the Western forum as it is for the Nunavut
9 forum, is the establishment of a new constitution for their
10 territory. Together, the Western and Nunavut forums still come
11 together as the constitutional alliance to discuss the selection
12 of a boundary for division. That's always a difficult issue but
13 one that we're going to be addressing seriously later on this
14 month and I'm optimistic that things will go very well.

15 And I think I'll stop there, then, and Steve can speak
16 from there.

17 MR. BERGER: Steve Kakfwi.

18 MR. KAKFWI: Okay. What I will
19 do is try to give an overview, perhaps take the areas that the
20 three earlier speakers addressed and try to tie them into a general
21 picture that... hopefully, if I spend enough time at, you might
22 be able to see what it is that we are doing in the different
23 areas that were mentioned and how they fit together to... in the
24 future the Dene and the Metis will have some measure of control
25 and power to exercise their rights as people.

26 There is, at the national level now in Canada, political
27 discussions being held between the provinces and the federal
28 government, the two jurisdictions that are recognized presently
29 in the Canadian constitution. A couple of years ago, the aborigi-
30 nal people, the Metis, the Inuit, the treaty Indians of Canada,
31 got agreement with... a political agreement with the provinces
32 and the federal government to hold a series of four constitutional
33 conferences that would be directed at trying to identify and



1 defining aboriginal rights, defining what aboriginal rights are.

2 There has been two conferences now and they have been
3 largely of benefit only to the general public in trying to get the
4 message of aboriginal people across to Canadians through the
5 national TV coverage that we received. There are...

6 The general objective of the aboriginal people together,
7 in spite of the differences that they have, is that they want the
8 aboriginal right of people to be recognized and entrenched in the
9 Canadian constitution. They want their right of aboriginal people
10 to self-government, to be recognized and entrenched in the con-
11 stitution. And for some, such as the Metis people, they have
12 very strong feelings about wanting the governments to agree they
13 should have a land base and then to help them acquire a land base
14 because... a large portion of the Metis people in Canada do not
15 presently have a land base and are not recognized as a people
16 that are responsible... responsibilities of either the federal
17 government or the provinces.

18 The other objective of the aboriginal groups, which is
19 very emotional... I think it was mentioned yesterday... was
20 equality. It took up quite a... lot of the two-day conference,
21 the attention and the time that was held by this item was quite
22 significant. Simply, in Canada, there is one aspect of equality
23 which is very emotional for women. It was mentioned yesterday.
24 A treaty woman marries outside of anyone other than treaty, she
25 automatically becomes, in the federal government's eyes, other.
That is, not a responsibility any longer, no longer having any
aboriginal rights. On the other hand, a man who is treaty can
marry anyone from any part of the world and that person will
become, legally in the government's eyes, an aboriginal person.
That is, a person with full legal treaty rights. And this has
been an ongoing controversy for years. I think there is agree-
ment among the organizations that, yes, it's unfair, it's unjust
and it should be addressed, but not because the federal government

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1 wants it addressed and it's definitely not their prerogative. But
2 it's the prerogative of the different nations of people in Canada
3 to define their own membership. That is, it is the right of
4 a self-government... self-governing nation, a nation of people
5 within the state of Canada, that wants to maintain a degree of
6 sovereignty to define its own membership, that it's inherent in
7 any people that wish to retain a degree of sovereignty.

8 The other aspect to the issue of equality is the
9 equality of all aboriginal people in the eyes of the law, in the
10 eyes of the constitution. That is, presently the only people that
11 have direct... that are sort of trustees are protected by the
12 federal government of Canada are the treaty and the Inuit, but
13 specifically the treaty people. The Metis are not given the
14 same treatment, are not extended the same privileges, the same
15 rights, benefits.

16 And so, equality goes beyond just the issue of how women
17 should be treated in relation to men. But... how all aboriginal
18 people in Canada should be treated and respected and recognized.
19 And the feeling is, at least from the Dene Nation, that the
20 Inuit, the Metis, the non-status Indians and the treaty should
21 all eventually end up with the same degree of rights, the same
22 recognition in the Canadian constitution. And that, at the
23 different regions of Canada, the variations that are required
24 because of the differences between the Native peoples, their
25 traditions, their values, will be reflected there. But at the
national level, equal rights for all aboriginal people is an
objective, at least of the Dene Nation. I think some of the...
most of the other aboriginal groups in Canada take the same
position.

The significance of what is happening at the national
level, for myself as a leader of the Dene Nation, is that it
appears very difficult at the present time to convince the
provinces that... and the federal government to agree with the



1 objectives and the ideas that we want them to accept. We also have
2 a difficulty between the national Native organizations in agreeing
3 on how to work together and what the agenda should be and how
4 they should approach these constitutional discussions.

5 There is a history of differences, certainly between the
6 provinces and the federal government, there's a long history of
7 differences been referred to by different speakers between the
8 Inuit and the Indian people of Canada, and I think there is
9 differences between the Metis and the Indians. And they're
10 cultural, they're historical, they're very real. But at the
11 same time it seems at the expense of our community membership,
12 these differences seem to prevail at the constitutional discussions
13 and we walk away, at least from the last constitutional conference,
14 not having accomplished anything simply because we did not work
15 together.

16 And the reason I say it's significant to me is because,
17 in the Northwest Territories, at least in the western part of
18 the Northwest Territories, what we have is an opportunity to show
19 Canada at the national level how it could be done, how we can get
20 a government, as it is called, the NWT government, to work with
21 the aboriginal people, how the treaty Dene can work with the
22 Metis population, how the non-treaty Dene can work with the
23 Metis, how the Inuit that are going to be in the western part
24 of the territory can work with us, and how we can, as aboriginal
25 people of that part of the territory... can work together and
establish a relationship with the non-Native people of that part
of the territory, and come up with an agreement on how we're going
to govern ourselves. And that is, I think, a challenge that we
have, an opportunity.

What has been mentioned before, earlier by a number of
speakers, again, the Dene Nation has been pushing for recognition
of their right to self-government for about ten, 15 years now.
These things are starting to happen. We also have been pushing for

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1 years for the constitutional redesign of Canada. That is happening.
2 The redesign of the government, or the make of government for the
3 Dene and for the western part of the Northwest Territories, is
4 also in the making and... It has been mentioned earlier, but the
5 Dene have always insisted that we have all the rights of a nation,
6 although we have, by no choice of ours, been forced to live within
7 the state of Canada. What we retain is a little short of full
8 sovereignty. These are ideas that are not unique to the Dene but
9 are recognized in international law. And what we're using in
10 supporting the political redesign of government for the Dene and
11 for the western part of the Northwest Territories is the Dene
12 Nation's right to self-government. That is what we are going into
13 this process with, that we are not giving up that right and going
14 into a process where we are asking the federal government of
15 Canada to give us government, or to give us powers and jurisdiction
16 that they have so that we can have a government.

(TAPE 46, SIDE A)

14 MR. KAKFWI: And our attitude is
15 that if we do that, then we... without saying so, give up that
16 right forever, that we have to maintain at all times that what
17 we are doing is simply getting recognition for our right to self-
18 government. And that is where it fits into the Canadian constitu-
19 tion.

20 So we get that at the national level and then at the
21 regional level we try to come up with a political agreement between
22 all the people in the Western Arctic, and come up with a political
23 agreement on what type of a government we're going to have, what
24 type of jurisdiction it's going to have, how it's going to make
25 decisions.

26 So that's two areas of work that the Dene have been
27 involved in, are presently involved in. The other specific area
28 which has been also taking up a lot of our time and attention over
29 the years with very little actual progress, as far as the government



1 ... the federal government is concerned, is the area of what they
2 call a comprehensive land claims agreement. Our approach over
3 the years, as we've watched the Alaskans get an agreement, the
4 James Bay Cree and the Inuit of Northern Quebec get a settlement,
5 and watching the Committee for Original Peoples Entitlement in
6 the Mackenzie Delta get an agreement, and the Inuit-Tapirisat of
7 Canada approaching an agreement, and the Council for Yukon
8 Indians, has been one of a very critical view that we did not
9 support and we did not agree with the substance and the agreements
10 that were made. And the main objection on our part was the
11 extreme parameters, the restrictions under which these groups were
12 forced to negotiate. So our role was to be publicly very critical
13 of these... of these agreements. All these agreements deal with
14 extinguishment. The federal government presently has a policy
15 where any aboriginal group that they negotiate an agreement with
16 forces them, requests of them and demands that the bottom line of
17 it all is that they have to give up their aboriginal rights,
18 whatever they are. And that is what we have the disagreement
19 with, that we don't think it's necessary and we don't think it is
20 actually possible for that to happen. But there it is and...
21 and, you know, with certain groups, that has happened.

22 We have taken the approach of trying to put pressure on
23 the government to expand their parameters of negotiations. That
24 is, try to get them to give better deals, more room, try to
25 include political development in that negotiation process. We
26 have been unable to do that. That is why now, when we're sitting
27 down with the government, we no longer talk about self-government
28 and government institutions at the land claims negotiating table.
29 We take the other approach that Steve Iveson has spent some time
30 talking about.

31 The criticisms that we have made are a matter of
32 public record. We now find ourselves in a situation where we
33 are encroached by all groups around us, to the east the Inuit,



1 to the northwest of us is the Committee for Original Peoples
2 Entitlement, to the west the Council for Yukon Indians. It appears
3 that... unless we want the government to legislate a claim on us
4 or unless we want them to try to enforce the treaties eight and
5 ll that were signed some years ago, that we have to get into the
6 exercise of negotiating a comprehensive package.

6 We're still not happy with the present policies. The
7 extinguishment policy is still there but we feel we can begin
8 to negotiate some tangible benefits for our people at the community
9 level through the claims process and in the meantime continue to
10 put pressure on the federal government to change or abandon its
11 extinguishment policy.

10 The two different view in Canada on aboriginal rights
11 can be, I think, best explained... although I don't know if Doug
12 Sanders has done this already... but what the federal government
13 and the provincial governments insist on is saying, "We don't
14 know what aboriginal rights is, and so what we do... what we're
15 doing when we have constitutional discussions with aboriginal
16 people is we place an empty box in the middle of the table and as
17 we identify rights, if there are one or two or three, we then
18 throw those in the box." So it's a matter of saying, "Well, you
19 apparently have this right so let's put that in the box," and
20 taking that approach that unless aboriginal rights is recognized
21 in present legislation, unless there's some reason for it to be
22 recognized, it doesn't exist.

20 The view of most of the aboriginal people in the
21 country is that they've got it all wrong, that in fact, all
22 aboriginal people still have a degree of sovereignty, that they
23 have not given those up and, therefore, when they come to the
24 table, what they have is a box full of rights. It's not totally
25 full because if it was we would be independent nations. So there
is a little bit of your rights removed when you go to the table,
but it is a full box and that is how you negotiate with the

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1 federal government. And that is generally why it is for us diffi-
2 cult to buy the extinguishment policy because what the government
3 wants to do when it sits down with you at the negotiating table
4 is say, "Okay, we'll negotiate certain... we'll recognize certain
5 rights you have... right to go hunting, right to trap, right to
6 have some say over caribou herds, you have a right to a certain
7 amount of land, but let's extinguish all the other rights first."
8 So you sit down, you extinguish your rights and then the empty
9 box approach is taken. In return, in exchange for extinguishment
10 of your rights, the government then says, "Okay, we'll give you
11 so much money, we'll give you so much land, we'll give you so many
12 rights and benefits," and that is why, I guess very simply, we
13 have such a problem with that particular policy.

14 If I could switch now to another approach that the Dene
15 are taking which is very recent, it is in the area of economic
16 development. During the '70s, we were, at the community level, of
17 the opinion that should a major development occur in our country,
18 we would not be able to withstand the impact of such a develop-
19 ment and that we needed to set underway the processes that were
20 required to get ourselves our rights to be recognized as the
21 rightful owners of the land, the resources in the area, and to
22 get ourselves organized at the regional, at the local level, at
23 the national level, politically and economically so that at the
24 community level you have people that are organized and prepared to
25 not only try to cushion the negative impact of major developments
but people organized and prepared to get into economic development,
political development, with the kind of passion and clear-headedness
that would bring assurance to all of us that we would get something
of benefit. The opinion is that now most of the communities are
at that stage and that what we need to do is get work done so that
all our communities together plan out and develop what you would
call a Dene national economic development plan so that the
structures and the policies, the corporations, the lines of

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1 decision-making, the guidelines and the terms of reference for
2 local and regional... what you would call national corporations
3 and institutions are all fairly well clear and laid out and that
4 the Dene Nation, together... I suppose I should be including
5 the Metis in here, should have some fairly clear policies on
6 economic development that would guide the corporations, that would
7 guide the political leadership when the decisions are being made,
8 and that is a recent initiative that we've started so that we
9 take the initiative and try to find ways in which we can take
10 part in the wage economy and industrial development, major develop-
11 ment and mesh those with the traditional economy, the traditional
12 lifestyle, and build in support mechanisms that can help us
13 bridge the two and not get into one at the expense of another.

14 We have, I think, through the years also... and I'm not
15 clear exactly where it's going to fit in... but a very, very strong
16 role on continuing to insist on protection of the land, the
17 resources within our territory, and we have taken part in just
18 about all environmental hearings, including one in Washington,
19 D.C., back in 1976 about environmental protection. The role that
20 we see for ourselves is very clear. We are still, in our
21 opinion, the owners of half a million square miles of the Western
22 territory and... you know, until we are no longer around or until
23 somehow it is taken from us through an action, we must continue
24 to exercise our right in protecting the environment and insuring
25 that all developments are thoroughly monitored. There is a...
And so we need to keep working at trying to develop an environ-
mental protection regime and monitoring agency for development in
a research capacity so that we can take part in hearings and
processes that relate to our interests in protecting our resources.

I think as far as the development of a claims package,
as I said earlier, there is a number of us that are not totally
convinced it's such a good idea that eventually we're going to
come up with a package that... at least myself, as president of the

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1 Dene Nation, may have personal difficulty in trying to sell to
2 the community leadership, that I may have to resign or disown the
3 package. But there is also very clear to me an obligation on the
4 part of the Dene and Metis leadership to come up with a package
5 that the people at the community level that are not so vocal,
6 that are not economically very well off... the poorer people of
7 the Dene and Metis population, the disabled, the elderly, the
8 young children that are orphaned, the social... mishaps, I guess,
9 of our people, have to be extended an offer that they can look at
10 and decide on on an individual basis, whether they want it or
11 not. And in any case, eventually... like I said, people like
12 myself do not have to accept this package. I, too, will have,
13 hopefully, a right to vote and if I do not like the package and
14 it is accepted anyway, that I do not have to be a part of a
15 comprehensive package, that I have the ability, as an individual,
16 and the capacity to make my own living and I do not need the
17 comprehensive package and the benefits that will come from it,
18 and that ultimately the purpose of the package, anyway, is to give
19 the people that have nothing, the trappers, the hunters, the
20 uneducated, the unemployed, at the community level a crutch,
21 perhaps, something to give them assistance into becoming more
22 self-sufficient and more independent again.

23 So that is all the... I wanted to cover. I'm jumping
24 all over but I was trying to develop some idea of where the Dene
25 Nation has been coming from the last few years and how the work
that needs to be done on the Canadian constitution and the work
around the political development of the Northwest Territories,
economic development and a comprehensive claims package all fit
together. What that altogether should bring us is a hell of a
lot of good security, constitutionally in legal terms, a high
degree of self-government at the regional level and specifically
for the Dene and Metis, some economic benefits, some resources
in order to become again, perhaps, rulers in our own homeland.

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1 And that is how I see it all fitting together.

2 Thank you.

3 MR. BERGER: Thank you, Steve
4 Kakfwi. Just before we turn to questions, Bill duBay has asked
5 me to say that all of you going to the North Slope Borough's
6 computer mapping project at noon, and a number of you, I think,
7 are going with Bill, would you meet at the coffee table when we
8 break at noon, the coffee table over here, with Bill and he'll
9 assign you to cars and drivers and so on.

10 Well, we're ready for questions and I have a question
11 for Steve Kakfwi. Are you able to give us in any detail the
12 outline of what Dene self-government within the context of the
13 Western Arctic framework would look like, it's prominent features?
14 Is that possible to do at this stage?

15 MR. KAKFWI: The Dene Nation and
16 the Metis Association, a couple of years ago, released a public
17 discussion paper termed, "Denendeh," which is the Dene Nation's
18 term for the Western portion of the Northwest Territories, the
19 half a million square miles that we lay claim to. In that
20 discussion paper, I think the main feature of it... There's two
21 main features. One is that there's a residency requirement for
22 anyone to be a voter or a participant in a government system.
23 That is a ten year residency requirement. The other one, as I
24 recall, is the call to create what we would call a senate made
25 up of the aboriginal people within Denendeh, and the senate would
hold all the power and jurisdiction to protect the exclusive
aboriginal rights of the Dene-Metis, that certain rights will be
seen as exclusively the rights of aboriginal people and that
this senate would be the watchdog for the aboriginal rights of
the Dene-Metis, and that there would be an elected government
operating much the same as any other place that would operate
on the concensus, and that it would be seen in terms of an
assembly of people, assembly of community representatives that

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1 would meet and make decisions as a government for people.

2 Personally, I think there is a lot of room for negotia-
3 tions. The specifics of how things are structured definitely
4 need a lot more discussion. The notion of looking at guaranteed
5 representation for aboriginal people is something that I would
6 like to hang onto because, as I said earlier, the reason we are
7 taking this approach is because we feel, as aboriginal people,
8 we have a right to govern ourselves. It's our land, it's our
9 resources, and we have the right to make our own decisions over
10 how we want to govern ourselves. And, you know, how the govern-
11 ment is made up... it's going to be up to us. And ten years
12 from now... If this government was created tomorrow, if ten
13 years from now the Dene become a minority in their own homeland
14 and the Metis possibly become in the minority with us, you know,
15 we have to have some assurance that when this happens we have
16 some representation yet and some decisive decision-making still,
17 in spite of the population shift. And by taking this approach,
18 I think if we do not do such a good job, I think eventually down
19 the road, people may pull out of a one-government system and
20 maybe even look at what you would call an ethnic government, a
21 government only for Native people that southern Indians in
22 Canada now look at... that is, reservation government... govern-
23 ment for Metis, government for treaty. That is what we may end
24 up with so we need to build in some fairly strong assurances at
25 the onset that it's something that we're going to want to live
with for quite a number of years. It still has to respect the
rights of the non-Native people that come up but it also has to
assure us fairly clearly that no matter what happens in the
future we still have a great... a good measure of control and
decision-making in that. Those are the parameters of how, I
guess, the design of this government is going to happen. We
haven't sat down and tried to hash those out yet.

MR. BERGER: Thank you --

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1 UNIDENTIFIED: (INDISCERNIBLE)
2 question for you. Did you ever have the opportunity to become
3 familiar with the early American United States history about the
4 time of the revolution? Have you ever had a chance to read that?

MR. KAKFWI: What part?

5 UNIDENTIFIED: Just the general
6 history of the United States revolution in 1776, particularly
7 the writings of Thomas Jefferson. Have you ever had an opportunity
8 to study those?

9 MR. KAKFWI: Well, a number of
10 years ago, when the Dene came out with a declaration, which was
11 basically a declaration to the world saying that Denes see them-
12 selves as a nation, there was a tremendous public uproar in
13 Southern Canada about how we were all controlled by communists
14 and, you know, left-wing elements... intellectuals, yes --

MR. BERGER: That's even worse.

(LAUGHTER)

15 MR. KAKFWI: Well, you know,
16 even infiltrated by the RCMP. But the reason I mention it is
17 because, you know, when I was down in Washington, D.C., in
18 1976, I was talking to someone down there about the Declaration
19 of Independence and the fellow was saying that it was shown one
20 time, someone... a student did a poll on the streets of New York
21 about if anyone recognized that particular document, and it was...
22 the general reaction was, you know, it's a piece of communist
23 propaganda. So...

24 MR. BERGER: Well, could we go
25 on from there? I think what the questioner from the audience
may have been driving at, and I'm going to call on those who are
around the table and signified their desire to ask questions
earlier, but... Thomas Jefferson did contemplate that the
Indian people would join the United States of America as a
state composed principally of Indian people. That was very much.

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1 under consideration soon after the founding of the USA. Now...
2 but we went into some of that last week when we had leaders here
3 from the Lower 48 and we'll have to leave it there.

4 UNIDENTIFIED: Steve, I have
another question --

5 MR. BERGER: No. Excuse me,
6 please. I want --

7 UNIDENTIFIED: Chief Justice,
you know, you've --

8 MR. BERGER: -- some of these
9 people --

10 UNIDENTIFIED: -- been rail-
11 roading this commission hearing for three weeks. You're a
12 Canadian chancellor in a court of equity. You're in the United
13 States of America and the first amendment is... that pertains
14 to all meetings held in this country. Now, I'm not trying to be
15 rude here or break open your committee hearing, but I've heard
16 every one of these Natives and all these good people come here
17 and they talk one common language, no matter what their diverse
18 culture is... that is the law of money, negotiation, industrializa-
19 tion, wage economy, interest, mortgages, loans, debt and credit,
and nobody here, no white person here, has told these people and
educated these people that what they are talking about is a
system of international law that's enslaving their people and
enslaving every white man in this meeting today.

20 MR. BERGER: Well, sir --

21 UNIDENTIFIED: And I particu-
larly --

22 MR. BERGER: -- I've got some --

23 UNIDENTIFIED: -- put it on
24 your shoulders because you're a justice and you should know
better.

25 MR. BERGER: Well, I've got

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1 some names down here and I'm afraid I'm going to ask them to
2 bring their questions forward and... We've brought people from
3 a long way away and I think it's only right that I should ask
4 those people from Alaska who want to question them to proceed
now --

UNIDENTIFIED: Well, I'm from --
MR. BERGER: -- with their

5
6 questions.

7 UNIDENTIFIED: -- Alaska. I'm
8 a citizen. You're a subject in Canada. You don't have a consti-
9 tution and you know it. You've got a statutory enactment
called the British North American Act.

10 UNIDENTIFIED: You're out of order.
11 Just go, okay?

12 UNIDENTIFIED: Your out of
13 order. Do you want to debate me? You just come up here and
14 sit in front of the TV camera. The Native people should know that
15 this commission is called an equitable commission under the
16 rules of admiralty and it is accumulating facts that are going
17 to be used against the aboriginal peoples and the final destruc-
18 tion of your culture and all your rights. And that is a fact of
law. And that's what you're participating in. And with that,
I'll leave this meeting because it isn't worth it.

(APPLAUSE)

19 UNIDENTIFIED: Right on. And
20 who's paying you, buddy? Are you another attorney that's being
21 paid here?

UNIDENTIFIED: (INDISCERNIBLE)

22 UNIDENTIFIED: Yeah, I'll bet
23 you work for the (INDISCERNIBLE)

24 MR. BERGER: Well, let's carry
25 on.

The names I've got down here are Sheldon Katchatag,



1 Shorty O'Neill and Don Mitchell. And carry on with the questions.

2 MR. KATCHATAG: First of all,
3 I don't feel any desire or need to apologize on behalf of my
4 people for that kind of interruption. We are a people that
5 respect the rights of other people to speak, but we do not believe
6 that it should be done in such a rude fashion and I'll leave it
at that.

7 My question to all participants here from international
8 areas is on the general role that ANCSA has played in the develop-
9 ment of your claims. Now, is ANCSA used as a role model which is
10 used... In other words, are you holding ANCSA up as a model to
11 be followed, or are you using ANCSA as a model to say, "Now,
12 this is a landmark settlement but this is not the kind of settle-
13 ment that we want for our people," and for what reason? Now...
14 There's a... In listening to everybody, we see where everybody is
15 going in their quest for determination of their rights and powers
16 but what I'm missing or would like to see is more of a definition
17 on your part as to what role ANCSA has played in the development
18 of your claims and your actions. I'll leave it at that for
everybody to think about during lunch and maybe we could come
back to that so that we could get some idea on this the last
day of the international overview hearings what effect ANCSA has
had on your deliberations and negotiations.

19 My only question for those that have spoke this morn-
20 ing is for Steve Iveson. I would like you to clarify for the
21 record the word plebiscite and some of the requirements for and
results of a plebiscite. Thank you.

22 MR. IVESON: The plebiscite was
23 a call for a vote on the part of the residents of the Northwest
24 Territories to, by the legislative assembly of the Northwest
25 Territories, for them to express their opinion on the idea of
dividing the Northwest Territories into two political jurisdic-
tions. It was sponsored by the legislative assembly of the

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1 Northwest Territories. The requirements were that a person, to
2 be eligible to vote, had to have been a resident of the Northwest
3 Territories for three years. That, in itself, was a precedent,
4 certainly not ten years as Steve Kakfwi has mentioned, but well
5 beyond the more normal six months period.

6 And the vote is not binding on anyone. It was an
7 expression of opinion on the part of people. But as a result of
8 the vote, then the legislative assembly indicated its support in
9 principle, unanimously, for division.

10 Does that answer your question?

11 UNIDENTIFIED: So it was a vote
12 of tokenism?

13 MR. IVESON: You could call it
14 a... Well, you call it what you'd like, I guess. You can call it
15 a... a form of consultation, a numeric form of consultation,
16 whatever.

17 MR. KATCHATAG: My question dealt
18 with... I would like it clarified, not only to the people here in
19 the commission but also to any Native people here in Alaska who
20 might not understand the term plebiscite and all that that implies.

21 MR. IVESON: Plebiscite relates
22 to a referendum, perhaps. Is that an expression you would use?

23 MR. BERGER: Maybe I could
24 answer that, Mr. Katchatag. The... The vote that was taken in
25 the Northwest Territories was a nonbinding vote. That is, people
turned out and voted, and voted in very large numbers, and
they made... they voted on whether to divide the Northwest Terri-
tories into two pieces, one predominantly Inuit, the other pre-
dominantly Dene and Metis, and then the vote was considered by
the legislative assembly of the Northwest Territories. They
regarded it as binding on them and they felt that they should
then work toward division of the Territories on the basis that
the majority had indicated. And that's why they have a



1 constitutional forum on the Eastern side where the population is
2 predominantly Inuit, and another one on the Western side where
3 the population is predominantly Dene and Metis, and on each side
4 they're working out the kind of government they want to establish.

5 But the words plebiscite and referendum, perhaps, don't
6 help the thing along. It's a vote, and the people passed a vote
7 that wasn't binding but the legislative assembly said, "Well,
8 we'd better pursue the matter in the way the people have indicated
9 they want us to do."

10 MR. KATCHATAG: Now, a plebiscite,
11 is that not also a vote of a separate and distinct people? Could
12 that not be applied to a separate and distinct people to determine
13 not only what measure or what program, but also what government
14 they would, as a people, prefer? Is that not a definition of
15 what a plebiscite can be or do?

16 MR. BERGER: Well, I don't think
17 so. I think that this was a vote of everybody who happened to
18 live in the Northwest Territories, that everybody living there
19 was eligible to vote and the vote was proceeded along the lines
20 that Steve Iveson indicated. But I think that this isn't... I
21 think this is a bit of a technicality.

22 Charlie Edwardsen?

23 MR. EDWARDSSEN: I think that
24 you create a semantic distortion in using plebiscite in the
25 American context. In the American context, a plebiscite makes
26 law and in Canada, a plebiscite may mean a concensus or a mere
27 poll. Is that correct?

28 MR. BERGER: Yeah, that's right.
29 That's right... I think that clarifies it.

30 MR. EDWARDSSEN: So these
31 semantic injustices that are created are... should be reviewed
32 in a... in a constitutional and a linguistic context so that
33 one does not... eschew or mis... misassume somebody else is right.

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1 MR. BERGER: Well, I wonder if
2 we could go on then to Shorty O'Neill and then Don Mitchell.

3 MR. O'NEILL: I just want to
4 make a comment first and then I have a couple of questions.

5 As a visitor here, firstly to the indigenous people of
6 this country, the real owners of it, secondly to the commission,
7 I think the interruption that we had a little while ago, we've
8 got to understand that the Europeans don't bring their kids up
9 properly, eh? And we've got to forgive them for that, because
10 that's what they're taught when they're kids... that you've got
11 to interrupt all the time.

12 And I think our delegation would like to ask, while he
13 was in our way not really acting properly in the way he did it,
14 I think he also had an important opinion for the commission and
15 I think our delegation would strongly ask that it be included in
16 the record.

17 I'd like to get on to a couple of questions. First, to
18 Rick... and probably to a lot of people here. I've been con-
19 tinually hearing for the last three days, four days... about
20 incorporated bodies, incorporations, the Metis are incorporated...
21 and what we've found in our country is that if we become in-
22 corporated, we become controlled by the government and sometimes
23 we have to become incorporated for different reasons. So how we
24 get over that is, we keep our major political bodies unincorporated
25 and our traditional way. They're incorporated in our traditional
way, not in the European way. And then if we have to incorporate
a body so it can operate within the European society, then we
set up a unit which is incorporated, which is controlled by the
political body but where the government cannot get at the
political body. And I'm amazed that most of the political
bodies that I've heard about in the last four days have become
incorporated. And... you know... I'm just wondering why you've
become incorporated, if you can explain that to me?



1 MR. BERGER: Rick Hardy?

2 MR. HARDY: I suppose one of
3 the... probably the primary reason for... Okay, first of all, let
4 me say that all of our organizations are, in fact, incorporated,
5 the ones that we have in the Northwest Territories, be it the
6 Metis Association, Metis Development Corporation, the Dene Nation
... In fact, the Western Constitutional Forum is a body corporate,
as well, and --

7 MR. BERGER: These are incorpor-
8 ated under the law but they are not profit-making corporations
9 except for the Metis Development Corporation, have we got that
right?

10 MR. HARDY: Yes, that is
11 correct, and the reason --

12 MR. BERGER: So that they will
13 be legal entities and... is that the... really the answer to the
point?

14 UNIDENTIFIED: Territorial or
15 provincial?

16 MR. HARDY: Okay... Well...
17 Okay, first of all, I just want to confirm what Mr. Justice
18 Berger says, is that in order that they can be legal entities,
19 in order so that they can create bank accounts for themselves and,
20 in fact, do business and protect the individual members of the
21 organization from any personal liability and I think that I
22 understand, perhaps, the background of your question, Shorty, and
23 I would say that, probably to some extent, that by incorporating
pursuant to the laws that are created by Canada or by the govern-
ment of the Northwest Territories, we are accepting their juris-
diction over us to that extent.

24 MR. O'NEILL: Yes, two other
25 questions I want to ask. In the last four days, again I'm
slightly amazed and I'm not sure why that is... One of the

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1 biggest problems we have is the destruction of our sacred sites
2 or sacred areas and it is always the up front thing... every
3 time we're talking about something, the very first thing we always
4 talk about is the protection of our sacred sites or sacred areas.
5 And, you know, all indigenous people are probably the most
6 religious people in the world. That's probably why they send
7 missionaries out to try and turn us into Christians. We make
8 better Christians than what the missionaries are.

9 But the thing is, I haven't heard one single mention in
10 the last four days of sacred areas or sacred sites and I kind of
11 wonder why that isn't the first thing.

12 And that's for anybody.

13 MR. BERGER: Bill Erasmus.

14 MR. ERASMUS: When we discussed
15 our attempts at negotiations, we more or less generalized over a
16 lot of areas, but I mentioned that in 1973 when we did our
17 traditional land use study, part of that included the... how do
18 you call... the... the mapping out of these specific sites so
19 that when hunters and trappers indicated their extent of land
20 use, they also indicated particular historical, sacred and
21 other sites that were of significant value in that sense. So we
22 do have those sites located, a large majority of them, and as
23 far as I know, we intend to include that in our negotiations and,
24 of course, set up some kind of a regime that will make protection
25 and have full recognition of those areas. So that was probably
why you didn't hear anything from the Dene-Metis.

MR. BERGER: Don Mitchell?

MR. O'NEILL: Just one more...

MR. BERGER: One more question?

Sure.

MR. O'NEILL: The last question
again is on minerals and when... I've noticed a whole lot of
talk here that there isn't time to follow these negotiations



1 through properly. You've got to get them fixed up, you've got to
2 get them through quick and there isn't time to come back to the
3 people in a lot of the talks that have been happening this week.
4 And all of this is because of minerals. And, you know, we're
5 pushed in the same way, from one end of the country to the other
6 by the governments, particularly the governments, and the mining
7 companies. And we kind of got sick of being treated like mush-
8 rooms by these bodies... When I'm talking about mushrooms, I'm
9 talking about those little things that grow in the dark and get
10 fed on bullshit.

11 And so we set up a unit that investigated the mining
12 companies, investigated the mineral sales throughout the world,
13 and investigated the governments and gave that information back
14 to the community and to the political bodies that were fighting
15 the battles. What we found is that there is no mineral shortage.
16 In fact, things like bauxite... There is ten times the amount of
17 aluminum on the world market that they can sell and they keep
18 it off the market so the price is up. The oil shortage is one
19 of the greatest fallacies of the '70s and probably made millions
20 for the corporate bodies and governments throughout the world.

21 And, you know, I'm just asking questions to probably
22 every delegate from any indigenous group here. What are they
23 doing about looking into the incorporations and are there any
24 bodies set up so that maybe we can swap information on that to
25 find out exactly what the corporations that are desecrating our
country, killing our people, are doing here in your countries.

MR. BERGER: That's an interest-
ing suggestion. Don Mitchell, do you have a question?

MR. MITCHELL: Thank you. And
I guess it's for the whole panel or just whoever feels inspired
to respond. One of the things I've tried to sort of keep an
eye on, the evolution of your claims effort from over here, with
varying degrees of success. And one of the things I was struck

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1 with this morning was someone's reference to the metaphor about
2 putting rights in a box, or whether or not the box is full to
3 begin with. And one of the things that I think is happening in
4 Alaska, and I guess the reason for this commission, is that there
5 are a significant number of folks who would like to get the
6 United States government in some fashion back to the table to
7 discuss the configuration of the deal that was cut back in 1971.
8 And although my views shift on it all the time, my current theory
9 is that, at least in the 20th century, there's really no such
10 thing as negotiation and really what happens is that the aspira-
11 tions of capital becomes trapped by the Western intellecutal
12 tradition and eventually, when the aspirations of that capital
13 hits a certain critical mass, then the folks in charge of how
14 things work have got to figure out what to do about that. And,
15 certainly in the 19th century in this country, what people did
16 about that was shoot folks or move them off or did what needed to
17 be done and the Western intellectual tradition had evolved to a
18 point so that in 1971 that wasn't acceptable. The people had to
19 be cashed out. But I don't really think that you could describe
20 that as a negotiation.

(TAPE 45, SIDE B)

21 But certainly because Charlie and some folks were able
22 to trap that accumulation of capital, some deal of some fashion
23 had to be cut and one of the concerns I have about trying to go
24 back and redo it is how can you recreate that kind of situation
25 where you can at least play a couple of hands around the table
sort of way out on the edge. And the thing that has always struck
me, and not knowing anything, really, about the details of your
aspirations over there, is I've not been aware that there's
really been the push, you know, of the pipeline, like we had in
Alaska, or the dames in James Bay that really give the oomph to
have to have those people have to sit down and deal you folks out
and have to be able to look at themselves in the mirror.

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1 was... although that they are liberal in nature, they're conserva-
2 tive in natural resources for the simple fact that they're going
3 to give you, not rights, but a pastoral appetite, where that they
4 give you and let you come and talk to them, drink their coffee,
5 smoke their cigars, have their women and maybe they'll send you
6 home drunk.

7 I went through Alaska Native land claims completely
8 drunk, as... as a circumstance for some people... they said, "Oh,
9 that guy, he can't handle himself." But let me tell you, that's
10 the only way I could tolerate some white people, is to be
11 completely drunk.

12 And so, the premise... The very premise when you opened
13 the Alaska Native Land Claims Settlement Act is that it was to
14 be fair and just. What I found out was, I thought that we were
15 going to negotiate. So when I concluded the settlement, I started
16 out with a claim of 93 million people... 93 million acres and
17 in 1971, it dwindled down to 5.7 million acres. Was that fair
18 and just?

19 And the basic premise that America is a constitutional
20 government... it only appears on paper and so in the... In the
21 American context, I studied what the American revolution was all
22 about. I found out some basic... for your information, that in
23 America, United States, that is... that your property was not
24 supposed to be stolen or used without your... permission. And
25 so I thought this was the case, so I spent about... something like
in the neighborhood of ten million dollars in about 15 year period
and found out that I only had pastoral rights, that I did not
have Fifth Amendment rights, that the use of oil was something
technical and... nonexistent for the Eskimo. But when you take
a look at use, historical use of oil and gas, my culture, the
Eskimo people, have been in the oil business longer than the
entire history of the Anglo-Saxon community. We've been in the
whale business and what most people do not know at the time is that

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1 these whaling companies are now oil companies.

2 So when you take a look at the historical use and occu-
3 pancy, they will steal from you and give your rights something
4 less than what the constitution says. It says, by God, it does
5 not pertain to... the Fifth Amendment only applies to white folks,
6 blacks and others. And so... The American context... and why
7 ANCSA is such a bad model is... we got lucky and convinced the
8 White House that there should be some settlement. And so, we had
9 to fight our own people, our own state.

10 The greatest anathema to Native rights is state of
11 Alaska and the oil companies that received benefits from its
12 leases. And in this context, that the greatest loss to Alaskan
13 people have been the mismanagement and the misinterpretation of
14 the disclaimer clause in the Alaska Statehood Act. Here is the
15 United States administration with a constitution and an enabling
16 act called the Statehood Act. I view the Statehood Act as a
17 surrender document for all of the white people and since 1959,
18 the 25 years of statehood, I have seen subversions of all of
19 Alaska's renewable resources leaving Alaskan hands.

20 Now the... our oil and gas and minerals is controlled by
21 multinational corporations and the state of Alaska with no mineral
22 policy. And the fishermen... the fish in the high seas is
23 completely Japanese, Chinese, Korean, Russian... and Great Britain.
24 Why Great Britain? It's because the state of Alaska, in its
25 wisdom, has not seen the energy companies to go into other enter-
prises. And so what state of Alaska ended up with, is the addi-
tional 40 some odd million acres that we had gotten away from the
federal register into private hands is now being lost fastly to
incompetent management, to debt service. So all of the gains...
all of the gains that have been made by Alaska Native land claims
are going to be lost in a bankruptcy court.

And the greatest threat that the Alaska Native people
see... What I tried to do in the '60s and the '70s, was that the

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1 Alaska Native leadership opted for the political friendship of
2 these dumb Anglo-Saxons here who know less than we do about our
3 own future, for the friendship and the limited liability that they
4 enslaved the rest of the Alaska Natives... when there was an option
5 for sovereign immune instrument. The basic cultural dichotomy
6 about Alaska is that it left the norm. The Alaska Native Land
7 Claims Settlement left the norm and opted for a state configura-
8 tion without changing the state of Alaska's disclaimer clause
9 that said state of Alaska and its people shall forever disclaim
10 any right and title of hunting and fishing rights in the future...
11 and this is the basic fallacy of constitutional rights in America,
12 is that the constitution is only a pastoral document.

10 MR. MITCHELL: Charlie, before
11 I ask the Canadian panel to respond to my question... I mean, I
12 think your statement proves my point (LAUGHTER). I mean... my
13 point was that the dominant political system started paying lip
14 service to Native claims in the 1880s. There were claims act
15 bills of various kinds introduced in the '30s, the '40s, the '50s,
16 and there was lots of cheap talk but nobody every would face up
17 to it until you hung them up because of the interest of the oil
18 industry and other folks. And then... I mean, I would agree with
19 you. Then you still got trashed, but to the extent that you got
20 a chance to play in the game at all, it was because you trapped
21 them. And my point is, is it possible to play without trapping
22 them, either in Canada or having to do it again here at home to
23 get another bite of the apple. And that was my question.

21 MR. EDWARDSSEN: I think that if
22 you keep Native rights according to the doctrine of federal pre-
23 emption, that you can always trap a secondary instrument like a
24 state. So under a rigid federal authority where this pre-
25 emption is so clear, such as it is in the Alaska disclaimer
clause, that you could play the weak versus the strong more
fluently in an American format, which you cannot do in a

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1 Canadian context for the simple fact that they have just arrived
2 to a constitution.

3 So the American experience is not easily transferable
4 to Canada for the simple fact that the Canadians, today, and
5 their ancestral heritage, tells me, and if history is correct,
6 that they had opted for King George's version of... And so, the
7 basic separation... I think that if we take the Treaty of Paris
8 as a living document in line with the J. Treaty, the boundary
9 dispute between Russia and the United States and Great Britain in
10 1825, and to take that Russian treaty to... treaty of 1867, and
11 the treaty of 1867 gives us... and gives me some hope for the
12 simple fact that the oil companies were so sloppy when they...
13 when they lost to me on section four.

14 What a lot of people do not know was, when everybody
15 else went home, left Washington, D.C., and went home after the
16 40 million acres was achieved and got a pass from the White House
17 for 40 million acres, then I was abandoned in Washington, D.C.
18 Everybody else went home. Why the settlement is so bad is the
19 last six weeks. I was the only one in Washington, D.C., holding
20 the American dike, and I failed. And the only thing that I
21 succeeded is the section four, the extinguishment clause... is
22 not perfect. And so I see the Alaska Native Land Claims Review
23 Commission as a forum to further inform the Americans that they
24 did not secure the good faith of the Native people for the simple
25 fact that their utmost good faith was nonexistent.

 And so, the secretary of Interior is not without respon-
sibility and the Republican tenure in Congress when the... In
1862 when the U.S. court of claims was created, that Congress had
usurped some executive powers and directed the office of the
president incompetent to negotiate with Indians. They took a
separation of powers away from the president and said, "Mr.
President, you are no longer going to make treaties." And to
this day, the separation doctrine argument on that question is not

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1 fully determined.

2 And then, on top of that, I also later had a horrible
3 experience that I could not pay my attorney, that I could not hire
4 an attorney. So what that means is that the Indians are without
5 the resources of the Fifth Amendment completely, that your right
6 of counsel is not a right. It is pastoral with the consent of the
7 secretary of Interior. So, to take a look at what has happened to
8 Alaska Natives in the... and the tribes in the Lower 48, the great-
9 est mistake that the Alaska Native people made was that they could
10 have easily administered this under a federated enclave.

11 As bad as the Indian Reorganization Act is, it is the
12 only element in American law that I feel was not extended to
13 Alaska Natives. I am quite positive to this day, had the people
14 of Alaska had the opportunity to vote and cast their ballot at
15 the time of succession, that they would have rejected the settlement.

16 MR. BERGER: I think that we
17 have time for some observations from Steve Kakfwi or any other
18 of the Dene-Metis group, and then I think we should adjourn
19 because Bill duBay has arranged the visit to the North Slope
20 Borough computer mapping project, and then come back this
21 afternoon to hear from the Nunavut Constitutional Forum, the ITC,
22 and from the Australians and the Sami again before we adjourn.

23 MR. O'NEILL: (INDISCERNIBLE)

24 MR. BERGER: All right, all
25 right. The aboriginal Australians.

Anything to add just before we go to lunch, Steve
Kakfwi?

Maybe I could just make an observation just before we
leave... that I think that Don Mitchell's observation has a lot
to be said for it. That is, that in Alaska, the claims act was,
in a sense, the product of a large pool of oil being discovered
at Prudhoe Bay and the need for bringing it to market. In James
Bay, the land claims settlement was precipitated by the need to



1 proceed with a large hydroelectric project. But over the last
2 two days, it became apparent that the settlement in the Western
3 Arctic by the Committee for Original Peoples Entitlement, the
4 Inuvialuit, has apparently come about without the impetus of any
5 single large-scale industrial project in that region, and I think
6 it is even more apparent that, for the Council of Yukon Indians,
7 their agreement has not been the product of a drive for industrial
8 development that takes the form of a specific project.

9 So I think that, with your permission... Oh, Steve
10 Kakfwi?

11 MR. KAKFWI: If I could say a
12 little about that... I think I differ a little because the pres-
13 sure to make an agreement with the Committee for Original Peoples
14 Entitlement is because of the massive interest of oil companies
15 in the Beaufort Sea and in the Mackenzie Delta. With the Yukon
16 Indians, the pressure was from the Yukon non-Native people. The
17 Yukon... The Council of Yukon Indians, I understand, had put a
18 land freeze on about half of the Yukon Territory and in order
19 to get it out, they had to also come to a sort of agreement with
20 the... with the Yukon Indians. The added momentum to these
21 negotiations was federal political interests in Ottawa. The
22 present minister of Indian affairs in Canada, General John
23 Monroe, had some very high political aspirations and wanted very
24 much to finish his term, which is up in a short while, to... to
25 achieve one or two agreements. Those are what caused the progress
that occurred with these respective groups to the point that they
have.

I guess our own view and, you know, it's what Charlie
Edwardsen's saying and Don Mitchell... I don't think... and the
same with Shorty, here... but I don't think it is at the initiative
of people like ourselves that we want to give up large portions of
our land and the tremendous amount of giving up that we have to
do in extinguishing. But we also have to look at the fact that we

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1 need to negotiate some sort of arrangement. And so we look for...
2 as you would say, the night when the devil's in town... you know,
3 when all the pressures are there and the conditions are right,
4 you see if you're brave enough to dance with the devil and see
5 what you get to take home that night. That's what the attitude
6 I have about a comprehensive claim. You know, it's dangerous
7 business and very emotional. You're not going to be a winner at
8 all but you do what you have to to get something out of the cir-
9 cumstances.

10 We all keep, I think, in mind whatever levers we need
11 and are required in order for negotiations to start and for
12 negotiations to keep going.

13 MR. BERGER: Thank you. I think
14 that is a more complete picture than I was able to give.

15 Mike Albert, of Tununak, we'll give you the last word
16 before lunch and then we'll have to move on after that.

17 MR. ALBERT: Thank you, Mr.
18 Berger, for the opportunity for me to give me a chance to speak
19 right here again. I come here from Tununak and there's a number
20 of group with me that come here to attend this meeting here and
21 we have concerns and goals that have no difference than yours.

22 What I would like to say right now is that when...
23 (PAUSE)

24 MR. BERGER: We can come back
25 this afternoon, Mr. Albert.

MR. ALBERT: When Alaska became
state, that there was only handful of people when they signed for
the state of Alaska to United States. That's what suffer me and
suffer everybody in my own village. And then, in second time,
when Alaska Native Claims Settlement Act was being enacted, only
handful of people signed for that, and that's theirs, too.

My question is, why didn't the real land owners of
Alaska... was that discussed first before everything was signed?



1 Why didn't people of Alaska, real owners of the land, be discussed
2 before Alaska was transferred to became a state of United States...
3 and why didn't the people of Native Eskimos in Alaska be discussed
before the land settlement act was made?

4 That's all I want to say. Thank you.

5 MR. BERGER: Thank you, Mike.

6 Well, I think we'll adjourn for lunch and come back at
1:30, and we'll hear from the Nunavut Constitutional Forum.

7 (HEARING RECESSED)

8 (HEARING RESUMED)

9 MR. BERGER: We could begin...

10 Even though the Dene-Metis contingent is absent... It may be that
11 they were overwhelmed by the excitement of the proceedings this
12 morning. The... But I think we should start now so that we will
13 have time to consider what is said by the Nunavut forum and then
14 have still, I hope, time left for the people from Australia to
speak and then Alf Isak Keskitalo from Sami land.

15 So, perhaps, Peter Ittinuar, you might just open the
subject up?

16 Dalee, do you want to sit over there?

17 MS. SAMBO: Sure.

18 MR. BERGER: Bring your name
card.

19 MS. SAMBO: Make sure nobody
forgets who I am.

20 MR. BERGER: All right. Well,
21 Peter Ittinuar, go right ahead.

22 MR. ITTINUAR: Thank you,
Justice Berger.

23 We from the Eastern Arctic of Canada are here partly in
24 recognition of your history as a Native claims worker, especially
25 in the Calder case and certainly in the Mackenzie Valley pipeline
hearings... rather, the Mackenzie Valley hearings, as well as the



1 interest we have in political status of indigenous claims
 2 throughout the world. In this context, I must mention that the
 3 Alaska claim for us has not been one of real influence, at least
 4 directly, in our case. We've been aware of it for many, many
 5 years. We have never, as Makivik did nor the NKYA did, come
 6 over to Alaska to specifically study the technical aspects of the
 7 corporation structures, et cetera. So I must... regrettably, I
 8 must say that the Alaskan model has never been one that we
 9 followed very closely.

10 I suppose we could say a few things about historical
 11 injustices or historical hardships, but I'm going to skip over
 12 that. My colleagues are rather long-winded and they'll take up
 13 some time, I believe. I will say this, following up on the history
 14 of the Australians, the Eskimos or Inuit in Canada only became
 15 able to vote federally in 1960. That's not very long ago.

16 As I mentioned earlier, we are here in two parts. We
 17 have the Nunavut Constitutional Forum, we have also the Tungavik
 18 Federation of Nunavut. The Nunavut Constitutional Forum is doing
 19 the work for a policial institutionalization of a government in
 20 ... roughly north of the treeline in the Northwest Territories.
 21 The Tungavik Federation is the ethnic part of the total package
 22 whereby they are negotiating through the comprehensive land
 23 claims policy of the government, things that... whereby Eskimos
 24 in Eastern Arctic will be the beneficiaries. Randy Ames certainly
 25 will cover that more than adequately.

I must mention that Dennis Patterson is the chairman
 of the Nunavut Constitutional Forum.

This, perhaps, is commentary on our attitudes towards
 inter-ethnic relations. I don't think I should really say much
 more about that unless somebody asks. This morning there was
 ... there were connotations and allegations of superiority,
 inferiority in terms of ethnicity and this is something for us
 ... something that we've always tried to avoid.



1 I must quote a man whom you've had fundamental differences
 2 with, Justice Berger, and this is Prime Minister Trudeau. Unfor-
 3 tunately... Justice Berger. I admire both of you... (LAUGHTER)
 4 ... Well, that's not the unfortunate part but unfortunate I have
 5 to quote a man you...

6 At the recent first ministers conference, he referred
 7 to Nunavut several times in his official opening statement. If
 8 I recall correctly, he said that the federal government is ready
 9 to give favorable consideration to the Inuit proposal for a
 10 government... or, a self-government in the Eastern Arctic, namely
 11 Nunavut.

12 Well, following that I must now refer to the semantic
 13 anomaly that was alluded to by Charles Edwardsen, that was namely
 14 the plebiscite of April 14th, 1982, which, for the most part,
 15 indicated that territorial residents wanted division of the
 16 territories. Subsequently, the federal government recognized...
 17 recognizing that the plebiscite was... while it's not a law, but
 18 a true indication of peoples' wishes by polls, the federal
 19 government, on November 26 of 1982, recognized in principle the
 20 division of the Northwest Territories and for the creation of
 21 two new governments, gave us a number of conditions which we have
 22 to meet in order to create these governments and in order to...
 23 in order for petition to happen in order to have division of the
 24 Northwest Territories. And these conditions were continuing
 25 consensus for division... There's no doubt about that in the
 Eastern Arctic. As was indicated this morning, there was some
 mixed results in the western portion of the Northwest Territories.
 I will not say why this happened but, hopefully in the future,
 this consensus will include all of the western portion.

As well, we have to define the division of powers between
 Ottawa and our respective government. Through the WCFNCF process,
 we are doing this. You've heard from the WCF this morning
 and how far they've gone. We will try and indicate to what extent

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1 we've tried to define these divisions of power. As one of the
2 conditions included also, the settlement of claims. Now, this is
3 in reference to the comprehensive claims that Randy Ames is
4 involved in, the Tungavik Federation of Nunavut is involved in.
5 I may mention something further to this after the statements by
6 my colleagues. There has been some development in this as a
7 condition by the federal government.

8 Last and certainly not least is the question of the
9 boundary. You heard a proposal by the... or, at least reference
10 to it by the western... our western colleagues. This boundary
11 has to be settled between the WCF and the NCF through the
12 alliance. There's quite a number of factors involved in settling
13 this boundary and we have to, hopefully, settle it soon because
14 of the time frame of the political climate in Canada, which I will
15 elaborate on later if necessary.

16 From here, I think, Mr. Chairman... Oh, I should mention
17 one thing. I'm on instruction from Peter Green, president of
18 COPE, on his behalf to say that unequivocally they are a member
19 of the Nunavut Constitutional Forum. There is no question of
20 where they will be from here until the boundary is settled and
21 the two territories are instated.

22 As for the elements and features of the Nunavut Consti-
23 tutional... Nunavut government, I will now have the chairman of
24 the Nunavut Constitutional Forum go into a fair amount of detail,
25 as he is wont to do, and then we will have Randy Ames talk about
the Tungavik Federation land claims process.

Thank you, Mr. Chairman. Dennis?

MR. BERGER: Thank you, Mr.

Ittinuar. Mr. Patterson?

MR. PATTERSON: Thank you, Mr.

Chairman. That fanfare was part of our presentation. I hope
you appreciate it.

Mr. Chairman, in order to talk about Nunavut, which is

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1 a proposal for a territorial form of government, I'd like to
2 describe briefly some features of the existing territorial govern-
3 ment in the Northwest Territories. I've passed around the annual
4 report of the legislative assembly of the government of the
5 Northwest Territories. It will give you much more detail that I
6 will give here, but let me just describe briefly the government
7 of the Northwest Territories, because that's the model that we are
8 basing our form of self-government in Nunavut upon.

9 Basically, the Northeast Territories has an advantage not
10 enjoyed by any of the groups that are represented here today in
11 that Native people are a two-thirds majority in the Northwest
12 Territories. We have a fairly healthy budget for a population of
13 around 50,000. The operating budget this year is over 500 million
14 dollars and it's increased by about 15 percent in each of the last
15 two years. I'd like to think because we're good negotiators with
16 the federal government, which funds 80 percent of the budgetary
17 requirements of the Northwest Territories.

18 Since 1979, when there was a Native majority in the
19 legislative assembly, that Native majority has dominated the
20 character of the government, has formed the character of the govern-
21 ment of the Northwest Territories, and I think have increased...
22 I know have increased their representativeness in the government.
23 And currently, as of the recent 1983 elections in this fall,
24 there's an even higher majority of Native persons in the legisla-
25 tive assembly. A total of eight Inuit and six Dene members,
which means 14 out of 24, but really it's greater than that
because people like myself and two other Inuit non-Native MLAs
from the eastern part of the Northeast Territories also represent
constituencies which have a majority of Inuit, in some cases a
very high majority of Inuit. And I think, following on what
Peter Ittinuar said earlier, the fact that non-Native persons
like myself and my other two colleagues can be elected, running
against Inuit, on our merits, I would hope, in majority Native

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1 constituency, shows a very healthy cooperative attitude towards
2 relations between the non-Inuit and the Inuit in the Eastern
3 Arctic. So really, if you count those three writings, we
4 really have a very high majority of Native persons represented
5 in the assembly and in the government. We have a cabinet... or,
6 it's an executive council, as it's called, which has eight
7 ministers or eight members. Seven of those are elected MLAs and
8 four of those people are not only aboriginal people but I think
9 they are people who are very active in Native organizations...
10 names like Nellie Cournoyea, Tagak Curley, Nick Sibbeston and
11 Richard Narrasu, are well known in the Northwest Territories for
12 their activism in Native organizations.

13 How has this affected the government of the Northwest
14 Territories? I would say, Mr. Chairman, that the Native majority
15 in the assembly have never really imposed themselves in a way
16 to create resentment, but the presence is strongly there and I'd
17 just like to cite a few instances of some of the things that have
18 been done, sometimes quietly.

19 One of the first initiatives that was taken by the new
20 legislative assembly in 1979 was to completely revisit the policy
21 of the territorial government with respect to land claims nego-
22 tiations. Now, as we've heard from Mark Gordon, the province of
23 Quebec was one party to the negotiations of their claim, which
24 complicated things enormously for them. I think in the Yukon,
25 as well, it was very evident from the presentation that the claim
was negotiated with very active participation from the Yukon
government and a heavy influence from the Yukon territorial
government.

But in the Northwest Territories, in its second session,
the legislative assembly adopted a new policy for the territorial
government which was basically to remove it from an active third
party role and to acknowledge that in Canada aboriginal peoples'
claims are matters between themselves and the federal government,



1 and the territorial government was very clearly instructed by the
2 legislative assembly to be only a part of the federal team, not
3 to be a third party at negotiations and, indeed, although this
4 has never been used, the directions from the legislative assembly
5 even permit the possibility that the territorial government might
6 be asked by an aboriginal organization negotiating aboriginal
7 claims to leave the talks. Now that, fortunately, hasn't happened
8 because good relations have been developed and the government of
9 the Northwest Territories has tried hard and, I think, succeeded
10 in supporting the reasonable proposals of aboriginal rights
11 organizations.

12 But I think it's worth noting that the new legislative
13 assembly very quickly moved to avoid the sort of problems that
14 have complicated claims in other jurisdictions that we've heard
15 about this week.

16 A few other initiatives of the legislative assembly
17 worth noting are redistribution of seats... which favored the
18 rural rather than the urban areas in the creation of new seats,
19 affirmative action programs in education grants for Native people
20 and employment for Native people, strong support for indigenous
21 languages, preservation and enhancement, and perhaps one of the
22 more spectacular moves of the ninth assembly, which was to en-
23 masse travel to Ottawa and engage in kind of a week-long sit-in
24 at the House of Commons until aboriginal rights was restored to
25 the constitution. We demanded and got a meeting with the prime
minister and I think our assembly, by that fairly dramatic action,
can take some credit for the reinstatement of aboriginal rights in
the constitution, along with our MP and many others who worked
in the cause.

Mr. Chairman, this is not to say that there is not a
profound dissatisfaction with the government of the Northwest --

(TAPE 47, SIDE A)

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1 Territories as it's presently structured. This is an area one-
2 third the size of Canada. It's an area that includes peoples and
3 histories that are vastly different and we believe... contain such
4 diversity as to be really ungovernable. It is particularly absurd
5 that the Northeast Territ... to us from the Eastern Arctic, that
6 the Northwest Territories should be governed from a capitol in
7 a southwestern portion of this vast area, three time zones away
8 and light years away in understanding and experience in the views
9 of many of our people.

10 However, we believe that the model of a territorial
11 form of government is a good base for negotiating a new government
12 in the eastern part of the Northwest Territories. We are confident
13 that, with Nunavut, we can profit from the powers and even from
14 the advances in recent years made by the government of the North-
15 west Territories in expanding its jurisdiction. And I'd just
16 like to... by making reference to the annual report index... just
17 list the powers that are presently enjoyed by the territorial
18 form of government. And I think they're not insignificant... at
19 least, as a start.

20 Justice, status of women, finance, personnel, economic
21 development and tourism, public works, renewable resources...
22 that includes all the land... jurisdiction over all the land
23 mammals in the Northwest Territories, energy, mines and resources,
24 although we don't have nearly the powers that we'd like to have in
25 that area yet, education, same jurisdiction as a province, social
services, health, local government and aboriginal rights and
constitutional development. I'd also like to dispell the idea
that the territorial form of government is a puppet of the federal
government which is really run by a federally-appointed commis-
sioner. Although we have a titular head of government in this
person who's called the commissioner, in my view the commissioner
of the Northwest Territories, and probably with his full support,
is merely a few steps away from being a lieutenant governor or a

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1 truly symbolic titular federal representative in the territories.
2 We have very determinedly and I think successfully eroded the
3 powers of the federal government through the commissioner over
4 the Northwest Territories in recent years. Just last fall, we
5 succeeded in getting the federal government to agree to eliminate
6 the deputy commissioner's position. He was, until then, a voting
7 member of the executive council, really a member of the cabinet,
8 and a federal civil servant. That position no longer exists and
9 we have also, in the last four years, been able to strip the
10 commissioner and the deputy commissioner of all their departmental
responsibilities except one, which is the department of personnel,
which I believe will soon be replaced by a public service commis-

11 So all the... important departments of government are
12 now run by elected ministers and we fully expect that the Nunavut
13 territory will take up where this political evolution has left
off.

14 Mr. Chairman, I would like to briefly describe the Nunavut
15 proposal. But first I should just explain that the booklet,
16 "Building Nunavut" which is available and I believe most partici-
17 pants here would have, gives a fairly exhaustive description of
18 precisely what powers we propose for the Nunavut government.
I'd like to just touch on some of the main features and conclude
my presentation.

19 As mentioned earlier, we are proposing a public form
20 of government. It will have a very high Native majority in its
21 early years and something around 85 to 90 percent of the popula-
22 tion of Nunavut, depending on where the boundary goes, are...
23 will be Inuit people. So they will have a very firm control over
the new government, at least for the early... the foreseeable
future.

24 One safeguard that we wish to include to avoid large
25 numbers of transients taking over the government without having at

1 least resided a significant period of time in the new territory
2 will be a voting requirement, a residency requirement. The
3 Canadian constitution... the new Canadian constitution may well
4 prevent us from imposing as sizeable a residency requirement as
5 we'd like, but we're hoping, I think, that it would be at least...
6 at least three years, as was required in the plebiscite vote.

7 The other thing I should point out early on is that the
8 Nunavut Constitutional Forum, which has been described earlier,
9 feels very strongly that the constitution must be built at the
10 community level with full participation of the residents of the
11 proposed new territory, and I would like to make it very clear that
12 we have completed over 30 very extensive community hearings already
13 in three vast regions of the Eastern Arctic and we are about to
14 continue with further extensive hearings week after next in the
15 Western Arctic in the area of the Inuvialuit, the purpose being
16 to get grass roots input and advice on the constitution. And
17 we are also going to host a constitutional convention at the end
18 of this process whereby we will seek, with representatives from
19 every community, ratification of the proposed form of government
20 before we go ahead and negotiate with the federal government to
21 implement Nunavut.

22 One other thing I'd like to say is that an advantage of
23 the territorial form of government is that it can be created by
24 an act of the federal parliament without concurrence of or
25 interference from the provinces. And we see this as a very
26 distinct advantage in pursuing our constitutional goals. The
27 creation of a province, which is our goal, is more complicated
28 and will require, unless the constitution is amended, will require
29 approval from other provinces in Canada. But we want to take
30 things a step at a time and seek a territorial status and build
31 our strength and begin our futher negotiations from there.

32 A few of the issues that have been raised in the com-
33 munities that are not really covered in this document are the

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1 importance of the role of elders, those who transmit the values and
2 culture of the people. And we are being pressed by communities to
3 find some means of allowing elders to participate, perhaps some
4 kind of a senate, although I don't think the senate that we would
5 propose would have the legislative veto powers as the... the
6 same legislative veto powers as the senate, as I understand it,
7 which was proposed in the Denedeh proposal. We are looking for
8 some model of allowing elders to advise the government of Nunavut
9 and we're also being pressed very strongly by the communities to
10 give even stronger emphasis to the incorporation of customary law
11 and traditional methods of dispute resolution in the... to build
12 those into the constitution of Nunavut.

13 An important feature I should mention, Mr. Chairman, is
14 that we have determined that it is necessary to entrench a bill
15 of rights in order to protect, and protect visibly, the rights of
16 minorities. We wish to insure that individuals of all cultures
17 and races are free to fulfill themselves in Nunavut. It may
18 be that, indeed, this bill of rights might eventually need to be
19 used to protect the interests of a Native minority if that should
20 ever occur in Nunavut.

21 Sea mammals are extremely important to the Inuit, and
22 sea mammals and most development activities in the Northwest
23 Territories are presently federal responsibilities and beyond any
24 significant control of our territorial form of government. I
25 include land use and ownership, mining, oil and gas development,
shipping and ice breaking. A major concern of aboriginal peoples
in the Northwest Territories, indeed all people in the Northwest
Territories, is that the federal government's policies are un-
responsive to northern preferences and are shaping the North
irrevocably. We recommend that territorial governments, the
present Northwest Territorial government or a future Nunavut
government, have a much larger role in policy-making. In such
matters as marine management, the Inuit in particular are deeply

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1 concerned that the Canadian federal authorities are not managing
2 affairs as actively as they should.

3 We are also very concerned about having impact into
4 the major source of development activity in the Northwest Terri-
5 tories, the nonrenewable sector. We have accepted... I think
6 realistically, that it is not going to be possible to displace
7 the federal government completely in the predominant role it shares
8 in most forms of development, but we propose that the Nunavut
9 government share in the effort. And in relation to the offshore
10 as well as decisions respecting offshore development, we have
11 proposed that something like the Canada-Nova Scotia Offshore
12 Agreement be explored where there would be a shared role in
13 management and a shared... shared revenue from those resources
14 accruing to the territory.

15 We also propose that we should build on the increased
16 responsibilities that the Northwest Territories government has
17 obtained in mining. We now... The Northwest Territories govern-
18 ment has jurisdiction to regulate mining safety in the Northwest
19 Territories. We propose that we should be given total jurisdic-
20 tion over the mining activity in the Northwest Territories, again
21 with a share in resource revenues.

22 A few other features of the Nunavut government I would
23 just like to touch on are that Native language... the Native
24 language, Inuktatuk, would become an official language, a working
25 language of the government of the Northwest Territories...
26 pardon me, the government of Nunavuk. We would seek to expand on
27 the communications systems that are now in place in the eastern
28 part of the Northwest Territories, television and radio, and see
29 those systems become even more active as a means of bridging
30 the formidable geographic and climactic barriers between our
31 communities.

32 We have addressed and expressed great concern about an
33 issue we call cultural property, which is what Mr. O'Neill was

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1 referring to this morning. You'll see there's an important section
2 in our proposal calling for protection of artifacts and archeologi-
3 cal sites which have been robbed in our history.

4 We also would seek to build up improved relations
5 between circumpolar countries and jurisdictions... Greenland, Alaska,
6 Northern Quebec.

7 Another aspect that emerged very strongly in our hear-
8 ings was the need to focus a tremendous effort on education and
9 training for aboriginal peoples in the eastern part of the Northwest
10 Territories. It was driven home to us very strongly in the
11 community hearings that we should make education and training a
12 priority if we were to avoid making the same mistake over again
13 in creating a government in the Eastern Arctic which will be depen-
14 dent on outsiders, in large measure, for key administrative and
15 bureaucratic positions.

16 The final point I'd like to make, Mr. Chairman, is that
17 the Nunavut proposal recognizes... after a number of studies that
18 we've done... and perhaps I should just mention some of the studies
19 that we have initiated and completed... division of powers between
20 Nunavut and Ottawa, financial perspectives which examine the
21 nature and flexibilities and possibilities of the Canadian federal
22 system in accommodating the needs of Nunavut and its overwhelmingly
23 unique population. We've also done studies on Inuit customary
24 law, statutory language guarantees, preamble to the Nunavut
25 constitution, a Nunavut bill of rights and special measures re-
lating to the offshore.

The study on the division of powers in Canadian confedera-
tion and the study on financial perspectives revealed to us that,
contrary to popular conception, the Canadian constitution doesn't
... isn't rigid in dividing powers between federal and provincial
jurisdictions. There are an infinit number of possibilities for
the acquisition of power and control over one's destiny within
the confederation.

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1 Section 91 and Section 92 are nowhere near as rigid
2 as they might seem to be and the possibilities of management
3 agreements, delegation, contracts and other innovative means of
4 accommodating our unique needs in the Eastern Arctic are wide open
5 to us with enough hard work and negotiation. So we are... confi-
6 dent that there are ways in which our interests can be protected.
7 But we'll start off with the territorial form of government,
8 building on the progress that's been made by the territorial
9 legislative assembly in recent years and getting as much as we
10 can when Nunavut is established with the passage of a bill in the
11 House of Commons, but then using that new government as a basis
12 for developing even more powers and more self-determination, which
13 we see as quite possible within the Canadian confederation.

14 The first ministers conference defining aboriginal
15 rights in the constitution is a matter of great interest to us.
16 We're ultimately hoping that the form of self-government which we
17 will obtain, we're confident, in Nunavut will be given some kind
18 of constitutional recognition and protection through entrenched
19 provisions respecting self-government or respecting Nunavut.
20 And we're also hoping that the constitutional amendment process
21 will eliminate some very serious barriers that we see to establish-
22 ing provincehood, namely the requirement of approval of seven
23 out of ten provinces for the establishment of a new province,
24 with over 50 percent of the population, which we think is a hurdle
25 that none of the other provinces had to overcome when they were
established and it's not fair to impose it on us.

And, secondly, the very inequitable provision which
allows, at the moment, those same seven provinces to agree to
extend their boundaries north into the Northwest Territories.
That would... If such a move were ever to take place, that would
probably result in anger and militancy such as has never been
heard before in the North. We're confident that the attention
that the Northwest Territories and the Inuit Committee on National



1 Issues have been getting in the first ministers conference and
2 credibility with the fairly reasonable approach that's been taken
3 that we can persuade the provinces to remove these inequitous
4 provisions.

4 One final point I'd just like to touch on. We were asked,
5 in preparing this presentation, just how the Alaskan experience had
6 influenced us and I'd like to say that... or, echo what Mr. Ittinuar
7 said, that in developing our form of government in the Eastern
8 Arctic, we probably didn't advert very directly the Alaskan
9 experience but I think it's very clear from what Mark Gordon said
10 that Alaska was a strong influence on the Quebec and James Bay
11 Agreement and therefore indirectly has had a very strong influ-
12 ence on us because, of course, the Quebec and James Bay Agreement
13 set the tone for land claims in Canada. The only thing I would
14 like to observe is that we are beginning to see, I believe, in
15 Northern Canada some of the stresses that have been adverted to
16 in your hearings so far between expectations of Native corpora-
17 tions to make profits and the expectations of people in the com-
18 munities that these corporations should also be the means of
19 protection of the long-term interests of Native people. We are
20 seeing the beginnings of those kinds of conflicts and stresses
21 in Canada with respect to certain Native development corporations
22 and I'm very hopeful that we may learn some lessons from the
23 experience in Alaska in dealing with those problems and in perhaps
24 finding ways of making sure that Native corporations are account-
25 able to their constituents and operate as democratically as is
possible for profit-making corporations. We're very much look-
ing forward to hearing any recommendations that your commission
might make on that particular problem, because we see... I see
the same tensions emerging or beginning in Northern Canada.

24 Thank you very much, Mr. Chairman, and... I know, on
25 behalf of all the Canadians here, we're very pleased that we had
the opportunity to participate in this most informative session.

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1 And I'll pass the microphone to Mr. Ames on behalf of
2 Tungavik Federation. I think he's going to... I've asked him to
3 emphasize to what extent the Tungavik claim also pursues political
4 rights and political development issues. Although it's very clear
5 that the government of Canada has tried to separate political
6 development from land claims, we have not been willing to put all
7 our eggs in one basket and I think Mr. Ames is going to explain
8 that, despite the federal claims policy, the Inuit have made some
9 progress in the other front, land claims negotiation, in attaining
10 some measure of political rights in addition to what we're doing
11 in the Nunavut forum.

12 Thank you.

13 MR. BERGER: Yes. Mr. Ames?

14 MR. AMES: Thank you, Mr.

15 Chairman. As mentioned earlier by Mr. Ittinuar, I'm part of the
16 research negotiating team for the Tungavik Federation of Nunavut.
17 The TFN represents some 15,000 Inuit living north and east of
18 the treeline. I should make it clear at the outset, I'm going
19 to use the word Nunavut quite often, and in the context that I'm
20 using it in, it's in a land claims context. We also use the
21 term Nunavut to refer to our area of claim and it's not to be
22 confused with the larger political context in which COPE is part
23 of the Nunavut territory.

24 The mandate of the TFN is the settlement of land claims.
25 It's a comprehensive land claims package covering an enormous
area of the arctic. There's about 4,000 years of occupation and
use in that area. The archeological record distinguishes between
four levels... or, four cultures that have evolved over time.

 The Inuit, in prehistoric times, were primarily an
isolated group of people with little contact with the outside
world. Certainly, there was sporadic contact with their neigh-
bors to the south, the Indians. Sometimes the relations were
less than cordial but the next period of contact came with the



1 whalers and the early explorers. The period of contact vary
2 tremendously, depending on part of the Arctic the people are in.
3 The earliest contact periods were in the Eastern Arctic and this
4 continued over a period of years, right into the 20th century
5 with the fur trade, the missionization, the RCMP, right up until
6 the 1950s and 1960s when the federal government decided that
7 people should be brought in off the land and brought into settle-
8 ments, primarily for the purpose of health and education but also
9 for reasons of ease of administration.

10 In 1971, Inuit-Tapirisat of Canada was formed in re-
11 sponse to pressures to Inuit people in the North. The people were
12 quite concerned that their culture was being eroded, that they
13 had a number of goals and aspirations that could not be met
14 through the current... current government system.

15 In 1973, there was the supreme court case decision in
16 British Columbia concerning the Nishka, which in many ways prompted
17 the Inuit to began a land claims settlement in the Northwest
18 Territories. And what came out of that was, between '74 and '76,
19 a comprehensive land use and occupancy study which enabled people
20 to document their areas of use and occupation.

21 In 1976, the Inuit submitted a Nunavut proposal, as it
22 was called, to the federal government which was accepted by the
23 federal government. It included land claims and political aspira-
24 tions. However, the Nunavut... the '76 proposal, people felt at
25 the time, was a very complex thing and there hadn't been enough
consultation with the communities so it was withdrawn.

A land claims commission was formed. This was under
Inuit-Tapirisat of Canada, which negotiated for about a year and
a half with the federal government. The commission was not
successful in getting any agreements with the federal government,
however it was successful in delivering the message that Inuit
were not prepared to settle land claims without some kind of
political development. They were not going to settle unless their

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1 political aspirations had been met.

2 The commission, however, was dissolved and a new process
3 of negotiations began. The responsibility for land claims was
4 gradually devolved through another organization, finally to the
5 Tungavik Federation of Nunavut, which is an independent organiza-
6 tion of ITC, however ITC is the mother from which it came.

7 I've heard a lot of talk about sovereignty over the past
8 couple of days and currently, sovereignty in the true sense of the
9 word, which I think means supreme, absolute independence, is not
10 really an issue within the claims process. I think Inuit are
11 prepared to settle their needs within the bounds of confederation
12 using a Nunavut territory and using the land claims process as
13 the vehicles.

14 When we began thinking about land claims, it was clear
15 most of us were very new at it and it was a tremendous task to
16 design a comprehensive land claims package. We tried to identify
17 basic goals, basic principles, and I think that the overall think-
18 ing was that what we had to do was provide people with a package
19 that gave people rights, that gave people management responsibili-
20 ties, to put together a package or settlement that wasn't frozen
21 in time, something that allowed evolution to occur through manage-
22 ment, through economics. They wanted to put people on an equal
23 footing with the outside world and it wanted, I think, to give
24 people freedom of choice in the future. In other words, someone
25 who may wish to hunt, trap and fish for his living would have that
opportunity, whereas someone who wished to be a nine to fiver
would also have that opportunity. We wanted flexibility and we
wanted something that would provide for people, not just for
20 years but for 200 years, a thousand years.

When we looked at requirements of a land claims package,
we boiled it down to basically five major areas. There are some
other areas and I'll mention those later. But within each of
those areas, there's a number of different elements and the areas

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1 that we thought were the most critical were wildlife, land and
2 resources, offshore, the economic aspects of the package and
3 social provisions. As I said, it was an enormous task and I think
4 it was much akin to trying to put together a jigsaw puzzle without
5 the picture on the box to help guide you. But we persevered and
6 have come up with eleven agreements in principle over the past
7 few years.

8 The first topic we negotiated was wildlife. We thought
9 that this was the most critical topic of negotiation for Inuit.
10 And when we approached the topic, we tried to separate rights and
11 management. We wanted to negotiate rights first because whatever
12 rights we had when it came to wildlife would clearly color the
13 management responsibilities. I'm giving people here a very
14 pragmatic approach to this subject. It might seem almost clinical
15 but I'm just trying to give you the thinking behind it.

16 We managed to establish that people had the right to
17 hunt, trap and fish over the whole Nunavut territory. I've noted
18 that in other settlements people have tried to block off areas of
19 land in which there would be exclusive hunting and trapping and
20 fishing by Native people. We didn't find this an appropriate
21 approach for a number of reasons, one... ecologically it doesn't
22 make a lot of sense. Wildlife moves all over the area. Secondly,
23 if you own land as... be it surface or surface and subsurface,
24 you have the rights to keep other people off. If people want to
25 come on, you can negotiate some kind of access arrangement, so it
wasn't really necessary to set aside kind of hunting preserves in
that kind of context.

 And also, even if you own land on which you can hunt,
there are laws of general application that apply, so you can't
do exactly what you want anyway. So we didn't think this was an
appropriate approach. We wanted to establish the rights to hunt,
trap and fish everywhere.

 We also argued for exclusivity. It was something that the

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1 federal government was not prepared to give, so we tried to get
2 it through another way and were, in some measure, successful. We
3 ... proposed that there be a harvest study that would identify
4 basic level of need, basically what people were taking. And this
5 was going to be a benchmark by which we would measure allocation
6 and the future management decisions. This benchmark wasn't frozen
7 ... wasn't frozen in time. It... People could take more than that.
8 They shouldn't drop below that unless conservation needs required
9 it.

10 But anyway, about that there would be other categories
11 of use dealing with commercial and sport and non-beneficiary use
12 and the bottom line is that, if there's not enough wildlife to
13 go around to meet all peoples' needs, peoples' food needs are
14 met first.

15 We were also successful in meeting exclusivity through
16 another technique which was called presumption of need. It came
17 to specific wildlife species such as polar bear, musk ox, walrus,
18 whales, and what it basically said is that Inuit are presumed to
19 need all of these species that people can take on a basis of
20 conservation. If these species ever took off and they were
21 tremendously abundant and it was possible to open them up for
22 other people to use, then the presumptive need could be rebutted.

23 So basically, we provided for peoples' basic food
24 needs and we also achieved some measure of exclusivity with other
25 species.

We also tried to get the notion across to government
that wildlife is a resource. There seems to be a perception
amongst people that don't live from resources, from wildlife
resources, that they really are resources and we tried to treat
them in an economic fashion. We got people the rights of first
refusal when it came to any sport or commercial operation dealing
with wildlife. We also intend, in the final agreement, to nego-
tiate economic support programs for people that will be hunting.

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1 Government tried to initially limit us to traditional
2 species, what they saw were traditional species. We didn't think
3 that that was appropriate because, as the economy changes, and
4 as peoples' needs change or wildlife is available or whatever,
5 people have to be able to take what they can get. The fisheries,
6 department of fisheries and oceans, wanted to remove all species
7 of any commercial value from our rights to take and identified
8 things like Arctic cod, Greenland shark, Greenland halibut, so on
9 and so forth, arguing that Inuit didn't take those in the past
10 therefore they didn't have a right to take them in the future.
11 We suggested to them that trapping, which was just introduced
12 this century, you couldn't really view as a traditional activity
13 yet government was prepared to accept it. Commercial fishing,
14 which was introduced in some areas of the Arctic about 20 years
15 ago, really wasn't a commercial activity but government wasn't
16 prepared to accept it as a commercial activity. It was a contra-
17 diction in terms. They'd accept one and not another. So we
18 argued successfully that people should have the right to hunt,
19 trap and fish any resource in any area of Nunavut.

20 We also argued successfully that wildlife... the
21 definition of wildlife should include flora, the plant life, and
22 I'm not sure that other settlements provide for that. It's
23 proving to be a problem for the federal government at this point
24 in time.

25 We also established a board. We wanted a board that
had management responsibility and had decision-making power.
We had been advised over and over again that people were not
satisfied with advisory bodies. We established a board that had
four Inuit and had four government people, federal and territorial.
It... I think it was a useful board because for one, it involved
the primary resource users in the management process and the
decision-making process. Secondly, it brought all the managers
together so that wildlife could be treated on an ecological basis



1 rather than on a species by species basis, as is currently done
2 within the federal government. It was the first time in the
3 territories there was a comprehensive approach to wildlife manage-
ment.

4 The board was to have responsibilities over many, many
5 areas, including the allocation of resources, research, habitat
6 protection, management and conservation areas and a number of
7 other areas. It also could make decisions. The decision-making
8 process... and I think this is quite critical because we're having
9 a lot of trouble with the agreement at this point in time... was
10 that the board would make a decision. It would be sent to the
11 minister responsible. If the minister did not disallow it, it
12 had the effect of law. If the minister was unhappy with the
13 board's decision, he could only do it within particular areas
14 and according to certain criteria, but send the decision back,
15 explaining why. The board was to reconsider it and send it back
to the minister. If the minister was not happy with it, it would
go to the federal cabinet or it would go to the executive com-
mittee if it was a territorial responsibility.

16 Right now, our wildlife agreement, which was negotiated
17 two years ago, it was initialed and it was endorsed by the Inuit
18 ... it was initialed by the federal government but it hasn't been
19 endorsed yet, and the kicker is that the federal government does
20 not like to have its hands tied when it comes to decision-making.
21 And it's very critical for us at this point in time because as
we move into other areas of discussion, we have to have the
management responsibility.

22 There's two areas in the wildlife agreement that haven't
23 been... three areas that haven't been negotiated. One is the
24 economic support programs. The second one is the principles of
25 conservation, and these are very critical because the board
decisions are based on them and the principles of conservation have
to focus in on the needs of the people as well as on the needs of



1 the resource. You don't draw a line on the map and have a bunch
 2 of Bambis running around a national park and consider that conser-
 3 vation. That's not meeting the needs of people. You need...
 4 People have to be able to have a healthy resource base in order to
 5 make a living.

6 The other area is the harvest study, and this is going
 7 to determine... Well, we think it's going to determine two things.
 8 One is to identify or document the levels of use right now. But
 9 secondly, it has to be used for sound wildlife management and
 10 there's more to wildlife management than counting dead animals.
 11 But I think that is what the federal government intends when it
 12 comes to the harvest study. All they want to do is document the
 13 kill. We think that there should be greater information gathered
 14 at that time and it should be combined with economic information
 15 in order to insure that people can use the renewable resource
 16 economy as a sound renewable resource economy.

17 As I said, we have problems with our agreement. The
 18 federal government came back to us about three months ago with
 19 138 changes that they wanted. So far, not a great deal of progress
 20 has been made on resolving these issues.

21 The next topic that we got into was land and resources,
 22 and we realized... Well, initially we looked at the James Bay
 23 Agreement as a model and we actually designed a James Bay style
 24 agreement with community lands and Inuit lands and the balance
 25 being in the hands of government. But when we had tried to
 address the problem of how you select lands, it became a very
 murky area. Do you select lands from the basis of renewable
 resources? If you do, what happens when the wildlife leaves the
 area, as it has a tendency to migrate or to change areas over time?
 Does your land have any value at that time?

We also knew the federal government wasn't going to give
 us very much when it came to subsurface, so we thought that the
 best way to protect our interests was to get into the whole

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1 management package of it and actually suggested to our board that
2 there was no need to select land if you have proper management
3 responsibilities. Our board, however, felt that there was some
4 need for people to own land so it was included in the whole land
and resource package.

5 Another point about the management is that, in order to
6 make the wildlife provisions meaningful, you had to have a sound
7 management system, which involves things like land use planning
and impact review. If you don't have some --

8 (OVERLAP TAPE NUMBER 13)

9 MR. AMES: -- covered all the
10 management areas, and I'll go through them briefly, and a number
11 of kind of smaller miscellaneous topics, but also fit into the
whole land management package.

12 We decided that there had to be a land use planning
13 process and that there had to be a planning office with plans
14 developed for the whole of the Nunavut region. The planning
15 office would receive applications from developers and would,
16 based on what was designed for the planning in the area, make a
17 decision as to whether this project was appropriate or not. If
18 it was seen to be appropriate, it would go forward to an impact
19 review process. That process would hold public hearings, would
20 review the project, and depending on what the developer's inten-
tions were and the kinds of terms and conditions that the developer
would be prepared to live with, this board would be able to reject
or modify or accept a project as it stood.

21 We also thought it would be useful that developers nego-
22 tiate what we called Inuit impact and benefit agreements as part
23 of any term and condition of development going ahead, and this
24 includes such things as national parks as well as mega projects,
oil and gas and mining.

25 We also realized that we had to get economic benefits
in other areas within the whole land and resource package and --

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(TAPE 47, SIDE B)

MR. AMES: -- we designed a management body which we called the Nunavut lands authority. It's basically an administrative body that hands out leases and licenses to developers and collects the economic rent which is to be split amongs both levels of government, the Nunavut government, the federal government and the Inuit. We haven't discussed that at the table yet, so it's unclear as to where we will go with that.

Other parts of the land and resource package include a water management board, water management system... We realize that you can't own water but you can have certain rights when it comes to water... rights to clean water, rights to free-running water, access to water, the ability to take resources from that water. So we decided that that was the approach we had to take. So we set up a water board and gave Inuit those kinds of rights. We haven't negotiated that part of the package yet, either, so ... things take a while to come.

We also negotiated topics on national parks, on conservation areas, archeologic sites, outpost camps and municipal lands. In deference to the Australians' concerns this morning on cultural aspects, one of the major contentions of our archeological package was to assure there is protection of archeological sites, that Inuit be involved in any kind of excavation of it and that artifacts that are currently not within Nunavut be returned to Nunavut. We're still at loggerheads as to who actually owns the artifacts. The federal government will not concede that they belong to Inuit but that they are part of the national collection for all Canadians. We also did the same thing with ethnography.

When it came down to the actual identification of lands that people were interested in, we tried to... Well, the federal government tried to constrain us with a number of principles... there was about a ten-page package of the dos and don'ts of land



1 identification and these were not acceptable to us and we said
2 to them, "Okay, before we talk about these principles that you're
3 so interested in, we want to talk about the purpose of land
4 identification. What is the primary purpose for Inuit to own
5 land?" And we got the federal government to agree that the pri-
6 mary purpose is economic self-sufficiency, and with that purpose
7 we were able to negotiate other principles behind it which said
8 that, if the primary purpose is economic self-sufficiency, in
9 order to meet that goal, Inuit have to be able to own lands for
10 reasons of subsurface or mineral value, of renewable resource
11 value, of commercial or industrial value, of conservation value,
12 of areas that were important to people for spiritual and cultural
13 reasons.

14 So we established that, those basic purposes of owning
15 land and then boiled down the federal document to about a page
16 and a half of principles, which certainly doesn't give us every-
17 thing that we want but it gives us the flexibility to be able to
18 negotiate with government for areas that do have subsurface value
19 or areas that are currently held by third-party interests, a whole
20 range of issues. So we tried to provide some flexibility.
21 We're not... The previous settlements have kind of given people
22 a lump sum of land, at least that's my understanding. You've
23 kind of settled on how much land the federal government is pre-
24 pared to turn over and then you kind of carve it up amongst all
25 the communities. In our case, that's not appropriate nor is it
really possible.

26 I think using the parameters of these purposes and
27 principles, that communities on a case by case basis should
28 identify lands that meet their economic self-sufficiency over
29 time and at the end of the day you add up the mileage from all
30 the communities and all the regions and that becomes the sum
31 total. Though we haven't negotiated the process that is required
32 to carry this through.

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1 We have negotiated municipal lands and the primary
2 purpose for negotiating that was to give municipalities, as
3 municipalities, control over their back yard. And the way it
4 stands now, the municipalities will have jurisdiction over wide
5 areas. They will identify the areas in which they need...
6 and these areas shall be identified in such a fashion as to meet
7 their long-term needs of growth. In other words, they have water,
8 quarry rights or recreation... They can select lands for recrea-

9 There's another part of the land and resource picture
10 that, unfortunately, has been lost in other areas and I think part
11 of it is the perception that land claims involves only land. In
12 the case of the Inuit, the offshore is absolutely critical.
13 All but one community in our area is located on the coast and
14 people, I think, derive as much, if not more, benefits, more
15 resources from the sea than from the land areas.

16 The federal government really doesn't have a policy on
17 offshore claims when it comes to dealing with the Inuit. If
18 there's any policy at all, its policy is that it's not on. The
19 federal government has recognized that we do have some rights
20 when it comes to wildlife in offshore areas, but we don't think
21 that that goes far enough. We think that we have rights and
22 interests over seabed resources, over ice areas, and that we
23 intend to negotiate these. In fact, in all our agreements to
24 date that have any... any relation to the offshore, such as
25 planning or impact review or whatever, we always flag it that
this does not prejudice future discussions in offshore talks.

 There could be... Our offshore package hasn't been
fully put together yet and I suspect a large... a lot of it will
turn on how successful we are in negotiating management responsi-
bilities over land. If the mechanisms, the management structures
and so on, are satisfactory to meet our needs on lands, then

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1 perhaps it's just a matter of extending those into offshore
2 areas. If they're not particularly satisfactory or appropriate,
3 then we may have to look at other means of handling our offshore
4 areas.

5 When it comes to the economic package, we kind of have
6 an approach that says, you get it where you can, that we have to
7 be able to receive economic benefits from many, many areas and
8 these benefits have to come in over time. I think the federal
9 government views the compensation package as something that is
10 finite and once it has been handed out, there shouldn't be really
11 any more monies coming in. The federal government isn't happy
12 with the notion of royalties and if they were to negotiate
13 royalties with us, they'd make sure that the royalties were
14 capped.

15 We've tried to cover our economic needs through a number
16 of ways. Certainly land is an important economic asset, as are
17 renewable resources. In areas where we can get subsurface
18 resources, that is a tremendous economic benefit. We're looking
19 at negotiating special employment programs for Inuit involvement
20 in the federal and territorial governments as a means of securing
21 economic benefits. We've tried and have been successful in
22 negotiating Inuit impact and benefit agreements as it relates to
23 development when it comes to the establishment of conservation
24 areas and national parks. When it comes to negotiating these
25 things with outside developers, we're at loggerheads with the
26 federal government right now because the federal government does
27 not want independent arbitration when it comes to settling some
28 kind of dispute between a developer and an Inuit organization
29 negotiating these packages. The federal government believes
30 that the minister should have the responsibility. We're not
31 prepared to accept that.

32 And an area that we're just starting to look at is how
33 can we tap into federal programs in a more comprehensive fashion

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1 and how do we mix these things with our compensation monies?
2 Right now, the federal and territorial governments sit down and
3 negotiate economic development agreements and subsidiary agree-
4 ments and so on, but there's no positions, on the policy advisory
5 committee, for instance, for Inuit to sit there and help form
6 economic policy. There are no positions for Inuit on the manage-
7 ment committees that review proposals for people. We're looking
8 at ways of trying to get people into that system so they can
9 help develop a stronger economic future, one that's more
10 appropriate for the North, and looking at ways of how we can
11 integrate those with monies and economic benefits that are coming
12 in over time.

13 The other area is the social provisions. They are
14 probably the most important aspect of the package. They're...
15 They pale in comparison when you talk about billions of dollars
16 and development and so on. They kind of get lost in the shuffle
17 but it's an absolutely critical area because these are the things
18 that really come down to people at the communities, the major
19 concerns such as housing and health and education and language.
20 Language, I should mention that one way we're insuring that
21 peoples' language rights are looked after is that we make
22 Inuktatuk, along with the other official languages of Canada,
23 as the languages of the business of the boards that we're estab-
24 lishing. So these boards are going to have to operate in Inuktatuk
25 and the minutes, everything, will be done within the Inuit
26 language, as well as the English and French.

27 We're looking at these areas now. We haven't com-
28 pleted the research on it so there's not a great deal I can say
29 about it. There are some other areas that have to be negotiated,
30 such as eligibility in enrollment, processes of land identification,
31 the ratification process, taxation. Taxation is something we're
32 quite concerned about. I understand the Alaskans may have to give
33 up large areas of land in 1991 as a result of taxation laws and

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1 not being able to hold onto it.

2 And we're also looking at corporate structures. At this
3 point in time, Inuit... Well, I should back up a step and say
4 that we do have a development corporation which is a profit-
5 making corporation that was set up to take advantage of business
6 opportunities and to handle the land claims money when it comes
7 out of the settlement. But right now there are other elements in
8 the organization that are questioning following that route and...
9 trying to explore new ideas to see whether there are other appro-
10 priate models that would perhaps better meet peoples' interests.

11 And I guess I won't take any more of your time, Mr.
12 Chairman. That's basically in a nutshell what we've been trying
13 to do with the claims process, how we've approached it and,
14 certainly, there's a long way for us to go. It takes a long time
15 to get this done if you want to get a good settlement. You can
16 have a settlement tomorrow but it depends on what you're prepared
17 to accept and the Inuit are not prepared to accept just anything.
18 They want to make sure their long-term needs are met in terms of
19 rights... in terms of rights and in terms of their management
20 responsibilities.

21 Thank you.

22 MR. BERGER: Thank you, Mr.
23 Ames.

24 I think that I will adjourn for just a few minutes for
25 a coffee break and then I'll confer with some of you and see
how we should most effectively use the remainder of our time.
But I think we do want to hear from the representatives of the
aboriginal people of Australia again and Alf Isak Keskitalo again
before we adjourn.

26 Peter Ittinuar, you wanted to add something?

27 MR. ITTINUAR: Just to conclude
28 the presentation from this table, we... We presented our case
29 in two parts. There are others. Some of our people from other

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1 organizations could not come, for instance the Inuit committee on
2 national issues, which deals with the Canadian constitution and
3 their work in progress. Members from the Nunasi Corporation
4 could not come, which corporationwise has been mentioned a great
deal around the table during the past few days.

5 Perhaps to some people, our proposal seems moderate
6 or compromising while we try to be realistic, first of all in
7 the political climate of Canada and the attitudes from other
8 ethnic groups towards... or, from the largest society towards
9 minorities, and we've tried to deal with it so that we... while
10 our interests are accommodated, there has to be a quid pro quo
11 somewhere, and so this is... keeping this in mind, we've tried
12 to fashion our Nunavut proposal, which is... all of it is really
13 a Nunavut proposal, including what Randy Ames has been talking
about, so that this is acceptable in the best Canadian tradition
while keeping a very Inuk character to the whole... to the whole
case.

14 Sovereignty was mentioned around here a good deal. I
15 think it was Mark Gordon who said sovereignty means having the
16 biggest guns. Well... I think this... that, in a nutshell, is
17 the definition that Randy Ames gave to sovereignty. It is not
18 realistically possible to be totally sovereign, at least in
Canada in that part of the land mass.

19 So thank you very much, Mr. Chairman, and we'll try
20 and field questions if there's time. If not, that's fine.

21 Thank you.

22 MR. BERGER: We'll take a break
23 for coffee.

(HEARING RECESSED)

(HEARING RESUMED)

24 MR. BERGER: All right, Steve,
25 I'll call on you for 30 seconds just to start the ball rolling,
eh?

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1 Let's just begin again. We've got about 45 minutes and
2 what I was going to do is give Steve Kakfwi, of the Dene Nation,
3 about 60 seconds and then we'll hear from the...

(LAUGHTER)

4 MR. BERGER: Well, that's all
5 he asked for. And then we'll hear from the Australian aboriginal
6 people and then I would like to call on Alf Isak Keskitalo of
7 Sami land, and then Charlie Edwardson, who goes back a long way
8 in Alaskan land claims, would like to say something, and then
9 Douglas Sanders, who started the ball rolling on Tuesday, and
10 the Dalee Sambo, of the ICC, and then I think, by that time,
11 the people with their bingo cards will be coming into the hall
12 and we'll have to leave.

13 So, Steve, you can start off now, if you would.

14 MR. KAKFWI: Okay, I asked for
15 a little bit of time just to... on behalf of our delegation from
16 the Dene, to thank the people that organized this conference and
17 for the other delegations from other parts of the world, for the
18 Alaskans for allowing us to visit, and more or less just say
19 thank you very much on behalf of the Dene. We enjoyed it very
20 much and I think this sort of exchange should continue more
21 often, perhaps, in the future... and just to thank all of you.

22 MR. BERGER: Shorty O'Neill?

23 MR. O'NEILL: Well, first,
24 an advertisement on behalf of our host here, the indigenous
25 people of this country. At 6:10 p.m. today, the Anchorage
Community Center, in Room K201, there's going to be a bit of a
cultural thing on tonight put on by the local people here and
we'll all be there and I think probably we can say our goodbyes
and thank yous and everything at that place. I might save some
time here.

I've got a couple of things that have bothered me
during the week, pretty much so, and I think probably the strongest



1 statement and the statement that makes the most sense to me that
2 I've heard all week came just before lunch from Mike Albert. And
3 I think it's something that we've got to look at and take very
4 much note of.

5 What we've got to remember is that any agreements,
6 treaties, or whatever we make at the present time, is not only
7 affecting us right now. You know, we're... as an indigenous
8 people, we're one of the oldest people in the world. We're
9 timeless people. We have time. We have time to sit down, think
10 about things, talk between each other, and come up with the best
11 deal that we can for our children and their children. We are
12 only visitors here and the lands that were handed down to us
13 from our ancestors, that have been handed down since the beginning
14 of time, and we're only guardians over those lands. Our job
15 as a people is to insure that those lands and all the life that
16 live on those lands continue so that we have a heritage, we have
17 something for our children. And I don't care if 50,000 mining
18 companies and 20,000 governments are on our back to give up that
19 land, to give up our rights over the land. I think if we sell
20 our children out, then we can never hold our heads up.

21 One of the things... I've been around the world many
22 times as my position in the organization I work for. I've talked
23 to indigenous peoples throughout the whole world and every time
24 we sit down, we never talk about ourselves. We talk about our
25 children and what we must leave for them. And if we sell them
out, then we have no right in future lives, coming back to that
land. That's what we must think about.

 Our people talk about we all have a place to be born
in, we all have a place to die in. When our spirit goes back to
where it comes from and then comes back in the next life, we must
have a place to reborn ourselves in, you know? I'm a bit of a
selfish sort of a guy, myself. We believe that we come back in
the fifth or sixth generation through our family line and that's

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1 how we go back to our ancestors. And what man is going to sell
2 himself out so that he has no place to come back to? That's what
3 we've all got to think about.

4 There have been many other things that have... have
5 worried me, the constant reference to ethnic groups. While I'm
6 in Alaska, I make up a very small ethnic group here. There's
7 three of us. When we go home, we're an indigenous group. We
8 belong to a nation of indigenous people because we belong to that
9 country.

10 The other thing I was very concerned about was the
11 constant reference to dissidents and I talked to Mark Gordon
12 last night and now I feel happy that I can talk here because I
13 did talk to him last night about this... the next couple of things
14 I'm going to mention. If I hadn't talked to him, I wouldn't have
15 mentioned it here because I like to let people know what I'm
16 talking about.

17 But there was a constant mention of 30 percent of his
18 people were dissidents. How can 30 percent be dissidents? Dissi-
19 dent is one person who disagrees with everybody else. Yesterday
20 when a question was asked to our brother from the Yukon, he said
21 that three bands were dissidents. That's one quarter of those
22 people. They cannot be dissidents. They're a quarter of the
23 people who are not agreeing with the agreement as it is, and
24 if it's given time, maybe you're going to have three-quarters of
25 the people, maybe 99 percent if it's explained properly. And
I think that's what we've got to think about. We've got to
think about all those things.

The other reference, and I heard it again this after-
noon was to the guy with the biggest gun has sovereignty. Well,
we know about the big guns. The people in the Pacific region
here in Alaska know about the big guns. There have been over
220 atomic tests in the Pacific region, destroying our lands and
directly affecting our people, nine in my country, 66 in Micronesia,

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1 over 100 in French Polynesia, and France, Britain and the U.S.
2 have the big guns.

3 And effectively, that type of talk wipes out any mention
4 of lands for any of the people in the Pacific who are not inde-
5 pendent today.

6 The other thing about a lot of the agreements, and a
7 lot of people have got to think about that... The British, when
8 they invaded our country learned from what happened in America.
9 There has never been a treaty or an agreement made with aboriginal
10 people because of the problems they caused in America. In 1972,
11 when Justice Woodward made his report on the Northern Territory
12 land right bill, he went to Canada. He studied the White Paper.
13 He talked to both Canadian governments and indigenous governments
14 and then came back and put up the Northern Territory land right
15 bill. And we got certainly a worse deal in that than some of the
16 deals which were made in Canada, which were pretty bad when I
17 look at them, from my way of thinking anyhow.

18 And certainly, Sheldon today asked us what effect would the
19 deal here in Alaska have affects in Australia? And I bet you any-
20 thing you like, the Australian government has experts looking at
21 that right now, before they do any deal for us. And every deal
22 that's done, the other governments are looking at it. So every
23 time a deal is done somewhere, other indigenous people are going
24 to suffer because of that. And, you know, again we heard from
25 the Yukon yesterday that the deals already done have had bad
effects on that agreement. And I think they are things that people
must look at.

We, at the present time, are going through an inter-
national war process. That's something I haven't heard much of
here today. There are international laws. Countries do have to
comply with them. There are international agreements which most
of the North American countries have already signed, and they do
have to stand by them. And I think one of the things that we have

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1 to do internationally, indigenous people internationally, is stop
2 listening to our lawyers for a kickoff and start talking to each
3 other and uniting and start to work on the international law
4 scene and put some heavy stuff in there and see the best deal.
5 As adult people, let's put our heads together. Let's put our
6 minds together, adult minds respecting each other and respecting
7 what we can get for our children.

8 I think I'll leave it there and I'll hand it over to
9 Maureen.

10 MR. BERGER: Maureen Kelly.

11 MS. KELLY: I won't elaborate
12 too much on what I have to say because my brother over here says
13 what we feel in our hearts.

14 As a visitor here, I'd just like to say thank you to
15 the generous people of the indigenous nation for inviting me
16 here and I hope that what I learned here will apply to my people
17 when I get back.

18 Thank you.

19 MR. BERGER: Thank you, Maureen
20 Kelly. Alf Isak Keskitalo?

21 MR. KESKITALO: Thank you.

22 I'm going to try to summarize in some way some thoughts
23 and reflections that I've been able to gather together here in
24 the course of these days.

25 First of all, I would say that it has been a very
good and intense experience to be here, to hear about concretely,
how and what has happened in the history and negotiation of land
claims and of the perspectives for the future that are drawn up.

I would like to point to one particular thing that has
... that I've been seeing as very important. It's the fact that,
in North America at least, and as compared to my homeland, Sami
land, there is seemingly a process... there are two processes,
seemingly moving in the opposite direction. Here it seems to be



1 that the governments of Canada and United States have expressed
2 that there is a sort of aboriginal title, and then the land claims
3 and the settlement of these claims seem, to some extent, to have
4 ... in serving, to extinguish those titles. As we experience it
5 at home, it's first of all a very hard attempt to formulate our
6 own history and background inside a society in such a way that it
7 can be made treatable for the authorities, that we are eligible
8 for a process that can be referred to a concept of aboriginal
9 title. It has, so to say, to do with this sort of... what one,
10 in rough terms, could call a stealing of history, a subjugation
11 of history that has taken a lot of research and consciousness-
12 making in order to erect again in the last decades because it's
13 a process that's taken so long time for several hundred or a
14 couple of thousand years, even, in the contact between the Sami
15 people and the neighboring large peoples.

16 Since there has been posed a concrete question as for
17 what impression the ANCSA agreement has made, I would like to try
18 to answer it very shortly. The first time we saw the book, so
19 to say, it occurred to me some sort of a fabulous experience that
20 there had been somewhere a settlement on land rights, but imme-
21 diately when some of us started to discuss it, or to discuss the
22 relevance of such a land settlement, which it might have for
23 us, it occurred that the so-called checkerboard effect seemed
24 unnatural in a sense, at least to us. It also seemed unnatural
25 that it was probably, it seemed, limited in relation to the whole
area of Alaska. It also seemed unnatural that the eligibility
to rights was formed in... in the form of shares and stocks,
that possibly later could be traded.

I say this quite frankly, that's what we've been talking
about and since it was a direct question, so is the impression
we had. So... But in relation to the ANCSA settlement to the
James Bay and Northern Quebec settlement, to the plans of Nunavut,
the COPE agreement, which we have been able to look into later,

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1 they have, so to say, a double effect on our situation. The first
2 effect is that it's some sort of encouragement in the fact that
3 there is defined a sort of valid concept of aboriginal right on
4 which the government has to negotiate in some sense. But, of
5 course, then there is the sort of negative assessment of the fact
6 that when negotiations take place, there is so considerable a part
7 of what seemed naturally to be included in a settlement and so
8 far has not occurred. And we have been concentrating very much
9 on the question of subterranean resources, the rights, revenues,
10 so on relating to them.

11 On the other hand, what has been a sort of profit that
12 we have drawn from this in the process that's going on is the
13 fact that it has been possible to start negotiation... negotiation
14 of Sami claims in two boxes, one constitutional and political box
15 ... and the other which is a land claim box, and press forward
16 the constitutional and political box first so that any amendment
17 of the political status of Sami people is bound to influence the
18 settlement of land claims and if there is no amendment of our
19 political status, then, of course, we are very free to define
20 what type of stance we are taking to land claims questions.

21 On the whole, I say that both... We are following very
22 closely what's happening in Australia, New Zealand, North America.
23 But I would say that it's important to draw attention to the
24 fact that this is related to a very large question of human
25 rights. It's related to the case of indigenous peoples who cannot,
because of almost deadly suppression, articulate themselves around
the world and therefore, it is the responsibility for aboriginal
people who can and are allowed to express ourselves to take part
in the process wherever we can to promote the human rights movement
in that direction.

And I'm, for instance, pointing to what has been done
towards covenants on the rights of indigenous peoples. I'd like
to mention that this has been, currently... We try currently to



1 do something on this in Norway in cooperation with Nordic and
2 Norwegian authorities on, for instance, the foreign department
3 of Norway. It sounds, perhaps, strange that we are able to work
4 together with the government in this sense but I think that we
5 will continue working together with the government in this sense
6 even if none of our claims ever are acknowledged, because we see
7 it so important to contribute what we can, even if it might not
8 be very much, to the international promotion of human rights
9 and indigenous rights.

10 And I think I'll try to conclude there and I'll thank
11 Justice Berger for the invitation opportunity to come here. I'll
12 also thank Inuit Circumpolar Conference, who has inaugurated
13 this process. Thank you very much. Thank you all for your
14 company and presence.

15 MR. BERGER: Thank you, Alf
16 Isak. We all appreciate your coming to represent the people of
17 Sami land and we hope that the connection... it already exists
18 but I hope that your presence here will strengthen that connection.

19 I think we have time now to hear from two
20 Alaskans, Charlie Edwardsen, Junior, and then Dalee Sambo.

21 MR. EDWARDSEN: First of all,
22 I would like to extend your welcome to Alaska. Alaska is a
23 very distinctive place for the simple fact that there are three
24 political instrumentalities in Alaska. One is the Native
25 administration have survive Alaska Native land claims for the
simple fact that the Alaska Native land claims was not a juris-
dictional act and that sovereignty, limited sovereignty is in
session, federated by the chaotic American Indian law and our
experience today is amalgamation of all of these struggles of
territorial invasion that has occurred from the Anglo-Saxon
community. However, since the Inuit Circumpolar Conference had
their first meeting, we have made some successes. We have not
been shiftless. As you well know, the Alaskan Eskimo Whaling

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1 Commission and the Eskimo whaling was under assault from the
2 world. We now have secured, under Inupiat administration, a world
3 model in securing management of the bowhead specie, which gives us
4 extra territorial jurisdiction.

5 And since Alaska Native land claims was not a jurisdic-
6 tional act, although that there are a lot of insecure Alaskans
7 that feel that ANCSA had solved everybody, I would like to wake
8 them up again and say that it is far from over, and that... that
9 the constitutional forum of the United States is open to Alaska
10 Native people and we are now engaging in a boundary dispute between
11 United States of Alask... United States of America, state of
12 Alaska and the Inupiaq. We are going to have a clearer definition
13 of what the boundary of state of Alaska is, who is state of
14 Alaska, what does it have, what did it disclaim, who is United
15 States, and where is a shared responsibility, a shared jurisdic-
16 tion is... and we feel that, in this boundary between Canada and
17 United States, across our common sea, the Beaufort Sea, we would
18 like to extend the claim to Canada beyond the 100 mile Canadian
19 waters act because for the fact that we can inform the Canadians
20 that the Inuvialuit have used more than 100 miles of water.

21 So the extra territorial use and occupancy of our sea
22 lanes, sea rights, have not been surrendered by Alaska Native
23 Land Claims Settlement Act, and so... And one must remember that
24 Alaska Native Land Claims Settlement Act is subject to the will
25 of the majority because it is a leg --

(OVERLAP TAPE NUMBER 13)

MR. EDWARDSSEN: -- legislative
mandate. It is not a negotiated settlement. It was lobbied
by the forces of a body who is easily influenced by something
else. And because of that, it is open for amendments. Nothing
in Alaska Native Land Claims Settlement Act is sacred. And so...
So Congress was even unsure of itself, of its monster that it had
created for the simple fact that they had found... an opportunity

1 for a 1985 report. So I feel that the forum and the evolution
2 of this settlement and some of the planned disorganization of...
3 Here is a settlement package in the whirl that had identified
4 billion dollars without defining revenue. The village corporation
5 and the regional corporation are still fighting who owns what.
6 And so the subsurface estate was split up in half and the corporate
7 model... corporate model has really devastated the cultural
8 references of all of the Native communities and... And a proxy --

(TAPE 48, SIDE A)

9 MR. EDWARDSSEN: -- is far less
10 than a democracy. It only deals with bottom line. It does not
11 deal with nobody else's rights. It sells them out. So there
12 is no protection in corporations. But as individual tribes with
13 sovereignty, as a member of the human phylum, we do have human
14 rights and it is in this context that your right in Australia,
15 your right in Rankin Inlet and my right in Prudhoe Bay must not
16 be destroyed. And it is this shared commonality that we are
17 part of the greater human effort and we have not chose to commit
18 suicide.

19 And why this is important, because Congress of the
20 United States, with the aid of some Alaskan leadership, committed
21 legislative infantcide, that it saw in its wisdom for people to
22 cease to exist without their permission. And I believe, since
23 1948, the U.N. charter, the United States of American had to
24 have permission from the U.N. for Alaska to become a state so
25 Eskimo-Indian sovereignty is far from extinction.

And so I... I hope that we can go back to Congress and
to create and define a policy that is constitutionally applicable,
uniformly across the American constitution. Right now, the
Alaska Natives and the Indians in the Lower 48, they are denied
legal representation. If the secretary of Interior does not
approve your attorney's contract, you may have a legal problem
with the United States, if he doesn't have an approved contract,

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1 you can't spend tribal resources to pay the guy and the authoriza-
2 tion is depended upon the secretary... of Interior.

3 And this problem of not able to have independent counsel
4 has diminished the value of a constitution for the simple fact
5 that they have created a structural... injustice which cannot
6 be redeemed by dollars alone. And so, I feel that if you ask the
7 rest of the villages, I believe that the direction of the commis-
8 sion should consider Alaska Native people restoration act where
9 these basic federal preemption law takes hold and for those
10 Alaska Natives that wish to abandon their tribal relations, I
11 would like to refer them to a federal statute where this is possible.

12 The 1991 date is already here. More damaging to Alaska
13 Natives was the federal lands policy management act of 1976.
14 What that did was, it took statutory rights away from the Alaska
15 Native people, meaning that they must have some Fifth Amendment
16 rights if these rights are statutory, meaning that the core
17 township of a village is a valid existing right, that it is not
18 vacant, it is appropriated. And when state of Alaska, the Bureau
19 of Land Management, and the village corporation stole this from
20 the Native councils of these IRA communities, the secretary of
21 Interior, the director of Bureau of Land Management is susceptible
22 to a legal mandamus for trespass.

23 So to this day, I have informed the Bureau of Land
24 Management, according to their land regulations for ANCSA for the
25 simple fact that they didn't fool me then during the process,
were they going to fool me after the legislation was completed
because I was the only guy that went through the process?

And... So... The rights that the Alaska Native people
have derived from the Fifth Amendment and they must be protected.
And it is this little string, is Fifth Amendment unilaterally
applicable to all Americans in United States? I have a court
opinion that says no.

And... And so... Even... Even with that, I feel that the



1 ... that the management, that the whaling management that the
2 Eskimos have developed for the world, is a worthy model of
3 aboriginal extra territorial jurisdiction throughout the world
4 on the species that we hunt on. And so, instead of our caring
5 pasture being in the North, we also have a southern pasture, and
6 we wish for the rest of the world to be equally concerned about
7 the protection.

8 And the Inuit Circumpolar Conference has declared a
9 nuclear-free zone in the Arctic. We are not alone for the
10 simple fact that... that the Russian and the American administra-
11 tion have seen profitably for their own constituency to make more
12 arms, thus making world peace more vulnerable and we feel, even
13 with that, that in the energy development... that we Native people
14 have a genuine opportunity to utilize our national forum to
15 get into economic engagement such as, I'm going to propose to the
16 secretary of Interior that we amend the pipeline permit for
17 American Indians along the trans-Alaska pipeline corridor receive
18 contracting of the pump stations so that foreign state enterprises
19 such as Sohio, who owns 54 percent of Prudhoe Bay, takes his money
20 away from Alaska because Alaska Native people and the state
21 legislature refuse to own the transportation system. Americans
22 are losing 330 million bucks a year in fees which should have
23 remained in Alaska, and we feel that we can utilize the President
24 Reagan's mandate to work on government-to-government basis and
25 the greatest capital formation that is available to the Alaska
Natives and the Canadian Indians and the Inuit is the trans-
Alaska pipeline corridor for the simple fact that there is a
treaty and in the... in the treaty... with Canada would enable
us to have power contracts with our Canadian counterpart and
making the buy-American act meaningful. And everybody has talked
about unemployment. Well, I want to remind Alaskans that this is
a political year and that pipeline that they have in the trans-
Alaska pipeline is Japanese pipe, so it's not... It's an

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1 un-American pipeline.

2 MR. BERGER: I thank you,
3 Charlie. Dalee Sambo, of the Inuit Circumpolar Conference.

4 MS. SAMBO: Well, I'll be
5 speaking for myself. You... It's a hard statement to follow...
6 Etok.

7 I just wanted to make a very broad observation. I've
8 had the benefit of listening to the entire overview hearings from
9 the beginning, February 27th, on up to this date. It's been an
10 enlightening experience.

11 Throughout the three weeks, there has been reference
12 to sovereignty, independence, self-government, self-determination,
13 self-sufficiency, full autonomy, self-control, nations within
14 a nation, states within a state, government-to-government rela-
15 tions. I think that whatever terms we use and whatever approaches
16 we use within our own respective countries, we're all working
17 towards the same end. The approaches may be very subtle. They
18 may be very passive. They may be very aggressive and extreme
19 and radical, but they're all in an effort to the same end, the
20 end being a security of a land base, security of the resources,
21 self-government, self-control, all of those things.

22 And I think that the bottom line is that we're all
23 moving and making basic efforts to preserve ourself as a race,
24 to be kept from being wiped off the face of the earth. There
25 are some basic underlying problems, at least that was noted last
week in the second week of the overview hearings about the...
Well, the underlying problems here within the United States.
The U.S. government, on the federal level, having plenary power,
having unilateral power over Indian affairs, the affairs within
Canada. I think that there's one area in which Canada seems to
be ahead of the United States and that is in addressing aboriginal
rights on a constitutional level, putting it within the framework
of the constitution. That needs to be done within the United



1 States. It needs to be done on a national level throughout, but
2 moreover, the work has to be done as Shorty O'Neill has mentioned
3 and Alf Isak Keskitalo has mentioned, on an international basis.
4 We need to lock arms internationally.

5 I think that... The most important aspect of all of these
6 processes, whatever approach you choose to take within your own...
7 within your own arenas, whatever arena is appropriate for you and
8 wherever you come from, the most important aspect of all of these
9 processes is to simply exercise and demonstrate those rights,
10 exercise and demonstrate those powers. That's... really the, I
11 think, the true essence of being sovereign or having self-control
12 or hav... being independent, have self-governments, to exercise
13 and demonstrate them whether the U.S. government, the Canadian
14 government, the Australian government recognizes is or not.

15 Thank you.

16 MR. BERGER: Doug Sanders, you
17 started the discussion off on Tuesday so we'll give you the last
18 word, except for the chairman.

19 MR. SANDERS: Thank you, Mr.
20 Chairman.

21 I was in touch by telephone this morning with Jose Carlos
22 Morales, the president of the World Council of Indigenous Peoples.
23 He asked that I convey to you and to everyone here his regrets
24 that he was not able to be here this week and his best wishes for
25 the success of the conference.

I was struck by Don Mitchell's question before lunch, as
I think many were. The question as to whether things like ANCSA
should be understood simply in terms of a short-term transaction
under pressure. ANCSA was necessary to get access to the Prudhoe
Bay oil discoveries rapidly and therefore there would be no
political, legal, moral or other kind of will to reopen or re-
consider the questions that are involved.

It seems to me that it is possible to reopen questions

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1 of settlements of indigenous claims. There are a few examples
2 that can be cited easily. The Menominee restoration would be
3 the best known in the United States. Secondly, the terminationist
4 aspects of the allotment policy under the Dawes allotment act in
5 the United States was ended, legislatively reversed, by provisions
in the Indian reorganization act of 1934.

6 In British Columbia, the issue of the cutoff lands has
7 been successfully reopened and in both New Zealand and Japan there
was a reconsolidation of indigenous lands in the 1920s.

8 Each of these examples are examples of the reopening
9 of indigenous claims or settlements in contexts that were not
10 legally necessary. There was no statement or admission by the
11 nation state involved that the earlier matters being reopened or
12 redone had been legally deficient the first time around. There-
fore, other factors were dominant.

13 I have tried to do a bit of an analysis of what I think
14 the factors have been in a number of jurisdictions in which there
15 have been land claims settlements and in some in which there have
16 not. It's resulted in a nine-page paper. I had some copies made
17 but it appears page three is missing, so you will get a... a
18 full set of the paper. This is simply an attempt to work out a
19 typology which would show the factors that have been important.

20 And I would just like to suggest that, in terms of
21 these settlements, there's certainly more factors involved than
22 the short-term goal of getting access to the Prudhoe Bay oil or
23 the sites for the James Bay hydroelectric project. You, yourself,
24 Mr. Chairman, just before lunch commented that there were other
25 examples in which an imminent project was not involved.

So one could pose as a second factor a concern with long-
term economic development, which is certainly very real in settle-
ments like COPE and the CYI settlement.

There is, thirdly, a concern with stability on the
part of many of the governments. They recognize that they... in

1 the... what they have classified as hinterland areas in which
2 there are large populations of indigenous people, that there has
3 been a long-range process of marginalization and economic dis-
4 location in the areas and the possibility of violence, of threats
5 to the political stability of the region are real. It's a concern
6 which is often not articulated by government. They don't want
7 to admit that that is a concern but it's very frequently there.

8 Fourthly, I'd suggest that sometimes in these settle-
9 ments, there are elements of planning. In some ways, one could
10 look at the James Bay and Northern Quebec agreements and character-
11 ize them not as land claims settlements at all, but as efforts
12 of regional planning of social, political and economic character
13 for a region in which relatively little coherent planning had
14 gone on before.

15 I must say, looking at Alaska, I find it very difficult
16 to characterize ANCSA in planning terms but certainly there were
17 certain kinds of elements of that.

18 Fifthly, there are certain kinds of moral concerns.
19 The nation states within which we live are... can be described at
20 least as morally pretentious. They are concerned with image.
21 They hold themselves out as being moralistic.

22 Norway has gone to some efforts to establish a benevolent
23 international image by making indigenous people part of their
24 foreign aid program. This has given certain openings for Sami and
25 others to point out the internal contradictions between what
26 Norway says about Bolivia and what Norway says about Inner Finmark.
27 The senate committee report from Australia of last fall lists as
28 one of the interests of the government of Australia in some kind
29 of compact with aboriginal people... they make this statement,
30 "Australia's ability to speak on apartheid and human rights
31 internationally is undercut by its treatment of aboriginals."
32 Australia was very concerned with getting the chairmanship of
33 the security council a few years ago and was convinced that there

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1 was a high possibility of a Third World veto stimulated by
2 aboriginal protests in Australia. And whenever Canada has been
3 criticized internationally, it is... on human rights questions,
4 it has always been on questions of Inuit and Indian policy. In
5 fact, I like to point out that we have been criticized by some
6 of the most unsavory governments in the world. Canada has been
7 criticized by Hitler, George Wallace and South Africa on its
8 Indian policy. If we are morally pretentious, as I think we are,
9 we find that extremely uncomfortable.

8 Oh, we now have page three. Thank you, Don.

9 And finally, and I've deliberately left it to the last
10 of the list, not because of Shorty's comments about the role of
11 lawyers, but because that's where I put it, and that's legality,
12 that you do have formal contradictions within the systems which
13 allow, at least in some countries, the courts to play some role
14 in stimulating political movements and that is, I think, the
15 relationship that has occurred in Canada and the... But the...
16 The loss of the first major land rights case in Australia, a
17 very serious loss, technically, in terms of the judgment of the
18 Australian court, has obviously not ended the questions of
19 aboriginal rights within Australia. In many ways, the reasoning
20 of the court is almost irrelevant to the political struggles that
21 have gone on since then and have not prevented some significant
22 innovations since that time.

19 And so I suggest that the range of factors that are
20 involved in these questions are not the simple, short run issue
21 which Don Mitchell posed in his question before lunch. It isn't
22 that simple. Things can't be reduced quite that dramatically.
23 If they could be, I don't think any of us would be here today.

23 Thank you.

24 MR. BERGER: Thank you, Doug,
25 for those thoughtful remarks.

Well, let me just say a word or two in closing this

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1 three weeks of overview roundtable discussions by thanking you all
2 for your attendance, thanking the media for their attendance and
3 thanking the public for their attendance.

4 And I would like, once again, to thank the Humanities
5 Forum of Alaska for sponsoring the... overview roundtable discus-
6 sions. Ron Scollon, the chairman, Andrea Helms, who has been
7 attending this session for the forum's statewide committee, and
8 Gary Holthaus, executive director. I'd like to thank Jim Sykes
9 and Tim Buckley for their audio recording at the University of
10 Alaska Instructional Telecommunications Services, the North
11 Pacific Rim, Incorporated, the North Slope Borough and Alaska
12 Independent Public Television for their video taping of the
13 overview.

14 I would like to announce, as well, that the charter
15 flight to Whitehorse and Yellowknife is leaving at 6:00 a.m. and
16 be at the door of the Westward Hilton at 5:30 a.m. Now, that's
17 a.m. and...

18 (LAUGHTER)

19 MR. BERGER: The only other thing
20 I want to say to all of you is that --

21 UNIDENTIFIED: Point of order,
22 Mr. Chairman?

23 MR. BERGER: Yes?

24 UNIDENTIFIED: Point of order.
25 Being the Native representative at this table and having had the
order brought down by my colleague here, I'm going to amend that
to 7:00 a.m.

MR. BERGER: All right, 7:00
a.m. but I guess that means be at the door of the Westward Hilton
at 6:30 a.m.

Could I just refer to Mike Albert's testimony? I
think Shorty was right in saying that all of us were struck by
what Mike Albert said this morning and Charlie Edwardsen said,

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1 "Ask the villages." Well, that's what the commission is about.
2 We've had three weeks of talking here in Anchorage and it's been
3 good talk, good discussion. I've gained an awful lot from it and
4 I hope each of you has gained a lot from it also.

5 But this commission will now spend the rest of the
6 year holding meetings in the villages of Alaska. There are 200
7 villages. We're going to try... Indeed, we are going to go to
8 villages in every region and we are going to give everybody at
9 the villages we visit an opportunity to speak on all of the
10 questions that we've been concerned about here these past three
11 weeks.

12 We hope that in the fall we will have an opportunity
13 of holding additional roundtable discussions on some issues
14 specific to Alaskan concerns and then, when the village meetings
15 are completed, as I expect they will be early in 1985, we will
16 be writing a report that will be made public in the summer of
17 1985 and will, I hope, give to Alaska Natives the means of plan-
18 ning their future for themselves, of charting new directions for
19 themselves. I hope that report will, as well, be of use to
20 aboriginal people in other countries and, if I may say so, perhaps
21 to their governments also.

22 The meetings here have been fascinating in a way. We
23 saw how ANCSA was developed back in the early '70s. We saw how
24 it's unfolded. We saw how the Inuit and the Cree of James Bay
25 and Northern Quebec looked at ANCSA, adopted some features, re-
jected others, then the Inuvialuit of the Western Arctic looked
at James Bay and Northern Quebec, incorporated some features of
that settlement in their own agreement, and then we heard yester-
day how the Yukon Indian people have developed their own agree-
ment just this year and how they had looked to other agreements
and come up with their own ideas.

I think it is important to note that all of these
experiences have now been brought back here to Alaska and now that

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1 Alaska Natives are reviewing their land claims legislation, it is
2 appropriate that Alaska Natives should gain insights from those
3 who learned from their experience over the past 12 years.

4 I'm especially grateful that we had representatives
5 here from the Aboriginal people of Australia. I think we all were
6 struck by how far they had gone, how much they had achieved since
7 1967. It is a remarkable story and, while they are by no means
8 satisfied with the progress made, it did impress me how much they
9 had achieved in so short a time.

10 We expressed our gratitude to Dr. Robert Petersen of
11 Greenland for attending this morning and I have already expressed,
12 as I wish to do again, my appreciation to Alf Isak Keskitalo for
13 attending to represent the people of Sami land.

14 I want to thank those who wrote papers for the overview,
15 Walter Parker, who's been with us throughout, Douglas Sanders,
16 who's been with us this week, Ann Fienup-Riordan, who was here
17 for the first week, and Joe Jorgensen who came for the second week.

18 I hope that we will all be seeing each other again. I
19 wish you all a safe journey to your indigenous homelands and I
20 hope that we will see each other again soon.

21 So I declare the meeting adjourned.

22 (HEARING ADJOURNED)

23
24
25
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C E R T I F I C A T E

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

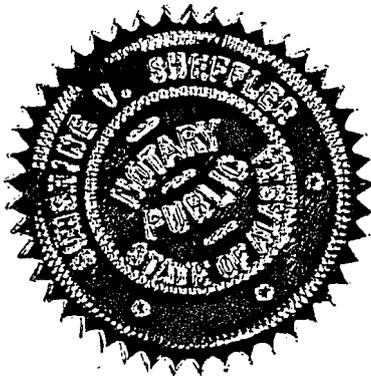
4 I, Sunshine V. Sheffler, Notary Public in and for
5 the state of Alaska, residing in Anchorage, Alaska, and Certified
6 Electronic Court Reporter for Accu-Type Depositions, do hereby
7 certify:

8 That the annexed and foregoing pages numbered 1229
9 through 1338 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 17th day of April, 1984.



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

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