

ALASKA
HISTORICAL LIBRARY

200
Aug 85

TRANSCRIPT OF PROCEEDINGS

ROUNDTABLE DISCUSSIONS

ANCSA & 1991

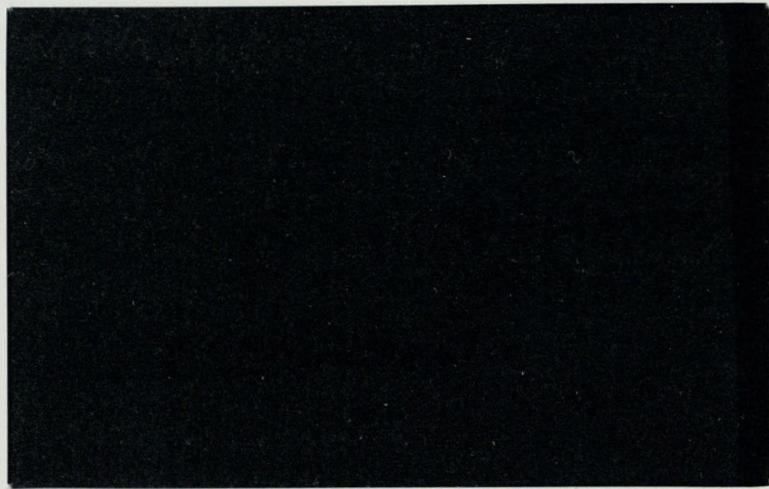
VOLUME XXI

ANCHORAGE

NOVEMBER 15, 1984

ALASKA NATIVE REVIEW COMMISSION
HON. THOMAS R. BERGER
COMMISSIONER

KF
8208
A46
1984



TRANSCRIPT OF PROCEEDINGS

ROUNDTABLE DISCUSSIONS

ANCSA & 1991

VOLUME XXI

ANCHORAGE

NOVEMBER 15, 1984

Transcripts of the Alaska Native Review Commission are produced in two series. Those in Roman numerals are for the Roundtable Discussions. Those in Arabic numbers are for the Village Meetings.

All original transcripts, audio tapes and other material of the Alaska Native Review Commission are to be archived at the Elmer E. Rasmuson Library, University of Alaska, Fairbanks, Alaska 99701.

Acknowledgement: This Roundtable was made possible by a grant from the Alaska Humanities Forum and through the Gifts and Matching Program of the National Endowment for the Humanities.

TABLE OF CONTENTS
NOVEMBER 15, 1984

1	<u>EXPLANATION</u>	<u>PAGE</u>
2	Mr. Berger Speaks-----	2090
3	Mr. Fessler Speaks-----	2090
4	Mr. C. Johnson Speaks-----	2091
5	Mr. Berger Speaks-----	2094
6	Mr. Fredericks Speaks-----	2094
7	Mr. C. Johnson Speaks-----	2094
8	Mr. Berger Speaks-----	2095
9	Mr. Price Speaks-----	2095
10	Mr. Berger Speaks-----	2096
11	Mr. Case Speaks-----	2096
12	Mr. C. Johnson Speaks-----	2096
13	Ms. E. Johnston Speaks-----	2097
14	Mr. Berger Speaks-----	2097
15	Mr. Price Speaks-----	2098
16	Mr. Berger Speaks-----	2098
17	Ms. E. Johnston Speaks-----	2098
18	Mr. Price Speaks-----	2099
19	Ms. E. Johnston Speaks-----	2099
20	Mr. Berger Speaks-----	2099
21	Mr. C. Johnson Speaks-----	2099
22	Mr. Berger Speaks-----	2100
23	Ms. E. Johnston Speaks-----	2100
24	Mr. Berger Speaks-----	2101
25	Mr. Fessler Speaks-----	2101
	Mr. Price Speaks-----	2101
	Mr. Berger Speaks-----	2103
	Mr. Fessler Speaks-----	2103
	Mr. Price Speaks-----	2104
	Mr. Fessler Speaks-----	2104



PAPERWORKS

330 E. 4th Ave., Suite 201

Anchorage, Alaska 99501

(907) 274-4833

	<u>EXPLANATION</u>	<u>PAGE</u>
1		
2	Mr. Berger Speaks-----	2104
3	Ms. E. Johnston Speaks-----	2105
4	Mr. Fessler Speaks-----	2105
5	Mr. Berger Speaks-----	2106
6	Mr. Fessler Speaks-----	2106
7	Mr. Price Speaks-----	2106
8	Mr. Fessler Speaks-----	2107
9	Mr. Price Speaks-----	2107
10	Mr. C. Johnson Speaks-----	2107
11	Mr. Berger Speaks-----	2108
12	Mr. Dementieff Speaks-----	2108
13	Mr. Fessler Speaks-----	2108
14	Mr. Price Speaks-----	2109
15	Mr. Berger Speaks-----	2109
16	Ms. E. Johnston Speaks-----	2109
17	Overlap Tape, Side B-----	2109
18	Tape 5, Side B-----	2109
19	Mr. Dementieff Speaks-----	2110
20	Mr. Fessler Speaks-----	2110
21	Mr. Berger Speaks-----	2110
22	Mr. Price Speaks-----	2110
23	Ms. E. Johnston Speaks-----	2111
24	Mr. Price Speaks-----	2111
25	Mr. Berger Speaks-----	2112
	Mr. Dementieff Speaks-----	2112
	Mr. Fessler Speaks-----	2112
	Ms. E. Johnston Speaks-----	2112
	Mr. Berger Speaks-----	2113
	Mr. Case Speaks-----	2113
	Mr. Fessler Speaks-----	2113
	Mr. Fessler Speaks-----	2114



PAPERWORKS
 330 E. 4th Ave., Suite 201
 Anchorage, Alaska 99501
 (907) 274-4833

	<u>EXPLANATION</u>	<u>PAGE</u>
1		
2	Mr. Case Speaks-----	2114
3	Mr. Berger Speaks-----	2114
4	Mr. Berger Speaks-----	2115
5	Mr. C. Johnson Speaks-----	2115
6	Ms. E. Johnston Speaks-----	2115
7	Ms. M. Johnson Speaks-----	2115
8	Ms. E. Johnston Speaks-----	2116
9	Mr. Berger Speaks-----	2116
10	Mr. C. Johnson Speaks-----	2116
11	Mr. Berger Speaks-----	2117
12	Mr. Price Speaks-----	2117
13	Mr. C. Johnson Speaks-----	2118
14	Ms. E. Johnston Speaks-----	2118
15	Mr. Berger Speaks-----	2118
16	Mr. Johnson Speaks-----	2118
17	Mr. Price Speaks-----	2119
18	Mr. Berger Speaks-----	2119
19	Ms. M. Johnson Speaks-----	2120
20	Mr. C. Johnson Speaks-----	2120
21	Mr. Berger Speaks-----	2121
22	Ms. E. Johnston Speaks-----	2121
23	Mr. Berger Speaks-----	2122
24	Mr. Garber Speaks-----	2122
25	Mr. Berger Speaks-----	2123
	Mr. Strong Speaks-----	2123
	Mr. C. Johnson Speaks-----	2123
	Mr. Strong Speaks-----	2124
	Mr. Berger Speaks-----	2124
	Mr. Anders Speaks-----	2124
	Mr. Berger Speaks-----	2125
	Mr. R. Johnson Speaks-----	2125



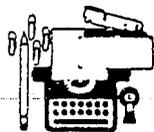
PAPERWORKS
 330 E. 4th Ave., Suite 201
 Anchorage, Alaska 99501
 (907) 274-4833

	<u>EXPLANATION</u>	<u>PAGE</u>
1		
2	Mr. Fessler Speaks-----	2126
3	Mr. Case Speaks-----	2126
4	Mr. Berger Speaks-----	2127
5	Mr. Case Speaks-----	2127
6	Mr. Fessler Speaks-----	2127
7	Mr. Berger Speaks-----	2129
8	Mr. C. Johnson Speaks-----	2129
9	Mr. Strong Speaks-----	2129
10	Mr. Berger Speaks-----	2130
11	Mr. Strong Speaks-----	2130
12	Mr. Berger Speaks-----	2131
13	Overlap Tape, Side B-----	2131
14	Tape 6, Side A-----	2131
15	Mr. Garber Speaks-----	2131
16	Mr. Berger Speaks-----	2132
17	Mr. Dementieff Speaks-----	2132
18	Mr. Berger Speaks-----	2133
19	Mr. Fessler Speaks-----	2134
20	Mr. Berger Speaks-----	2135
21	Mr. Strong Speaks-----	2135
22	Mr. Fredericks Speaks-----	2135
23	Mr. Taylor Speaks-----	2136
24	Mr. Berger Speaks-----	2136
25	Mr. Anders Speaks-----	2136
	Mr. Berger Speaks-----	2137
	Ms. E. Johnston Speaks-----	2137
	Mr. Berger Speaks-----	2139
	Mr. Garber Speaks-----	2139
	Mr. Taylor Speaks-----	2140
	Mr. Fessler Speaks-----	2140
	Mr. Berger Speaks-----	2141



PAPERWORKS
 330 E. 4th Ave., Suite 201
 Anchorage, Alaska 99501
 (907) 274-4833

1	EXPLANATION	PAGE
2	Mr. Fessler Speaks-----	2141
3	Mr. C. Johnson Speaks-----	2142
4	Mr. Berger Speaks-----	2142
5	Mr. Fessler Speaks-----	2143
6	Mr. C. Johnson Speaks-----	2143
7	Mr. Berger Speaks-----	2143
8	Mr. Strong Speaks-----	2143
9	Mr. Berger Speaks-----	2145
10	Mr. Case Speaks-----	2145
11	Mr. Garber Speaks-----	2146
12	Mr. Berger Speaks-----	2146
13	Mr. C. Johnson Speaks-----	2146
14	Ms. E. Johnston Speaks-----	2149
15	Mr. C. Johnson Speaks-----	2149
16	Mr. Berger Speaks-----	2149
17	Mr. Fredericks Speaks-----	2149
18	Mr. Berger Speaks-----	2150
19	Mr. Anders Speaks-----	2150
20	Mr. C. Johnson Speaks-----	2150
21	Mr. Berger Speaks-----	2151
22	Ms. E. Johnston Speaks-----	2151
23	Mr. C. Johnson Speaks-----	2151
24	Mr. Strong Speaks-----	2152
25	Ms. C. Johnson Speaks-----	2152
26	Mr. Berger Speaks-----	2152
27	Mr. Garber Speaks-----	2152
28	Overlap Tape, Side B-----	2153
29	Mr. Garber Speaks-----	2153
30	Tape 6, Side B-----	2153
31	Mr. Garber Speaks-----	2154
32	Mr. C. Johnson Speaks-----	2154



1	<u>EXPLANATION</u>	<u>PAGE</u>
2	Mr. Berger Speaks-----	2155
3	Mr. Fessler Speaks-----	2155
4	Mr. C. Johnson Speaks-----	2156
5	Mr. Fessler Speaks-----	2156
6	Mr. Fessler Speaks-----	2157
7	Mr. Berger Speaks-----	2157
8	Mr. C. Johnson Speaks-----	2157
9	Mr. Johnson Speaks-----	2158
10	Mr. Berger Speaks-----	2158
11	Mr. C. Johnson Speaks-----	2158
12	Mr. Anders Speaks-----	2158
13	Mr. Berger Speaks-----	2159
14	Mr. Price Speaks-----	2159
15	Mr. Case Speaks-----	2160
16	Mr. Price Speaks-----	2160
17	Mr. Berger Speaks-----	2160
18	Mr. C. Johnson Speaks-----	2160
19	Mr. Berger Speaks-----	2161
20	Ms. M. Johnson Speaks-----	2161
21	Adjourns-----	2161
22	Reconvenes-----	2161
23	Mr. Fessler Speaks-----	2162
24	Mr. Berger Speaks-----	2162
25	Ms. E. Johnston Speaks-----	2163
	Mr. Berger Speaks-----	2163
	Mr. Berger Speaks-----	2165
	Ms. E. Johnston Speaks-----	2165
	Mr. Fessler Speaks-----	2165
	Mr. Berger Speaks-----	2167
	Mr. R. Johnson Speaks-----	2167
	Mr. Berger Speaks-----	2169



PAPERWORKS
 330 E. 4th Ave., Suite 201
 Anchorage, Alaska 99501
 (907) 274-4833

1	<u>EXPLANATION</u>	<u>PAGE</u>
2	Mr. Case Speaks-----	2169
3	Mr. Fessler Speaks-----	2169
4	Mr. E. Johnston Speaks-----	2169
5	Mr. Shanks Speaks-----	2169
6	Mr. Berger Speaks-----	2170
7	Mr. Shanks Speaks-----	2170
8	Mr. Berger Speaks-----	2171
9	Mr. Fessler Speaks-----	2171
10	Mr. R. Johnson Speaks-----	2172
11	Overlap Tape, Side B-----	2172
12	Tape 7, Side A-----	2172
13	Mr. R. Johnson Speaks-----	2173
14	Mr. Berger Speaks-----	2173
15	Ms. E. Johnston Speaks-----	2173
16	Mr. Garber Speaks-----	2174
17	Mr. Dementieff Speaks-----	2176
18	Mr. Fessler Speaks-----	2176
19	Mr. Berger Speaks-----	2177
20	Mr. Fessler Speaks-----	2177
21	Mr. Berger Speaks-----	2178
22	Mr. Garber Speaks-----	2178
23	Mr. Fessler Speaks-----	2178
24	Mr. Fredericks Speaks-----	2179
25	Mr. Fessler Speaks-----	2179
	Mr. Berger Speaks-----	2179
	Mr. Fessler Speaks-----	2180
	Mr. R. Johnson Speaks-----	2181
	Mr. Strong Speaks-----	2182
	Mr. Case Speaks-----	2183
	Mr. Berger Speaks-----	2183
	Ms. M. Johnson Speaks-----	2184



	<u>EXPLANATION</u>	<u>PAGE</u>
1		
2	Mr. Dementieff Speaks-----	2184
3	Mr. Berger Speaks-----	2184
4	Ms. M. Johnson Speaks-----	2185
5	Mr. Berger Speaks-----	2185
6	Mr. Case Speaks-----	2185
7	Mr. Dementieff Speaks-----	2186
8	Mr. Case Speaks-----	2186
9	Mr. Berger Speaks-----	2186
10	Mr. Shanks Speaks-----	2186
11	Mr. Case Speaks-----	2188
12	Mr. Shanks Speaks-----	2188
13	Mr. Dementieff Speaks-----	2189
14	Mr. Fessler Speaks-----	2189
15	Mr. Dementieff Speaks-----	2190
16	Mr. Garber Speaks-----	2190
17	Ms. E. Johnston Speaks-----	2190
18	Mr. Berger Speaks-----	2192
19	Ms. E. Johnston Speaks-----	2192
20	Ms. E. Johnston Speaks-----	2193
21	Mr. Berger Speaks-----	2193
22	Overlap Tape, Side B-----	2193
23	Tape 7, Side B-----	2193
24	Ms. E. Johnston Speaks-----	2194
25	Mr. Berger Speaks-----	2194
	Mr. Shanks Speaks-----	2194
	Mr. Fredericks Speaks-----	2195
	Mr. Shanks Speaks-----	2195
	Mr. Berger Speaks-----	2195
	Ms. Maher Speaks-----	2195
	Mr. Anders Speaks-----	2196
	Mr. Berger Speaks-----	2196



PAPERWORKS
 330 E. 4th Ave., Suite 201
 Anchorage, Alaska 99501
 (907) 274-4833

	<u>EXPLANATION</u>	<u>PAGE</u>
1		
2	Mr. Case Speaks-----	2196
3	Mr. Berger Speaks-----	2197
4	Mr. Garber Speaks-----	2197
5	Mr. Shanks Speaks-----	2197
6	Ms. Maher Speaks-----	2197
7	Mr. Shanks Speaks-----	2198
8	Ms. Maher Speaks-----	2198
9	Mr. Dementieff Speaks-----	2198
10	Mr. Berger Speaks-----	2199
11	Mr. Shanks Speaks-----	2199
12	Mr. Berger Speaks-----	2200
13	Mr. Strong Speaks-----	2200
14	Mr. Berger Speaks-----	2201
15	Mr. Strong Speaks-----	2201
16	Mr. Fessler Speaks-----	2202
17	Mr. Strong Speaks-----	2204
18	Mr. Fessler Speaks-----	2205
19	Mr. Strong Speaks-----	2205
20	Mr. Garber Speaks-----	2206
21	Mr. Strong Speaks-----	2206
22	Mr. Anders Speaks-----	2206
23	Mr. Garber Speaks-----	2207
24	Mr. Shanks Speaks-----	2207
25	Mr. Berger Speaks-----	2208
	Mr. Fessler Speaks-----	2208
	Mr. Berger Speaks-----	2209
	Mr. Fessler Speaks-----	2209
	Mr. Fredericks Speaks-----	2212
	Mr. Fessler Speaks-----	2212
	Mr. Fessler Speaks-----	2213
	Mr. Fredericks Speaks-----	2213



PAPERWORKS
 330 E. 4th Ave., Suite 201
 Anchorage, Alaska 99501
 (907) 274-4833

1	EXPLANATION	PAGE
2	Mr. Berger Speaks-----	2214
3	Mr. Fessler Speaks-----	2214
4	Overlap Tape-----	2214
5	Tape 8, Side A-----	2214
6	Ms. Maher Speaks-----	2214
7	Mr. Garber Speaks-----	2214
8	Mr. Berger Speaks-----	2215
9	Ms. Maher Speaks-----	2215
10	Mr. Case Speaks-----	2215
11	Ms. M. Johnson Speaks-----	2215
12	Ms. Maher Speaks-----	2216
13	Mr. Berger Speaks-----	2216
14	Mr. Case Speaks-----	2216
15	Mr. Hageman Speaks-----	2217
16	Mr. Berger Speaks-----	2217
17	Hearing Adjourned-----	2218
18		
19		
20		
21		
22		
23		
24		
25		



(NOVEMBER 15, 1984)

(TAPE 5, SIDE A)

1
2
3 MR. BERGER: Let's take our
4 seats, I think everybody's here. We introduced ourselves
5 yesterday; we have two new arrivals today. Rose Marie Maher of
6 Northway, and you're President of a village corporation there.
7 We welcome you! Daniel Fessler, who is advisor to the State's
8 Statutory Law Revision Committee, and is working on and
9 developing the new corporate code from the state. I don't have
10 my notes in front of me, but Mr. Fessler, you're from California,
11 the University of...?

12 MR. FESSLER: University of
13 California at Davis.

14 MR. BERGER: At Davis -- right.
15 Well, we welcome you, too, sir. And I think that we can begin.
16 Yesterday we had some general discussion about 1991 and its
17 implications and John Taylor and Paul Goodwin and others talked
18 about what would happen if there were no changes in the legis-
19 lation. We also discussed, towards the end of the day, some of
20 the remedies that might be adopted to insure that Native
21 corporations and Native land remain under Native control. A
22 number of suggestions were made. It was suggested by Elizabeth
23 Johnston, for instance, that the only way to insure that Native
24 corporations remain in Native hands, was to restrict the transfer
25 of shares. Glen Fredericks, speaking for the Kuskokwim
Corporation, with 1200 shareholders in the Bush, said that their
principal concern is to insure that the land remains in the
Native hands and Glen Fredericks said that he thought the key
thing was to separate the land from the corporation, so that if
the corporation got into hot water, the land would be safe, and
we discussed that. I took the liberty of suggesting at the end
of day, that all that I had found at the meetings I've been
holding in villages was that, people were regarding land and the



1 safekeeping of Native land for future generations as the para-
2 mount consideration, and I suggested that the schemes being
3 considered to address 1991 had to meet three criteria: that is,
4 that they had to protect the land against corporate failure,
5 against corporate takeovers, and against taxation of subsistence
6 or underdeveloped land by the state.

7 So we're ready to look at the AFN resolutions today,
8 and we thought this afternoon, we would ask the village people to
9 talk about 1991 from their point of view; but, I asked Charlie
10 Johnson if he would lead the discussion this morning, lead off,
11 and after Charlie, we'll ask Monroe Price, and Elizabeth
12 Johnston, if we may, to comment on the AFN resolutions because
13 both of them have had something to do with putting them together,
14 as I understand it. So Charlie, why don't you start off.

15 MR. C. JOHNSON: Okay, thank you.
16 Let me give a little background as to how these resolutions were
17 developed. We started out about three years ago, in 1981, we had
18 some discussions amongst us, amongst the board members and people
19 at AFN, and corporations on -- it was kind of informal between
20 different people of, "What we're going to do about 1991?" and
21 that ended up in a retreat in Kotzebue, that summer in 1981. The
22 point of the discussion at the time -- we went through about two
23 days of discussing some of the points that Bart discussed when he
24 opened up the meeting here yesterday, is "What are we, and what
25 do we want to be?" We talked a lot about the conflicts that are
kind of inherent in us, because of the way the Land Claims Act is
written up. A lot of discussion about, "Are we really being
Native by accepting the corporate mode? Is there some other form
that's more suitable to Natives? How are we going to remain
Natives? How are we going to protect the land?" And that was
our first meeting. It lasted for two days. It was a very good
opening discussion, I felt, and I think those who participated
felt that way, and that led to a series of more discussions and
retreats. And we've held now approximately eight or nine



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 retreats. A couple of them here in Anchorage, but usually we try
2 to go to places like Cordova or Kodiak or Kotzebue, and go over
3 points of how we wanted and how we felt and where we felt that
4 our future should be. "What were we going to do with the Land
5 Claims Act. Does it need changing?" We went through all these
6 questions. One of the things that we did was, last year at the
7 AFN Convention, we introduced some general principles that were
8 adopted by the Convention about how we should address 1991, and
9 the changes. The resolutions that we have, and we presented at
10 this year's convention, we presented not specifically as you see
11 them and for those of you that have this paper in front of you,
12 it lists those resolutions. At these retreats, we kind of
13 drafted them in principle or stated them, and then we gave them
14 to the attorneys and they deteriorated. I mean not deteriorated
15 them, we compressed them into these resolutions that were more
16 technical I guess, and more specific. At this year's convention
17 what we did was, we did not adopt these resolutions. What we did
18 was adopt a process that was supported by the delegates to the
19 conventions, that before we adopted specific resolutions to ask
20 for specific legislation, that at first we needed to go out to
21 the villages, and the regions and get responses from our people
22 on how they felt about these specific ideas. And after that, we
23 would hold another convention, a special convention in March of
24 next spring, and formally adopt them as AFN, and then take them
25 to Congress, with specific legislation that we were going to be
asking for. We've discussed this, by the way, with our
Congressional delegation and at the convention got a very strong
commitment from Senator Stevens that he would do everything
possible in his power to insure that the resolutions that was
placed at our convention, that he would introduce them and do
everything he could to see that they passed. So the process that
we're going through now is, we're going to take these out to the
regions, each of the regions is ...are going out to the villages



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 and get some response on the specific resolutions and then we're
going to come back in March.

2 Okay, additionally what we're also trying to do is to
3 involve more directly the villages in the convention and the
4 decisions at AFN, so what we've also done is we've appointed a
5 committee, made up of members of both the profit and nonprofit
6 side to start working on how to involve the villages more.
7 Additionally what we're doing, is we've asked each of the regions
8 along with the AFN, both profits and non-profits, to sponsor a
9 meeting of its village corporations to select not only the
10 village corporation but the IRA councils and traditional councils
11 as well, to select some people to come to a January meeting, and
12 that January meeting here in Anchorage would be of primarily
13 village people for them to select somebody to work with the AFN
14 appointed committee to draw plans on how to include more directly
15 the villages, both IRA's and corporations, in the process that
16 AFN is going through. We felt that 1991 issue is the ideal
17 situation for us to correlate that participation that we need
18 from the villages if we're in fact going to be effective in
19 representing the entire Native population. So that's basically
20 the process that we've set out to do at AFN with addressing these
21 specific resolutions that you see. In the retreats, we centered
22 on the issues that I'm sure that most of you have heard of, that
23 is basically, how do we protect our land? How do we keep the
24 corporations and the land under Native control? How do we
25 benefit the elders? How do we include those born after 1971?
Those specific or those general areas are where we concentrated.
We had some lively discussions on some of these issues. We had
some differences obviously, because of the differences of the
makeup of the different regions. And the wording on the
resolutions, which really provide options rather than dictating
specific actions -- it really just provides options for each
region to take, was really finally what unified us, as the 12 or
13 you know, diverse regions. At first, we were talking in our



1 early meetings of, in fact we would put in restrictions on land.
2 We would put in restrictions on non-Natives, and things like that
3 and we ran into a lot of problems getting together on these
4 issues. When we finally decided, and we're kind of pushed into
5 really making them options, rather than specific restrictions
6 that automatic. Then at last we got unified on supporting the
7 resolutions that -- that we will present to the villages. So
8 each of the resolutions that we have put together are options,
9 rather than specific, directed courses of Actions. So with that,
10 I can -- unless Glen wants to add something or Marlene, because
11 they participated heavily, and so did Liz. And these, -- some of
12 these discussions we can go to the specific resolutions.

MR. BERGER: Glen, Marlene.

10 Anything to add?

11 MR. FREDERICKS: Only thing that
12 I would add is that we did stress options. And I think what
13 Charlie is saying is very true. And I know myself, from the
14 village, I wanted that option. And Charlie says, we had some
15 heated arguments, but I think that is the way to go.

15 MR. C. JOHNSON: Okay, if you
16 want to go over the specific resolutions. In this...

16 MR. BERGER: Just before you do
17 that Charlie, could I ask a question? You mentioned the 13th
18 region. Were they part of this, if you ... if I may ask?

19 MR. C. JOHNSON: We invited the
20 13th to each of the retreats. They did participate in one or
21 two. I can't remember which specific ones, but they did
22 participate. And the resolutions address, not only the 12
23 regions in Alaska, but also the 13th, because they are an ANCSA
24 corporation, and it provides them, although everything doesn't
25 apply to them, obviously, because they don't have land to...
we've asked for ANILCA protections of land. Of course those
things would not apply to the 13th. However, I think such things



1 as stock alienation, and other things would apply and so we did
2 ask their participation.

3 MR. BERGER: Well, why don't you
4 start off with the first one, and then we can perhaps discuss
5 them one by one.

6 MR. C. JOHNSON: Okay, in this
7 printout that you see here, if you open to the very center of the
8 thing, and open it up. It just has headlines that says "1991
9 Resolutions", and this is a printout that was put out by Tundra
10 Times. The first resolution specifically sets out, I think, a
11 process that affects all of them. And that is, that changes or
12 options, rather than being accepted by a Board will be accepted
13 by the stockholders, and I can read you the resolved: "Now,
14 therefore, be resolved that the AFN, [in] convention assemble[d]
15 endorses the concept that whenever a corporation is given an
16 option with regard to a concept, that that option shall be
17 exercised by vote of the shareholders. Be it resolved, that the
18 Board of Directors of each corporation shall establish a minimum
19 shareholder vote to exercise the option, but the minimum votes
20 shall not be less than the majority of a quorum of shareholders.
21 No dissenters' rights to stock purchased, repurchased by the
22 corporation shall be available if a corporation exercises an
23 option."

24 Maybe I should let Monroe, or somebody who is an
25 attorney, discuss what the real effect of this is, but one of the
things that we discussed at these retreats was that anything that
needs to be done has to be done by the stockholders, rather than
by the Board, and I think that's really the intent of the first
one.

(Indiscernible)

23 MR. PRICE: Well, I just say
24 that, as I recall, there was some disagreement about what level
25 of shareholders' support there should be for the approval of
removing restrictions or other aspects of the, as it might



1 ultimately turn out. And the question was, "Should the
2 resolutions set a minimum -- a mandatory shareholder vote
3 percentage for all corporations? Should it be different for
4 different options? Who should decide? -- Congress, the board,
5 etcetera, etcetera, and this is the result.

6 MR. BERGER: David Case.

7 MR. CASE: Maybe one of you can
8 refresh my recollection. What's the likely quorum to be, in a
9 particular corporation? Are we talking 50 percent of all
10 shareholders, one-third, 10 percent; what's the range of
11 possibility?

12 MR. C. JOHNSON: Well, I think
13 most of the quorums of the corporation is one-half plus one, but
14 you know, that was not specifically discussed or argued at any
15 point. There was, however, some discussion as Monroe stated, at
16 what level of -- what number or percentage of stockholders should
17 vote on some of these specific things? Now, as you know, in
18 corporations, it is often very difficult to get stockholders to
19 vote. In my corporation, we have a quorum of one-half plus one.
20 Lately, we have not had any problems getting a quorum. Our
21 average turnout has been 52 percent. This last election we had a
22 66 percent turnout, and the reason we had such a large turnout,
23 we were discussing changing the structure of the Board to give
24 villages more representation on our Board, and so consequently we
25 had a much larger turnout, and much more interest generated; but
in the past -- well, the last few years we have not had a problem
getting a quorum. It has been a half plus one. I know, before,
I was on either the Board or in the presidency, we've had to
delay our meetings as much as thirty days in order to get
quorums.

MR. CASE: What's the minimum
quorum permitted?

(Indiscernible)



1 MS. E. JOHNSTON: The minimum
2 quorum permitted in the state is one-third, and some of the
3 Native corporations do have a quorum requirement that is as low
4 as one-third, which means of course, if it's a majority of the
5 quorum, it would be as was alluded to yesterday, that you could
6 have as low as a figure as 17 percent, making this kind of
7 corporate decision, which is somewhat intended with the general
8 views of good corporate governance.

9 The second thing that's in this, as Charlie mentioned,
10 it was an effort to solve the fact that among the corporations,
11 themselves, there were different views on how this can be
12 handled, and now wishing Congress itself to set this. By letting
13 the Board set it, you have an interesting phenomenon, which is
14 the Board itself can decide then, out of two through eight, which
15 of those resolutions the Board itself thinks are hunky-dory, and
16 which there are not so good, and have different requirements for
17 different ones. It's also a resolution that has hidden in it the
18 possibility of great movement of power, from shareholder to the
19 Board, and that is in there, and I think it should be seriously
20 considered as a problem.

21 MR. BERGER: Well, you caught our
22 attention, I think. Could you explain a little bit what you
23 meant by that last remark.

24 MS. E. JOHNSTON: Okay, if a
25 Board of Directors is the one to set the requirements for what
the standards of passage are, and as you know, in corporate law
you could again, again you could go as low as a majority of the
quorum, which I've indicated in the Cook Inlet situation, might
be your 17 percent figure, that would an affirmative, could go as
low as that or it could go as high as some of the super-majority
requirements that can be established in corporate law, like 90
percent.

If I, as a Board member, am permitted, if I say, as the
body of the Board, am I permitted the discretion on each of the



1 resolutions to set figures that go all the way from 17 percent up
2 to 90 percent; then I myself, as the body of the Board, can
3 almost fix the race. Okay -- if I tell you how high you have to
4 jump, before you can pass some of these things, I can, you know,
5 some of us can (only) jump so high. Charlie, I think, was
6 extremely accurate on the fact that some places have difficulties
7 in getting some certain levels of participation. So you do have
8 a problem, a reality problem, that this is trying to deal with,
9 but I'm just warning you of the abuse problem that's here, too,
10 which is the potential of the abuse of the Board of Directors
11 setting different standards for passages based on whether they
12 wanted it to pass or not. And, that I think is a problem.

13 MR. PRICE: I would like to ask
14 you just one question, without...

15 MR. BERGER: Monroe Price. I'm
16 only stating the names of people for the record.

17 MR. PRICE: ...okay, without
18 legislation, wouldn't the Board generally, if the Board wanted to
19 under State law... what is the discretion of the Board to set the
20 majority?

21 MS. E. JOHNSTON: Monroe, I think
22 it depends on the kind of resolutions...

23 MR. PRICE: ...the issues
24 involved here.

25 MS. E. JOHNSTON: Well, no, it
depends on the issues involved. In other words, let me do
straight corporate law, and you can draw your analogies perhaps
even better than I can. In straight corporate law, as it exists
today, when you have a significant event, and we talked about the
definitions yesterday a little, of what might be significant
events: mergers, dissolutions, sale of all or substantially all
of the assets. These type of major corporate events that alter,
in a significant fashion, what's going on in that corporation,
when you get those kind of significant corporate events, State



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 law has said two-thirds. When the AFN and the Native community
2 has gone to Congress for similar types of significant events,
3 they've gone for a majority of the outstanding shares. Okay, so
4 when the Native community went before the Congress for the merger
5 issue, which is the significant corporate event that alters the
6 rules of the game, and alters significantly what's going on, as
7 opposed to voting on whose going to be elected director, or this
8 type of thing. The standard that was passed at the Congressional
9 level for that significant event, was a majority of the
10 outstanding shares, which is similar to what Charlie was
11 referring to, 50 percent plus 1.

12 MR. PRICE: Where would you put,
13 just to jump ahead for a moment -- removal of restrictions on the
14 sale of stock, under State law if there were, if there were a
15 State law equivalent.

16 MS. E. JOHNSTON: Since right
17 now, the law is, that in 1991 there will be no restrictions on
18 stock, I would say that for a corporation to apply those
19 restrictions, I would say that's an extremely significant
20 corporative event. And I would argue for a majority of the
21 outstanding shares. But, I want to tell you, who cares what I
22 would argue? What I really want to point out to you is the
23 danger of the Board having the power because of the potential for
24 abuse, of the Board setting different standards, based on the
25 what the Board wants, having nothing to do with what the
shareholders want. That's really what I'm trying to address.

MR. BERGER: Charlie
Johnson.

MR. C. JOHNSON: You know, you're
making some assumptions, that the Board is, is generally not
acting in the best interest of the stockholders. And I don't
think that's a very accurate assumption. You're assuming that
the Board is going to use the powers that it already has, to
perpetuate itself or to perhaps not act in the best interest of



1 the stockholders. Now going back to the history of ANCSA
2 corporation and why only a majority of stockholders, rather than
3 two-thirds as is required in normal corporations, and the reason
4 for that is, you take a normal corporation and there's always
5 some concentration of stock and major blocks of stock, that makes
6 it much easier to, to get the type of participation that's
7 required in major events. With Native corporations, when we all
8 almost have, at least we started out with all having, the same
9 amount of stock, it becomes a popular vote rather than a vote of
10 the concentration of shares, and even in the normal corporation
11 like we're all involved in corporations other ANCSA corporations.
12 I know for instance on one corporation I'm involved in where less
13 than about ten percent of the shareholders can in fact vote the
14 two-thirds majority that is required because of the concentration
15 of stock, but I seem to have... I have problems with your
16 assumption that the Boards will utilize the powers they already
17 have, not in the best interest of the stockholders.

18 MR. BERGER: Elizabeth, then Dan
19 Fessler.

20 MS. E. JOHNSTON: Charlie,
21 don't -- I'm not assuming that the Board will or will not do a
22 certain thing; what I am is a lawyer, and as a lawyer I try never
23 to give groups more power than is needed to accomplish a task,
24 and I certainly always try to pay attention to any powers that
25 are uncurbed, and I represent management, so I suppose it's
somewhat ironic for me to be arguing that this kind of power
should not given to the Board of Directors. I'm just suggesting
to you in general corporate law, this is not a power that is
given to the Board of Directors, and I consider it a danger not
because I consider Native Boards, in general, unresponsive to
their shareholders, but because I'm a lawyer, and I know what
unfettered power is, and does, and I think it's a mistake, and
that's just because my background, and lawyers tend to be



1 suspicious creatures, and that's just -- you should accept that
2 as part of my background.

3 MR. BERGER: Dan Fessler, you
4 wanted to add something.

5 MR. FESSLER: Well, I'll begin by
6 confessing that I'm also a lawyer. I'm also a school teacher,
7 and so maybe I'm at odds with -- internally. I think it might
8 help if we put this discussion in a more general concept. As I
9 understand it, and any assumption that I articulate that's wrong,
10 please, no one hesitate to correct me. The idea to have the
11 fruits of the Native settlement devolve upon corporations was
12 something which was pretty well thrust upon the Native popu-
13 lation. The corporation has not been used in this manner to my
14 knowledge.

15 MR. PRICE: I think that first
16 assumption is subject to question.

17 (Indiscernible)

18 MR. FESSLER: Okay.

19 (Indiscernible)

20 MR. FESSLER: The corporation
21 used -- in the manner of suddenly saying these would be the
22 corporate assets, and this group of individuals will be the
23 shareholders, and the shares will be distributed to these
24 individuals by virtue of their being identified as the Natives in
25 the State of Alaska, is a fairly unique phenomenon.

The idea of Congress was that the corporations were to
be created under the Alaska's corporation law. Alaska's
corporation law in 1971, as it is today, was essentially taken by
the first Alaska legislature from the corporation law as it then
existed in the State of Oregon. In other words, on the day that
Alaska became a State, it suddenly had to pass laws on all manner
of matters that had heretofore been regulated by Congress Act.
And so what they decided to do was to look to the law of the
State of Oregon; now that's where we got our existing corporation



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 law from. Under the existing corporation law the control and
2 management of the corporation is legally envisioned as being
3 lodged with the Board of Directors. Shareholders are envisioned
4 as having an essentially passive role. Their one major
5 prerogative, under the corporation code of the State of Alaska,
6 is to elect Directors. Beyond that, the only time the Board of
7 Directors has to go to the shareholders, under existing law, for
8 the purpose of ascertaining whether they consent is if the
9 shareholders, excuse me, if there is a desire to amend the
10 content of the Articles of Incorporation. That cannot be done by
11 the Board alone, if there is a desire to take the corporation
12 through what is generically called an "organic change" which is
13 what Liz was indicating when we were talking about mergers,
14 consolidations, stock--sale of all the stock, transfer of of all
15 the assets other than ordinary course. There the law protects
16 the shareholders, recognizing that after one of those
17 transactions, you're going to be the shareholders in a
18 fundamentally altered institution.

14 Now those are the essential features of the law, and so
15 whether or not you have, and I can't tell when we talk here, and
16 Charlie about decisions. In other words if there are options
17 that devolve upon the corporations, the issue, put in its most
18 easily understood fashion which is the only way I understand
19 these, is whether or not it is akin to one of those organic
20 changes, in which case, shareholders could say "we have a
21 statutory right to be consulted", or whether or not it would
22 amount to essentially altering the content of the Articles of
23 Incorporation of the given corporation, in which case the
24 shareholders could say, "we have a legal right to participate in
25 that decision, the Board isn't competent to do it alone". But
failing that, the status quo is that the Board has the power, and
if the shareholders don't like the decision then infer one elects
new people to the Board, hopefully, people who will be able to
reverse the decisions that the shareholders find distasteful.



1 But, there is a way within all your corporations at the
2 present time, without going beyond your corporation, in other
3 words, without having to go to AFN, let alone to the Alaska
4 legislature, and certainly not to the Congress of the United
5 States, and ask them to do you a big favor, in which you could
6 protect yourself.

7 I don't know what types of Articles of Incorporation
8 are common in the regional corporation nor what types of Articles
9 of Incorporation are found in many of the village corporations,
10 but it would be possible for you to use the Articles of
11 Incorporation to define areas of great interest to the
12 shareholders wherein you want to arrive at a status quo position,
13 and you wish to make it difficult to change that decision, by
14 simply enshrining whatever position you want to have, in the
15 Articles of Incorporation. And one of the things you can do in
16 the Articles of Incorporation is raise the percentage necessary
17 to vote on changing the Articles of Incorporation, and you have
18 the power right now under the law to do those things to protect
19 yourselves. You don't need...

20 MR. BERGER: Where does the power
21 reside, the Board or the shareholders?

22 MR FESSLER: ...Right now, in
23 order to do this you have to change the articles. This will
24 require, therefore, the cooperation of the incumbent board and
25 the shareholders. Neither institution, the Board nor the
shareholders, has the power to amend the articles.

MR. BERGER: Right.

MR. FESSLER: Together, they do,
and having amended the articles, you can set the terms under
which in the future those articles can be changed beyond those
amendments. And you can very discriminatory. You do not have to
lock your corporation up with 90 percent voting requirements for
all changes to the articles, you can bullet particular provisions
of the articles, and say, "as to these we will require 90 percent



1 voting quorum." In other words, the State law, which is the
2 basic law we must look to for conduct of the corporation, even
3 today, and more so after 1991, the State law in Alaska is very
4 permissive. It permits you to do a great deal under the
5 articles, and the pending legislation in the Alaska legislature
6 come January which the AFN endorsed in the last legislature is
7 also very permissive in permitting you to tailor articles that
8 are the way you want them for your corporation. Politically, at
9 this moment, it would require that you get your incumbent board
10 and your shareholders into sharing the view as to what you want
11 done.

12 MR. PRICE: What percentage of
13 shareholder assent do you need to change the article?

14 MR. FESSLER: 50 percent.

15 MR. PRICE: Of the shareholders,
16 not of a quorum; 50 percent of the shareholders.

17 MR. FESSLER: Oh, that I, again,
18 we'd have to look what your articles...

19 MR. PRICE: No, I'm talking about
20 State law.

21 MR. FESSLER: Under current state
22 law it's 50 percent, it may be two-thirds. I'm being told it's
23 two-thirds. The traditional Model Act Rule was that it was 50
24 percent.

25 MR. PRICE: Of all shareholders?

MR. FESSLER: Of all
shareholders. In other words, it would be an absolute majority
of the shares. But, remember that those votes can be cast by
proxy as well as in person.

MR. PRICE: Right.

MR. BERGER: The point that
Elizabeth made was slightly different and that was, as I
understand it, that if the Board of the particular corporation
was eager to see one of these proposals on the consideration of



1 the AFN Convention passed by the shareholders, they would set a
2 very low standard of passage, and if they were eager to see one
3 defeated by the shareholders, they could set it at 90 percent and
4 be reasonably certain it wouldn't be passed. That was the
5 suggestion Elizabeth made.

6 MS. E. JOHNSTON: Highly unusual.

7 MR. FESSLER: Board of Directors,
8 in an area where there was not much question that it was
9 committed to the Board's decision by State law, in other words,
10 the shareholder's opinion would be purely advisory. The Board
11 could decide, even though it might not in the eyes of the State
12 be legally bound by that decision to submit any decision to a
13 vote of the shareholders, and if we're talking about that kind of
14 vote, it is absolutely true that the Board could set the terms
15 under which the shareholders' decision would be taken, but the
16 point I want you to understand is that, in the absence of the
17 areas that I articulated, the amendment of the articles, the
18 decision to take the corporation through an organic change,
19 division of a corporation, and it has always helped me since the
20 third grade to draw pictures, is of a pyramid. The shareholders
21 are at the bottom, and they are numerous; their function is that
22 they are equitable owners of the Corporate assets, after all
23 obligations to third parties are satisfied. Their prerogative is
24 to select a representative group called the Board of Directors.
25 The Directors have, as their major task, charting in a broad
outline the policies of the corporation and engaging the
Corporate officers. The corporate officers act for the
corporation as its agents to transact business with the world at
large. To deal with their third person. A corporation, as was
pointed out in Mr. Bass's rather interesting paper which I read
on the way up, is in point of fact, a rather strange creature of
our imagination. It is a legal fiction but if the corporation is
tried to be given human attributes, the shareholders are hard to
put in the matter, but the Board is the brain, and the legs, and



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 the mouth and arms, that deal and make signs to the outside
2 world, is suppose to be the officers. Directors, as such, have
3 no power to bind the corporation individually; they operate as
4 only the collective body, as the officers, or the agents of the
5 corporation.

6 MR. BERGER: Well, your point, I
7 believe, is that the -- instead of going to Congress, and asking
8 them to set these standards of passage, the corporations could
9 actually amend their articles, and provide for certain standards
10 of passage, depending on the particular organic act under
11 consideration.

12 MR. FESSLER: And another thing
13 you could do, or I would suggest we think about doing. One
14 other way to begin, I notice here, that one of the whereas
15 provisions or reasons for Resolution 84-01 is the idea that each
16 of these corporations should take the decision with some
17 sensitivity as to the way in which other corporations are
18 evolving a position on those decisions, because after all, we're
19 all in this thing together, and we don't want to be pulling oars
20 in opposite directions. Well, there are ways in which you can
21 use simple contracts to work out treaties as between the
22 corporations without having to go through any spectra or setting
23 a larger corporate entity above them otherwise. There are a lot
24 of things that you can do with this structure. Whether I am
25 ill-informed, that it was sort of dropped upon you, was an idea,
or whether it was the one you reached in the great grab bag of
life, and pulled out, and said "this is what we want, the
corporate form", you've got it now! And it has lots of
opportunities, and lots of pressure points that are under your
dominion, as opposed to requiring anybody that come along and
deals the cards out to you a different way.

MR. PRICE: Can I suggest that we
go to the first one, because I'd like to... it might be
interesting to look at these shareholder questions, in the light



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501

(907) 274-4833

1 of particular decisions. It's also possible that this resolution
2 mandates corporations to do things that they might not do. That
3 is to say, the minimum, for example -- which decisions have to be
4 made by shareholders, and the minimum level necessary, which is
5 different from Liz's point, that is to say, does this Act, for
6 certain decisions to go to shareholders that wouldn't otherwise
7 go to shareholders, and does it force a level below which the
8 corporation could go under existing State Law--above which...

9 MR. FESSLER: Your current
10 resolution...

11 MR. PRICE: Yeah, but you can't
12 tell by looking at 84-01, without looking at the context of each
13 of the resolutions.

14 MR. C. JOHNSON: I'd like to ask
15 one other question. You mentioned, earlier, a couple of
16 paragraphs ago, that you...that Directors presently have the
17 power for setting standards of shareholder acceptance of specific
18 actions.

19 MR. FESSLER: Only in the sense,
20 Charlie, if the decision is one which legally the directors could
21 make on their own.

22 MR. C. JOHNSON: Okay.

23 MR. FESSLER: It is within the
24 power of the Board to decide that they would take an advisory
25 vote or poll of the shareholders, in order to assist them in
making that decision. They would not normally be thought to be
legally bound by such a thing, which is why I call it an advisory
vote. Indeed, if you go to areas that may have little relevance
to our discussion, normally directors are not supposed to do
that, in other words, you're not supposed to elect a director,
and then have the director constantly be coming back to you
asking, "What am I to do?" "What am I to do?" "What am I to
do?" If you think of the pyramid, the whole purpose of having
the Board was to elect the smaller group that could make



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 decisions, and be cohesive, as opposed to having to go to much
2 larger group, and constantly ask for a polling situation.
3 Corporations were not Athenian democracies, and the only... you
4 elect a representative body. So in that sense, the Board could
5 go to the shareholders and say, "unless three-fourths of you say
6 no, we're proposing to do this", or they can say, "unless 90
7 percent of you say no, we are proposing to do this." Those are
8 advisory votes. There are very few areas under which the Board
9 would be legally obligated to go to the shareholders.

10 MR. BERGER: Could I just --
11 Claude Dementieff, and then David Case wanted to get into this.
12 Claude, you go ahead.

13 MR. DEMENTIEFF: As I understand
14 the State law, there's two different votes. There's for the
15 basic changes in the bylaws or the Articles of Incorporation,
16 more so the bylaws, I believe, it's 50 percent of a quorum. For
17 extraordinary changes in the corporation it requires two-thirds,
18 such as liquidation of assets, etc. This resolution here, if --
19 I'm assuming a lot of things. I'm asking more questions -- if my
20 assumption is right, that this resolution allows the Board of
21 Directors to set the vote, circumventing State law on the minimum
22 number of votes, required without even changing their own bylaws,
23 they could set the vote by resolution of a Board.

24 MR. FESSLER: One thing, I don't
25 understand Claude, so I can't really respond 'till you clarify on
it -- if this -- has been passed, I understand by the AFN, is
that correct?

MR. BERGER: No, it hasn't been,
according to Charlie.

MR. DEMENTIEFF: No, here's the
process of what we went through and so hopefully, we'll go
through a similar process like this and come up with objections
like Liz is making, before we go ahead and pass these. What we
passed at the last Convention was that we would, we accepted a



1 process that mandated that management and leadership of AFN get
2 out to the regions and the villages, and go over these
3 resolutions, hopefully making them understood, and out of that
4 will come what will be acceptable to everybody, in going to
5 Congress for amendments on ANCSA in 1991. And it may very well
6 be that the very point that Liz is raising may be one of the
7 objections, and that may very well not pass AFN. It will be
8 presented to AFN in a different matter, that would take care of
9 the objections that might arise, such as that one that Liz's
10 talking about.

11 Mr. PRICE: Let me just say that
12 it -- it also may be that -- okay.

13 MR. BERGER: Just before we go on
14 -- Claude asked a question, characterizing this, and not seeking
15 to be majorities and Dan didn't answer, but Elizabeth, you were
16 nodding in affirmation, did you agree with Claude's
17 characterization?

18 MS. E. JOHNSTON: Claude, can I
19 repeat it back to make sure that I've got it, but as I understood
20 what you were asking if the...

(NOVEMBER 15, 1984)

(OVERLAP TAPE, SIDE B)

21 MS. E. JOHNSTON: ...thrust of
22 this resolution is put into Federal law...

MR. BERGER: (Indiscernible)

23 MS. E. JOHNSTON: ...yes, Claude,
24 has built in an assumption that if this resolution were
25 transformed into proper...

(NOVEMBER 15, 1984)

(TAPE 5, SIDE B)

26 MS. E. JOHNSTON: ...statutory
27 language and built into Federal-Congress -- Federal law, would
28 this not then mean that it would, in effect, preempt the State
29 law standards, and perhaps other standards that might be in



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 someone's articles and bylaws and I was nodding my head, which --
2 Tom correctly says doesn't show up on the tapes, that in general,
3 I think that's a fair statement.

4 MR. DEMENTIEFF: But basically
5 what happens with this resolution if it is put into Federal laws
6 is, that we'll also have the State law to work with, plus a third
7 now. So the Board of Directors can operate their options or
8 decision in either one of three methods.

9 MR. FESSLER: Well, you would
10 have a problem in trying to decide the basic, and a very
11 interesting area is that the Alaska Native Claims Settlement Act
12 mandates that there be Corporations, and that they be organized
13 under the Alaska State law, and the original vision was that
14 there would be certain federal statutory restrictions on these
15 Corporations that would supersede State law, that would expire in
16 1991. Now, it will be an awkward arrangement between State and
17 Federal law to figure out how to make these two responsibilities
18 jell if Congress keeps changing, extending and entering the area,
19 while still leaving the basic proposition in place that these are
20 Alaska corporations formed under Alaska law, and answerable to
21 Alaska's state legal institutions.

22 MR. BERGER: Could I suggest
23 something perceived here. This is fascinating stuff, but I think
24 the, where Claude has gotten us, is this far; that the
25 resolution, if it were passed, would enlarge the discretion of
the Board of Directors, and they could choose to adopt the
standard of passage in the articles under relevant State or
Federal law, or the discretion given to them under the
resolution. I wonder if...

MR. PRICE: I don't think that is
correct.

MR. BERGER: All right.

MR. PRICE: I think, first of
all, it is not clear, because the way resolutions were drafted,



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 and of course, Liz, you were more actively involved in this than
2 I, whether -- when these are finally drafted, it incorporates, as
3 an additional limit, State law concerning extraordinary acts.
4 That is... or other kind of things. This may not be exclusively
5 preemptive. So I guess the answer to Claude, if I'm right, I
6 don't think either of us know it at this point.

7 MS. E. JOHNSTON: I think...

8 MR. PRICE: The Board of
9 Directors would be constrained. Certainly would be constrained
10 by federal law; might additionally be constrained by State law.

11 MS. E. JOHNSTON: I think the
12 intention of, and again Charlie, if I'm wrong on this tell me,
13 but the intention, the thrust of the problem that the resolution
14 was trying to deal with was to have Federal law preempted so you
15 would not be restricted by these two-thirds and other types of
16 standards within State law unless you so wanted to be restricted,
17 as Claude points out, but you would not required to be
18 restricted. In that way, I think it was a preemption idea that
19 was -- the thrust behind, otherwise what purpose does it serve?

20 MR. PRICE: It may mandate
21 procedures that would not be required under State law, in other
22 words, to some extent these provisions and that's why, I thought
23 we'd go to them specifically, may require reference to share-
24 holders, of issues that would not be required to referenced to
25 shareholders under State law.

MS. E. JOHNSTON: Again, I think
it's, I find it a difficult argument to suggest that's something
that is significant as some of the changes that are properly
inherent in the AFN resolutions, whether or not your stock is
restricted. Whether or not you're going to change all of the
assets from a profit corporation over in to a tribal organiza-
tion, would not be something -- that conceptually is totally
appropriate to take to the shareholders for a mandatory vote, and
(2) that every corporation has promised that's what it's going to



PAPERWORKS

330 E. 4th Ave., Suite 201

Anchorage, Alaska 99501

(907) 274-4833

1 do, so instead of intellectually discussing whether or not this
2 is something for shareholders discussing whether it should be
3 mandatory, I think we should take that as a basic assumption.
4 Because I cannot, it's very difficult for me to believe that
5 there is one leader in this room who would be saying that he
6 would not take it to shareholder vote (1), and (2), that he would
7 not consider that vote mandatory; the problem is, what are the
8 standards of the passage?

9 MR. BERGER: Could I just suggest
10 that what we do now is this. Monroe's ideas, as we look at these
11 one by one, and I think we should turn to them, but before we do
12 Claude, and then David and then Marlene, had their hands up.

13 MR. DEMENTIEFF: Maybe I can
14 clarify a little bit more if I can, my own thinking anyway.
15 Let's take the fictional corporation, that is bylaws says
16 one-third, or 33 percent plus one is a quorum. The best they
17 ever had, and their whole existence is 40 percent, and they're up
18 against the gun, and they want to liquidate their assets. If
19 this was part of federal law, this power of the Board to set a
20 minimum vote required by shareholders, they could say, "we don't
21 need to go to the two-thirds State law requirement, if we want to
22 liquidate our assets. We'll just pass this resolution, and set
23 the minimum vote, to liquidate our assets," is that... am I
24 assuming correctly that this would allow that.

25 MR. FESSLER: I don't think you
could make that an ironclad assumption at all. If, unless the
Congressional Act specifically addresses the Alaska Statue and
says something to the effect that not- withstanding the
provisions of AS.10.05.2762 I wouldn't make that assumption. All
you bought is an expensive lawsuit.

MR. BERGER: Okay, did you have
an addendum to that Elizabeth.

MS. E. JOHNSTON: Hopefully
short, Claude, which is just that I don't think that the AFN



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 resolution attempted to address the question of liquidation,
2 therefore I am one with Professor Fessler.

3 MR. BERGER: David Case.

4 MR. CASE: I guess I had a very
5 basic question about the mechanics of all this. What does the
6 Board normally have the power to change with respect to articles
7 and bylaws?

8 MR. FESSLER: Your Alaska section
9 that I just cited, the Board has no power on its own to amend the
10 articles at all.

11 MR. CASE: But you can amend the
12 bylaws?

13 MR. FESSLER: It can amend the
14 bylaws. It cannot amend the articles. It is the only --
15 interestingly, under existing Alaska law we have a particular
16 situation. The Board alone can propose amendment to the
17 articles, the shareholders can't. Virtually every other state,
18 shareholders can propose amendment to the articles. The Board
19 has to propose the amendment. And then Alaska Statute, it must
20 go to the shareholders, and it must receive an absolute
21 two-thirds majority, not two-thirds of a quorum, but two-thirds
22 of the shareholders, or the amendment fails.

23 MR. CASE: And I'm correct in
24 assuming that shareholder voting requirements are not normally
25 parts of bylaws.

MR. FESSLER: No, they are not,
and nor can the bylaws override the provisions of the Article of
Incorporation. To a given corporation, the Articles are like its
Constitution, the bylaws are more like the statutory law. The
bylaws are easier to change, but they are always subordinate to
the provisions of the Articles, which control.

MR. CASE: And bylaws could never
contain shareholder voting requirements?



1 MR. FESSLER: Bylaws could never
2 contain a shareholder voting requirement that was inconsistent to
3 with Section 276, they could never set a lower figure. Nor could
4 they set a higher figure.

5 MR. CASE: Okay, but the Articles
6 could set a higher figure.

7 MR. FESSLER: The Articles are
8 competent to set a higher figure, if they are, and the bylaws
9 probably could contain something that would suggest that the
10 Board would take advisory votes of shareholders. But in terms of
11 "how do you amend the Articles," you amend them under existing
12 State law. And whether the Congress could come along and say,
13 "we're going to have different standards for amending your
14 Articles in these given areas", is a question as to whether there
15 would be a concession of supremacy to Federal law in that area.
16 Which increasingly will become dubious; but, one thing you want
17 to do as a technician is to make very certain that whatever you
18 ask Congress to do directly addresses the Alaska State
19 corporation code so that no one is left in doubt, as to what it
20 was that you attempted to accomplish. For that, at least, will
21 conceptually simplify everyone's understanding of what's going
22 on, and perhaps save you the expense of some very tortuous
23 litigation.

24 MR. CASE: My question really is,
25 does the resolution address the question of whether the Board is
going to be amending the bylaws or acting by a resolution or is
that something that's not decided, not stated in the resolution
period.

MR. BERGER: It is unnecessary.
The resolution said the Board can determine these matters, and
you don't need to look to the bylaws, and the Articles.

MR. CASE: State law requires the
Board to act through the Articles, by suggesting proposing
amendments to the Articles, and then voting by the shareholders.



1 I'm assuming you got to be pretty specific, if you're not going
2 to do it that way.

3 MR. BERGER: But, I thought that
4 Elizabeth agreed with Claude that this relieved the Board from
5 compliance with State law.

6 MR. C. JOHNSON: No, the
7 resolution as it was drafted, and the concept behind the
8 resolution was basically that all matters that affect the major
9 changes of the Corporations in 1991 will go to the shareholders.
10 Now the idea of having the Directors set some minimum votes was
11 not to instill an idea that a smaller amount could pass a
12 specific resolution, but the general discussions that we had
13 about that were that a larger amount would need to take some
14 courses of action, particularly with transfers of assets, and
15 things like that, and I was talking like two-thirds. As far as I
16 can remember, we never talked about the Board setting a smaller
17 amount for passage. It was always the higher amount of passage,
18 and it generally related to such things as transfer of assets.
19 We never did discuss, in fact, the Board overriding either the
20 bylaws or Articles of Constitution, I mean, Articles of
21 Incorporation.

22 MR. BERGER: Elizabeth, did you
23 want to add something to that?

24 MS. E. JOHNSTON: Only that I
25 understand what you're saying was discussed, Charlie, but the
actual language of the resolution talks about a simple majority
of the quorum, and that's the lowest standard that exists for
passage of existing corporate law. You do have, I understand,
you do have some reality problems of what degree of participation
different corporations have.

MS. M. JOHNSON: When we drafted
these resolutions they were in concept only, and the mechanics of
what's going to come down is going to be worked out. And in the
next several months. That was the reason for it, and the reason



1 to get to the concept is the reason we got this language because
2 of the existing organic documents of the different corporations,
3 and in the explanation that went out with these resolutions. Not
4 only does it say that we were trying to get to the minimum. We
5 want the highest vote possible. We were not trying get by State
6 law at all. That was never the intention of the group. The
7 explanation said that it was a minimum, and that it was according
8 to the articles and the bylaws of the existing corporations.

9 MS. E. JOHNSTON: The point is
10 that, Marlene, that many corporations do not have anything in
11 their articles and bylaws on these points, because they are
12 relying on State statutes. Because State statutes form the
13 backdrop to most of our articles and bylaws. I suggest to you
14 that it -- the problem that is intended to be solved by that is
15 the real problem, okay, that many corporations have. It's not
16 Bristol Bay's problem, but I know it's other corporations'
17 problem; which is the low level of participation, in a share-
18 holders meeting you cannot do what you want do, and meet the
19 statutory requirements that are in State law. And so of course
20 you do want to get around them. I believe that that's a legiti-
21 mate desire. You can't meet... many Corporations don't have even
22 two-thirds participation, so how can they meet a two-third's
23 affirmative vote. Of course, they want to lower it.

24 MR. BERGER: I wonder if we could
25 go on to look at some of these specific resolutions. I think
that the point that Elizabeth made has been flagged, and I
suspect the AFN is aware of it.

MR. C. JOHNSON: We're aware of
it now. The next resolution is another one, I think, that's
going to cause a lot of discussion, because it's the alienation
of stock issue. The opt-in, the opt-out issue, essentially. And
the way it's worded here. Again, as Marlene stated these are
thrown out for discussion, and these are not the final aye/nay
things; and we will change them to suit what people, what we



1 really need. I might say, when doing the process, the first two
2 or three meetings, we did a lot of discussions, Marlene -- like
3 Elizabeth is talking about now -- and finally decided unless we
4 have something specific that we can talk about, let's write it
5 all down, and go after some concepts, then we can refine it from
6 there. So, that's the intent here. This particular resolution;
7 I'll read it then I'll turn the mike over to somebody who can
8 explain it, maybe better than I can: "As therefore be resolved
9 by AFN in convention assembled, that the convention endorses the
10 concept that ANCSA should be amended to eliminate the provision
11 for allowing stock alienation after 1991, but, that each
12 corporation has the option to permit alienation of stock under
13 the current ANCSA provision. Be it further resolved, that this
14 option may be exercised once prior to December 18, 1991, and
15 thereafter as prescribed by corporation Bylaws."

16 There was a lot of discussion on this particular one,
17 whereas there was a couple of corporations really wanted to
18 maintain the current provisions which permit in alienation only
19 by passage or by positive action. There was also a lot of
20 discussion on this one, where everybody says well, what is going
21 to happen to all the little corporations, the villages that might
22 not take action? We should maybe automatically put these
23 protections in there, where they could change them only by vote
24 of the shareholders or some specific thing; and that was the
25 intent here. This resolution takes the later view that the
provisions would be automatically, or the protection would be
instilled, and that would take a positive vote of some kind to
allow alienation of stock. I don't know what we're going to end
up with on this particular one; but that's the idea.

MR. BERGER: Monroe Price.

MR. PRICE: I'll just add one
comment. First of all, it may be that "bylaws" is not correct,
it should be Articles. Ultimately, these are the kind of things
that will have to be looked at. This shows, in some way the



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 interplay between current state law, future state law, current
2 federal law, and future federal law on shareholder voting rights.
3 Under current federal law, and current state law, restrictions on
4 the sale of stock would terminate in 1991, with no shareholder
5 vote whatsoever. This provision mandates that the restrictions
6 remain and requires a shareholder vote to remove the restric-
7 tions, but requires a shareholder vote determined in the way
8 indicated in the first provision. Now one could say that that is
9 a higher shareholder voting requirement than now exists, since
10 now no shareholder consent is required under law. This is aside
11 from the question of what a corporation does to remove restrict-
12 ions. That may not be convincing to some people, but I just want
13 to make that point.

14 MR. C. JOHNSON: Did you use up
15 all yourself on the first one?

16 MS. E. JOHNSTON: Charlie, would
17 you be willing, or you or Monroe, just to talk a little bit about
18 the second part of the "be it further resolved..." where we're
19 talking about continuing options to exercise; just get out
20 whatever ideas we're behind at.

21 MR. C. JOHNSON: Okay, actually I
22 think maybe if we went to the next resolution, that would kind of
23 address that. If you remember yesterday, when Tony Strong was
24 proposing some solutions, on dissenters' rights, that maybe, and
25 the option to buy them out, in a way, and I think that is partly
one of the things, that this, the second part of the resolution,
would allow.

MR. BERGER: You mean, resolution
84-04.

MR. JOHNSON: Well, [84]-02; and
the next one is...

MR. BERGER: [84]-03, I mean.

MR. JOHNSON: [84]-03. Maybe if
I could go to that one, and then we can go throw that around a



1 little bit. Reading it, it resolved part "that the Alaska
2 Federation of Natives in convention assembled endorses the
3 concept that ANCSA should be amended to allow corporations to
4 purchase their own shares before 1991; and during any subsequent
5 period of stock alienability." Since shares under stock alien-
6 ability can't be transferred and we may have some dissenters
7 problem, or some non-Natives that we may want to eliminate
8 through some provisions. We have to have a process to do that.
9 And I think that's what this is attempting to do, and maybe
10 Monroe can, or somebody else can elaborate on that.

11 MR. PRICE: Well, I think, again
12 this is a concept. It will be hard to draft, and hard to
13 execute; because there will be problems of evaluations, fairness,
14 and some of the problems that Tom mentioned earlier of trying to
15 assure that there is not a wealth/poverty distinction, and
16 ownership of Native shares. I think those have to be addressed
17 by individual corporations, and to some extent by the statutes.
18 Again, one of the issues is, to what extent should that be an
19 option of corporations to fashion their own mode of dealing with
20 this question, and to what extent it is something that should be
21 dealt with by Congress. There is a question, such as should
22 these be windows of time for the re-purchase of stock, which are
23 discreet, and set by law or should this be a continuing power of
24 the corporation; questions like that.

25 MR. BERGER: Could I raise a
couple of questions about this resolution? It says that, in the
whereas, it says in the explanation, "Even if stock cannot be
sold or transferred, a corporation would be allowed to buy stock
from its shareholders, that want to sell." That would remove
some of the pressure on the corporation from shareholders that
want to be able to sell their stock. Charlie referred yesterday
to the expectations of individual benefit that exist out there.
People think they should get something out of this; want to sell
their shares. This is is not a case of the corporation being



PAPERWORKS

330 E. 4th Ave., Suite 201

Anchorage, Alaska 99501

(907) 274-4833

1 able to match an offer from an outsider. This isn't right of
2 first refusal. This is a right, unilaterally, for the corpora-
3 tion to make an offer itself at a price that it decides on. It
4 seems to me that's a very far-reaching concept, and if the right
5 to make the offer and to purchase shareholder's stock, is
6 exercisable at anytime between now and 1991, you could wind up
7 with a very few shareholders, Native shareholders, and a great
8 many Native people who are no longer shareholders.

9 I'm just looking at the bare bones of this resolutions,
10 but I think that means it could be the most important of all of
11 these resolutions, and I, maybe I'm the only one here that looks
12 at it that way, but Marlene, would you...

13 MS. M. JOHNSON: I agree that
14 this resolution is going to need a lot of work, but I think the
15 real intent, at the time we wrote it, was giving an "all out" for
16 those shareholders that don't have voting rights what have you,
17 and don't want their stock to be not inalienable; where they
18 could not sell it or get rid of it -- that really want to get out
19 of the corporation. It was not the intention of the corporation
20 ever offering to buy shareholders out.

21 MR. C. JOHNSON: Let me add a
22 little bit to that. A couple of things that we discussed. If we
23 assume the ANILCA provisions for right of first refusal, and
24 allowing the corporations to deny the right to vote after 1991 to
25 non-Natives, that is part of the thing that Marlene was
discussing. Also, there was some discussion at -- during these
retreats, of how can we perhaps benefit elders, that are not
being... not getting benefits out of the Land Claims Act. And
perhaps this might be a way to do it. Those were the kind of
things that were kind of behind this particular resolution, and
maybe you're right, it does need a lot of work to maybe more
clearly defined what we intended, in this particular one; to
evade the danger that you are pointing out.



1 MR. BERGER: Elizabeth, and then
2 Bart.

3 MS. E. JOHNSTON: Like Marlene, I
4 see this resolution as a window, rather than, if you like a
5 continuing kind of thing, because there will be a crucial
6 decision to be made by the shareholders of each corporation,
7 which way they want that corporation to go. Granted, this is not
8 a legal event, but BBNC did make the effort to survey its own
9 shareholders, and we came out with a profile where 63 percent of
10 the shareholders wanted continuation of restricted stock. And 36
11 percent did not. Now, as management, it seems to me that our job
12 is to make sure that as we move toward the restricted stock goal,
13 that what is put in the Federal statutes is as constitutionally
14 sound as our brains can make it.

15 But, secondly, that politically, and in an institu-
16 tional sense, of that 36 percent, incidentally, I'm not
17 suggesting to you, that 36 percent all want to buy out. Because,
18 when they're really presented with the choices... come the real
19 vote, this is a survey, a poll, not the real thing. But, some
20 of those will switch, but among those 36 percent are some who
21 would like out, and although you raise the specter, which I think
22 is, not only, well, we have two specters, if you like. We have
23 the specter you've raised which is real, and we have the
24 alternative specter, which we already have, of people who would
25 prefer not to be in the institutions, and who are locked in.
When people look at Native corporations, and they say well, "Why
are there so many proxy fights?", or "Why is there such unrest?",
some of it has to do with some people being locked in who would
prefer not to be. And, I do not, I guess, like Marlene, I do not
perceive that this is an ongoing thing over time, where you would
have a continual sort of loss, but rather that at a crucial time
when the vote is taken, people could make their choice; we do
have at Bristol Bay, in some of the villages, we have a
tremendous difference in pattern among villages. In some of the



1 villages, such as Chignik, 90 percent of the people who were
2 originally enrolled in Chignik, are no longer there. We have
3 villages like Togiak, where it is exactly the opposite pattern.
4 Ninety percent who are originally enrolled there are still there.
5 I would think that would make a significant difference. Both on
6 what people wanted and also in terms of how real the specter is
7 that you are laying out from your own experience, and so having
8 different corporations go a different way may not be bad.

9 MR. BERGER: Tony, and then
10 Jerry. Tony Strong. Oh, I'm sorry, Bart Garber... forgive me.

11 MR. GARBER: I don't think
12 there's anything clandestine in this either. I think the
13 discussion, of this resolution ought to come close in hand, or
14 along with the new Natives' provision, because what you have
15 here. If you want to say that this option is exercised, with the
16 idea that there's also a backdrop of the first right of refusal
17 that is extended both to the corporation and to the family, and
18 yet it's a limited situation, so that you don't -- what you have
19 -- a market, that's in back determining the shares. What you end
20 up with then is a large corporation with a lot of financial
21 capability, perhaps bidding against the children of this person,
22 who is allegedly the beneficiary under these inheritance
23 provisions, who may want to be in, but as a parent, who is a
24 shareholder who does not want in, you've got a possibility there,
25 where you're eliminating their ability to get the shares. And to
be fair, I mean, even if the corporation would like to see that
child get it, what is he going to do? Are they not going to bid
what the true market value is? And therefore, the one who wants
to get out isn't getting the fair value, and yet the children are
stuck in the situation where they can't bid the 500,000 that the
corporation is going to be able to get through bond financing or
something.

So I think that, although it's going to add to your
problems, those are related issues that ought to be talked about



1 because from the very first legislative history, the idea was for
2 a corporation to be a perpetual thing, because of the intended
3 beneficiaries were supposed to be people who would inherit. You
4 want to balance that, though, against the rights that you've
5 given to current shareholders, but notice that your decision is
6 going to affect those who might have otherwise gotten those
7 shares for free, through inheritance.

6 MR. BERGER: Tony, you're next.

7 MR. STRONG: Yes, there was
8 something that occurred, while the discussion was going on, that
9 as was stated, I think, both by Charlie and Marlene, and by Liz,
10 was that one of the reasons for this 84-03 resolution was to
11 allow those people who are not current voting, are shareholders
12 but they're not voting shares. In other words, the non-Natives
13 who are holding the shares. And you have to tie it also, with
14 what Bart said. It has to tie it with those people who are born
15 after 1971. The solution I suggested yesterday had some bearing
16 on it, as well, about being able to issue shares to everybody who
17 was born, and anybody who's currently holding shares, only holds
18 it in life estate.

15 The problem I see is that this resolution doesn't
16 address the people who are, do inherit shares after the window
17 closed. If we take the assumption that after 1991, non-Natives
18 who are holding share in the corporation cannot vote those
19 shares, then this resolution doesn't address them, 'cause there
20 will be non-Natives who will be inheriting shares after 1991.
21 And if their shares are not votable, they may have the same
22 feeling of wanting to opt out. So, I think that resolution
23 doesn't address it and I think it was an important issue.

22 MR. BERGER: Charlie, you want to
23 answer?

24 MR. C. JOHNSON: Yes, just
25 briefly. It says that you would allow this process during any
subsequent period of stock alienability, then in fact stock



1 alienability is extended, it would continue to allow that for
2 those people who could not, who would not be voting their shares.
3 My response was that, was to the fact people were saying they
4 perceived it as a window, as opposed to a continuing authority of
5 the corporation. If it was continuing authority of the
6 corporation, then there was those people who don't have the right
7 to vote their shares may have that continuing ability to sell or
8 alienate themselves.

9 MR. STRONG: We are looking at it
10 as a continuing thing, additionally, in further resolutions. You
11 remember yesterday, we were talking about the percentage of
12 shares that are passing to non-Natives, and we said that part of
13 that, a large part of that, is the matter of definition, because
14 of the blood quantum requirements. In one of the resolutions we
15 had addressed that particular problem, in a fashion, I think
16 that, would allow each corporation to extend some of these
17 benefits to those that would have Native blood in them, or
18 descendants.

19 MR. BERGER: That wraps that up,
20 Tony.

21 MR. STRONG: Apparently.

22 MR. BERGER: Gary, and then Ralph.

23 MR. ANDERS: Looking at what's
24 likely to happen should Natives decide to sell their stock, prior
25 to 1991 or after that, I think there's some questions that need
to be raised here. Thinking back about the effect of the cash
payments that were paid out to non-resident shareholders, and the
sense of unfairness that that created among part of village
residents, I see a parallel here if, in fact, a significant
number of people are able to sell their stock back to the
corporation. Justice Berger mentioned the possibility of
creating two classes within the Native community -- those that
have shares and have influence on the corporation and those that
do not. But thinking through this, it seems that if people began



1 to sell their stock back to the corporation, that it might set
2 off some kind of chain reaction. Another point related to this,
3 it seems that the intent of some of these resolutions is to
4 maintain corporate control. In thinking about this, it seems
5 that it might be possible to concentrate on a legislation that
6 would require continual Native ownership, both in the village and
7 the regional corporation. I don't know if that is a viable
8 approach, but it seems to be one way of dealing with the issue of
9 the maintenance of control within those entities.

7 MR. BERGER: Ralph Johnson.

8 MR. R. JOHNSON: I believe that
9 I'm assuming correctly that throughout all this discussion we're
10 only talking about voluntary sales, that is to say shareholders
11 only going to sell voluntarily because the resolution is unclear
12 on that. Okay, if that's true then the second question it seems
13 to me that Monroe Price eluded to, and I find, a much more
14 troubling one, and that is what value is to be determined, and
15 with closely held corporations shares it's exceeding difficult to
16 arrive at value. I mean there's just any economist or corporate
17 person, accountant can tell you, you can take book value, you can
18 take asset value. You don't have any market to determine value,
19 and I gather there is no market, as such, at the present time, so
20 there's really no way to get a value on it; if you ask me if I
21 want to sell my land in eastern Washington, I say "sure, depends,
22 what's the price?" and if you say, "\$50,000", I say, "that's
23 ridiculous, I don't want to sell you." You say, "4 million
24 dollars", I want to sell it. So, I mean it isn't worth that, I
25 don't have any land like that, but I'm just saying that the price
is everything, and it seems to me that unless the resolution
addresses the question of value or price or something like that,
then it's not a very helpful exercise to go through.

24 MR. BERGER: Just before I call
25 on you Dan -- the kind of scenario that concerns me is, suppose
in the village you have, as Tony Strong told us yesterday, you



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 have in some village a family that may dominate the local village
2 corporation. Other families that feel, for one reason or
3 another, that they might as well sell out at an offer advanced by
4 the village corporation, and an offer that may bear no
5 relationship to the value of the land which, of course, may not
6 be ascertainable anyway, but may not even bear any relationship
7 to the value of the assets, apart from the land. The non-real
8 estate assets. There might be even money in the bank account,
9 which would dictate a higher offer than has been made. Well, in
10 any event, people might sell out. They might not get anything
11 like what they should for their shares. Furthermore, once
12 they've sold out, if they are going to stay in that village, it
13 may be that over a period of time, they become looked upon as
14 people with no rights to use the corporate land, and you may wind
15 up with the type of situation that we have in Canada, and some
16 other countries, where you have some people who are actually
17 called status Indians, and other who are called non-status. They
18 have no status. Well, in Canada it relates to their status, in
19 terms of the special relationship with the Federal government.
20 It doesn't relate to private property rights, and corporate
21 assets, but here corporate assets are the patrimony of Native
22 people, that's the... At any rate, is there an argument? (Looks
23 like I'm going to get one.) Is there an argument for making some
24 kind of distinction between villages and regions in connection
25 with this? I'm not really dealing with the resolution. I'm
dealing with the question of principle. At any rate, Dan and
then David, and then Charlie.

MR. FESSLER: If David had a...

MR. CASE: ...Just a small point,
and that is that this is a problem that has already arisen in the
Lower 48, in allotted reservations where people have sold their
allotments, and now are viewed as having sold out their interest
in the tribal lands, and that is a division that can occur, and



1 has occurred in, as far as I know, in places in Lower 48 for
2 different reasons.

3 MR. BERGER: You mean allotments
4 sold between 1887 and 1934.

5 MR. CASE: Right, and then the
6 family is perceived as not having any. They may be members of
7 the tribe, and they reside on the reservation, and all, but there
8 becomes division between traditional people, who have perhaps
9 held onto to the land at all cost, and now the factions developed
10 between traditionalist and people who have sold their allotted
11 lands.

12 MR. BERGER: Dan Fessler.

13 MR. FESSLER: Well, just a couple
14 of points. I read upon correctly interpreting Resolution 2, and
15 Resolution 3 together. The proposal would all come down to the
16 idea that the stock would be non-alienable. There's no right on
17 the part of any person to demand the corporation that it part
18 with current assets, in order to purchase the stock. All these
19 resolutions would do, would be to say that the corporation would
20 have the power to decide, that it would adopt that policy. One
21 thing I think you'd want to be concerned about is, whether the
22 corporation on making the decision, would make the decision
23 generally, or whether it could make the decision with regard to
24 specific individuals, because at some point there will be a
25 problem of people complaining of the potential of discriminatory
treatment. And as a general proposition, the idea of restriction
on the alienability of stock and corporations has been around a
for a long time in the American legal experience. It has never
been widely received. It has always had rough sledding.

There are two basic strains of thought. Those who are
opposed to restrictions on alienation try and claim that stock in
a corporation is akin to personal property, that property can
only be affected by the State in accordance with due process, and
therefore there are restrictions, which the individual citizen



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 has with regard to anybody's ability to dictate as to what will
2 be done with his rights. And if you're using the law to make the
3 stock inalienable, then those laws have been tested, and they
4 have not always prevailed.

5 On the other hand, and perhaps the better reason
6 prospective is, that as long as the restriction on alienation is
7 tied to what is called a proper corporate purpose, and it would
8 seem to me that Native corporations could essentially define
9 proper corporate purposes, so long as the restrictions are
10 reasonably related to that articulated corporate purpose, and so
11 long as they do not amount with total prohibition, then they have
12 been deemed restrictions which have passed muster. My only
13 caution would be that whatever you ask Congress to do, you'd want
14 to do it with the fullest knowledge of areas of recurring trouble
15 that you want the legislation to speak out and specifically
16 extinguish as land mines in your future, before you start walking
17 around in the twilight in that area, because it can be a problem,
18 and as several people have suggested, the ultimate problem is one
19 of, "is there an obligation on the part of the corporation?"
20 Must it treat all persons, similarly situated, in terms of their
21 desire in the same manner? And the other question is, "Is there
22 a fair price that is being paid?"

23 Now, in Alaska at the present time, if there were to
24 make analogies to your current corporation law, where dissenters'
25 rights are recognized with regard to those people who perfect
them for organic changes, the law's very solicitous of the
minority shareholder. The corporation has to make an offer; if
the shareholder is not happy with the offer, they enter into a
period of negotiation over the question of evaluation; if they
cannot (the shareholder and the corporation) resolve that matter,
it goes to court, where there is a judicial evaluation. If that
type of theory were ever seized upon, all I'm suggesting is that
you could be opening the door for courts coming along and
deciding what is the proper and fair price to be paid, and that



1 has with it its own risk, and indeed expenses, in getting that
2 type of evaluation settled.

3 MR. BERGER: Charlie, and then
4 Bart.

5 MR. C. JOHNSON: Without arguing
6 the process for establishing a value, the intention is in fact to
7 be discriminatory. As Gary Anders mentioned little a while ago,
8 that perhaps we need some specific language to guarantee
9 continued Native control, and in fact that's part of our
10 intention. There's also a couple of more assumptions that I
11 think that we need to speak to. One, these resolutions are
12 placed out in front, assuming that the corporations will continue
13 to be the organization that survives 1991. There's a resolution
14 that allows, that we're requesting the change of assets to other
15 types of organizations. That's another assumption, we might be
16 able to do that. Our intention, is in fact, to be
17 discriminatory. Now, back to the other point that Tom just
18 brought up about the fact that in the village families will, you,
19 certain, certain families, in fact do control the politics of the
20 region -- the village. I think that's a moot point. That's how
21 it is, and that's it's going to be. It's like arguing about
22 winter. It's a matter of pure numbers. The larger families are
23 going to control, and I think to argue that point... it's really
24 a moot point. It's strictly a matter of numbers that's been in
25 place that develops in any types of society irregardless. I
don't think that point even needs to come up.

MR. BERGER: Well, Tony, you
raise it first of all, and so we'll... Tony, than Bart, then
Claude.

MR. STRONG: I do have a response
to that. But, I also have another point, that really hasn't been
discussed. At this point, I don't know if it has ever been
brought to the attention of the Commission. The response I have
really goes, and continues with the discussion I started



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 yesterday about that -- the structure of the corporations. The
2 way they are set up, and the way the votes are cast, does put the
3 power of deciding what the corporation is going to be doing, in
4 the hand of a few people, or a majority, the majority in a sense.
5 The majority rules; and in certainly in southeast Alaska, where
6 we have traditionally had a clan system of governance. That
7 means, to me, when the clan leader wasn't able to take care of
8 their clan members, that clan leader was replaced by another.

9 The system of governance, traditionally, was that clan
10 leaders are the ones that took care of their members, and it
11 wasn't up to a person who was popularly elected by other member
12 of the village, or other members of the region for that matter.
13 So, the superimposition of a new structure broke up that decision
14 making and it took away the authority of the clan leaders, and I
15 think, I suspect that, that basic principle is true in other
16 regions, as well. I'm not as familiar with the Inuit region, but
17 I understand, that whaling captains had a lot of... a lot more
18 say historically, over what went on in the village, than they
19 currently do; where they do now, do now have some say over the
20 distribution of the wealth that comes with catching the whale.
21 But, they don't have the same kind of power that they
22 historically have had over other decision matters and the
23 important decisions of the community. So I do think that it is
24 an important subject for us to address. It does involve the
25 culture, and it does involve the decision, about how assets are
to be used, and wealth is to be distributed in the communities.
Then...

MR. BERGER: Are you going to your
new point.

MR. STRONG: Yes.

MR. BERGER: Could I -- I wonder
if we could just...

MR. STRONG: Sure.



PAPERWORKS
330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 MR. BERGER: ...wrap this up
2 before you do that, and I was using Tony's observation about
3 villages in Southeast families, and so on, as an illustration. I
4 think Charlie is right. It is a question of numbers, and that's
5 life, but my point is whatever the reason, for people selling out
6 in the village. If they sell out to the corporation, they may be
7 in the same position as those people who sold out in the U.S.
8 when they were given the right to -- when all the reserves were
9 broken up and...

10 (NOVEMBER 15, 1984)

11 (OVERLAP TAPE, SIDE B)

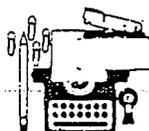
12 MR. BERGER: ...each person got a
13 piece and those that sold out were regarded as people who weren't
14 really entitled to continue as members of...

15 (NOVEMBER 15, 1984)

16 (TAPE 6, SIDE A)

17 MR. BERGER: ...the tribe by
18 those who had hung on and it seems to me you've got a very
19 similar situation. Well, I don't want to flog that, but Bart,
20 and then we'll come back to Tony and then Claude.

21 MR. GARBBER: Just two things and
22 the one relates to that. I agree with that, Charlie. You're not
23 going to be able to do anything. I mean, in our village we
24 happened to have four families. But that's the way it is and
25 that same power structure applies not just to corporations, but
it applies -- well, state corporations -- it applies to the IRA
corporation and it applied probably before that to the
traditional, 'cause even though the leader was thrown out, he was
thrown out by the majority. Because if the majority didn't want
him thrown out he wouldn't have been thrown out. He didn't throw
himself out voluntarily. So, the question of, "Who is
discriminating?" -- I think is important. We're not going to be
able to do anything about the people in the villages. I think
there's one tendency though, that's beginning and that is that we



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501

(907) 274-4833

1 ought to stop the federal government from discriminating on the
2 basis of whether you're a shareholder or not. Some recent
3 federal statutes have made that distinction and I don't think
4 that we should risk the status of a Natives with the federal
5 government in a special relationship on the basis of whether he
6 owns stock or not and has assets. So that status should be
7 protected and I think it could be if -- when we approach the
8 federal government and ask for this ability to allow us to buy
9 back, that we state specifically in there, that even though the
10 person sells, that does not affect his status as an American
11 Indian under federal law and that should at least stop, to the
12 degree that we can, discrimination. But not discrimination
13 amongst us, but discrimination by the federal government on that
14 basis. The other point I wanted to address, I understand and I
15 realize the restrictions on alienation that they are deemed, per
16 se, unreasonable when they're absolute and that you usually need,
17 Professor Fessler, a reason that's related to a corporate
18 purpose. I submit that the federal government could make that
19 alienation period absolute based not on corporate purpose, but on
20 federal plenary power, because ANCSA is Indian legislation. And
21 so I don't think that we really -- well, there may be an issue
22 there, but I think that there is a clear "out" at least with
23 regard to absolute alienation of stock in ANCSA corporations due
24 to the special relationship and the federal governments plenary
25 power over Indians.

19 MR. BERGER: Maybe we could just
20 have -- Claude, do you want to add anything and then we'll come
21 to Tony.

22 MR. DEMENTIEFF: Just an observa-
23 tion more -- well, I think my question was answered but, right
24 now we do have two classes of Natives already. Those born before
25 1971 and those born after. I think it needs to be, not discussed
just here, but statewide by all corporations. Just what are the
destructive elements if any, of that situation? ANCSA legislates



1 the removal of the restrictions on the stock after 1991, which
2 will increase the separation of the two different Natives.
3 Shareholders, non-shareholders. I can imagine going to -- going
4 home and saying, "Oh, hello, how are you doing? I haven't seen
5 you in a long time. Are you a shareholder? I'm a shareholder!"
6 People are going to be talking about that -- that type of
7 situation. Nobody's really looked at what destructive elements,
8 if any, can come about because of that situation.

9 If you want to have the corporations buy the stock,
10 there's -- you can't do that after 1991 according to the law, but
11 maybe in the interim, there are other things that can be done.
12 If the intent of the resolution is to provide for the elders, for
13 example to give them something before 1991, which is an honorable
14 thing to do. There are, there are possibly other ways that it
15 could be looked at. I'm using the example of the New York Stock
16 Exchange on the, on the options market that puts in the calls.

17 A corporation may have the main institute of contract
18 between a shareholder and the corporation. On a call type of
19 situation where it gives the corporation the option to buy the
20 stock at a certain set date or whatever the contract would say.
21 You wouldn't actually buy the stock but it would still have that
22 shareholder, have voting rights the would still be a shareholder.
23 If the corporation is given the option or the money option to
24 the, to the shareholder and done the honorable thing for the
25 elder and not created the second class of Native, that probably
should be considered somewhere along the line also.

MR. BERGER: Well, just let me
make one observation and then we'll go on to Dan. I think
Claude's point (and you all realize that I agree with him) is
well taken that the deep seated consequences of this have to be
considered. You've got two classes of shareholders now. You're
going through a great big series of steps to try to get shares to
the people that don't have them, while they happen to have been
denied them because they weren't born in time. But at the same



PAPERWORKS

330 E. 4th Ave., Suite 201

Anchorage, Alaska 99501

(907) 274-4833

1 time you're proposing that there be a buy-back -- an opportunity
2 for corporations to make offers to the shareholders and you could
3 wind up with another division of people according to whether they
4 hold shares or not and in the villages it may be more important
5 than in the regions, because there it might, in the end, mean
6 that they would be denied the use of corporate land, treated as
7 trespassers. That's one of the long-term consequences to be
8 thought of. Well, Dan, you want to talk about subsistence, I can
9 tell!

10 MR. FESSLER: But what I wanted
11 to do is just to make one comment about these resolutions. I
12 understood the point that you made that they were drafted in a
13 very general form and that you're going to work further on what
14 they're doing. The only thing that I would say, I obviously,
15 having just come here last evening from California, if I were to
16 spend the rest of my life here, could not learn and become a
17 source of judgment as to what is the best thing to do with
18 respect to the human problems. As a lawyer, the only thing I do
19 is draw your attention to some of these areas in the hope that
20 however you word these resolutions they will be drafted in such a
21 manner as to minimize any ambiguity or leaving you open to
22 lawsuits. Whether or not you -- whatever the content is, just as
23 a technician, I would hope that you would specifically interface
24 with the state statute so that it is not a matter of speculation
25 as to what was intended by Congress and if the federal government
chooses to speak out and characterize a permanent imposition of
non-alienability on the stock, as something which it is doing
under its power to legislate, with respect to the Native popu-
lation of the United States, then the resolution ought to say
that emphatically and not leave it as a matter of speculation as
to in what sense Congress was acting. These technical matters
are ones that could be very important to you, because the last
thing you want to come out of this with, is to have to go back to
Congress yet again and to mount this all over because you've



1 spent several hundred thousand dollars in litigation learning
2 that it is worthwhile dotting the i's and crossing the t's when
3 you -- when you're doing this type of thing.

4 MR. BERGER: Yeah, Tony and then
5 Glen and John and Gary. And then we'll go on to the next
6 resolution.

7 MR. STRONG: I've seen Glen
8 raising his hands for a while. I think he wanted to respond to
9 the earlier discussion and I'm going to change the subject, I
10 think.

11 MR. FREDERICKS: I agree that
12 when I go out to my villages and talk about 1991, they ask me,
13 "What if I sold my stock right; if I had the right to sell it,
14 where do I then fit?" I say, "you're, well, I guess you're
15 non-Native then," you know. "Where can I hunt?" Well, according
16 to corporations, you just sold your stock and your land, you
17 can't, even by right, go hunting because it's owned by these
18 other people. You are -- and that's the kind of class we're
19 gonna -- we're gonna create in the long run I think. That's why
20 it's so important to me -- is to separate the land. That land
21 would never be sold by some institution, you know. Who the hell
22 cares whether I sell my stock? And that's what the Natives are
23 telling us. "Hold that land." But the way the system is now, if
24 I sold my stock, I've sold my land rights. I can't hunt. And I
25 think that's what we -- I think that's what they're saying to us,
you know. And only way, as I see it, is to separate that land.
If we have to go to Congress to do that, if we can't do it by
state statutes, with -- then we have to go to Congress. And I
think that would solve our problems, you know.

MR. BERGER: Well, Glen, I think
later on in the resolutions that's what we're coming to -- come
to grips with that. Well, you know that better than I do. But
it may be this discussion, which I've found very helpful is
driving us towards your position, so maybe you can relax and wait



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 till we all reach the point at which you've already arrived.
2 Sorry, John Taylor.

3 MR. TAYLOR: Tom, I think there
4 may be another unintended consequence of some of these
5 resolutions that we may want to explore a little, just so we know
6 what we might be getting into. I think I'd like Dan to comment
7 on it too, possibly. As I look at the possible impact of some of
8 these resolutions, if they go through the natural chain of
9 events, that they may have on village corporations, I suspicion
10 that if we do make stock alienable in the village corporations,
11 what we'll end up with is, out of the 50 percent that are left
12 over, closely held corporations, very closely held corporations.
13 And that brings about a whole new series of economic dynamics and
14 corporate dynamics and, in some cases, legal dynamics. Now, I'm
15 not so sure that closely held village corporations are really
16 what you're after in the long run.

17 MR. BERGER: There's Gary and
18 then Elizabeth. I hope. Am I right about this.

19 (Indiscernible.)

20 MR. ANDERS: Let me just say add
21 a footnote to what John said. In thinking through past
22 experiences with regard to the termination of Native land rights,
23 we've seen various patterns affected with regard to per capita
24 distributions versus tribal distributions. And there are pro's
25 and cons to both in terms of the probability of a certain pro-
portion of people succeeding in economic terms. Per capita,
gives a higher probability simply because of the lack of concen-
tration, the capital. It seems to me that many of the
resolutions that we're looking at give a very high degree of
flexibility to individual corporations. That may be a strength,
but it also may be a weakness.

As an economist and as someone that studies the opera-
tion of markets with regard to the potential transfer of Native
corporations, what I'd like to see discussed more concretely is



1 the process envisioned by which shares can be transferred or
2 signed back to the corporations and in that I think that there
3 are impediments that can be built in to ensure that if the stock
4 is going to be sold that it will, in fact, receive a fair and
5 just price and that some of the worst case scenario affects are
6 ameliorated and there is another point that I would bring in with
7 regard to the integrity of the village corporations and the
8 importance of the land base to the subsistence rights of Alaska
9 Natives and that is we're not looking at inter -- we're looking
10 at inter-dependent, not independent situations.

11 The development activities that will occur, instigated
12 by certain regional and village corporations, it'll have a great
13 deal of effect on the natural resource base of which people draw
14 their livelihood. And it's potentially conceivable that you
15 would have development activities occurring in mining and in
16 other areas that would have very sharp effects on the quality and
17 quantity of game resources available for those people.

18 MR. BERGER: Elizabeth and then
19 Bart.

20 MS. E. JOHNSTON: I know I'm
21 repeating myself but I do want to get in again that regions and
22 villages do vary. And in Bristol Bay's case itself, we own only
23 -- or -- I guess, what 98 percent of what we own is subsurface
24 estate. There is no particular location of the region except the
25 Bristol Bay Area. But there's no -- that division between Native
and non Native, those two classes, doesn't ring a bell for me for
the region. Among our villages, in some of them, it rings a real
bell, that it would -- that it should be of real concern. In
some of the other villages...

MR. BERGER: Do you mean,
Native/non-Native or shareholder/non-shareholder?

MS. E. JOHNSTON: Share-
holder/non-shareholder, I'm sorry. Shareholder/ nonshareholder
situation. In some of our villages the movement of the



1 population has already taken place. In effect, it's almost an
2 abandoned village and so the -- the -- the thought that there
3 would be people there, living there trying to utilize subsistence
4 at the same time having sold their stock, doesn't ring a bell in
5 those villages. While others, it would be a real problem, and I
6 just -- I just stress the fact that fact patterns vary widely and
7 would make a difference on whether that would come -- whether
8 that problem would occur.

9 The only other thing that I wanted to mention is --
10 ties in. Various people have -- have talked about the value
11 problem. As I understood it, when the resolution was initially
12 discussed there was some possibility of building into the
13 statutory framework, a formula for providing value. And I just
14 want to caution that -- and I think that's an excellent idea and
15 obviously in doing it there would be a variety of thought
16 processes going through it. And it would be a formula that would
17 apply so that, again, the management couldn't wing it and just
18 offer people whatever they thought they could get away with.
19 But, something that looks very simple like book value, is very
20 appealing. The only problem with that is, in many of the village
21 corporations, the land has not been booked, or if it's been
22 booked, it's been at a dollar an acre. But I would further
23 raise for you, what can you say the land is worth if it is
24 committed for subsistence use and will not be used for something
25 else, i.e., income-producing for 50 more years. What kind of an
-- in economic terms, value do you want to assign to that as
opposed to the mythical and hypothetical corporation that Roland
referred to yesterday, which is in a different position as to, in
economic terms or values of those lands. Lastly, I just wanted
to say on values that even in the regional corporations, what's
gone on in booking the land assets has varied widely for those of
us who just have subsurface and have no, what is the proper
phrase, unknown reserves we have not booked anything, we're still
in the exploratory stage. There's not one thing that will show



1 up except on the footnotes. At the same time you have a
2 corporation such as Sealaska, which has valued and booked their
3 timber assets. So, all of that, in a variety of ways, has to be
4 built in and understood in approaching appropriately a formula
5 that would be fair both to the corporations and to the
6 shareholders.

7 MR. BERGER: Yes, Bart and then
8 Tony.

9 MR. GARBER: Yes, just two things
10 and I understand the distinctions that Liz is making with regard
11 to which shareholders still use sub -- land and subsistence use,
12 which ones want to intensively develop. I'd hope that we make
13 that a personal question that you ask either all of the residents
14 or shareholders, whomever. You can't make presumptions just
15 because someone has moved out. You make that distinction an
16 urban rule and it's not -- people even when they are in urban
17 areas still have lots of those interests that aren't always --
18 simply moving to Dillingham or moving to Anchorage, doesn't mean
19 you automatically want to build the coal mine. So you have to
20 look at it closer than that. The other thing I wanted to see if
21 Mr. Taylor could develop. He said that he's concerned about
22 village corporations becoming closely held. Well, I would say
23 that we -- most of our corporations are closely held already.
24 So, if you have some kind of fear there, I wish you and Mr.
25 Fessler -- Professor Fessler could develop that because, I mean I
represent corporations with only 32 people in them, that's not
exactly a public corporation and even those like my own that has
300, there's five board members who essentially only represent --
I mean -- well, that represent the three major family blocks in
that village already. So I would say that we've got closely held
corporations now. Is there something really to be concerned
about or does that add to some dimension of what we're talking
about here?



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 MR. TAYLOR: Well, I think the
2 point being made is they'll become even more closely held and
3 when we've tried to deal with village corporations in helping
4 them plan in doing the kinds of things that they want to do, the
5 more closely held they become, the greater the probability is
6 they either become extraordinarily flexible or extraordinarily
7 inflexible. There's no medium road when you're trying to work
8 with a closely held corporation. It either goes or it doesn't go
9 and that's the end of it right there. And so that's just one of
10 the kinds of problems that I foresee, as you become even more
11 closely held. That doesn't lend to the kind of flexibility an
12 organization really needs to survive long term cycles. Dan!

13 MR. FESSLER: At the present
14 time, Alaska corporation Law does not know such a creature as a
15 closely held corporation. Right. I mean it's an unrecognized
16 species. The new model business corporation act that has been
17 widely discussed continues the non-recognition of closely held
18 entities. The term "closely-held corporation" is used, I think
19 at this -- in this meeting in a slightly different context than
20 it is normally used or used in other discussions where we're
21 talking about a situation where Liz and I wish to form a business
22 that in all other respects would be a partnership but what we
23 would really like to have would be a "heads -- we win and tails
24 -- all our creditors lose," situation because we want limited
25 liability and so we form a corporation. We also wish to be given
an indulgence wherein we don't have to observe any of the normal
norms of a corporation, we don't want to have to have board
meetings because it would be just the two of us, we don't want to
have to have elections of the board because we would be voting
for ourselves and pretty soon you get to think, well it's all
being done with mirrors and it's all sort of silly and all we
really wanted was limited liability and so that is what many
people think of when they're talking about closely held
corporations. It poses for a state legislator a broad ethical



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 problem as to whether they just want to sanction that type of
2 behavior by people generally as opposed to the notion that there
3 are corporations that have very few shareholders and in that
4 sense are closely held. And what I think that is being
5 articulated here is, what we're talking about is a shrinking
6 shareholder base, the more people who sell their shares to the
7 corporation, what will the corporation do with the shares that it
8 has acquired in this manner and may have had to part with hard
9 assets in order to acquire. Well, it can't vote them.
10 Theoretically it can be reissued, which may be one way to handle
11 the problem of those people born after 1971 that sort of
12 pre-permitted...

13 MR. BERGER: Excuse me, Dan,
14 leaving the people born after 1971 out....

15 MR. FESSLER: Yeah.

16 MR. BERGER: ...I don't think
17 that it's contemplated that the shares could be reissued.

18 MR. FESSLER: No.

19 MR. BERGER: You simply have a
20 dwindling body of shareholders...

21 MR. FESSLER: You have a
22 dwindling body of shareholders and therefore those individuals
23 who have not sold out to the extent that the assets still remain
24 are more and more firmly more in control of those assets. And
25 your point and several others have raised that they may be able
to treat the assets, being the subsistence lands as a means of
discriminating against other people, say, "Well, you're not a
Native anymore, you can't hunt," etcetera, etcetera. I mean, I
can only began to imagine the horror that would be brought up.
But if you do, sir, take away the land, haven't you also taken
away -- and if the land can't be affected by the corporation,
then the corporation has lost virtually all of its ability to
have any disciplinary force upon the population or the area.
Because if it can't determine what happens to the land, and that



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 is the basic long term concept of putting the land in present
2 corporate title, not giving it to individuals, then you have that
3 problem. What is the corporation for, after that if we succeeded
4 in breaking off and saying that the land couldn't be sold by any
5 institution.

6 MR. C. JOHNSON: May I answer
7 that partly?

8 MR. BERGER: Charlie.

9 MR. C. JOHNSON: The intention, I
10 think of Glen's statement earlier is exactly what you've stated.
11 To take out of control -- take the land out of control from the
12 corporation so that in fact if the corporation's in trouble for
13 example, it really cannot utilize the land to bail itself out
14 unless, or specifically unless a group allows it such as an -- a
15 traditional counselor, cooperative or whatever, that everybody
16 would belong to. Now, in that specific issue, one of the real
17 vigorous discussions we had in one of our retreats was the use of
18 land by the remaining residents of villages. Kind of speaks of
19 to the point that Liz was bringing up about specific villages,
20 some that have a lot of the remaining stockholders still there.
21 Others that have a small percentage and a lot of them live in
22 Dillingham or Anchorage or wherever.

23 Now, one of the concepts that we threw out at that, or
24 threw it onto the table I mean, at one of the -- retreats was
25 that, can we place some restrictions on determination of land
use, such as that if the land is to be utilized, sold or
whatever, that those that are still remaining on the land will be
the determining ones. Of course, we got into a real vigorous and
-- discussion on that. And that was kind of aimed at the point
that you just brought up and what Glen has been bringing up, that
in fact, taking the land out of the corporation is -- was exactly
the point that you're bringing up, that is to take it out of
control of the corporation, really.



1 MR. FESSLER: Then you would want
the corporation left?

2 MR. C. JOHNSON: Maybe, it may be
3 that it would survive and have -- be involved in some activities,
4 for example, I know Glen's corporation is involved in real estate
5 here and other things, so -- but see the problem is with the
6 corporation -- with the land being an asset of that corporation,
7 if their activities should get in trouble, I mean, it jeopardizes
also the land that's held by the corporation, and that is exactly
the point.

8 MR. FESSLER: Most sure -- most
9 surely, then, no. And if shareholders -- par shareholders,
10 though they're no longer residing in the village and they're no
11 longer leading the traditional life, have a voice, they may
obligate the corporate land for enterprise purposes that are
antithetical to the people who remain...

12 MR. C. JOHNSON: That's correct.

13 MR. FESSLER: ...such as having
14 the big coal mine there. That's a separate and distinct issue
15 because it might be financially successful and culturally
ruinous.

16 MR. C. JOHNSON: Correct.

17 MR. BERGER: Yeah, I think we
18 should go to Tony, we've...

19 MR. STRONG: I think -- I think
20 what I've wanted to add into the discussion or at least bring to
21 the attention of the commission is a couple of points that really
22 seem to be -- I never hear it discussed on any -- in a -- any
23 statewide level but it's a real problem to individuals. And that
24 is, during the registration process to become shareholders in the
25 corporation, the process in which persons could designate
themselves as members of a particular village or members or a
regional corporation, left a lot of people very confused.



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501

(907) 274-4833

1 Some people were living outside the United -- outside
2 of the state of Alaska, going to school and when they filled in
3 their form, this humongous sheet that they had to fill out to
4 become a member, they put down an address which put -- which made
5 them to be shareholders, either at the regional level or in
6 another village, simply because when they put down their current
7 mailing address, they put down where they were at rather than at
8 home, where home was. So, people who are for instance, who are
9 -- who have been raised in the village of Klukwan are not
10 shareholders of Klukwan, Incorporated, they're shareholders of
11 Gold Belt, they're shareholders of the Thirteenth Regional
12 corporation, they're shareholders of Sealaska at large and have
13 not been aware of any provisions to become shareholders of the
14 village in which they live in.

15 That goes directly to some of the issues that we were
16 talking about earlier, is -- "you're not a shareholder here, what
17 are you doing? What are you talking about? You don't belong
18 here, you're not a shareholder, why are you living in this
19 village?" So, and it does present that kind of difficulty and
20 then the other issue that was presented by the Claims Settlement
21 Act was the definition of what a village is. There were at least
22 two villages in Southeast Alaska who wanted to be -- to receive
23 this status of village corporations. They wanted to be able to
24 incorporate a village corporation and receive the benefits of the
25 Claims Settlement Act. They were denied that right by defini-
tions within the Claims Settlement Act. One is, is whether or
not that particular group of people are Natives any longer or
whether there's a village there. Certainly the village or the
village in Haines, there's a village down on the waterfront, it'd
been there all of my life, you know, there's stories that go on
forever including current people who live there and they call
themselves a particular tribe and they applied for status under
the Claim Settlement Act, to become a corporation and to receive
benefits, the 23,040 acres and they were denied that, because



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 under the Claims Settlement Act it said, there was a provision in
2 it that said that the corporation or the community had to
3 maintain some kind of integrity as a Native community. Also the
4 village -- so, because of that definition they were denied
5 administratively, denied the benefits of the Claims Settlement
6 Act and are now holders at large, shareholders at large in the
7 regional corporation and they don't, I mean that the basic
8 community has been affected by it. And then another village in
9 southeast Alaska where it had been a traditional village applied
10 for status and they had the minimum of 25 people who had applied
11 and everything, but they were denied as well, the ability to
12 participate in the Act as a village and develop a village
13 corporation, so I think that -- I'd like to -- I don't know where
14 this fits into this discussion on these resolutions, 'cause it is
15 -- and it -- but it is a problem that was raised by the Claims
16 Settlement Act. It's somewhat of a 1991 problem, 'cause it's
17 part of the Claims Settlement Act problems.

18 MR. BERGER: Yes, David Case and
19 then Bart.

20 MR. CASE: Just to amplify what
21 Tony just said, I think there are probably -- frankly four
22 village communities that I can think of in Southeast that sort of
23 fit into that bill, but Ketchikan is the obvious urban area that
24 is a continuing -- there's some continuing frustration there, I
25 think, that's having been excluded from the Act. But there are
other communities as well where there's -- the issue comes up and
I think Seward and Valdez, maybe others. And indeed this may be
an issue that -- and although I know that has been said that
there will be no more land and no more money, I guess the ques-
tion ought to be asked, are -- is it possible -- at this -- even
at this late date to correct, what seemed to be injustices?

MR. BERGER: Bart and then
Charlie.



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 MR. GARBER: I had just one other
2 to -- and try to -- and hopefully that it -- keep it hooked into
3 this idea of being able to buy back stock and how does this
4 affect control and whatnot. It -- there's an irony here in that
5 one of the earliest proposed reasons for keeping the settlement
6 vehicle a corporation, was to ensure the right to be mobile but
7 still be able to participate in decisions of what happens in the
8 local area with regard to land use, so that if you were a share-
9 holder and you could participate in a corporate body that could
10 be anywhere and yet still own lands in a particular place, that
11 in -- that allowed Natives then to move to Nome, to Barrow, to
12 Fairbanks, a local area and yet still be able to participate in
13 the decisions about their home lands. Like Tony said, that same
14 criteria wasn't afforded to the process of determining who would
15 get claims. If you were mobile before that usually meant that
16 you lost status, so that if you were mobile after, that's fine,
17 that's what we want. But if you're mobile before, you lost. I
18 am in the process of fighting for one just like that and before I
19 was with Seward, with a small group, but -- and the other thing
20 is that just -- it'll -- that's fine -- I'll leave it at.

15 MR. BERGER: Okay, Charlie you
16 have the floor.

17 MR. C. JOHNSON: Okay.

18 MR. BERGER: You make your
19 observations and then go on to the next resolution.

20 MR. C. JOHNSON: Okay. First,
21 couple of observations, you know, ANCSA is replete with these
22 horror stories about the enrollment process and I think one of
23 the things we don't address in the resolutions but has been
24 brought up and you've probably heard it in your travels and I
25 hear it occasionally with my own stockholders and is -- look, I'm
enrolled -- somebody will say, "I'm enrolled in Sitnasuak and I
really should be enrolled in Shaktoolik. Will we be able to go
back to where I really should be enrolled after 1991?" We don't



1 address this yet. I don't know yet how we're going to do that,
2 but it's certainly one that needs to be addressed, not only in
3 the context that Tony has brought up, but in fact of transferring
4 from really where you feel you should be and where you are
5 registered. And in fact, I was Outside, I was living in Oregon
6 at the time of the process of enrollment and luckily I put down
7 my home villages and my mailing address. My father who was
8 visiting me put down that he was -- that his mailing address
9 currently was Portland. So he ended under [Region] 13. And
10 unfortunately he died before he could transfer -- you know, he
11 could get that corrected. So I am -- I now have inherited the
12 shares in the 13th as well as my home village.

13 But, I mean the stories about that are endless and if
14 perhaps, in some point, we can correct that with some of these
15 resolutions. I'd like to introduce the next three resolutions
16 kind of because, they're all related. I'm not gonna be here this
17 afternoon, so I'm gonna ask Glen and Marlene to lead the
18 discussions on land. The next resolution, [84]-04 is intended to
19 allow the inclusion of newborns that were born after 1971 and
20 allow some special provisions to the elders by issuing them
21 additional stock -- of preferred stock or changes -- a changed
22 stock of some kind.

23 The resolution [84]-05 is a resolution that would
24 prohibit the transfer of stock to non Natives. And perhaps,
25 while it doesn't specify a use of the method that Tony has
suggested of life membership or -- I can't remember the term you
used Tony, but something -- life estate stock or something like
that might be a method to -- a way to implement that particular
resolution.

Resolution [84]-06 would allow the corporations to
extend the benefits, of voting and other benefits to those that
are descendants of Natives.

Now there's an important assumption in both [84]-04 and
[84]-06 and that is that the agreement reached in 7(i), applies



1 after, you know, irregardless of the number of people that would
2 be included in any future expansion of the corporations. As I
3 mentioned earlier, the 7(i) agreement that we've reached between
4 regions freezes the level of distribution percentages at the
5 original enrollment numbers so that if I'm receiving income from
6 the Bering Straits or funds from Cook Inlet or Sealaska,
7 irregardless of how many stockholders they have in the future, my
8 percentage of little over eight percent is not going to be
9 affected. We got into a very vigorous argument about that again,
10 in discussing the amount of the blood quantum of those that
11 should be included. And when we finally got to the point that it
12 doesn't make any difference to Bering Straits how many share-
13 holders Koniag has or Aleut or Bristol Bay because it's not going
14 to affect any revenues I get from 7(i). Then it's not going to
15 affect us, period, if in fact Koniag allows those that are
16 three-sixteenths or one-eighths to participate in their
17 corporation, it's not going to have any affect on us at Bering
18 Straits. And neither would any changes in our enrollment have
19 any effect on other corporations and that I think -- we finally
20 reached an agreement on the blood quantum level. If it wasn't
21 going to affect us in a -- between corporations, that it doesn't
22 make any difference then, the level of blood quantum that is
23 required for participation. And -- so going back to the one -04,
24 the resolution, I'll read it. "Be it resolved that the Alaska
25 Federation of Natives, in convention assembled, endorses the
concept that ANCSA should be amended to give each corporation the
option of offering additional stock to Natives, leaving the
price, if any, up to the corporation and eliminating any
liability for issuing stock at low or no cost."

One of the arguments that we got into that's obvious,
is that by issuing additional stock at low or no cost, we're
decreasing the value of those that are currently stockholders.
We're diluting their value. The counter argument to that, that
we got into was, what right or what did we do as current



1 stockholders to benefit -- to receive this benefit of owning
2 stock? What did we do any different than those that were born
3 after 1971? The only difference is the date. And the argument
4 is that our land has been held for us by our forefathers for
5 generation after generation and a continuing process that we
6 should not eliminate in one generation, by this 1971 deadline
7 that -- or those born after 1971 have as much right being born
8 Native as we do, to participate in the land and the benefits of
9 that land. That's how we -- the two arguments that came here.
10 The settling argument on that is the one that I mentioned that
11 it's not going to affect -- between regions, the numbers since
12 we've frozen the participation percentage of any revenues from
13 7(i).

14 So, one of the -- I might add though, before everybody
15 gets into the discussion, is this, for, I think us, we that are
16 in Native corporations, that at AFN, perhaps the real benefit
17 here of this discussion is the amount of legal expertise and the
18 advice that we're getting at little or no cost.

19 MS. E. JOHNSTON: It's worth
20 every penny, isn't it?

21 MR. C. JOHNSON: Yes.

22 MR. BERGER: Well, I think we can
23 look on that as a compliment. I think Glen and Gary wanted to
24 say something about this.

25 MR. FREDERICKS: You were telling
-- discussing that -- what would happen if 7 -- if we know that
we want to tie 7(i) to the existing shareholders? What will
happen then if we all -- I mean eventually, die off and no more
7(i)? I mean is that the idea? It would do that, wouldn't it?

MR. C. JOHNSON: No, the
intention of freezing the 7(i) participation percentages at the
original numbers, is like for example, Bering Straits receives a
little over eight percent of 7(i) revenues in -- of the whole
group. I meant of all Alaska Natives. Now, we're going to



1 receive that according to the 7(i) agreement, irregardless of our
2 numbers after that because, you know our numbers have swollen
3 from 6300 shareholders to like something like 7100. And it's
4 because of the inheritance. When somebody dies and they got
5 eight kids or you know or whatever. So our actual numbers have
6 increased, but the number of shares we have is still the same.
7 And it was the intention at the 7(i) negotiations that we freeze
8 it at that level. That one -- and that was kind of an
9 understanding that there wouldn't be at any -- or there might not
10 be any expansion of the Act -- actual numbers of shares. There
11 might be an expansion of the number of participants, you see.

12 MR. BERGER: Gary and then
13 Elizabeth.

14 MR. ANDERS: A question regarding
15 the distribution of stock to people born after 1971. Do you
16 envision this to be a continuing process and if so what kinds of
17 criteria are going to be used? And the second point is -- I have
18 some difficulty understanding this, because I think it's all
19 ready a controversial one with regard to the effect on the
20 maintenance of control. You know there's a very strong tendency
21 -- I think that literature bears this out for private
22 corporations to become more public over time and by creating
23 either different classifications of stock or reissuing the same
24 kinds of stock to new shareholders, you're enlarging that stock
25 base.

MR. C. JOHNSON: Okay, you know,
we had a lot of discussion on that very same question and some
suggestions were brought up such as the one that Tony put out,
was, that a life membership or a life estate type of stock, that
would revert back to the corporation or would die with the person
when they died, would be the way that we would go. It would be
similar to a membership in a tribe. I mean the tribal membership
is not something that you can dispose of. And the discussion
about including those born after '71, it was similar to that



1 concept. Now, granted it needs very -- a lot of work and it
2 needs some real paring down and definition, but that was the
3 intention. Not so much to continually develop a widening base of
4 stock. If we did that, I mean we'd have -- how many -- 100
5 millions of shares at some point. The intention was that...to
6 develop some kind of stock, like the life estate stock that Tony
7 has mentioned or something similar to that. Also, in one of the
8 other resolutions it -- we ask for the ability to transfer assets
9 to a related Native organization where life memberships would be
10 given out that were non-transferable. So, those maybe should be
11 tied together and that discussion should also apply this
12 afternoon when the discussion on the transfer of assets to a
13 tribe or a IRA or coop or whatever type of organization that's
14 set up?

11 MR. BERGER: Elizabeth and then
12 Tony.

13 MS. E. JOHNSTON: Charlie, I just
14 had two questions for a point of clarification. First of all,
15 you mentioned that you're gonna draft, so that 7(i) isn't
16 affected. I assume you also mean that you'll draft so 7(j) isn't
17 affected, so that as village corporations do or do not enlarge
18 their shareholder populations their percentages too, would be --
19 remained set.

18 MR. C. JOHNSON: Yes, when we
19 speak of 7(i), we also generally include 7(j), also.

19 MS. E. JOHNSTON: And the second
20 question I had, just had to make sure that I understood this, on
21 the new Native, whether or not a corporation issues stock to new
22 Natives is optional, is that correct?

22 MR. C. JOHNSON: That's correct
23 and in fact, all of the resolutions here are options rather than
24 mandates.

24 MR. BERGER: Yeah, Tony and then
25 Bart.



1 MR. STRONG: Thank you. The
2 other question -- I mean, something that was brought up to me and
3 I'd -- I guess a lot of it of us have been asked of this question
4 before but it's not a part of the discussion yet, is what about
5 those older Natives who would be new Natives had they registered
6 to become shareholders but by some reason reason they didn't
7 register. They're Natives or they're, -- they meet the blood re
8 -- quantum requirements and somehow they didn't get registered by
9 1972 or '73, when the cut-off date was. They're not participants
10 in the Claims Settlement Act and these resolutions don't address
11 that and I was wondering if there was gonna be some method for
12 getting those people to become shareholders.

13 MR. C. JOHNSON: Yeah, in our
14 discussions on this particular resolution [84]-04, there were
15 three classes of people or -- I guess we can call them classes of
16 Natives, I guess now. Those that were born after 1971, those
17 that did not register for some reason, no matter what reason and
18 elders. And the intention here was to include those three groups
19 of Natives that we felt needed to be -- and everybody has felt
20 needed to be included in the land claims benefits.

21 MR. BERGER: Thank you. Bart.

22 MR. GARBER: Yes, just a couple
23 of questions are -- and point out some things. I don't like
24 ringing my own bell, but this discussion -- the prob -- the
25 conflict that you're having here, then, is whether we want to
continue with the typical kind of distribution of assets under
corporate system with private property rights as the basis versus
how much. That conflicts with our idea of sharing the assets and
distributing out to everyone. I don't think that we ought to
look at -- I mean we can say that we'll either, or: we'll either
have pure distribution or under corporate law private property or
else we're going to spread it out to everyone. There are places
in between. And what we're talking about is, what kind of
different distribution systems can we have so that we all



1 participate and still feel like a community. I mean, there's
2 Professor Fessler and some other corporate -- may be able to talk
3 about the idea of making different classes of stock so that --
4 right now under corporate law you've got preferred and common
5 shares...

(NOVEMBER 15, 1984)

(OVERLAP TAPE, SIDE B)

6 MR. GARBER: ...share. You could
7 make all original issue of stock preferred and give them a right
8 to a certain guaranteed distribution. Because the problem you
9 have is that, over time...

(NOVEMBER 15, 1984)

(TAPE 6, SIDE B)

10 MR. GARBER: ...you have the
11 diminishing value of your share because of the increasing number
12 of people. And then new people who come in or else a second
13 class of stock, you could call it common stock or whatnot, gets a
14 certain set percentage of what's left of whatever distributions
15 you have after that. I mean that's somewhere in the middle, so
16 that you guarantee the first body a guaranteed returned and they
17 can go ahead and distribute that out to their kids and whatnot,
18 however they want it, because it always remains preferred stock.
19 And yet, you could still stop everyone from being able to
20 alienate it if you want, because that's the problem that we have
21 that we're talking about with individuals being able to replace
22 themselves with non-Natives or people who we don't want to. The
23 other thing -- the other question I have -- in discussing the
24 elders' resolution, was it intended -- I know that and there's no
25 -- I don't want to upset anyone but, was the idea of the elders
-- the body of people who existed in 1971 or the idea of elders
as a ongoing thing where we will make it a permanent idea that we
always do respect elders today as we will in 2000. Because, I
mean if you'll forgive me, there will be some people who become
older in 1990 who may not exactly be our idea of traditional kind



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 of elders, but they will be, you know, the very successful
2 corporate folks who have a nice pension and if we want to make
3 this a permanent distribution system or if we're talking about a
4 -- you know, honoring those people who we thought of as
5 traditional elders who existed at a time because they haven't
6 been able to benefit from the Act, because in the first 20 years
7 we haven't had -- made -- we haven't made money and were --
8 they're gonna die before they get anything. Could you -- is it
9 an ongoing thing we're talking about or -- is that's a
10 possibility I suppose. A permanent change in the distribution
11 system.

12 MR. C. JOHNSON: Well, I think
13 the intention here was that elders will always be with us and
14 those of you that will grow older will benefit someday. Are
15 those of us, I should say. And that we'll always have that --
16 our elders with us and that we'll be able to provide for their
17 needs at some point. Ironically or -- I don't know whether it's
18 ironic or not, you know the benefits of the Land Claims Act
19 really have fallen to only a few. And that few are those of us
20 that are employed by the corporations. The primary economic
21 benefit has been to those that have been employed by the
22 corporations and it has not fallen to the general Native
23 population. And we need to accommodate that or take care of that
24 in some way. So, I think the intention here is that the benefits
25 to elders will be a continuing process. Now, in -- actually to
your earlier statement, I just have a question of the ability to
create specific classes of stock and you asked Professor Fessler
that question about creating, maybe a preferred and a common
stock class. Do we -- I was kind of under the assumption that we
would have that power anyway after 1991 if nothing changed and I
perhaps need to be clarified on that.

MR. GARBER: The main thing I was
considering was not when we could do it. I mean we could do it
before it we got special legislation. We could do it after, even



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 without or -- you -- with shareholder approval. My question was,
2 is there some system that exists no matter what it would take to
3 enact it? What are the variations in between giving everyone an
4 absolute equal right versus what we have right now, which is only
5 one set body as of right -- what are the options in between and
6 then there's a secondary issue, we can ask when and how we can do
7 it.

8 MR. BERGER: Yes, Dan Fessler.

9 MR. FESSLER: Sure. You have
10 tremendous latitude under Alaska State Law, either existing or as
11 proposed by the -- in the form of the bill that I have been
12 working on. Your choices are not even restricted to something
13 called preferred or common stock. You can have 10 classes of
14 common stock if you want. You can have one class of stock and
15 divide into series, which is a traditional way of recognizing
16 when people came on board. The only thing that is required is
17 that you must define the rights and privileges of the various
18 classes or series of stock within the Articles of Incorporation
19 and to change the status quo as we discussed a few minutes ago,
20 that would require amending the articles. But, I can't stress
21 again that there are doubtless vexations and a lot of unpleasant
22 consequences of having to deal with this whole problem when in
23 the corporate context -- and I certainly sense that before and
24 I'm getting it enhanced since now. There are a lot of
25 opportunities that you have to determine your own future, even
with the specific corporations themselves. And the articles are
how you're gonna do that with regard to stock. And all you want
to do is make certain that you have somebody who's drafting those
articles, helping you and what are called the indentures, which
is the basic statement as between those shareholders and the
corporation of their right, that that indenture is a very
well-drafted and understood document. Not just from legals but,
so that it's drafted in the language that people really
understand what's happening.



1 MR. C. JOHNSON: Okay, just to
2 comment on the points that Bart has been raising, are the types
3 of discussions that we went through during our retreats. As you
4 can see, looking at what we've been discussing, you know, as
5 Native people we want to, perhaps, have our cake and eat it too,
6 in that we want to be able to engage in some economic activity
7 that would benefit us. Yet we also want to be able to maintain
8 either a tribal identity or some identity that is not dependent
9 upon membership in a corporation. And the dilemma that we have
10 gone through and how do we accommodate that, I think one of the
11 other resolutions kind of addresses that particular dilemma and
12 that's the last one that allows us to transfer assets. And
13 because of that dilemma it places -- as you've stated, on us a
14 tremendous burden of not eliminating the possibilities of us
going either way and it's a difficult situation for us in
drafting the type of legislation that we want not only to satisfy
the legal requirements that you're bringing up but to satisfy the
desires of our people whether they're living in the villages or
in the cities.

15 MR. FESSLER: With respect to the
16 topic again -- which just as a technician, I wouldn't dare go
17 near how you want to subsequently define, who is an elder? Or
18 whether that is to be a continuing process. I simply point out
19 that at the time, if you decide to go stock classification as a
20 means of accommodating such worthy people, that you have the
21 perfect prerogative to define who is going to be now or in the
22 future entitled to this stock, by simply drafting carefully the
23 share indenture and the amendment to the articles. And then that
24 will set in motion either a group of people who are now but not
in the future or a group of people who will be perpetuated as
they qualify for whatever you set down. You have such tremendous
opportunity to resolve these problems internally.

25 MR. C. JOHNSON: Can we do that
now under current state law?



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 MR. FESSLER: No, but after 1991
2 if Congress didn't do anything, you would have plenary power to
3 do that. Now, there is the further problem that you made me
4 sensitive to and that is the concept of getting some of the big
5 major issues of corporations. Especially among the regional
6 corporations if they're all sort of similar. And of course, by
7 saying that a corporation can do this in its articles, I'm also
8 saying that 13 corporations can have radically different
9 approaches to this matter. And whether that is a culturally or
10 politically acceptable concept is something for you to determine
11 and not for a technical lawyer.

9 MR. BERGER: Could I ask a
10 question that I think Tony asked, but I didn't, I -- under
11 resolution 84-04, I believe it is, you can issue shares to new
12 Natives -- leave the elders out of it for the moment -- and you
13 can do that without consideration. That is a corporation could
14 decide by an appropriate majority of its shareholders to issue a
15 hundred shares to each child of shareholders who was born after
16 1971. And what did you say about those shares that they would
17 only be shares that would be held for life. Did you say that?

15 MR. C. JOHNSON: No.

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

17 MR. C. JOHNSON: What we're
18 discussing was the following resolution when I mentioned that.
19 Now, the point could also apply here that, you know, the new
20 shares that are issued would be life estate shares or whatever
21 you'd call them. That's one of the solutions that's been brought
22 out and it may not be the solution that is taken but it's
23 certainly something that I think needs not only more discussion,
24 more research and perhaps drafting. I don't know that.

23 MR. BERGER: Yeah. And the idea
24 was, I take it, that the rolls would be permanently open so that
25 after 1991 each child born then would get a hundred shares.



1 MR. JOHNSON: That's correct and
2 there is two ways -- I think that we've discussed doing that.
3 One is this resolution, the other would be the one where we would
4 transfer assets to a related Native organization, tribe or co-op.
5 And if you're a tribe -- IRA councilor, traditional council or
6 whatever, you're a member by...

7 MR. BERGER: Yeah.

8 MR. C. JOHNSON: ...being born a
9 Native, and the intention there was to perpetuate Native control
10 and ownership over the land as well as the assets of the
11 corporation.

12 MR. BERGER: Yeah. No, I was
13 just curious how this issuance of shares to new Natives would
14 work and if you use the corporate thing, corporate structure, you
15 would be issuing, theoretically a hundred shares to each child as
16 born. The rolls would be permanently open and it would be an
17 incident of ownership of shares in that corporation for the
18 individual shareholder that there would be continuing dilution of
19 the value of the shares. The idea being there would be no
20 compensation for...

21 MR. C. JOHNSON: Yeah, that's
22 true unless we went to some solution that -- like Tony has
23 mentioned. Now, one of the things that you notice in this, is
24 that I think the reason for the hundred -- the shares issuance,
25 it's kind of a matter of semantics since we're still talking
corporate organization here. I mean we could have easily said
membership and in fact, the last resolution does say membership
rather than shares. Benefits to members and where everybody
would be issued a life membership. It doesn't say anything about
shares.

MR. BERGER: Gary and I think
we'll stop after that.

MR. ANDERS: Just a couple of
observations with regard to the demographics involved. You know



1 a fairly a substantial proportion of Alaska Natives live in urban
2 areas and it seems that if you're attaching priorities to the
3 utilization of the land and the maintenance of stock in Native
4 hands, one consideration might be that over a couple of
5 generations there might be not only dissolution of the stock but
6 increasing inter-marriage between Natives and non-Natives and
7 that would present problems in itself with regard to the transfer
8 of voting rights and other privileges that belong to
9 shareholders. Another consideration, and I think that this is
10 very controversial and I don't know the answer to it, is whether
11 or not some of these important issues are going to be resolved in
12 and of themselves through the natural attrition process. In
13 other words, what happens when a person dies, what happens to
14 their stock? In increasing the size of the stock and leaving the
15 assets fixed, you diminish the value. That's very obvious. But
16 in maintaining the number of shares outstanding but distributing
17 them throughout the family you increase coverage at the same time
18 you maintain the integrity of that corporation's ownership.

14 MR. BERGER: Monroe Price.

15 MR. PRICE: Yeah, I just want to
16 say that in some way the problem overall -- looking over all of
17 the resolutions is whether it's correct to have a large -- and I
18 mentioned this to Bart, yesterday -- a large umbrella of options
19 or whether there should be a narrower set of options. Is this --
20 it seems to me the point of these resolutions was to provide a
21 wide array of options with -- the -- how -- the question about
22 how they're used in establishing a policy for 1991 being up to
23 each corporation. It seems to me there may be a fundamental
24 question about whether having breadth is a good or bad thing,
25 etcetera, etcetera, but that really, I think, is the underlying
philosophy your -- and an effort being made within certain
constraints to provide as much flexibility as possible.

MR. BERGER: Yeah, David Case.



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 MR. CASE: Will you be back this
afternoon? You're still on the agenda.

2 MR. PRICE: No, I won't be. I
3 won't be able to.

4 MR. CASE: Okay. I mean I --
5 maybe we don't want to do it now but I want to -- would like to
6 explore what you mean by the -- whether there are advantages or
disadvantages to having breadth and not having breadth.

7 MR. BERGER: Well, you -- Monroe,
you'll be back.

8 MR. C. JOHNSON: What do you mean
9 by -- well, I didn't understand the question.

10 MR. CASE: Monroe said that these
11 resolutions were designed to give a broad range of options, but
12 that it -- there may be questions about whether giving a broad
13 range of options is a good idea and that having a narrow range of
14 options might be a good idea. I don't -- I'm not sure -- I would
15 be interested in knowing what the question is. What are the
16 considerations if you were choosing between a broad range and a
17 narrow range of options? What do -- well, you know -- what do
18 you have in mind?

19 MR. PRICE: It depends on how
20 bizarre like you want to be.

21 MR. C. JOHNSON: The -- ...

22 MR. CASE: Okay.

23 MR. C. JOHNSON: ...in reaching
24 some unanimity of support for the concepts, we in fact had to
25 broaden the options because of the diversity of the regions and
the villages that are involved and by allowing a broader range of
options we were able to get broader support and that's the reason
for their breadth, not because we wanted to leave it loose. In
fact. I would have preferred to make it much tighter but we're
different in our region than some of the others.



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 MR. BERGER: Well look -- oh,
2 Marlene.

3 MS. M. JOHNSON: (Off mike) I
4 just want to just speak to Tony. He said that the omitted
5 Natives and that is covered under 84-04 and the -- that's the
6 reason we use the word on the bottom that said "Native." Because
7 we didn't want them saying the new Natives, elderly Natives or
8 omitted Natives, we just said Natives or descendants of Natives.
9 Because we will argue "Natives are Natives".

10 MR. BERGER: Omitted Natives --
11 that's a phrase destined to take it's place in the lexicon with
12 after-borns, but -- well, thank you, Marlene. I think that we
13 should stop and if you would allow me on your behalf to thank
14 Charlie Johnson for coming and leading the discussion. We
15 appreciate it, Charlie, and we'll carry on the discussion with
16 Marlene and Glen this afternoon and Monroe to be their legal
17 backup and the Fessler-Johnston duo over here to shoot darts at
18 them. And maybe this afternoon we could just consider for a
19 minute the question of dissenters' rights and the 5th Amendment,
20 to make sure those are not overlooked and then we could turn to
21 -07 and -08. Those, I think can be treated together and that
22 will take up a good deal of our time, but it seems to me it'll be
23 a useful discussion and I just like to carry on with it and I
24 hope that, like Claude and Glen, people from the villages will
25 feel free to participate. Don't let all this high-powered, but
at the moment apparently free, legal talent, overwhelm you. And
we'll come back at 1:30, if that's okay. And we'll send you the
transcript, Charlie, with the rest of the free legal advice in
it.

ADJOURNS

RECONVENES:

MR. BERGER: Okay, well, why
don't we start then. I thought we might, this afternoon before
we take a look at the other two resolutions that Charlie left



1 with us, we might just spend a brief minute or two considering
2 the questions of dissenters' rights and the 5th Amendment and
3 what I understand that that entails is the proposition that the
4 rights of dissenting shareholders under common law and Alaska
5 State Law should be at an end, that is they would not be entitled
6 to be cast out even though they didn't wish to go along with some
7 of these measures and of course, there's the related question, I
8 think of whether or not the diminutive in the value of the
9 dissenting shareholder's shares is a taking of property without
10 compensation under the 5th Amendment. I don't think we need to
11 be detained very long on those questions, but I think we should
12 at least hear something about them and maybe you could -- I could
13 ask Dan Fessler and perhaps Elizabeth to address the first and
14 perhaps David Case and Ralph Johnson to address the second. Just
15 -- just didn't -- I hope I've made it clear what I'm talking
16 about and if you could carry on from there, perhaps each of you
17 might say a few words about it.

18 MR. FESSLER: I think that it
19 would be better if Liz were to make the initial response because
20 she simply knows a great deal more about Native corporations than
21 I do.

22 MR. BERGER: Okay.

23 MS. E. JOHNSTON: Okay, my
24 response will be -- should be -- perhaps, listened to, not just
25 from the point of view of a legal perspective which, of course,
it will definitely betray, but it also springs from a particular
fact pattern, which is Bristol Bay Native corporation. And the
fact that in an institutional or political sense, that we have
two major divisions within the corporation. Sixty-three percent
for restricted stock, 36 percent for unrestricted stock and how
one as a management group must pay attention to both of these --
it's hard to say one is more legitimate than the other. Okay!
They're both coming out of the shareholder group. And to say
that you can -- that you may or would wish to ignore one-third of



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 your shareholders is not a situation or it is not a position that
I wish to speak for.

2 In my view, it would be extremely wise to have within
3 the drafts that go to Congress (and I believe it is at the
4 Congressional level that the restricted stock issue must be taken
5 care of) that it would be very wise of the Native community to
6 have one of the alternatives in that draft, even if everybody
7 didn't want to go that way, the opportunity for dissenters'
8 rights. The reason I think that would be wise is 1), my legal
9 perspective, which I said would be betrayed in this answer. My
10 legal perspective is this, that in 1971 when the Act was passed,
11 the right to have freely alienable stock in 1991 vested. I may
12 be wrong on this, okay, but this is my perspective. And because
13 it's vested, in my view the only way you can deal with that to
14 move toward the continued restriction is to have a combination of
the shareholder waiver and for those shareholders who chose not
to waive, that those shareholders would have the opportunity.
Not that every shareholder would exercise that opportunity by any
stretch of the imagination, but...

15 MR. BERGER: Waiving what?

16 MS. E. JOHNSTON: I'm sorry,
17 would waive their right to have unrestricted stock in 1991. In
18 other words that you would have a legal event, a vote at a
19 shareholder meeting where this operative mandatory legal event
20 would take place where shareholders could chose to waive or not
21 to waive. And I will, for purposes of discussion, assume and
22 also because of the results of the survey, assume that the
23 appropriate number of our shareholders did waive. Those who did
24 not waive then would have the opportunity for dissenters' rights.
25 This is the procedure that I feel makes some legal sense. I feel
it would cost Bristol Bay something, but I feel that it would be
good to pay it because in the long run it is my belief that to do
that is the most conservative posture I can suggest in order to
have the statute ultimately withstand the constitutional



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 challenge. And by that I mean that one of the things that sort
2 of horrifies me is the thought that we could develop a scheme
3 today, whereby we said to all of our shareholders, "Look, we're
4 going to protect you, we're going to have restricted stock and
5 we're going to do a variety of things with the land or create
6 potentials for doing a variety of things in the land." And then
7 later, when a well-financed effort -- well-financed effort came
8 along with good attorneys on the other side, the protection was
9 stripped because the constitutional issues had not been
10 adequately taken care of. Professor Johnson and I have talked
11 about this briefly and may not be of the same mind- set on this.
12 But, I think that -- you know and as I may, as I say, I do not
13 believe I'm wrong as a matter of law, but so what. Who cares if
14 I'm right or wrong! I will tell you that it is my perspective
15 and I will also tell you that I think the most conservative way
16 to deal with a constitutional challenge is to protect yourself
17 against it so that you're in a posture that says, even if the
18 rights were vested in 1971 we have proceeded in a way where we
19 have taken -- where we have balanced those rights where people
20 have waived them and we balanced them in the same way the normal
21 corporate structure does. So, so what if you prove if they're
22 vested, we have appropriately taken care of them and people have
23 been compensated as was the value of the stock. Now, that's my
24 legal perspective and -- but my political perspective within,
25 again, the context only at Bristol Bay Native Corporation is
this: that I do not relish the idea or management, frankly,
saying to one-third of their shareholders, "You can stick it in
your ear, I don't care what you want, 63 percent wants something
else." On something this vital, I think there need to be -- I
don't know whether we call them safety valves in a political
sense or where we call them an appropriate listening to a
significant segment of your shareholder population. I don't know
how to express this very well. But it is in my view, in Bristol
Bay's case, that it would be a real mistake to just say, "Well,



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 all that matters is the 63 percent that are going one way."
2 That's perhaps a longer answer than you re- -- it's more than
3 your two-minute answer.

4 MR. BERGER: Yeah, well, no. It
5 was like all your answers. Very, very good. But, just to make
6 sure I understand what we're talking about. The minority
7 shareholder -- your 37 percent or whatever they are, has certain
8 rights under common law and Alaska State Corporate Law to be cast
9 out if he doesn't go along with the majority. That's the first
10 thing I think. And the second thing is, well, even if he has no
11 rights under the law, he has certain rights under the 5th
12 Amendment not to have his property taken without just
13 compensation.

14 MS. E. JOHNSTON: I believe that
15 in a legal sense, the 5th Amendment comes in to play and again
16 there are other attorneys here who can -- who could correct this
17 statement, but I believe the 5th Amendment only comes into play
18 if you assume that certain rights are vested. I think that's the
19 pivotal question here and I -- and as I discussed, I, assuming
20 that the right to have freely alienable stock in 1991 is a vested
21 right rather than a inchoate right. If you got into the inchoate
22 mind set or assumption, you might come out totally different on
23 the 5th Amendment question. So, it's like a threshold -- I'm, am
24 I saying this right, Ralph, it's like a threshold question and
25 I've come out one way and some other attorneys would come out
another way.

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

MR. FESSLER: No, just again to
put the thing in its broadest possible prospective. The normal
idea in a corporation when you take something at a shareholder
level is that the majority rules. And if you're in the minority,
you either bide your time until there's another opportunity to
elect directors, in which case you hope that you'll more



1 persuasively make your point heard and wind up in the majority
2 and if you have despaired of an ability to do that, then the
3 normal situation is you have the option to sell your stock. Now,
4 when you cut off the option to sell the stock, you begin to make
5 a fundamental challenge to the whole idea of how corporations

6 run. And the idea is, are you now locked into the situation?
7 Well, in Alaska at the present time, there's only one
8 set of circumstances in which the minority finds itself able to
9 demand of the corporation that the corporation unlock the key,
10 give them something in exchange for their shares and let them go
11 and that is if the corporation has gone through what we've been
12 describing as an "organic change". There's been a merger or a
13 consolidation, then by statute you must recognize the concept
14 that there are dissenters' rights. The dissenters' rights that
15 are put forth in the statute are very difficult for most people
16 to comprehend and you have to be very careful of an individual
17 shareholder to preserve them, lest you lose them. But, the issue
18 that would arise from the -- just the most corporate perspective,
19 for I am no scholar of the Constitution of the United States at
20 all. And from the corporate perspective is, would it be wise to
21 recognize that there's going to be a possibility, maybe a
22 probability of litigation on this issue. If you succeeding in
23 getting the prohibition on alienability in stock perpetuated, so
24 that you've cut off the power of people to say, "I don't like
25 what's going on and I'll just sell out, please." And then you
propose that people are captured and they have no escape.
Especially, when as -- and this I think is the point that Liz
keeps stressing, if you were to read existing law, although
people didn't buy their stock which may be the point that needs
to be developed. Although people didn't buy their stock with the
expectation that they could alienate it after 1991, the Act said
that the restriction on alienation would expire in 1991. And if
Congress is confident to change that rule now, are individuals
going to be able to assert some status to say, "well, fine, you



1 can do that but at least you owe me compensation for
2 extinguishing the expectation that I had." The weakness of that
3 position of course is, that you didn't pay in the traditional
4 sense, for that expectation.

5 MR. BERGER: Ralph Johnson, did
6 you want to...

7 MR. R. JOHNSON: Well, obviously
8 this is not the time for the lawyers here to engage in a
9 fascinating discussion of constitutional law, so I'll limit my
10 comments to some general conclusions.

11 First, as to the division between the legal and
12 political issues, I quite agree. I can give you and will give
13 you a very brief statement of what I view the constitutional
14 issue. That's quite different than the political issue and in
15 one sense I like the idea of setting up a fallback position that
16 dissenters would be compensated. I worry about another aspect of
17 that and that is the dissenters who wish to continue to live in
18 the same village and who wish to hunt and fish and cut ice and do
19 other things on that land and having sold their stock, they have
20 essentially lost their right to do so, so that no trespassing
21 signs will go up to those who've sold out. And I suspect that in
22 the long term that's going to be either impossible to enforce or
23 cause a very high degree of conflict and dissension in the
24 village community. If somebody wants to sell out and leave, then
25 that's another matter, but that's a political consideration that
I think that a lot of people here are more -- infinitely more
informed to worry about than I am. But I wish to raise the
issue.

On the constitutional issue, I guess just having gone
through quite a bit of research on the question, I'm convinced
that if Congress goes through the right hoops, does the right
things, it can extend the inalienability of the stock. It can
return the land to trust status. It can limit the voting rights
of the stock and it can do all of that without the requirement of



1 payment of compensation. It can do that without violating the
2 just compensation law of the federal Constitution. Now, just
3 about two minutes on that, cases that are well known in this
4 field of recent vintage -- the case involving the Penn Central
5 Railroad Station in New York. Another case involving a man by
6 the name of Alaird (ph) who sold eagle feathers in Montana who
7 was told in -- overnight that all of his thousands and thousands
8 of dollars worth of eagle feathers were worth nothing the next
9 day. And the Supreme Court said he didn't -- wasn't entitled to
10 compensation. And there's more specifically a case decided by
11 the Supreme Court in 1918 that changed the rules of Indian in the
12 Lower 48 who held allotment land. He held allotment land that
13 was free to be sold and the -- they changed the rules on him and
14 said that now he has to have the Secretary of Interior's approval
15 to sell his land. Well that changed the value of his ownership.

16 All those cases, plus if one looks at the plenary power
17 of Congress to deal with Indian affairs, you add all that up, I
18 guess I'm satisfied that Congress can legislate to terminate or
19 change stockholders' rights in 1991 if they wish to do so.
20 Whether that's wise to do so is a different question. But I
21 think that we can start out, at least as far as I'm concerned,
22 with the assumption that if Congress wishes to take such action,
23 it can do so.

24 Well, I might add one other thing. And that is that,
25 let's assume that Congress decided to use the fallback position
and say that they would compensate somebody for -- in 19 -- let's
assume this action were taken in 1987 and the stock would be able
to be sold to non-Natives in 1991, four years later. And you
need to know now the difference in value in the stock in 1987
between that case A, where it's salable to non-Natives in 1991,
four years later, or secondly where it's not salable to
non-Natives or on the market four years later. I suspect it's
going to be an extremely small difference in value at that point
because there are so many variables that are involved in the



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 value of the stock that, for example, who the current management
2 is? What their investment portfolio is? What their record is of
3 investment and management in the past? The price of rice in
4 China? The price of oil from Tehran? All those factors get
5 involved in that and to sort out and identify a particular value
6 that is attributable to the salability of the stock on the open
7 market four years later will be, one, exceedingly difficult and
8 probably be pretty minimal. But that would satisfy the
9 dissenting stockholders' problem as Elizabeth Johnston raises it.

10 MR. BERGER: David Case.

11 MR. CASE: I just had one further
12 question of, probably of Professor Fessler. Am I correct in
13 assuming, and it is an assumption, that dissenters' rights as
14 dissenters' rights are not vested property rights. In other
15 words, is it -- is there any constitutional question when a state
16 or the federal government, as it all ready has in the case of
17 Alaska, eliminates dissenters' rights?

18 MR. FESSLER: Not that I'm aware
19 of. No, I don't know of any such case, but again I want to very
20 carefully underscore that we're now talking about an area in
21 which I have the peripheral side vision. And in attempting to
22 work with a memory of a Constitutional course that is a
23 distressingly long time ago, and so I would yield to the
24 expertise on it...

25 MS. E. JOHNSTON: You did wander
longer ago -- then you're willing to testify.

MR. FESSLER: That's fine, I
wouldn't want to be asked that thing, okay.

MR. BERGER: Roland Shanks.

MR. SHANKS: Well, I just wanted
to throw a couple of things in here. I fear to argue with
lawyers and I only argue with law professors with a lot of
trepidation but anyway, there is one parallel that I think might
be worth keeping in mind, especially when it comes to whether in



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501

(907) 274-4833

1 fact, rights vested with shareholders when the Act was passed and
2 that is in the past -- hey, on the last few years we successfully
3 made the argument in many cases that selection rights were in
4 fact the property right and that to take a selection right from a
5 corporation without due process was in fact, condemnation.

6 Probably one of the better examples of that was in the
7 railroad legislation where Congress said that it was essentially
8 gonna extinguish 3(e) selections on railroad areas and we
9 successfully fought them on the basis that that was the
10 condemnation of our selection right. And in fact we had an
11 Attorney General's opinion from the State of Alaska that said
12 that. He left the Attorney General's Office not too long after
13 that, but he's now our lawyer. But anyway, there has been
14 several other cases a lot smaller and not quite as noteworthy as
15 the 3(e) determination cases, but...

16 MR. BERGER: When you say you won
17 that, they...

18 MR. SHANKS: They essentially
19 took...

20 MR. BERGER: ...did you go to
21 court?

22 MR. SHANKS: No, they pulled the
23 provision out for fear that they would lose if it went to court.
24 And we let them know that we were very ready to take it to court.
25 So, anyhow that's just one thing that's happened and I think we
might want to kind of throw into the back of our minds that we
have all ready seen, kind of a tentative right that was given by
the Act pretty much dealt as a property right. Not only that,
but our own corporations have made that argument. And I think to
turn around and make the opposite argument, the percent of of our
shareholders might be a bit awkward. And that kind of brings me
to the next point and that is when dealing with dissenters'
rights and going to Congress and asking them to essentially
extinguish dissenters' rights. You know, I'm not a lawyer and I



1 don't deal in courts, but I have been known to wander by a
2 legislative hall once in a while and I think it would be an
3 extremely difficult provision to sell to the U.S. Congress these
4 days, that some potentially significant portion of the
5 shareholders should just be told that they either take it or
6 leave it. I don't think that the U.S. Congress is in the mood to
7 do that kind of thing and I think that that is a real stumbling
8 block that we need to deal with when we look at these provisions.
9 I just, I do not believe that politically is gonna fly.

10 MR. BERGER: Dan Fessler.

11 MR. FESSLER: Give me one
12 advantage of somebody that's in the meeting like this who is so
13 obviously an outsider and who has no background at all, is that
14 they'll blunder out and say something which perhaps people with
15 better judgment would keep quiet about. But there is one thought
16 and I would pose the question to Professor Johnson. I assume
17 that at some point, it is conceivable that litigation will be
18 mounted, that will have as its overt or covert purpose,
19 challenging the wisdom and viability of the Congressional
20 decision to make corporations the vehicle, the implementation of
21 the Settlement Act. I assume that the Alaska Federation of
22 Natives would want to pick and chose very carefully exactly
23 whether it was gonna be in the upwind position when that
24 situation happened. And I don't know whether or not that is
25 particularly the battle ground that I would chose on this issue.
At some point the Supreme Court might get asked to decide when
Congress decided, after all of the twists and turns of federal
Indian policy and the many sad stories that could be appended to
that history, to use the corporation as the vehicle for the
Alaska settlement and then to say that shares were alienable, and
indeed the peculiarities were going to be taken off after 20
years, that that involved a Congressional decision that after 20
years the corporation would have served as a vehicle wherein
people would have entered the world with these assets and with



1 the machinery in place and that all prior history about the
2 prerogative of Congress to change its mind and whether
3 individuals have acquired status as opposed to their historical
4 tribes, etcetera, etcetera, that all of those things would be
5 caught in jeopardy on the day that that question is posed in that
6 form and whether we could be very confident of the outcome.

7 MR. R. JOHNSON: Well, I -- my
8 view is that we could be confident of the outcome. There -- the
9 Supreme Court in recent years has taken the position without
10 reference to the Indians, but with reference to what they call
11 future anticipatory benefits from a transaction, business
12 benefits that you will get. And I comment on Allard who owned
13 this marvelous collection of eagle feathers and was told a few
14 years ago that his feathers were worth nothing. He could look at
15 them, but he couldn't do anything with them because he can't sell
16 them. Well, instantly his inventory went from a hundred of
17 thousands of dollars worth down to zero and the Supreme Court
18 said that's too bad because those are not future...those are not
19 present benefits that's something you would have earned in the
20 future. It looks very much like stock ownership in ANCSA.

21 Secondly, if you look at the Menominee termination
22 where the Menominee tribe individually held stock in a
23 state-chartered and state-organized corporation and that was the
24 -- the land was taken out of that status and put back into trust
25 status.

(NOVEMBER 15, 1984)

(OVERLAP TAPE, SIDE B)

MR. R. JOHNSON: There has been
no judicial determination of that. There was a lower court case
that was started and then dropped for various reasons. But even
more than that is the so called plenary Power of Congress, which
has...

(NOVEMBER 15, 1984)

(TAPE 7, SIDE A)



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

MR. R. JOHNSON: ...been
1 demonstrated so many times and so powerfully in Indian affairs;
2 and whether for right, for justice, for justice, or whatever,
3 that power of Congress is very, very strong, and I think would be
4 a sufficient basis if Congress decided to change its mind on
5 the grounds that this is for the benefit of the Natives. It may
6 be right, or it may be wrong, but the Supreme Court has said we
7 won't look behind Congress' statement that this is for the
8 benefit of the Natives, and if that's true, why then Congress
9 could change the rules of the game, especially with regard to
10 something that hasn't yet come to fruition. It will come to
11 fruition in 1991 or sometime, and is still speculative, and can
12 do so without violating the Constitution.

13 That doesn't answer the question of political advis-
14 ability, and I think there is a lot at issue about that, and I
15 don't think Congress is going to act on the basis of just what --
16 because it's constitutional. They are going to listen to
17 Elizabeth Johnston and Roland Shanks and Glen Fredericks and a
18 lot of these people about what is -- what's the intelligent thing
19 to do.

20 But I think as far as constitutional power...let me add
21 another thing. There is going to be somebody who's going to sue
22 anyway. I don't think you can go around the world deciding you
23 are going to try and not have lawsuit, because you are going to
24 be sued. But I think that Congress is going to have to figure
25 out the odds on it, and go ahead and do what seems to be the just
and right thing to do.

MR. BERGER: Elizabeth, then Bart
and then Claude.

MS. E. JOHNSTON: I think
certainly the different perspectives on this issue have been laid
out, and I won't...go back and, I hope, reiterate anything I've
said before. I merely wanted to add slightly to what Roland
said, which is, and again I recognize this as a policy



1 perspective, not a legal one. I am somewhat concerned also about
2 going into Congress and saying that Congress has the power to do
3 anything it wants. Again, Professor Johnson's memory on this is
4 even better than mine, but my memory is that Congress has not
5 always acted benevolent, but in an ambivalent manner toward
6 Native populations, and has sometimes changed around things that
7 have meant that the Native population got the short end of the
8 stick and that some other group tended to benefit. I tend to
9 think that the pressures on wishing to reach certain lands and
10 certain assets in the State of Alaska are going to increase, not
11 decrease. And, therefore, that the motivations for a well
12 financed effort will increase, and even pressures on the
13 political institutions will increase to do these things. And I
14 would prefer not to be, perhaps in the future, in a posture of
15 having established a principal that Congress can take and change
16 corporate assets and move them into different kinds of status,
17 trust or otherwise. And I would rather not be in a position of
18 having argued that individual shareholders do not have vested
19 rights. Because, I think that pathway leads me to dig problems
20 for the shareholders who I am supposed to be trying to protect
21 and the corporation which I am supposed to be trying to
22 represent. I tend to find more protection, in the long run, in
23 vested rights and would rather take care of them, and pay
24 deference to them than I would create the other problem later,
25 which I believe Roland gave a very nice concrete example of.

19 MR. GARBER: I guess I speak more
20 in this situation (indiscernible) rather than as an attorney. I
21 can put that away, because being a Native may get stuck in a
22 position of having to make that policy decision of what to do
23 about the dissenters. And, I find some support in that it is a
24 historically, a political decision, and that the same kinds of
25 things faced Congress and the federal executive before, Ralph, as
you know, with the termination of allotment policy in the
thirties when lots of individual Natives down in the States had



1 their own little blocks of land, and Congress had the choice and
2 the administration had the choice, in trying to draft up the
3 Indian Reorganization Act.

4 When they tried taking all of those lands and putting
5 them back together again, and making them communal holdings
6 instead of individual, they got all kinds of static from Natives.
7 Both kinds, well acculturated ones who wanted to keep the
8 property because they wanted to subdivide it, and surprisingly,
9 they also had the static from the traditional ones who thought
10 that they had held this land for fifty or sixty years for the
11 tribe and they weren't going to have the federal government, whom
12 they didn't trust, suddenly tell them that they were going to
13 take the land back, and won't protect you and kinda said --well
14 they shook their heads and said well -- whom. So there was
15 static on both sides. The point is that it was a political
16 decision, and even though there may have been a court case
17 afterward, in that instance the administration opted to make the
18 choice of the Native to give his property over a voluntary one,
19 and they didn't force them to. You know you may come out with
20 any number of alternatives.

21 I have one other...I've always...I've been kind of
22 concerned about dissenter's rights myself, and I would like to
23 preserve them, or at least, try to find a way to preserve them
24 for another reason. And, that is that we have to...and this
25 takes into in part, you know, something of a traditional
philosophy also. That Natives resolve their disputes for... to
remain harmonious, to be able to continue on afterward. What
happens when you do have a large percentage of your people upset,
whether they happen to be the kind who want to have private
property rights or, perhaps in an individual instance, you've got
a substantial minority of more traditional folk? It doesn't
matter, you're going to have...you're going to have a bunch of
people who are upset one way or the other. And, it's going to be
difficult for whatever entity that you have afterward to



1 continue, and so that's another concern in the political
2 decision. You have to understand how is it that...that the most
3 of you are...whoever is going to be able to continue on and still be
4 able to live with one another, and to accomplish whatever purpose
5 it is that you decide you want to accomplish. I think that is
6 one of the main reasons to try to really center on dissenter's
7 rights, and find some satisfactory way to appease them, whether
8 it's the full amount of dissenter's rights that we have right
9 now, or perhaps a different kind of right that we replace. Maybe
10 there is something else that we can give to someone other than
11 what's currently available, I don't know.

12 MR. DEMENTIEFF: I want to back
13 up a little bit, but I think you made some good points in that I
14 wouldn't want the group to lose that in backing up. I would
15 like to ask a question. AS a commoner and not a lawyer, it's
16 hard to follow without intense concentration the discussion that
17 you are having. It's very very interesting, however.

18 In backing up, I would like to ask this of Dan, as an
19 outsider coming up fresh to Alaska as green in the fall of the
20 year. You mentioned the fact that somebody is going to
21 eventually go to the courts and sue somebody as to the validity
22 of the corporation as the appropriate vehicle. In your opinion,
23 could you -- could you give us an idea who that person might be,
24 a corporation, an individual or what?

25 MR. FESSLER: It could indeed be
an individual who has stock -- in a regional or village
corporation who wishes to dispose of the stock, and takes the
position that they do not like and regard as fundamentally unfair
a political decision reached by Congress that they can't [sue].
And, then they'd go and say, "Well, isn't this stock, which I got
in 1971, which I had been led to believe I could dispose of in
1991, a personal asset, isn't that a personal asset?" At some
point it is going to occur to say, "Well, to someone, perhaps
that individual, why did I have to have the fruits of the Native



1 Claims Settlement Act devolve upon me in this bizarre manner,
2 stock in a corporation? It had never happened before, it isn't
3 what I asked for." Perhaps I -- I overspoke. What I'm saying is
4 that -- that eventually, you will press the corporation which...
5 This whole discussion that I've been listening to this morning
6 and now this afternoon, is predicated on trying to use the
7 corporation to accomplish things that corporations were never
8 asked to accomplish before. I mean, they've just never been
9 asked to be vehicles to try and do what we are asking of them as
10 institutions; and now we are trying to say, "Well, should we
11 modify the institution, and will there be individuals who will
12 claim that they are being personally disadvantaged through these
13 modifications?" And that was what I was trying to say that --
14 that there were people who will raise that broader issue.

15 But again, I hesitate...I wouldn't want to let anybody
16 walk out of this room and say, "Well, I listened to two or three
17 or four lawyers." When we come to discussing the potential
18 application of federal constitution...I'm simply not a
19 constitutional lawyer, so I can only ask questions and expose
20 ignorance. I don't want to be seen as the source of another
21 legal opinion, for I would quickly deny that I would give anybody
22 legal advice with regard to the constitution.

23 MR. BERGER: Well, I think it was
24 a misunderstanding. You said someone would come along and
25 challenge the corporations as the vehicle. You'll...but you're
really saying someone would come along and challenge the power of
Congress to continue to use the corporations as a vehicle, but
to... but denying the promise of alienations of shares had been
there from the beginning.

MR. FESSLER: There is an odd bit
of saying that it is a congressional command that there shall be
created corporations. But, they shall be created under the laws
of the State of Alaska...alright. Now, Alaska's positive
substantive law recognizes dissenter's rights in the two areas



1 that I said, and they are not optional, they are mandatory. And,
2 it took an amendment to the Native Claims Settlement Act to say
3 that if there were organic changes involving mergers or
4 consolidations in which both of the participants were Native
5 ANSCA incorporating, there would be no dissenter's rights.
6 Implicit in that might well be the recognition that is the ANSCA
7 corporation would attempt at some point in the future to merge
8 with a non-ANSCA entity, there would have to be dissenter's
9 rights, else why would Congress have come along and nullified it?
10 Congress committed the corporations to live under the Alaska's
11 corporation law; to what extent can Congress now come around and
12 keep interfering with Alaska's corporation law?

13 MR. BERGER: I had Glenn
14 Fredericks down and then Bart, I think.

15 MR. GARBER: I just have one
16 limited comment, and that is that Congress reserved that right in
17 the act, where is said that if there are any state law...any
18 laws...state laws or federal laws that are in conflict, that the
19 ANSCA will prevail. So...

20 MR. FESSLER: There is no
21 questions, but that was as of 1971.

22 MR. GARBER: That's not clear,
23 and because we have amendments in ANSCA that became a body of the
24 Act, so that clause may continue. I mean -- certainly, it's a
25 restatement of the supremacy clause, perhaps.

MR. FESSLER: I am not
envisioning the State of Alaska as the party who will come along.
I am saying that individuals will come along and they'll say,
"Yes, I am a Native and yes, I am a member of this corporation
and, yes, I am also a citizen of the United States." And...and
the person I would fear most, and the person whom Professor
Johnson thinks is not posing a substantial threat here, is the
individual who comes along and says, "I am a citizen of the
United States and as such, Congress has no right to take away my



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 properties save by the due process of law." The main area where
2 Congress would like to do at the same point it will be told it
can't do it. It could be a debt holder, sure.

3 MR. FREDERICKS: I have a
4 question.

5 Is there any other...entities in the State of Alaska,
6 like co-ops; what authority do they have? Co-ops, non-profits
7 and so forth? You are dealing with...what...do they have
8 dissenter's rights, do they...? You know, I'm very touchy about
9 dissenter's rights. Nobody should tell me that I can't sell
10 stock, but I have a different theory about it. I'd
11 like...because the Native people continuously tell us to hold the
land at all costs, so that...we are trying to weigh both of them,
12 you know. And, what I'm getting at, is there are other entities
13 in the State law that we could use other than corporations?

14 MR. FESSLER: Under Title 10,
15 your options would be you could form non-profit corporations and
16 they have a slightly different substantive provision.

17 MR. BERGER: Well, excuse me
18 then, Dan. I wonder, Glenn, if we could just move on to the next
19 two resolutions where this comes up full blown, if you don't
20 mind, because we are at them now. I just wanted to ask one last
21 questions before we move on to those, because I think that those
22 next two resolutions raise this business of co-ops and
23 non-profits and IRA's. You say that Congress chose this bizarre
24 method of converting the Native estate and land in Alaska into
25 shares that were held by those Native people then alive. And,
the estate that had passed from generation to generation was
suddenly stopped, and was conferred on those then alive, and they
then acquired the right to pass it on by will even before 1991
and thereafter by selling and so forth. But they didn't pay for
this; it was, in a sense, one hesitates to use this expression
about any lawmaking body, but it was, in a sense, an arbitrary
choice on the part of Congress to say, "You will be the



1 beneficiaries of these centuries of Native title." They didn't
2 pay for it...is it arguable; is this another way of looking at
3 it? I don't mean arguable in the sense you are trying to
4 persuade somebody of it right now, but is it possible to look at
5 it in this way; this was an experiment by Congress? A new
6 approach to Native affairs? And it is new; Monroe Price isn't
7 here to claim that it's been done before. It is new, it's
8 unique, it's an experiment; it has a twenty year life, and then
9 they say, "Well, we are not very happy about it all, so we are
10 going to treat all the shareholders who never had to put up a
11 nickel as trustees for all the Native people, generations to
12 come. And we are going to do this or this, and we are going to
13 deny the dissenter rights." Is that, even for the sake of
14 argument, is that a plausible way of looking at it? I know this
15 takes us very far from conventional corporate law, but...

12 MR. FESSLER: It is an area in
13 which my opinion is being offered for nothing at its market
14 value. I think it is a plausible way to look at it. I mean, one
15 of the things I remember when I was given the opportunity to read
16 ANSCA for the first time about six years ago, that I read and was
17 struck by it, and I haven't heard it mentioned here today. And
18 that is, if I'm not mistaken, there is a provision in the
19 original bill which said that by setting up these corporations
20 Congress did not intend to create any permanent racially or
21 ethnically defined institutions. Now that bothers me. Given the
22 obvious desire that we have to preserve that we have to preserve
23 the land and the culture, and I...my God, that is a racially and
24 ethnically, an historically defined institution. That provision
25 was put in there, I suspect, because the ANSCA Act, like most
pieces of legislation, is a jumble of compromises with clauses
being put in to get certain votes, and other people saying, "I
wouldn't vote for something unless you put this in." And so, the
thing speaks in many directions. But, that provision does worry
me, and I would worry about that as well. I mean, if the



1 corporate purpose is later undefined as in having no
2 alienability, as an attempt to make sure that no one other than
3 those who could qualify can be possessed of stock...would there
4 ever be a problem of or an embarrassment by the presence of that
5 provision in the original ANSCA bill?

6 MR. R. JOHNSON: Well, one thing
7 that -- just a quick answer to something, the question of whether
8 the Natives paid for the stock. They paid for it by giving up
9 the claims they had to the entire State of Alaska, so there was
10 clearly consideration involved in that. I think that was not an
11 issue then. But, the other thing is that if you look especially
12 at the village corporations, they are not in any sense like any
13 other corporation. You've made this point a couple of times,
14 Dan, specifically, and in fact, the more you look at them, the
15 more you realize that they look like certain aspects of
16 governments. In that they don't represent a commercial
17 enterprise going out and doing something, they represent a way of
18 allocating an expression of a termination policy, but a way of
19 allocating certain rights in land to a specific group of people
20 that is racially oriented, and was one way of instead of doing
21 that to allocating this land to a government which is a
22 government that governs both Natives and non-Natives. It is said
23 we want Natives only to participate in this, and so they gave
24 that corporate shareholder status only to the Natives in the
25 village corporations. As I understand it, you look around the
State now, and you look at those Native village corporations --
not the regional --the Native village corporations, they are
essentially either moribund or operating more as governments or
partially as governments. They, only a few of them, a very small
percentage are now...ten, twenty percent are actually operating
somewhere else as a business. Well, that why I say when I come
back to the question of the plenary power of Congress...when
somebody responds, and says, "But this is a corporate set-up, and
all that." It wasn't really, if you look through the facade,



1 through the words there, you see that what was being done was the
2 allocation of land that is really land that these people lived on
3 traditionally, are going to live on, and it is not a corporate
4 form, except in some legislator's imagination.

5 Now, there are some cases that that's not true, and I
6 realize that Glenn Fredericks and some few others have made
7 successes of village corporations. But, if you look at the
8 overall picture, then you realize that this is still an exercise
9 of Congress' guardian/ward relationship, however you want to call
10 it -- trust relationship, they are somehow involved that Congress
11 was trying to resolve in a sense the trust relationship, and did
12 so in a way that wasn't very well thought out in many
13 retrospects, and that's why the Commission is now worried about
14 it.

15 MR. STRONG: I just wanted to
16 respond a little bit to what Professor Fessler had said about
17 Section 2(b), I think it was Section 2(b) of the Claims
18 Settlement Act, about Congress not creating any new racial
19 enclaves and things of that nature. If you look at the language
20 of that section, I've looked at it, and it bothered me certainly
21 when I first saw it, and as I through with my work over the
22 years, it -- I kept looking at it again. And, finally came to
23 realize that particular is of absolutely no effect, and the
24 reason why I say that is it says, "Congress is not by this Act
25 creating..." and the operative 'creating'... any new racial
enclaves." The Native governments were here before the Act, they
continued after it. To me, what is was saying is that these
corporations -- I think what they were trying today is that they
weren't creating a reservation system, and I think that was some
of the discussion that was going on certainly during the efforts
to have the Claims Settlement Act come about. In my conversation
with several of the Native leaders, subsequent to the passage,
when I asked them why didn't we look at Native governments, why
didn't we talk about Native governments at the time, and some of



1 them has said, we did take a look at it, and we rejected it. And
2 I think that was the reason why Section 2(b) was put into the Act
3 in the first place.

4 But, I mean if you look at the operative words in the
5 -- the key words in that is -- was -- of course, is "creating",
6 and I think David and Professor Johnson would be willing to say
7 that they're... the Native governments up here were not created
8 by that Act, nor were they destroyed by the Act.

9 MR. CASE: Sure, one thing that
10 is intriguing... I mean, I think its important to look at the law
11 in terms of the history of the law and of the decisions of the
12 court. In 1973, the Supreme Court, for the first time in two
13 hundred year, explicated the nature and the basis of the
14 discrimination for and against Natives. It's discriminatory and
15 it cuts both ways, but of course, the Supreme Court theory and
16 now is the law, is that the discrimination that affects Natives
17 from the federal government side is not racial discrimination.
18 It's discrimination based on a separate political status that is
19 -- has been defined under the U.S. Constitutional and through the
20 decisions of the Supreme Court. And that may sound like hair
21 splitting, and perhaps it is, but the distinction has been used
22 ever since to uphold federal legislation that affects Natives for
23 Indian preference of which the -- this case rose, housing in
24 Alaska. Preferential contracting for Native organizations in
25 Alaska. The rule book is now always become, it's not a racial
discrimination, it's a political discrimination based on the
status of Native people as a separate people politically and
historically. Again, it may be a legal fiction -- legal figment,
but it also appears to be the law. So, I kind of agree with Tony
that this language in Section 2(b) doesn't seem to mean a whole
lot, given the development of the law after the Claims Act.

MR. BERGER: Well, maybe we could
move on to these last two resolutions. Glenn and
Marlene...Marlene...Marlene, could you just discuss those for us.



MS. M. JOHNSON: Thank you.

1 84-07 speaks to the transfer of lands and the
2 protection of lands, either in the Land Bank, but they would
3 automatically be in the protection of the ANILCA Land Bank for
4 all lands, unless you chose to take them out. And, developed
5 lands would also be in the land bank but would not receive tax
6 protection as undeveloped lands would.

7 That these land protections would be automatic, and to
8 get away from the bureaucracy that you have to go through now to
9 get land put into the Land Bank. It also would allow the
10 transfer of lands to other Native organizations or entities,
11 whatever that entity may be.

12 MR. DEMENTIEFF: Can I -- I don't
13 understand this resolution exactly as such. If I understood you
14 correctly, you said that they would automatically go into the
15 Land Bank. According to the way I read it, it says in the
16 resolution that they are deemed deposited. "Deemed" meaning they
17 area under the same protections as a Land Bank but they don't
18 necessarily have to be in there. Is that correct?

19 MS. M. JOHNSON: I think what we
20 are saying when we put in the "deemed" in the Land Bank -- that
21 means that they were automatically in the Land Bank, period.
22 Unless you took them out they were deemed there. And somebody
23 that's an attorney can explain it.

24 MR. BERGER: Well, I've been just
25 looking at this. It says at the bottom of the page, and the
resolution would do three things. It would make the Land Bank
protections automatic, and I think Claude's right. If all the
land is deemed to be in there and then you cut the protection and
you take it out to eliminate the bureaucratic paper work and so
on, it would apply the protections to ANSCA corporation lands,
and it would allow a corporation to transfer its lands to another
Native organization such as a non-profit or an IRA without losing
the protections. So the idea seems to be that all Native



1 corporate land is deemed to be deposited in the Land Bank, even
2 if it's transferred to a non-profit or an IRA in order to
3 immunize it from corporate take-over or taxation or both. The
4 Land Bank protections to with it. Now that seems to what they
5 had in mind here, and the next resolution -- these are, in a way,
6 perhaps back to front, but the next one -- perhaps Elizabeth, not
7 Elizabeth, Marlene, you might just tell us what that one's about,
8 and we can consider them together.

9 MS. M. JOHNSON: This is commonly
10 called a NANA resolution. This allows the transfer of all the
11 assets to another organization, whatever that organization may
12 be, and the shareholders would be [in] membership with a
13 non-transferable membership and a life-time membership. In a
14 way, we are talking in simple terms to explain just what it would
15 be. It would be just like a tribe. You're a tribal member until
16 you die, you can't will your tribe...tribal membership to someone
17 else after you are dead.

18 MR. BERGER: So, you have one
19 resolution, Number 8, that says a corporation could transfer all
20 of its assets including land to another entity that would
21 resemble a tribe in many respects...and that's Number 8. And
22 Number 7 focuses on the Land Bank and says that all corporate
23 land is deemed to be in the Land Bank and then if they transfer
24 it to some entity, such as NANA has in mind -- or to use the
25 language at the top of the page here, "a non-profit or an IRA",
they don't lose the protection of the Land Bank. So, I think in
the unlikely event that I've fairly summarized these, maybe we
can consider them together. David...

MR. CASE: I can...I would like
to follow up on what Claude said. I guess I want to understand
what your concern would be as to the difference between the lands
having the restrictions or protections... I made a slip, but
revealing one. The protections of the Land Bank without actually
being deposited in the Land Bank, what's the difference?



1 MR. DEMENTIEFF: I'm not sure. I
2 think most of the people in the villages don't really understand
3 the Land Bank. Everybody talks about it; I wish somebody from
4 Gana-a'yoo was here. Because they... their trying to put all
5 their land into the Land Bank, and having considerable problems
6 with it, and considerable expenses. So, it's a big unknown as
7 far as village people are concerned.

8 MR. CASE: Do you happen to know
9 what kind of problems and expenses? I mean, what kind of a
10 source are they experimenting?

11 MR. DEMENTIEFF: No, I sure
12 don't. That's why I wish somebody was here. I would assume,
13 legal expenses. They would get a lot of free legal advice here.

14 MR. CASE: Well, around the
15 State, I've heard these same kinds of objections, and it would
16 probably be useful to have some idea of what the problems are
17 with the Land Bank.

18 MR. BERGER: Well, we had a
19 hearing in Galena, and Pat Sweetsir who is the Vice- president
20 for the lands of Gana-a'yoo spent two hours explaining all that
21 he had gone through trying to get land into the Land Bank, and
22 this was last July. And at that point, because they were
23 seriously trying to get land into the Land Bank, they confronted
24 the federal government with the necessity of actually developing
25 a policy in relation to the Land Bank, and the negotiations, I
26 think, had been cut off while the federal government regrouped
27 the Department of the Interior. And decided, well, what is the
28 Land Bank? And we've got to write our regulations and, you know,
29 all this sort of stuff. I think that's what happened. I don't
30 know where the legal expenses come in, but the bureaucratic side
31 of it is a little sticky. Roland and then Glen.

32 MR. SHANKS: Well, I've been
33 trying to follow what's happening with Gana-a'yoo, because we
34 have an agreement that as soon as we get lands we have to put



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 them in the Land Bank, and so we are curious to know as to what
2 we are going to have to go through. The problems with
3 Gana-a'yoo, and the problems that they've come up against have
4 been, first of all, the biggest problem they have is that they
5 were the first people to do it. And it is never easy to be
6 first. Everybody seems to agree, including the Interior
7 Department, that to get the three basic protections -- which are
8 the protections from taxation, from adverse possessions, and from
9 judgment -- essentially all you have to do is to deliver upon the
10 Secretary a letter saying that you wish your lands, and outlining
11 the lands to be included in the Land Bank, and you can probably
12 gain those three basic protections. The problem comes in when
13 you attempt to negotiate an agreement that goes beyond those
14 three basic protections, which is basically what Gana-a'yoo has
15 tried to do.

16 They've essentially read the rest of the provision that
17 talks about cooperative management, the ability of the federal
18 government to enforce trespass and maybe carry out other types of
19 management activities upon their lands, including permitting
20 granting rights of ways and those types of things, and they've
21 tried to set up some kind of system whereby the corporation will
22 be able to develop basic policies, but the federal government
23 will essentially enforce them. And they have run
24 into...basically, they've run into the Reagan budget cutting
25 process. The federal organizations are not interested in taking
on added management responsibilities at this time which may
translate into spending money. So, they've run into some real
heavy problems that way. Like I say -- and it's as Justice
Berger brought out -- the Interior Department did drop back and
try and write some regulations. Part of the problem was that
Gana-a'yoo tried to go into the Land Bank, and there wasn't any
regulations -- there was no guideline on how to do it. In fact,
the Interior committee has still refused to come out with
regulations. They only have guidelines which rather soundly sent



1 back when they did come out. They were not...they didn't
2 facilitate people entering into Land Bank agreements. In fact,
3 they made it almost impossible. And they took away every
4 advantage that there might be accepted as a great protection.
5 So, right now the Land Bank is a very amorphous kind of thing.
6 Nobody is sure what it is, nobody is sure how you gonna get in,
7 and the only thing that you can probably bank on are those three
8 basic protections, and nothing much past that. And, while those
9 three basic protections are real nice, they are not the only
10 protections that land needs in order to protect it as an asset.

11 MR. CASE: Well, then isn't the
12 thrust of the resolution to automatically afford land those three
13 basic protections and nothing more?

14 MR. SHANKS: That's the way I
15 read it. In fact, is...

16 MR. CASE: ...what you could get
17 now they are writing a letter to the Secretary.

18 MR. SHANKS: Right, and in fact
19 is in ANILCA another part of the Land Bank provision essentially
20 when land is conveyed to a corporations that is automatically
21 covered by Land Bank provisions for three years.

22 MR. CASE: So essentially, what
23 you are talking about is sending a letter to the Secretary
24 telling him you want him to continue those protections. And
25 Gana-a'yoo also brought up and developed an interesting question
that nobody yet has found the answer to. And, that is if there
is a gap between the end of another Land Bank agreement, is
adverse possession that starts during that window, can it
continue onto title or whether it is terminated by going back
into the Land Bank? And, that was one of the reasons why they
were most interested in timing, was that they did not want a
window between the end of the three year period and the
initiation of the ongoing Land Bank agreement.



1 MR. DEMENTIEFF: I'm not sure if
2 the attorneys can answer, or Roland, or... this question.
3 Subject to the regulations of ANILCA and the intent of the Land
4 Bank, would the corporations in transferring their land to a Land
5 Bank. Even though it's not a liquidation, would that be subject
6 to the two-thirds requirement of the state statute and the
7 disposition of the major asset extraordinary circumstance?

8 MR. FESSLER: I don't think so,
9 because the provision that has always been key is whether or not
10 the corporation was permanently alienating its interest, and that
11 would come under the provision of sale of all or substantially
12 all the assets other than the usual and regular course. The
13 board is given power to pledge or mortgage assets without the
14 necessity of any form of shareholder approval, and so I would
15 assume that a deposit into the Land Bank would be far more
16 analogous to that than would be the case of treating that as a
17 sale of all or substantially all the assets, so that it wouldn't
18 appear to be an organic change under existing Alaska law. But,
19 again, it would be very useful if this were to be enacted by
20 Congress, for Congress to specifically address the Alaska
21 corporations code and declare that this is not intended to be a
22 sale of all or substantially all owned now. When you get down to
23 the question of [84]-08...well, we are going to transfer the
24 assets to some other entity, and that is -- it looks to me as if
25 it's going to be a permanent transfer of assets, then I think
you've got a -- you have come squarely up against the Alaska
corporation statute. Because that is quintessentially the type
of transaction which dissenter's rights would otherwise to
recognized, and you'd have to have the whole formal compliance
that the board has to propose it, has to have a special lay
notice to shareholders meeting. Shareholders, by the requisite
majority, have to vote if there are classes of shares they ballot
by class, etc., so that the -- the [84]-07 transaction probably



1 is not an organic change within the meaning of the existing
Alaska statute; they though eight transactions would be.

2 MR. DEMENTIEFF: The reason I
3 asked is because in reading the resolution without the clear
4 understanding what the Land Bank is, it sends up all kinds of red
5 lights. And I know that we had to go to the shareholders and ask
6 them to transfer the land...it's going to be impossible...into
7 the Land Bank, if that was, indeed, the case that we had to
8 follow this state statute, the two-thirds majority. But,
9 apparently not, because it's not a real liquidation. It's just a
transfer, temporary transfer. But, automatic red lights pop up
when you look at the going into Land Bank without a full
understanding.

10 MR. GARBER: There is no problem
11 with the corporation taking the lands out of the Land Bank once
12 they are there at any point. The only thing that happens then is
13 that you pay back taxes if they're due, and in most situations,
14 unless you've got a new city, or the state has started requiring
15 taxes, you are not even going to have that. So that there is no
16 encumbrance. You know that there is nothing that -- there is no
17 cost to putting in it, other than just the attorney's fees or
18 what-not it takes to draw up the documents. So, long as you
19 escape the designation of a sale, or transfer, like Professor
20 Fessler said, the only standard you've got to meet, if it's even
a standard at all, is business judgment. And the courts usually
aren't gonna touch anything there, and it sounds like you got all
kinds of arguments to your favor to avoid taxes, you know, and
adverse possession and what-not.

21 MS. E. JOHNSTON: I just want to
22 speak to being in favor of the idea of the lands being deemed
23 deposited in the Land Bank even though, if you like, "just" means
the three basic protections.

24 Again, going to the village corporation level --
25 although theoretically, it only requires a letter to the



1 Secretary of Interior, some of the village corporations in our
2 region, for them to get down and describe appropriately the land
3 etc., etc., is not really going to happen; and in order to have
4 the land protected, which is a desirable goal, I think it is
5 desirable to have it deemed deposited. Remember, too, when the
6 Land Bank was first passed, all were deemed deposited and there
7 is this, what, three-year period sort of running. In the Bristol
8 Bay region, we got IC fairly quickly, we received interim
9 conveyance fairly quickly. And, so for segments of the land,
10 that automatic three-year period is running, and I think it would
11 be highly desirable to not have gaps and to be able to have in
12 particular, the village corporations lands protected. I think
13 that those who wish to then pull out, of course, can.

14 The only other thing I want to say on the Land Bank was
15 the hope that we could add one more concept in, and this was
16 really a concept brought to my attention by Don Mitchell who is
17 one of the attorneys working for the Federation. The whole
18 freedom to be able to pull or remove the lands from the Land Bank
19 is highly desirable as long as that corporation is in Native
20 control. And, of course, you can -- you don't have to pull all
21 lands out, you could pull a portion out, and that would allow the
22 corporation the flexibility to do what they needed as time
23 passes. But what became of concern was if you get a corporation
24 in a posture of bankruptcy, so that suddenly you're under the
25 bankruptcy rules where they talk about sort of the trustee taking
over the assets of the corporation in order to deal with the
creditor situation, whether or not the trustee could march in,
okay, and take the lands out of the Land Bank and then make them
vulnerable to this dealing with his bankruptcy solution, which is
basically what he seems to be concerned about. Appropriately
being a trustee in bankruptcy. And I think it would be good if
we could sort of add to the idea of the Land Bank, or be it
something that would be put in bankruptcy law or something that
would be put in ANSCA itself to make quite clear that the trustee



1 in bankruptcy would not have the power to take the lands out of
2 the Land Bank to deal with creditors because, of course, that
3 would be a complete negation of the whole idea of protection from
4 unsecured debts. So, that's just an additional idea, and as I
5 say, it was Don Mitchell that first brought that gap to my
6 attention and I think it's an important protection.

7 MR. BERGER: Could I go back
8 to...let's call it "the Glenn Fredericks position." Let's
9 suppose you want to achieve the protection of subsistence lands
10 and you put them...they are deemed to be in the Land Bank, you
11 wrote a letter to the Secretary or whatever, so you got those
12 lands in the Land Bank; they can't be taxed, but the corporation
13 is taken over by outsiders. Then they acquire the land in the
14 Land Bank, and they acquire the right to write to the Secretary
15 and say we want out again. And you also have no protection
16 against corporate failure. This is really to...if I may repeat
17 on I think I said yesterday, 'to immunize corporate lands against
18 taxation.'

19 MS. E. JOHNSTON: Yesterday, one
20 of the things you did list was how do we immunize the lands from
21 corporate failure, and in my view, obviously you need a combin-
22 ation of things to do that. One thing standing alone won't do
23 it, but perhaps the combination of the restricted stock together
24 with this possible improvement suggested by Don Mitchell on the
25 Land Bank would provide that protection even within the corporate
format.

MR. BERGER: Well, pursuing the
thought for a moment... Restricting sale of stock means that the
Native corporation won't be taken over; putting the Native cor-
poration land in the Land Bank means it's immunized from taxation
as long as it's used for subsistence, or undeveloped, but if the
corporation fails, then the creditors get the land in the Land
Bank. Or is the thrust of this proposal that it never comes out?
Could you explain that?



1 MS. E. JOHNSTON: I don't think
2 the thrust of the AFN proposal is that it never could come out.
3 I think you could because I think...my understanding was that
4 they left with the board of directors the discretion to pull out.
5 But what it left unanswered, just because of the way the Land
6 Bank was drafted, and because as I understand how bankruptcy is
7 drafted, that they didn't mesh very well, and you have that hole
8 in the legislation where it's possible to argue that as the
9 creditors move in and their interests are represented by the
10 trustee in bankruptcy, that he could then have the discretion --
11 which he has instead, then of the board of directors -- would
12 have the discretion to take the land out, and use it to satisfy
13 debts which, of course, cuts against the whole intention.

14 MR. BERGER: Right now, if you
15 did happen to get some land into the Land Bank -- leave this AFN
16 resolution out of it -- if you've got land in the Land Bank now,
17 the ANILCA Land Bank, it would be immune from taxation while it's
18 in the Land Bank, but when the ten years and... but if your
19 corporation failed...

(NOVEMBER 15, 1984)

(OVERLAP TAPE, SIDE B)

20 MR. BERGER: (Continued) and
21 leaving Mitchell's gap...

(NOVEMBER 15, 1984)

(TAPE 7, SIDE B)

22 MR. BERGER: (Continued) out of
23 it... Let's assume there is no gap, as when the ten years expires,
24 then the creditor can take the land, is that it?

25 MS. E. JOHNSTON: If I were on
the board of directors and I was approaching the ten year period,
I would make sure nothing expired. I would just slap the five
years on top of it.

MR. BERGER: Well, under the laws
as it stands now, when you've slapped your five years on top, is



1 that the end?

2 MS. E. JOHNSTON: No, you can
3 keep going, it's... I'm saying it's a good rule, both Roland
4 and Glenn who agree with me that the extension, although it's for
5 a term, you can add terms.

6 MR. BERGER: Do you want to speak
7 into the mike, Roland Shanks?

8 MR. SHANKS: I said the real
9 question would probably be whether there is a positive motion
10 needed to maintain the land in the Land Bank, and if you'd
11 already had a take-over or a bankruptcy situation or something
12 like that, the corporation may be unable to make that positive
13 move to keep it in the Land Bank.

14 MR. BERGER: You mean that if
15 your corporation goes into bankruptcy, and the trustee in the
16 bankruptcy is running the corporation, he isn't going to renew
17 the Land Bank.

18 MR. SHANKS: Might be -- I would
19 guess that.

20 MR. BERGER: It might be a breach
21 of his duties to the creditors, one would think.

22 MR. SHANKS: There is also a
23 couple of other problems that have come up in the context with
24 the Land Bank. One is... and I think that his has pretty much
25 been resolved, but the...early on, there appeared to be maybe a
state's rights issue brewing with the federal government,
essentially -- usurping taxing authority of the State of Alaska,
and adverse possession, and some of these other things which the
state has held very dear as being state issues. I think that's
been turned back, I think the state has now seen that this is a
good thing. But, it is a problem that could come up again in the
future. There is a potential that there is going to be a state
version of the Land Bank introduced in next year's legislature
which will not only offer a state version, but will affirm the



1 federal version to take care of any of those kind of problems.
2 And one thing that just occurred to me while listening to this
3 whole scenario that is -- could be almost the world's worst
4 scenario -- and that would be that a corporation put their land
5 in the Land Bank to protect it from being lost and in fact have a
6 serious take-over bid brought against them, and because their
7 land is in the Land Bank, and it can't be pledged or alienated,
8 they have absolutely nothing to go to the bank with to try and
9 get money to hold off and defend against the takeover. So they
10 could essentially be tying their hands to defend themselves
11 against to the take-over by trying to protect their own land.
12 It's kind of a real desperate catch 22. Yeah, but you'd have to
13 pay all the back taxes, and if you pulled it out in the...

14 MR. FREDERICKS: ...taxes you'd
15 pay, as I understand it, is if you develop part of that Land
16 Bank, that's correct.

17 MR. SHANKS: Well, yeah. But,
18 nobody has done it yet. And, I'm not sure.

19 MR. BERGER: You are speaking
20 with great conviction and...

21 MR. FREDERICKS: ...what would I
22 give as a Native? For two hundred years, we've been fighting to
23 keep -- get our land, and then we turn around and give it back to
24 the federal government? You know?

25 MR BERGER: Rose Mary Maher and
then Gary Anders.

MS. MAHER: I agree with Glenn.
I have some old files. My father was the secretary of the
Village Council, and back in 1959, and I read through the old
files and one of the letter that he wrote said, "Dear Secretary
of Interior; We, the Native people of Northway would like to keep
our land that we hunt and fish and -- for subsistence." And he
drew a map around the area he wanted, and said we would like the
federal government and the state government to stay out and we



1 would like to prevent non-Native people from getting homesteads,
and signed it and sent it off.

2 And, to me, that was the basic concept of the Alaska
3 Native Land Claims was to keep the land for the people as they
4 used it. And, it got all blown out of proportion, and I think I
5 agree with Glenn that I don't like the Alaska Native Land Bank,
6 and as a village corporation president, you know, I would be
7 against this resolution, and I don't have a solution, but I do
8 think that the reason for the Land Claims was to keep the land
9 for the Native people and their uses. And, I think the best
10 solution would be transfer it to the IRA's. And, I'd just...
11 I've had bad experience with the Land Bank; I've tried to deal
with them and I gave up. Gana-a'yoo got to them first, so I
really didn't carry it any further, but I totally agree with
Glenn.

12 MR. ANDERS: I'm confused. It
13 seems like we are talking about corporations as a homogeneous
14 unit, when in fact there may be or may not be conflicts of
15 interest between regional corporations that have subsurface title
16 and village corporations that have surface title. With regard to
17 the deposit of land in the Land Bank, who does that and who can
18 withdraw it? It seems that you have developed mental issues
19 regarding the use-rights of both surface and subsurface estates.
20 And, I'm not sure if -- when a village corporation nominates
21 lands for the Land Bank, whether or not that means that the
22 regional corporations can't explore for oil and gas associated
23 with that; you know, I think you have a real thorny issue
determining what's developed and what's not developed. It seems
that, you know, there are so many problems here that have to be
thought out that... you know, they ought to appreciate some
clarification.

24 Mr. BERGER: Thank you Gary.
David Case.

25 MR. CASE: I don't have much



1 clarification as to what's developed and non-developed. There is
2 a new state statute that rather meticulously defines that. And
3 Roland probably knows better what it means than I do; I've just
4 read it, he lives with it, I suppose. But, it has the mark of
5 having been thought through. And I'll leave it at that; maybe
6 you want to elaborate on it.

5 MR. BERGER: Bart Garber.

6 MR. GARBER: Why don't you go
7 ahead and try it first, Roland.

8 MR. SHANKS: There is one
9 provision in ANSCA already that says at least for exploration
10 purposes that won't be determined and deemed development of land.
11 But, I mean, how far do you go in exploration before... "well, we
12 are exploring because we drilled a well, but we only drilled one
13 and that's still exploration, that was a test hole." I don't
14 know. This is where you get into the definition of state law,
15 and depending -- just because something has been thought on
16 doesn't determine who thought about it, so you know that will
17 determine the depth of it. As far as the surface/subsurface and
18 who gets the deed on it... that's a new one for me. And if
19 someone else could maybe bring in this -- maybe an application to
20 see what is the scope of 14(f). About when the village allegedly
21 has the right to determine when land will be developed, where
22 then you've got regional corporations coming in telling us that
23 there is this long term theory of common law rights to access
24 subsurface minerals that comes in conflict with that, so maybe
25 it's a time to determine, you know, the 14(f) question. What is
the scope of that right? And when it has to do with Land Bank
decisions, I don't know. That may be a position where a village
may be able to negotiate to say that... "region, if you do
develop, you will assume the tax liability that you gave us."
And maybe there is a way to negotiate it, so it's just not an
either or question again. I'd like to avoid those.

MS. MAHER: On the 14(f) issue, I



1 don't know if you are aware that there was an effort made between
2 the regional and the village corporations specifically to gravel,
3 and it got into the 14(f), and things fell apart. We couldn't --
4 the villages and the regions couldn't communicate, they couldn't
5 agree so we just dropped it. And, I think on the 14(f), if you
6 have lots of money, then we can address the issue.

7 MR. SHANKS: I was on the board
8 of the village corporation; I'm really aware of that problem.
9 But the subsurface -- the gravel issue had to do with ownership,
10 and not the ability to get at it. So, we haven't gotten to the
11 question of the ability to get at it. We have found out that we
12 don't own -- all we own is a surface right, we apparently don't
13 even own the grass we walk on, maybe that's surface. I don't
14 know, maybe that's not surface and the region owns the roots.

15 MS. MAHER: One more comment on
16 that 14(f). When we were meeting with the regional corporations,
17 we tried to tie the 14(f) in with the gravel, and that's where
18 the negotiations went dead. The regional corporations weren't
19 ready to address the issue, and I think it's probably going to be
20 a legal battle before it's over with. And I have real problem
21 because I'm on the board of directors of a regional corporations,
22 and the president of a village corporation, so I kind of try to
23 stay away from that issue.

24 MR. DEMENTIEFF: Just a little
25 comment. I have to quote my father when I came down to the
purchase by the village corporation of gravel from the region; he
said he didn't want to buy it, he just wanted to rearrange it,
that's all.

MR. SHANKS: Well, to get back to
a little bit to the comment that was made just a couple of times
ago about the state law that defines development. That was in
fact developed and put forward by Cook Inlet Region a couple of
years ago. While I was on staff over there, to deal...



1 MR. BERGER: Sorry, what was
developed?

2 MR. SHANKS: The amendment
3 dealing with "what is developed land?"

4 MR. BERGER: Oh yes, right,
right!

5 MR. SHANKS: And basically, what
6 it says is that when land is put in a position and it's
7 essentially put on the market to be converted into money, that
8 then it is developed; up until that point it's not. Even though
9 the land may be divided into lots and there may be power running
10 in front of it and a road by it, it still isn't developed until
11 you actually put it on the market. And, that was to solve a
12 problem that some regions and some villages have, and that they
13 have gotten lands that, for one reason or another, was subdivided
14 in the past by the state or by, you know, some other situation
15 and through all sorts of courses of fate, have now come to a
16 region or a village. And also, some of the urban villages have
17 problems in that there land lay adjacent to a highway... and
again, it was not really through any activity of theirs or any
18 kind of desire of theirs to develop the land as it lies next to a
19 highway, and we felt that they should not be penalized and taxed
20 because of that.

21 We had a situation on the Kenai Peninsula where the
22 Kenai Borough was saying that the correction lots that BLM uses
23 to correct... it's a surveying technique that they use to correct
24 the number of acres within a township, and the lots that are
25 created by water bodies... to use for acreage calculation, are in
fact lots. They are subdivisions, and therefore, taxable as
being developed. So this law was kind of aimed at heading that
off. Anyhow, that's enough background on that, but basically,
the state law deals with taxation of land, and while we have kind
of shifted it over and used it as the definition under Land Bank,
there is no direct tie in statute between the two.



1 The surface/subsurface issue is an issue that was
2 discussed an awful lot. AFN had a work group on the Land Bank a
3 couple of years ago, and we went through all sorts of scenarios
4 and all sorts of "what ifs" and "what happens now" kind of runs.
5 And, there was a lot of questions about that. Basically, the
6 statute is silent to whether the surface owner can put theirs in
7 separate from the subsurface owner, whether the subsurface owner
8 can put his in separate from the surface owner, whether they have
9 to joined or what.

10 And we just kind of assumed, I think, particularly the
11 villages and some regions were anxious to assume, that since
12 Congress and it's wisdom was silent on whether you had to be a
13 surface or a subsurface owner that they didn't care, and since
14 they didn't care, we figured we wouldn't care. But that is an
15 issue that will, I'm sure, be a stumbling block to the use of
16 Land Bank on down the road when you have a village that wants to
17 put an area into the Land Bank, and you have village -- a region
18 that wants to do some development in that area; it's going to be
19 a difficult situation. And to speak just briefly of the 14(f)
20 situation has that been brought up, I don't want to speak too
21 long about it, because we are currently in litigation; and even
22 though our regional attorney -- regional corporation's attorney
23 is no longer here, there is pending litigation between Eklutna
24 and Cook Inlet, which involves not only sand and gravel and who
25 owns it, but also 14(f) and the extent of it. We agree with
Claude's dad that we weren't selling it, we were just moving it;
and our regional corporation disagreed with where we were moving
it to, so hopefully, when this litigation comes down, we will
have a better idea of what the rules are and what the whole
situation is.

MR. BERGER: Tony Strong.

MR. STRONG: Yes, I wanted to...

I thought the discussion would stay a little bit longer with this
other issue of... with change of ownership of a substantial



1 proportion of the assets of the corporation and...

2 MR. BERGER: Well, Tony, I think
3 we have come to that, and can I just say a word and then I'll
4 give you the floor.

5 I think that we should consider the two concrete
6 possibilities that have been raised here, first of all by Glenn
7 Fredericks that the land held by Native corporation is
8 transferred to a cooperative or a non-profit corporation -- and
9 Rose Marie Maher says, "or to an IRA." You have those
10 possibilities and I... This NANA resolution seems to encompass
11 those; perhaps I don't quite understand it. And so, it seems to
12 me that the discussion arises out of that and we might, and I
13 think this is what you are about to come to; what are the rights
14 of the dissenting shareholders? And, the second thing that I
15 want to come to and have people address is taking those three
16 possibilities in turn, co-op, non-profit, IRA. What protection
17 do you have against corporate failure, against corporate
18 take-over and against taxation? And, so the floor is yours, but
19 I think that's what we're doing now.

20 MR. STRONG: Well, I did shake my
21 head "no" initially when you said dissenter's rights, but
22 actually, it does involve dissenter's rights. The scenario I'll
23 put up before the fine legal minds here. What do you do in a
24 situation where, say we have a corporation -- a village
25 corporation right now owning only the surface rights and the
regional owning the subsurface rights? The village corporation,
in trying to fend off failure or trying to get some assets to be
able to invest in their operations, have pledged one hundred
percent of their land. And their efforts failed; they are now on
the verge of Chapter 11 or Chapter 7 Bankruptcy. That is a major
transfer of assets, so to speak. They didn't need to get the
shareholder's permission, as it was clearly stated earlier, they
didn't need to get shareholder permission to obligate the land.
But they went ahead -- I mean to transfer -- I mean they do need



1 to get it for transferring the assets, they don't need it to get
2 to obligate it to pledge it for... as collateral. Now we have a
3 situation, using my scenario, now you have a situation where all
4 of the land has been collateralized, the village corporation is
5 on the verge of Chapter 11 or Chapter 7 Bankruptcy. And, how do
6 you address the dissenter's rights, so to speak? Do the
7 dissenters have any rights under that kind of circumstances, and
8 who are the dissenters, right? How do you determine that first,
9 then at the same time... Chapter... is there any kind of
10 protection that could be afford to those... to the ownership of
11 that land?

12 MR. FESSLER: Those are critical
13 questions.

14 First off, we have to distinguish between two possible
15 scenarios of Alaska's substantive law. That which is the current
16 Alaska law is an Article 5, of the existing Alaska Corporation
17 Code which we've had in place essentially since 1957; all right.

18 Should the legislature enact what was last year Senate
19 Bill 246, let's first talk about the question of a mortgage. A
20 mortgage is within the prerogative of the board of directors, and
21 they have no need to go to shareholders if the mortgage lease
22 exchange or pledge or other disposition of all or substantially
23 all the property and assets of the corporation is made in the
24 regular course of business. Now, it would depend therefore on
25 what it was that the board was getting in exchange; you would
indicate if they were trying to raise liquid cash for the purpose
of developing assets. Boards normally take the position that if
that is what they are attempting to do, they are within the area
of pursuing the regular course of business, and that they have
authority to do it, and that that type of thing is not an organic
change. If a mortgage under the existing Alaska law is not in
the regular course of business, then it would fall under Section
438, not Section 435, and it would have to shareholder
authorization, because that would be treated as an organic



1 change. If it was Section 435 transaction in which they have not
2 gone to the shareholders, and there was no shareholder vote under
3 Alaska law, there would be no dissenter's rights. Because the
4 only way you can become a dissenter under Alaska law is to have,
5 first of all, the board obliged to put the issue to the
6 shareholders, recognizing it as an organic change, and you become
7 a dissenter by going to that meeting in person or in proxy and
8 voting "no" on the question. That's the first thing you have to
9 do. If you don't vote, you can't become a dissenter. You had to
10 vote "no". And thereafter, within thirty days, you must make a
11 demand upon the corporation that it pay you the fair market value
12 of your shares. If you don't make the demand within thirty days,
13 you forfeit what had been your rights. Now this is just going
14 through the scenario of what is existing Alaska state law.

15 Corporation is obliged to pay you that sum of money or make a
16 counter offer and to negotiate with you. You have ninety days in
17 which to conclude that negotiation. If it is successful, they
18 pay you the sum of money you negotiate out. If not, the matter
19 goes to court; the corporation is obliged to go to court and pay
20 the legal expenses of commencing an action to determine the fair
21 market value of the dissenter's rights. And the object is to
22 bring all of the dissenter into that one judicial shoot-out, so
23 that whatever is ascertained to be the value is the sum which is
24 paid to every shareholder; just multiply the number of shares
25 which he has. So, that's the scenario.

Is there any protection if the corporation is on the
very of failure in the scenario? None whatsoever, none. All
right. Although the statute does not indicate it, it is pretty
well... I don't know of any deviation from this when the point
has been put to courts and other jurisdictions, that the rights
of bonafide third party creditors always take precedence over the
rights of equitable owners. Whether those equitable owners had
in the interim dissented or not, and so we -- we can't look to
these areas of corporate law as a protection of the lands of the



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 corporation against the specter of what will be the corporate
2 obligation of creditors. Now, I can't speak to the Land Bank
3 that you are discussing, whether it's good or bad. I don't know
4 whether the Land Bank gives you some sort of strong-arm legal
5 protection, but I can tell you that the basic concept of a sale
6 of assets and the fact that there are, or not dissenter's rights
7 is currently a matter of state law, and whether or not that's
8 some sort of trump card... to say to the creditor, you're really
9 not going to be able to get our corporate assets because we are
10 paying them over to all of our dissenting shareholders. We would
11 have had to have all the shareholders vote no, in which case you
12 would never have authorized the transaction, in which case it
13 would be an "ultra vires" transaction which is another -- I mean
14 it's so -- it's so crazy to be talking about these basic human
15 problems in Latin terms. I mean, it gives you some dimension of
16 what it was when this idea making these corporate problem arose.
17 One change that you ought to be aware of, should the legislature
18 have passed HB343, Senate Bill 246, in the Alaska Legislature,
19 there would have been more discretion to the board of directors.
20 A mortgage of corporate assets would never have been treated. In
21 other words, whether it was quoted in the usual course of
22 business or not, in the usual course of business under the new
23 Alaska corporations code pending in the old legislature, and it
24 was not enacted last time, the mortgage would be a business
25 decision for the board to make. You wouldn't have to go the
shareholders so that there would be no possibility of dissenter's
rights unless the articles of the corporation set a higher
standard wherein dissenter's rights would trigger in. But again,
even under the new ACC provisions, there would have been no
enhanced margin of protection for the corporate assets against
the plans of the bonafide creditors.

MR. STRONG: The next -- the
follow up of that is this hypothetical corporation who's in this
dire straights, what can they do? I mean, they are stuck with



1 having mortgaged all of their lands and they're in a position now
2 of not having any money to pay their creditors, and they don't
3 want to have to lose all their land. The shareholders don't want
4 to lose the land. I mean it seems to me then that the only
5 possible option they have is to merge. Find some big brother to
6 merge with.

7 MR. FESSLER: The failing
8 corporation in that circumstance then becomes an object of a race
9 of creditors. Those who hold the mortgage are protected because
10 they have the prior right, they have a lien upon the mortgaged
11 land. The unsecured creditors are going to take a bath under
12 your scenario, they are not going to get anything at all.

13 The way you try and hold off the creditor who otherwise
14 is going to foreclose on the mortgage is to convince them not to,
15 and the way you normally convince them not it is just what you
16 suggested. You go to some other entity and say, if this entity
17 puts its assets on the line so that you can now look to that, we
18 can either say that the consolidated or the merged corporation
19 will be buyable, in which case you won't foreclose because we've
20 solved the problem with insolvency; we're solvent once again.
21 Or, we've got somebody to come along and act as a guarantor.
22 But, I suppose at that point Rose Marie's village corporation
23 would become very friendly with the regional corporation, and
24 would be racing there saying, you know, would you like to help
25 bail us out of a situation like this?

MR. STRONG: I have another,
slightly a follow up. Is... and this might make a regional
corporation a lot more friendly toward this village corporation.
in its region is what happens if the regional corporation, this
hypothetical village corporation, have an option of going to
another regional corporation outside of its region and saying, I
need help. And, I think somebody else, somebody who is more
familiar with ANCSA would be able to... My thinking is that they
can do that, but it just presents political problems.



1 MR. GARBER: Tony, I think you
2 could ask anybody you wanted to, it depends on what you've got to
3 sell. Your own region, like it has been alluded to -- may be
4 interested in something because they have a subsurface estate
5 that close to it. And so, you may be able to sell some right
6 there if there is anything at all caught up in 14(f). But
7 otherwise, you know, what interest does anyone else have in
8 dealing with your problems?

9 MR. STRONG: I'm... you're
10 alluding to saying that... the corporation which I've talked
11 about -- a hypothetical corporation, which I've talked about, has
12 any existence in any part of the state, and I don't claim that it
13 does. I'm just stating that -- I'm talking about the stuff that
14 was mentioned earlier -- what, about twenty thousand or two
15 thousand eleven, you know, what can we do? What can a
16 corporation faced with that circumstance do immediately, barring
17 any kind of change? So, you know, I don't want to allude to any
18 village corporation right now.

19 MR. ANDERS: Let me give you a
20 different situation.

21 Let's suppose that a village corporation has some
22 financial problems and there is a potential take-over or forced
23 sale of a portion of land. The subsurface estates, I guess, are
24 marketable or alienable to an outside interest, but the surface
25 estate has been placed in some kind of trust, whether it's with
an IRA or a cooperative or a Native association. I guess the
question that really deals with the integrity of the land base is
being set aside. On one hand, you seem to be talking as though
once it's put in the hands of some protective entity, it's safe
from forced development by an outside entity, whether it's a
regional corporation or a non-Native business. And I get the
impression that that might not be the case. Earlier on, Justice
Berger, you mentioned the possibility of potential swaps of land
between village corporations and regional corporations so that



1 the village corporation might be able to acquire a land base that
2 maintains both the subsurface and the surface estates. I'd like
to hear some discussion about that.

3 MR. GARBER: I can only talk
4 because I happen to be in a village corporation that might have
5 some surface estate that might even be worth anything. And, even
6 when you are in that situation, you've got to understand that the
7 region has all of the subsurface below you anyway. And, unless
8 there is something that they're real real interested in -- in
9 keeping sole protection over one area, I really don't know that
10 there is going to be much chance of us striking a bargain. But
11 you know there is other situations of these other hypothetical
12 villages, that the surface estate may have an extraordinary value
13 that might be exchanged for, hopefully, on the part of the
14 region, I guess -- subsurface estates that has no values; that's
15 the only way I can see it.

16 MR. SHANKS: I think part of the
17 problem is that until we actually get shaken out what is
18 subsurface and what is surface and how big 14(f) is and how
19 little 14(f) might be, it is very difficult to think about how
20 you structure something like that. Realistically, you know a
21 worst-case scenario for the village 14(f) is just downtown. The
22 villages may not have much interest in gaining surface rights; so
23 there may not be a lot in it for them. Worst case scenario for
24 the regions 14(f) is the entire village selection area, in which
25 case there might be a lot of interest. There have been village
and regional corporations who have actively talked about trading
parts of the subsurface for surface and essentially creating two
pieces of property that are separated now vertically, instead of
horizontally. And my hunch is that once these problems of what
is included in each estate are actually start to get settled out,
that we will see some of that actively happen, because it is
obviously one of the easier ways to get around the 7(i) problems
and some other problems is to do that kind of thing.



1 MR. BERGER: Could I come back to
2 the point that I thought that we had reached about thirty minutes
3 ago? When we were about to consider resolution 84-08 and...
4 could I ask... Well, it seemed to me that the issue raised was
5 one that we should take up with these legal experts while they're
6 here. That is, if Native corporation transfers its land to a
7 non-profit or a co-op or an IRA, what advantages are gained
8 thereby? I think we should discuss that, and I thought we should
9 also consider the procedural -- the present procedural problems,
10 if that's the right word, that stand in the way.

11 MR. FESSLER: This is... Using
12 your three goals: protect from corporate failure, protect from
13 take-over, and protect from property taxation with regard to the
14 real estate held by the corporation, whether its surface or
15 subsurface estates.

16 Non-profit corporations and cooperative corporative are
17 corporations under the law of Alaska. Therefore, they have about
18 them the attribute of limited liability. They have some very
19 different features, however, that you are embracing the biggest
20 distinction between a profit-seeking corporation which is what
21 all of the ANCSA corporations that are through regional level are
22 -- and I understand there is dispute as to whether it's merely
23 the vast majority or all of the villages corporations, and
24 non-profit corporations which were an alternative extended under
25 the Settlement Claims Act to village corporations that they could
be non-profit if they wanted to. The basic idea there is the
whole notion that you would gain some enhanced protection against
alienation because you can, you have a greater ability to define
the qualities and characters of who can be members of membership
oriented, non-profit corporations. You have, however, a trade
off for that, in that you are unable to make any form of direct
distribution of the fruits of the enterprise to the members.
Whereas, you can make direct distributions in the form of



1 dividends in cash or in kind to shareholders in a profit-seeking
2 corporation.

3 MR. BERGER: Excuse me, Dan,
4 you're lumping what are called non-profit corporations and
5 cooperatives together, there is no distinction?

6 MR. FESSLER: Oh no, I've not
7 even begun to speak of cooperative yet. Because they are
8 deserving of yet another type of treatment. In so far as what
9 the basic thing you would notice in your life if you suddenly
10 took a corporation and transformed it into a non-profit
11 corporation, all right? You would have a choice between what are
12 called public benefit non-profits and mutual benefit non-profits,
13 and it is clear that you would opt for what are called mutual
14 benefit non-profits.

15 A public benefit non-profit would in an outfit like the
16 Community Chest that is intended for some charitable or
17 eleemosynary purpose. Doesn't even have members, has a self
18 perpetuating board of directors.

19 A mutual benefit non-profit is organized not for
20 everybody in the society, but for a certain group of people and
21 it is run, according to Mr. Bass, very much like a profit seeking
22 corporation; and with that generalization, some mental
23 reservations aside, I would generally concur. The biggest,
24 biggest, distinction is you cannot make any type of distribution
25 to the individual members so they can't look forward to ever
receiving any kind of a dividend check if you opted to organize
as a mutual benefit non-profit. Does it mean that you can't ever
get any advantage out of being a member of a mutual benefit
non-profit? No.

The theory is that the mutual benefit non-profit is
providing a battery of services to you and its cost structure for
providing those battery of services, since it doesn't have the
element of having to pay dividends to beneficial owners, will be
lower; and that is your basic economic benefit for affiliating



1 with a mutual benefit non-profit corporation. Are you immunized
2 from corporate failures? No. You have no greater immunization
3 from corporate failure than a profit seeking venture would have.
4 Again, bonafide third party creditors will always have the prior
5 claim on corporate assets over member's claims. But you can
6 define members in such a way that makes it harder for there to be
7 a take-over.

8 Although, I would point out that even for profit
9 seeking corporations under the corporation law that was pending
10 in the last legislature, a corporation is competent by its
11 articles to define the attributes and qualities and
12 qualifications for shareholders so you can have lots of
13 protection there, and clearly do that in a mutual benefit
14 non-profit. Are the interests in a mutual benefit non-profit
15 alienable? There is a greater tendency to respect the right to
16 restrict alienation of memberships and mutual benefit
17 non-profits. Not terribly edifying, but a very common group, our
18 snobby country clubs that form themselves as mutual benefit non-
19 profits, and they are very very interested in who's going to be
20 there, whether they will wear the right clothes, etc.

21 So, there are certain advantages, and those advantages
22 sound most likely in protection from take-over and a greater
23 opportunity to select who will be the members. Are you
24 protecting your property from taxation? Not as a mutual benefit
25 non-profit corporations. They pay taxes just like everybody
else. Public benefit non-profits generally are exempt from
taxation but mutual benefit non-profits never are. So, a country
club pays taxes, it pays taxes on its gross income, it pays taxes
upon it real estate, etc. So that's the essential choice to be
made with non-profit entities.

Now, cooperatives. Alaska has one of the most skeletal
cooperative statutes on the face of the earth. All right. I
mean you'd get a better reading of the weather by walking into a
cave and just sitting there for six months and guessing, than you



1 are going to get a reading of your future by chartering your
2 future under the skeletal provisions of Alaska's cooperative
3 corporation statute. You can count both of the major judicial
4 decisions on your nostrils in terms of figuring out whether the
5 court has gone along and sort of filled in the gaps; it hasn't.
6 So, we don't know much about cooperatives, but I can give you a
7 sort of a of clue as to what they look like.

8 A cooperative is the most insulated from take-over of
9 any entity, because there is no stock. And the membership in a
10 cooperative, if it does choose to have stock, the stock is
11 virtually meaningless. It carries with it no voting rights. You
12 can restrict the membership in cooperatives, and cooperatives are
13 very, very useful because in dealing with the members of the
14 cooperative, cooperatives have been used to discipline various
15 aspects of the economy. So, if you belong to a fishing
16 cooperative, and you get in trouble with that cooperative, you're
17 in real trouble, because they have rights to your catch that are
18 defined by contracts. And there are provisions in state law that
19 say no matter how unreasonable, no matter how one sided those
20 contracts, the member is bound. So cooperatives have been used
21 in other states and to a limited extend in Alaska.

22 Primarily to make it possible for certain individuals
23 in certain areas of agricultural endeavor to organize themselves
24 as either production or marketing co-ops. Alaska's statute, as I
25 say, compared to those of other states is in desperate need of
serious attention. The Alaska Code Revision Commission, at the
present time, is undertaking a look at the Alaska cooperative
statute, and if the AFN is interested in that area, I would urge
you to engage that body in dialogue, because they are right now
looking at it. A co-op gives you no protection from failure. A
cooperative can belly up just as dead as can a mutual benefit
non-profit or a profit seeking corporation has considerable
protection from take-over. Has no exemption from taxation,
alright. So, there is no entity out there that I'm aware of,



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501

(907) 274-4833

1 unless we can get one created that is Cinderella's carriage, that
2 you can just pop into and be assured
3 that you will be whisked away to a lovely evening. They can turn
4 into a pumpkin on you if the business turns out to come a
cropper, in which case you can't reverse the process, at least
unknown to me how it's done.

5 MR. FREDERICKS: I like to
6 explore a little more about this cooperative.

7 I don't know if you were here when I explained... now
8 I'm coming from a Native... we talk here... everybody's got an
9 input which is good. From a Native standpoint of saving the
10 land... My idea was, can a corporation that now exists, my
11 company, my corporation take that land and put it into another
like a cooperative to protect it? Can I do that legally, under
state statutes, as it exists now?

12 MR. FESSLER: You clearly could,
13 ith the exception that I would suggest to you that taking the
14 land from your village corporation and conveying it to a
15 cooperative corporation would be treated under existing Alaska
16 law as an organic change. So, you would have to have the consent
17 of your shareholders. And once that it was that cooperative, it
18 would be insulated in the sense that however you define the
19 cooperative membership, you could keep that cooperatives
20 membership comprised of Natives and exclude non-Natives. If you
21 ever were so foolish as to get that cooperative to join in
22 guaranteeing any loans made to the corporation, the minute you
23 take the assets that are in the cooperative and have the
24 cooperative become a guaranteed party to the transaction, there
is no longer any safe harbor for those assets; I mean they are
now committed. So the one way you could do it, Glenn, that you
can keep the land away from rapacious creditors, is never enter
into any transactions wherein the land is pledged to repay such
creditors.

25 MR. FREDERICKS: Do you do that



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

1 by lease agreement? What I'm saying is... now we're on the right
2 track here, I think. If I took this land and if I wanted to make
3 a business, say a thousand acres of timber, my idea was to go
4 back to the membership and say I want to take a thousand acres
and make it into a corporation profit -- profit corporation, can
that be done?

5 MR. FESSLER: Certainly. In
6 other words, can the cooperative later on form a profit seeking
7 corporation from the same individuals, the same beneficial owners
8 form a profit seeking and convey assets from the cooperative to
9 the profit seeking corporation, they can. In other words, you
10 can have more than one corporate entity and you can move assets
11 around but at some point in the real world if you want to go out
12 and borrow a million dollars and they say, "Well, what have you
13 got?" You say, "Well, we don't have much of anything, because
14 its all in the co-op." They'll say, "Well then, we'd like to
15 speak to the officers of the co-op." And at some point you'll be
16 backed into a corner and the people who have the ability to sign
17 over the major assets will be asked to do so; and at that point,
18 I wouldn't want to leave you with the impression that the assets
19 are insulated, they wouldn't be. And, you can't, as somebody
20 said it earlier today... can you have it both ways...? Where the
21 assets can be effectively used to leverage yourself into a cash
22 liquidity situation.

23 MR. FREDERICKS: I'm very leery
24 of IRA's. Because of the federal government in the south. You
25 take sovereignty question in the state of Alaska. I mean, we
would have an uprising in the state of Alaska if we were given that
immunity, and I, as a citizen of the United States, would go
against that. What we want to done... that's what I'm saying how
to protect this land. Maybe what we ought to be talking about is
dealing with the federal government before it goes to court on
the sovereignty questions. I mean, we have two hundred little
villages out there going to be a nation. Now the State of Alaska



1 cannot, in my mind, deal with this. All of a sudden, I'm from
2 Georgetown, little town of thirty-five people. If I have a
3 sovereign right, I can say to you, "You can come into my... I'm a
4 sovereign nation." Well that's asinine, you know. That is
5 absolutely asinine to me. Until that question is dealt with and
6 clarified from Congress or from the courts, I'd be very hesitant
7 to put my land into a IRA for that reason. Because Congress can
8 pull that thing down on you, and what do you have? Nothing.

9 MR. BERGER: How do you feel
10 about IRA's, Professor Fessler?

11 MR. FESSLER: Well, I'll give you
12 an idea of how stupid I was for the first five times I heard
13 that; I thought you meant those individual retirement accounts
14 that -- and there is a sense in which that's exactly what you
15 mean. Only you are arriving at it through a very different
16 mechanism. I don't know enough about the whole Indian
17 Reorganization Act to begin talking.

18 MR. BERGER: Well, I thought that
19 in fact that we would come to that tomorrow, it's getting on
20 toward four and I'd like to carry on this discussion this
21 afternoon for a little while and then tomorrow, because I think
22 it really is the guts of what everybody is concerned about....

23 (NOVEMBER 15, 1984)

24 (OVERLAP TAPE)

25 MR. BERGER: (Continued)...Rose
Marie Maher and then Bart and then Roland.

(NOVEMBER 15, 1984)

(TAPE 8, SIDE A)

MS. MAHER: The two resolutions
84-07 and 84-08, they refer to IRA's. There are not that many
IRA's in the State of Alaska. And I don't know if the State
recognizes traditional village councils or not. Does anybody
have an answer to that?

MR. GARBER: They deal with them,



PAPERWORKS

330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501

(907) 274-4833

1 and they've actually written them into their regulations and what
2 not. So, I mean they recognize that the federal entity exists;
3 they question sometimes the scope of its powers or the underlying
4 common law that applies to it. Pardon me. Yeah, we've taken
5 contracts with them, and there have been court cases that say
6 they have immunity, or that some others don't because they are
7 not an IRA or they don't have immunity in certain business
8 transactions.

9 MR. BERGER: Could I just say
10 something, Rose Marie? At this Roundtable, we are struggling
11 with 1991, and protecting the land, and so on. We are having a
12 Roundtable in December to discuss IRAs and sovereignty because
13 they are necessarily part of this thing and it seems to me you
14 can't discuss one without discussing the other. So, I am more
15 interested right, at the moment, in the attributes of IRA's as
16 vehicles for holding land than I am about sovereignty itself;
17 that's something we'll come to next month. I know they are
18 mingled, and you can't talk about one without the talking about
19 the other, but I think it's useful while we've got these people
20 here to look at co-ops and non-profits and IRAs; and I should add
21 that this Commission has been looking at any number of
22 alternatives developed in other countries, because the list isn't
23 just co-ops, non-profits and IRAs... but I interrupted you, you
24 go ahead.

25 MS. MAHER: Well, most villages
that are not organized under the IRAs do have traditional village
councils. And I was curious to know what the problem would be
with putting traditional village councils on this list that they
have of non-profit or IRA.

MR. CASE: They are on the list.
Do you mean the federal list of recognized... just resolutions...
oh, I'm sorry, okay. I am not sure; maybe then Marlene should
answer.

MS. M. JOHNSON: There is no



1 problem with it. It say IRA non-profit or other entity and IRA
2 just as common used thing in Alaska, and that's one of the major
3 and there are quite a number of IRAs in the State of Alaska. Was
4 used -- but we don't -- maybe a new entity that hasn't even been
5 dreamed up yet.

6 MS. MAHER: The reason I asked is
7 'cause they've stopped any IRAs until the issues are settled
8 between the federal and the state government. So, there may be
9 some time before any new IRA's are issued.

10 MR. BERGER: So, in the meantime,
11 the traditional council should serve, is that the point? Yes,
12 that's what I'm saying.

13 MR. CASE: What was the question,
14 the point you just made just then? It's getting confusing.

15 MR. BERGER: Well, Drew Hageman,
16 I made the... I just said that traditional councils are on this
17 list of Marlene's, that's all.

18 MR. CASE: But, I mean the point
19 that should be made, too, about traditional councils and IRAs...
20 the distinction, if any, between the two which seems to me to be
21 -- correct me if I'm wrong -- it seems to me to be what you're
22 asking, is that correct?

23 MS. MAHER: No, I was just
24 curious to why they weren't included in these two resolutions.
25 They mention IRAs, but they don't mention traditional village
councils and...

MR. CASE: One of the... perhaps
one of the difficulties with traditional councils is that they
don't exist on paper and so when it comes to a paper-oriented
society and court system looking at these institutions and trying
to figure out what they are, do they exist, what powers do they
have? You may run into the difficulty that there is nothing on
paper that sort of acts as the proof. But as far as the law
goes, or the theory of the law goes, there does not seem to be



1 any material distinction and the important distinction between
2 the powers of an IRA or the
3 powers of a traditional council. Now there are some distinctions
4 because the IRA statute clarified or maybe confers some
5 additional powers on IRA councils. And one of those powers may
6 be that it relates to the protection of the land.

7 MR. HAGEMAN: I guess the... and
8 partially in response to your concern, Rose Marie, that I guess
9 AFN Did indeed endorse a resolution that village tribal
10 governments, not specifying IRAs or anything else -- village
11 tribal governments were entitled to control and jurisdiction over
12 their traditional territory. And, I guess as an opting, or if
13 indeed it is an option, Marlene, what do we mean by traditional
14 territory? Maybe I should, I'll ask that later, how is that?

15 MR. BERGER: Is that in this
16 resolution?

17 MR. HAGEMAN: It's another
18 resolution, AFN resolution that was passed. The title is Village
19 Tribal Government Control and Jurisdiction Over Traditional
20 Territory. The resolution is that AFN does endorse the concept
21 that each Native village tribal government is entitled to the
22 control and jurisdiction over its traditional territory.

23 MR. BERGER: Oh, I see. Well,
24 let's... that's another question that perhaps we can't settle
25 here between now and four o'clock. But you might bear this in
mind, that in the villages... in the hearings that I've held,
people are concerned about protecting the land, and they have
said, "Well, let's turn it over to co-op or non-profit." But of
course the largest number say, "Well, let's turn it over to the
IRA or the traditional council." But that isn't just, because
they want a safe place for it. It became apparent to me that
people regard those, the IRA and the traditional council, as the
likely vehicles for exercising some measure of government
authority over land and subsistence. So there is notion that it



1 make sense to them to place the land for safe keeping with the
2 same entity that is to have jurisdiction over it. Now, those
3 are... that's where your resolution that you just read, it kind
4 of... how do you go on from where we are at this point? But
5 maybe tomorrow, if you don't mind, we could just, when we are a
6 little fresher, take a look at these alternatives, and just see
7 what protection they offer against the loss of the land, because
8 if we restrict ourselves to that for the moment, we might be able
9 to emerge with our mind clear on the subject.

7 Anything else anybody wants to say this afternoon?
8 Well, if you don't mind, I will suggest that in a moment we
9 adjourn for the day because I think it's been a good discussion
10 and a pretty intense one and I found, as a judge, judges usually
11 sit in court only four hours a day, and we've been exceeding that
12 here, that if you are paying attention and concentrating you are
13 pretty well done all you can about this time of day. So, if we
14 could carry on tomorrow from there and then go into the question
15 of values because it seems to me that that's where we come out in
16 the end, where Bart Garber got us into this yesterday. And so,
17 if we could assemble again at nine o'clock or as soon thereafter
18 as you can be here, we'll carry on with the discussion and see
19 how far it get us.

(HEARING ADJOURNED)
END OF TAPE 8, SIDE A



C E R T I F I C A T E

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

4 I, Jenny V. Kearney, Notary Public in and for the
5 state of Alaska, residing in Anchorage, Alaska, do hereby
6 certify:

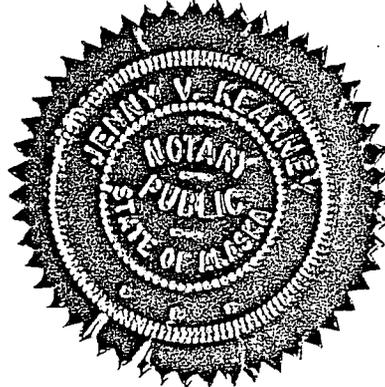
7 That the annexed and foregoing pages numbered 2090
8 through 2218 contain a full, true, correct and verbatim
9 transcript of the proceedings in the matter of the Alaska
10 Native Review Commission, Overview Roundtable Discussions,
11 as transcribed by me to the best of my knowledge and ability
12 from cassette tapes provided by the Alaska Native Review
13 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"
17 Street, 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
20 interested in this proceeding.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and affixed my seal this 28th day of May, 1985.

23 *Jenny V. Kearney*
24 JENNY V. KEARNEY
25 NOTARY PUBLIC IN AND FOR ALASKA
MY COMMISSION EXPIRES 8/26/87



PAPERWORKS
330 E. 4th Ave., Suite 201
Anchorage, Alaska 99501
(907) 274-4833

