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TRANSCRIPT OF PROCEEDINGS
ROUNDTABLE DISCUSSION
VOLUME XXIV
ALTERNATE APPROACHES TO
NATIVE LAND AND GOVERNANCE
DECEMBER 12, 1984

ALASKA NATIVE REVIEW COMMISSION
HON. THOMAS R. BERGER
COMMISSIONER

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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.

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Roundtable On

Alternate Approaches to Native Land & Governance

Anchorage, December 12 - 15, 1984

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GOVERNANCE
DECEMBER 12, 13, 14 & 15, 1984

(DECEMBER 12, 1984)

(TAPE 1, SIDE A)

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MR. BERGER: Well, my name is Tom Berger and let me welcome you all here this morning, the members of the roundtable and others who are here today. The way we propose to proceed is this, I will take the liberty of making some opening remarks and then I will ask each one of you to introduce yourself and then we will ask Ralph Johnson to summarize his paper on Native land and government here in the United States and in other jurisdictions and then we will ask David Case to present his paper on village home rule in Alaska and then we will have some discussion. There is an agenda that has been circulated -- it is just a draft agenda -- we have found that the best way is just to get started and then to revise the agenda each day as we go along. So, feel free throughout to mention at the breaks or at lunch... feel free to mention any changes you want made in the agenda. Mention them to me or to Rosita Worl or to David Case because we meet each day after the roundtable to see if changes should be made in the way that we are proceeding. The proceedings are being videotaped by independent public television and the University of Alaska Information and Telecommunications System and they will be making television programs to be shown on Learnalaska, and will be making a documentary as well, and they have asked me to remind you all to speak to a microphone. There are microphones nearby each seat so I don't think that will present any difficulty. Jim Sykes is taking down everything that is said on tape. Jim is the man just putting on the earphones and he is wearing the colorful suspenders and he has been taping the proceedings of the Commission from its commencement, in February this year. Well, having disposed of those preliminaries let me attempt to explain why I have called this meeting.

The Alaska Native Review Commission has held 52

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1 hearings in villages and towns throughout Alaska and more than a
2 thousand Alaska Natives have testified at those hearings and that
3 has kept us travelling throughout the state now since February.
4 And the paramount issue for those people in the Bush, and for
5 Alaska Natives who live in the urban centers as well, according
6 to what they have told me, is whether or not they will find a way
7 to retain the 44 million acres of land authorized to be conveyed
8 to the Native corporations under ANCSA, the Alaska Native Claims
9 Settlement Act of 1971.

10 In my view, there are three principal threats to their
11 land: corporate failure, corporate takeover and taxation. There
12 are others, but I happen to think those are the three principal
13 ones. Well, at the roundtable in November, last month, we had
14 some corporation lawyers here and some Native corporate
15 executives and we looked at possible solutions to 1991. We
16 considered whether or not restrictions on the sale of shares
17 might be imposed together with a possibility of distribution of
18 shares to new Natives, that is the Native children born since
19 1971, thereby insuring that the corporations and the land would
20 remain in Native hands. We also considered whether or not it
21 would be feasible to transfer land from the corporations to some
22 other entity and that brought up the question, "what other
23 entity?" And we looked at the land bank, we looked at non-profit
24 corporations, in the written version of my opening marks, "profit
25 corporations", but that should be "non-profit corporations". We
26 looked at cooperatives and we looked at IRA's. I will be
27 dealing... in my report which I expect will be made public late
28 next summer, I will be dealing in my report with the usefulness
29 of each one of these ideas. But, I wanted to take a longer look
30 at IRA's and various forms of Native self-government. Now, there
31 is a strong IRA movement emerging in Alaska, I think I may say
32 that because I have been to all of these villages and in many,
33 many of them the subject of IRA's is brought up by the people

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1 there. IRA's have been much talked about at the hearings in the
2 Bush. As I told Emil Notti and his colleagues on the Governor's
3 Task Force on State-Tribal Relations, the IRA's are not viewed by
4 people in the villages simply as a place to park Native land...
5 simply as a safe place to keep Native land. I think the whole
6 idea may have come about because people were concerned: "Well,
7 if the corporations are not the best place to keep our land then
8 what should we do with it?" And, of course, transferring the
9 land from the corporations to the IRA's was suggested and many
10 people think that is a sound proposition, whether or not it is,
11 is something that we discussed last month and there is no point,
12 it seems to me, in going over all of that ground again. Likewise
13 it seems to me, we have covered the possibilities of transferring
14 land to cooperatives, to the land bank and to non-profit
15 corporations.

16 Just to summarize the discussion, we looked at all four
17 of those possibilities and none of them came out a clear winner,
18 there were problems with each one. But in the villages, it seems
19 to me, that IRA's are not viewed simply as one other way of
20 preserving land. That is, one other alternative besides the land
21 bank, cooperatives and non-profit corporations, they are seen by
22 Native people as Native governments managing the land and passing
23 laws regarding activities on the land, especially subsistence.
24 In fact, it is my observation that the IRA movement or the
25 sovereignty movement, self-determination movement, whatever you
want to call it, has arisen in response to what are seen to be
the twin crises of land and subsistence. IRA's are thought of as
a means of keeping the land in Native hands and as a means of
defending Native subsistence rights in Alaska against further
encroachment. We want, therefore, to look at IRA's --and by
IRA's I include traditional councils -- we want to look at the up
side and the down side and I hope you will all feel free to
uphold them, but better still to attack them and to attack the

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1 whole concept as we proceed. We also want to look at what is
2 happening in the Lower 48 and in other countries.

3 We have been looking closely at ANCSA and we have been
4 looking at ANCSA for the whole of the year and many of you have
5 been looking at it for a lot longer than that and it is a kind of
6 bottomless pit; once you start discussing the problems of ANCSA
7 you seem to generate even more problems and it's something that
8 we have spent a year, now, reviewing in some detail. But now it
9 seems to me, we want to take a look at alternatives to ANCSA
10 because there are many complaints about ANCSA, yet let's be sure
11 that discussion of alternatives is about real, practical
12 alternatives and not about alternatives that, in the end, may
13 cause more problems than ANCSA itself. Having said I don't want
14 us to spend our time talking about the endless problems of ANCSA,
15 let me say that whenever you are reviewing a subject like ANCSA
16 there is a tendency to look at what is wrong with it and that is
17 perfectly natural and probably the best way to conduct a review.
18 People come and they tell you what is wrong with it, but it is
19 worth remembering that there are some features of ANCSA that it
20 seems to me stand out.

21 I was in Kuujjuag on Monday; that is the center of the
22 Inuit Home Rule Government in Northern Quebec and they asked me
23 to come and to be keynote speaker at a conference they had on
24 Monday and wanted to know about what we were doing in Alaska and
25 I told them, I said, "Remember three things about ANCSA: that it
has been the means for 13 years for Alaska Natives to manage and
consolidate and retain 44 million acres of land, that's a very
important thing to bear in mind. Secondly, it has enabled Alaska
Natives to invest in business and to become active in business
and that seems to me an important achievement. The presence it
has given Native people in the business community, it seems to
me, has also given them enhanced influence in the political life
of Alaska. I don't think that should be overlooked. But for

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1 Native people in other countries it has also been important
2 because it was a breakthrough. It meant that ever since 1971
3 Native people in other countries who go to the governments to
4 talk about land claims are able to say, 'we are talking about
5 real money, like Alaska, and we are talking about vast tracts of
6 land just like they got in Alaska'. Now, in those other
7 jurisdictions they usually go on to say, "But we don't want
8 shareholders corporations where shares are transferable, we want
9 to avoid the problem of the new Natives, we want to make sure
10 that subsistence lands cannot in the future be taxed and so on
11 and so forth". But the achievements of ANCSA are worth bearing
12 in mind. But it is the flaws in ANCSA that have lead Native
13 people here in this state to talk seriously about IRA's and that
14 is why we are here to look at them, the up side and the down
15 side. What are the alternatives? What does U.S. Federal Indian
16 Law offer and we have three of the editors of Cohen on Federal
17 Indian Law here at this gathering today, we have Bob Arnold who
18 has written a book on the Alaska Native Claims Settlement. What
19 can other countries offer? And some folks are here from other
20 countries. And, finally, is it possible to devise new
21 arrangements for Alaska combining the advantages of ANCSA
22 corporations and Native governments. We are not working in a
23 vacuum so we should bear in mind relationships between IRA's and
24 Federal, State and Local governments. Ralph Johnson is going to
25 be laying all this before us and David Case has prepared a paper
trying IRA's on for size as vehicles of Native home rule in
Alaska. Now, there is some questions for discussion that I wrote
on a piece of paper just to give you some idea of the kind of
discussion I was hoping we might have and I asked the question;
is there a movement by indigenous people in Alaska, in the Lower
48 and in other jurisdictions to govern themselves and their
land? The second question is, do IRA's work? Is it possible to
keep Native land in Native hands without submitting to Federal

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1 supervision? What are the implications for State tribal
2 relations? How is the issue of State tribal relations been
3 tackled in the Lower 48 and in other jurisdictions? What is
4 working? And what is not working, I should have said that too,
5 what is not working? What is possible, what is not possible?
6 Can State chartered governments meet the objectives of indigenous
7 self-government here in Alaska? Have they done so in the Lower
8 48 and in other jurisdictions? Can indigenous self-government be
9 accommodated in the United States, in Alaska and in other
10 jurisdictions? And ought indigenous self-government to be
11 accommodated in the U.S. and in Alaska and in other
12 jurisdictions? Well, it seemed to me we should go into these
13 things because they are linked to the way in which people in
14 rural Alaska are looking at ANCSA. I hope that the discussion
15 will be wide ranging and that all of you will feel free to join
16 in. I will act as a moderator and try to make sure that there is
17 a kind of, I won't say order but at least logic, to the flow of
18 the discussion and we will take a break for coffee in the morning
19 and in the afternoon. That will come as a relief to those of you
20 who have attended before when I never did break for coffee and
21 there has been much complaint about that, so we intend to break
22 this time. Well, thank you all again for coming and perhaps we
23 could introduce ourselves and perhaps we could start with David
24 Case to my right.

19 MR. CASE: My name is David Case.
20 I am the Commission's counsel.

21 MR. LERNER: My name is Ralph
22 Lerner. I teach at the University of Chicago.

23 MR. GETCHES: David Getches,
24 currently Executive Director of the Colorado Department of
25 Natural Resources.

MR. JULL: Peter Jull, I work with
the Canadian Inuits setting up a Inuit government in the

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1 Northwest Territories and with the Inuit Circumpolar Conference.

2 MR. ARNOLD: I am Bob Arnold. I
3 am Deputy Commissioner of the Alaska Department of Natural
4 Resources.

5 MR. CHAMBERS: I am Reed Chambers.
6 I am a partner of Sonosky, Chambers, Sachse and Guido with
7 offices both in Washington and Anchorage. We represent Indian
8 tribes.

9 MR. HARHOFF: I am Frederick
10 Harhoff from Copenhagen in Denmark where I teach international
11 law and European community law. I am also the legal advisor to
12 the Greenland Home Rule.

13 MR. ASCHENBRENNER: I am Larry
14 Aschenbrenner, an attorney with the Native American Rights Fund
15 here in Anchorage, Alaska.

16 MR. WORL: I am Rosita Worl and I
17 serve as special consultant to the Commission.

18 MR. VASKA: I am Tony Vaska, one
19 of the members of the Federal/State Tribal Relations who are
20 present here at this meeting and we'll have a public hearing
21 tomorrow here in Anchorage.

22 MR. WILLIAMS: I am Spud Williams
23 from the Tanana Chiefs Conference.

24 MR. WILKINSON: Charles Wilkinson,
25 at the University of Oregon Law School visiting this year at the
University of Colorado. My specialties are American Indian Law
and Federal Public Land Law.

MR. CHAMBERLIN: Ted Chamberlin
from the University of Toronto in Canada.

MS. MILLER: My name is Mary
Miller. I work at Kawerak, Incorporated, which is a Native non-
profit in northwest Alaska.

MR. JOHNSON: I am Professor Ralph

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1 Johnson at the University of Washington in Seattle. I specialize
2 in American Indian Law, Water Law.

3 MR. BERGER: Maybe I could just
4 say that, I am pleased that members of the Governor's Task Force
5 on Federal/State Tribal Relations are able to be with us. I
6 think some have been held up by the weather but I am glad that
7 you gentlemen are here. Dalee Sambo is here as the
8 representative of the Inuit Circumpolar Conference and there are
9 some folks from Canada who came because they wanted to learn from
10 this most distinguished group of people we have assembled at the
11 roundtable and I think you will be meeting them over the course
12 of the next few days. They are representatives from British
13 Columbia, from Makivik, the regional Inuit corporation in
14 Northern Quebec and from the CBC. Well, Ralph, could we turn to
15 you then.

16 MR. JOHNSON: Thank you, Mr.
17 Berger. It is a tribute to the work and the efforts and the
18 success of the Commission that we have such a distinguished and
19 learned and experienced group of people here for this important
20 session. It is a real pleasure to participate. This is my third
21 roundtable and I find that, I think I learn a great deal more
22 from these roundtables than I am possibly able to give. At the
23 outset I want to give my special thanks to Charles Wilkinson, and
24 Doug Sanders, who could not be here, for ideas and critique and
25 such, but especially to David Case who continues to teach me so
much about Alaska problems and Alaska law. I guess the one
definitional thing... I think I should say at the outset, you
will be pleased to know I am not going to read my paper. It was
an effort, as you probably have discerned if you had time to look
at it, to try and bring together some movements, some ideas, some
political actions, legal actions that are occurring throughout
the world in relation to indigenous peoples. It hasn't... it is
very tough to put these pieces together into some kind of a

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1 mosaic and what I did, I hope, is a start in that direction.
2 Anyone who reads the paper should realize that it's only a start
3 because there is so much going on, it is very difficult to weave
4 it into a fabric that is really truthful and complete and so
5 forth. One thing that is quite clear and that is, that although
6 I tried to put events in historical perspective, there are other
7 historical factors going on; there is the Republicans versus the
8 Democrats, there is the "states' righters" versus the federalists
9 and the United States, the federal side in Canada, there is the
10 Quebec question which drives, and in some sense controls, the
11 windows of opportunity that are provided by Natives. I was not
12 capable, in the time available, or in less than several hundred
13 pages, to paint that kind of a historic mosaic. But, surely it
14 is something that must be kept in mind by people who are
15 realistically concerned about this subject. Oh, and there is one
16 definitional matter that I feel compelled each time I speak to
17 this to mention, that is the word sovereignty. The word
18 sovereignty is, by itself, not very helpful. People tend to
19 think, especially people who have not been around the field very
20 long, they tend to think that sovereignty is either black or it's
21 white, I mean either you've got it or you don't got it, there is
22 nothing in between and yet that is clearly not true. We treat of
23 it all kinds of ways in other contexts, but when we come to
24 Indian or Native sovereignty, we think in those absolutist terms.
25 Sovereignty is really in mind-view and nothing more than a
statement of governing power and if I say that a group of people
have governing power, your next question is, well how much.
Well, that is the same question one should ask about sovereignty.
You can have a lot of sovereignty or a lot of governing power or
you can have a little bit of sovereignty or a little governing
power. The States vis a vis the United States have quite a bit
of sovereignty but they lost some in the Constitution. The
cities in the Lower 48... in Alaska have some aspects, attributes

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1 of sovereignty, they don't have other attributes. So, I urge
2 that as we go through this we tend to think as sovereignty as a
3 word that is the beginning of a discussion, not the end of the
4 discussion.

4 I have tried to identify in a sketchy sort of way, the
5 existing world-wide movement of indigenous peoples to gain
6 recognition, to gain status, to assure land tenure, to get some
7 kind of self-determination, self-governing rights. It's a
8 movement that I found far more broad than when I started this
9 project and I was only able to cover the four countries, but it
10 is very broad. It is being recognized in the international
11 bodies in the United Nations. It is being recognized in Latin
12 America. Each country has its special history which drives the
13 particular attributes of the search for self-determination and
14 land tenure of the different indigenous peoples. But the
15 movement is there, the movement cannot be denied. It is
16 expressed in so many different ways, and as I say, I have just
17 touched on a few.

15 I want to spend just a few moments telling you or
16 highlighting a few items in my paper. I think that first it's
17 important to realize that the initial policies toward Alaska
18 Natives were created at a time of particular history of the
19 United States toward Indians in the Lower 48. There was the
20 "removal era" of the 1830's to the 1840's, '50's, along in there.
21 Then there was a "reservation era" from about 1850... these
22 numbers are not precise, 1850 to 1880, 1890, somewhere along in
23 there. But the particular period in which Alaska was acquired
24 and the initial formation of policy toward Alaska occurred was in
25 the most virulent, if you want to call it, assimilationist era
that the United States has ever had toward Indians. There was a
second assimilation era of the 1950's but it was very short-lived
and did far less... had far less impact upon the Indian
population. But the Dawes Act... the Dawes Act, the Allotment

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1 Act which broke up reservations, took about two-thirds of the
2 lands of the Indians and got into non-Indian hands, one way or
3 another, was a massive attack upon the communal life. It was
4 driven by two major forces, if I can simplify this, it was driven
5 by bonafide Christian ethics and it was driven by bonafide
6 capitalistic ethics. You've got to deny or destroy the "heathen,
7 pagan" religions of the Natives and you've got to break up the
8 communal kind of life, both of which may be viewed as either good
9 or bad, or moral or immoral. But, in fact, those two forces
10 joined together to get Congress to enact the Dawes Act which
11 essentially broke up many reservations into parcels of land,
12 individually held parcels of land. It was that era... it was
13 exactly that era in which the initial policies toward Alaska
14 Natives were undergoing formulation and, of course, the idea at
15 that time was not to give any special recognition toward Alaska
16 (But, that Natives and the initial attempt was to deny that they
17 had the same kind of attributes of the Natives, the Indians in
18 the Lower 48. But, by 1900, 1905, 1910, it became apparent to
19 anyone who studied the question that there were really no
20 significant differences between the Alaska Natives and the
21 Natives of the Lower 48 and so, gradually national policy
22 switched around to recognition of Alaska Natives in the same
23 context, with the sovereign governmental status -- and I don't
24 mean to say there is unanimity on this -- but, the same ideas of
25 sovereign governmental powers. Sovereignty, the governing powers
that the Natives had for themselves, was from time immemorial, it
was not created by the Act... the treaty with Russia in which
Alaska was purchased in 1867. The Natives governed themselves
from ever and that came forward and had not been destroyed by the
acquisition of Alaska from Russia or by any other action. Well,
gradually it became recognized that this policy was one... the
policy toward Alaska Natives should comply and should conform
with the policies toward Indians in the Lower 48. We had the

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1 first self-determination era, which I just remarked about. The
2 first self-determination era in the United States, which was not
3 the same at all in Canada, as I'll comment in a moment, but, that
4 era was from... in 1934 with the enactment of the Indian
5 Reorganization Act, I am always reminded of the... I believe it
6 was Robert Service who wrote the piece on "the land God forgot",
7 about Alaska. I always think that this is the land that Congress
8 forgot, they forgot it in the 1934 and so 1936 they had to pass a
9 special Act about Alaska, we forgot that. Well, then in 1953,
10 Public Law 280 was enacted and they forgot Alaska again. Well,
11 in 1958 they had to enact a special PL-280 for Alaska. Those are
12 only symbolic because Congress has never been that concerned
13 with... until recently, until oil was discovered and the state
14 land selection process got under way, had never been
15 fundamentally concerned about Native populations in Alaska. But
16 in the 1960's, with the advent of Statehood, the land selection
17 process, the discovery of oil and Native litigation that may have
18 provided a basis for Native claims to huge shares of land,
19 produced a Congressional consciousness about Alaska Native
20 aspirations and claims and then produced the Alaska Native Claims
21 Settlement Act. That Act has aspects of termination, it has
22 aspects of continuation of Native life and Native economic
23 welfare in it. One of the common assumptions that was extant
24 after ANCSA was passed, was that Native governments were gone.
25 That ANCSA settled all this. Well, that isn't true, as this
Commission and others have now so artfully drawn out. If you
look at the ANCSA itself, you find that it is a Land Settlement
Act, it did not treat of the question of governance and, of
course, that is one of the fundamental questions that is now
being addressed here.

Now, a few comments about the movement in other
countries. Australia, when you look at the question of
Australian aborigines and the land tenure question, the

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1 governance question, you find a very different history then you
2 find in the United States. The aboriginals of Australia largely
3 were pushed around without recognition of either land tenure or
4 governance rights until the Woodward Report of 1974. That report
5 caused, along with a change in political attitude in all of
6 Australia... it didn't make any difference as it doesn't make a
7 lot of difference in the United States whether you have a
8 conservative or liberal regime in, the attitude toward Native
9 people seems to be powered by general consensus ideas in the
10 society. Anyway, the Woodward Report started such a change of
11 consensus and the Aboriginal Lands Right Act of 1976 was enacted
12 having to do only with the Northern Territory and it purported to
13 assure the aboriginals of a certain quantity of land, if they
14 could show that they had traditionally occupied that land and
15 gave them some control. Not in the same sense of governmental
16 control that you find on the reservations in the Lower 48, but it
17 did give them some control and still does through aboriginal land
18 trusts and aboriginal land councils. All of which are discussed
19 more completely in my paper.

20 In New Zealand, the Treaty of Waitangi of 1840, which
21 was the basic starting point for Native claims to governance or
22 land tenure, was essentially set aside by judicial decisions
23 which said, quite different from the United States, which said
24 that the Treaty of Waitangi is a statement of policy, it's not a
25 document that is a legal document. It does not control the New
Zealand courts and subsequently the attempt by the Maori to claim
that they had legal rights deriving from that treaty were denied,
most of the land was lost to the Maori, there are small parcels
of land... significant parcels but fairly small parcels that are
still owned by the Maori. Major problems, though, have arisen
over the years because of the fractionated ownership. As descent
and descent and descent occurred, as people died and the numbers
of participants, or the numbers of owners of those lands

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1 increased it became impossible to manage them. So, in recent
2 years, in the 1960's, 1970's, attempts have been made to merge
3 the control of those fractionated ownerships so that some kind of
4 economic usefulness could be derived from that land and that has
5 now resulted in a series of incorporations and a series of trusts
6 that have been created to allow some kind of management, by the
7 Maori themselves, of those lands.

8 Canada... it's interesting when you live south of the
9 border, you tend to look to the east or the west and I am ashamed
10 to say, we look too infrequently to Canada. When I started to
11 look seriously there... I have been teaching Indian law all these
12 years and I thought, 'well, I know quite a bit about Canadian
13 Native claims and all this'. Well, I discovered there was a vast
14 array of important materials there and I don't know that I have
15 done it complete justice. But, in any event, I think it's fair
16 to say that the policy in Canada until the 1970's really, was a
17 quite consistent policy of assimilation. It did not have the
18 self-determination era of the 1930's that occurred in the United
19 States, it is significant that the Royal Proclamation of 1763 did
20 state a basic policy that you should not overrun the Native
21 population, you should not take their land by military combat or
22 whatever, there should be negotiations and that policy, which was
23 also the policy in the United States... imperfectly exercised,
24 nonetheless, but still the policy was one that did drive Canadian
25 relations with the Native population. The Indian Act of 1876 was
a compilation of a variety of statutes. I guess the... if I were
to pull out one of the highlights of that Act, I would point out
the fact that the provinces in Canada exercise a great deal more
control over Native populations than they do in the United
States. Provincial law essentially controls in Canada except
where the provincial law is explicatively contrary to the Indian
Act. The Indian Act itself, the Federal Act controls if it is
explicit on the question, but other than that the control is in

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1 the provinces and in a de facto way, that means a great deal more
2 control in the provinces than in the states, in the United
3 States. Also, since 1951 a province cannot enact that which is
4 in violation of a particular treaty provision. There are far
5 fewer treaty provisions and treaties, incidentally, than there
6 are in the United States. Well, that assimilationist policy
7 drove Canadian policy until 1969 or 1970, a series of events;
8 cultural attitudes, consensus ideas changed. In 1973, the Calder
9 Decision which Justice Berger was counseled for on the Natives on
10 that litigation, was decided and for the first time the Canadian
11 court system recognized, to some degree in a split decision,
12 aboriginal rights to land. Well, that was part of the shift
13 over, part of the change that was occurring in Canadian policy.
14 Incidentally, there were treaties signed between the Canadian
15 government and the Native population until 1956. In the United
16 States, treaties were not signed with Native populations after
17 1871. We had agreements and other things, legislation; but no
18 treaties were signed after 1871.

15 Now, the Northern Territories, I guess I would like to
16 cover two agreements and then talk generally about Canada's
17 policy toward... out of the national Parliament. The Northern
18 Territories agreements... now, the James Bay and Northern Quebec
19 Agreement of 1975 was an expression of the changed Canadian
20 policy and of the international movement by indigenous peoples to
21 gain greater self-determination, involving the Cree and the Inuit
22 bands of Natives in Northern Canada, is a very complex agreement.
23 You would find that it is pages and pages and pages long. This
24 is not a simple little document, a boilerplate treaty, this has
25 been a carefully crafted, hard-fought, worked out document
drawing upon a broad range of aspirations of all sides.
Basically, it says that the land near the villages, where the
Cree and Inuit live shall be forever. That is the idea in the
ownership of the Native population. The minerals, as is true in

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1 Canada generally on crown lands, is held by the crown, by the
2 Federal Government but is under some control. There is some
3 control on royalties and how the development should be made by
4 the Native population. Hunting and fishing rights are much more
5 extensive than the lands that occur just around the villages.
6 They are in far broader areas. Corporations were set up, but the
7 corporations are not like the corporations in Alaska which own
8 the land, as well as a business side. These corporations are
9 basically designed to do business and the land itself is held in
10 a different ownership so it will not be lost to the Native
11 population. A regional government was created for the Inuit and
12 Northern Quebec, which Commissioner Berger was just there and can
13 tell us more about. But that government is largely controlled by
14 the Inuit, but primarily not because of a special thing that says
15 only Inuit can be members but because the Inuit are the dominant
16 population of the area. It is a very interesting structure that
17 was set up. The other settlement that I would refer to is the
18 COPE Settlement, ratified in 1984, just this year. Again, a
19 carefully negotiated arrangement between the Native population in
20 Inuvialuit, I am not sure I say it correctly, and the various
21 other entities of the Federal Government or the Territorial
22 Government and so forth. The land conveyed to the Native
23 population cannot be conveyed away. Again, it is not like the
24 regional corporations, which may lose their land by conveying it
25 away, or by corporate takeover or whatever. It cannot be lost to
the Native population. There is a complex corporate business
structure but it is considered a business structure, not one that
can wipe out the assets of the community. The Native population
has substantial control over game management, but not exclusive
control. It is a carefully arranged set-up where the Native
population has some greater control over areas of its own vital
interest and less control over areas where it's not of its keen
and vital interest, game councils, consultancies and so forth.

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1 Again, the thing... without going into the detail, the thing that
2 becomes apparent here, was there was an intention to sit down
3 with the Native population and negotiate to say, "where are your
4 critical interests?" "Where are your vital interests and where
5 are our vital interests?" "Let's try to work this out in a
6 negotiated pattern." It seems to me, that's the message that
7 comes through in those two situations.

8 Now, at the national level. I think that if one went
9 back (and I think there is an important lesson in this for the
10 work of this Commission), if one went back in Canadian history
11 ten years and asked the Native population or any advocates of
12 their views," would the new Constitution of Act of 19... the
13 constitution, that is actually an amendment of 1982, contain a
14 clause protecting Native lands or governing rights", you would
15 say it's ridiculous, nobody is going to do that. And, yet, that
16 is exactly what happened and in 1982 in the Constitution Act of
17 1982, the Constitution Act recognized aboriginal rights and
18 treaty rights. It did not define the nature of those rights, but
19 it did create a process by which the definition would come in
20 constitutional conferences, as they were held in 1983, 1984 and
21 others yet to be held. As a part of this ongoing process, in
22 response to a wide-spread view that there ought to be
23 negotiations, there ought to be a new pattern of relationship
24 with the Natives. The Penner Report came out in 1983, strongly
25 affirmed the notion of bi-lateral arrangements, of reviving the
idea of treaty negotiations with the Native population. There is
nothing that bars that those negotiations in Canada. Then, as a
product of that, or as a response to that, government came out in
Canada with the Indian Self-Government Act of 1983, Bill C-52
which went... I guess one would have to say that it went farther
then anyone could have possibly expected toward recognizing
Native self-government ten years ago. It did not go nearly as
far as the Penner Report had urged and did not accept, at least

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1 has not so far, it is still in draft form. But has not, so far,
2 fully accepted the concept of negotiation but it has gone a long
3 ways in that direction.

(TAPE 1, SIDE B)

4 Now, I would like to turn for just a few minutes to the
5 "Alternatives" section of my paper and you can see that I am not
6 going to dwell in great detail on a lot of the in between stuff.
7 But I would like to focus our attention for a few minutes on the
8 alternatives and suggest that this is only a partial list of what
9 can and should be considered by the group here today. I looked
10 at four, what I called "process alternatives". One can consider
11 litigation, it's a lengthy process, uncertain results. It
12 produces a decision at a given point in time but does not have
13 the capacity to consider a complex negotiation arrangement as we
14 found in the COPE Settlement and the other settlements in Canada.
15 We have legislation as a process that can be considered. That
16 would either be state legislation or federal legislation in the
17 United States. I want to pause there for a moment because I have
18 not touched on this before. I did have a section, in the paper,
19 on the "takings" clause and the issue of whether the Congress of
20 the United States could enact a law which would either place the
21 village - for example, village corporation-owned land back into a
22 trust status and whether that could be done constitutionally. I
23 think that I have established... at least I am satisfied, I have
24 had others read this, without any question that if Congress chose
25 to do that, that it has the power to do that and probably without
payment of compensation. There may be some compensation elements
somewhere down the line but I think it is possible to do, at
least the way I have described it in here, and it is possible to
do in a way that Congress can carry that authority out. That
would either be placing the land back in trust or it might be
limiting the sale of the land, it might be limiting the voting
rights of the stock, it might be placing the land under certain

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1 restrictions or whatever. That power is in Congress to carry out
 2 as it in its political wisdom is appropriate. There could be a
 3 Constitutional amendment and I'll remark about a couple of
 4 possibilities a little bit later. A Constitutional amendment,
 5 incidentally, is what the Penner Report recommended in Canada,
 6 the reason is that the Constitutional amendment you entrench an
 7 idea in the Constitution, in a sense, permanently. It is not
 8 quite permanently, you know, but it is for a very long time, it's
 9 tough to remove it and it does assure people of a future without
 10 the vacillations of changing political administrations. There is
 11 the possibility of administrative action in recognition of Native
 12 government or Native land tenure. One of the problems with that
 13 is that, that is the most chimereal of all. That is, it can
 14 change, it can be affected by different political views and the
 15 last one I have mentioned is self-help. The village of Akiachak,
 16 some of the other villages that have taken actions on their own
 17 part and can, in significant ways affect their own futures. As
 18 far as the subsidy of alternatives, I have mentioned that one
 19 such substantive alternative is to either place the land of the
 20 villages, I would suggest, back into trust to restrict the sale
 21 or restrict voting rights. We have examples of that, the
 22 Menominee Termination Act of 1954 which went into effect, I guess
 23 in 1961 and was undone in 1972, '73 in the Menominee Restoration
 24 Act is an example where land was taken out of trust, the
 25 ownership of it was held by the members of the tribe as
 stockholders in a corporation or they held certificates which
 were transferable into stock and then went back into trust
 status. There is also another substantive alternative that could
 be considered, called a "conservation easement". It has not been
 used in Alaska, to my knowledge, in any broad scale but is a
 method by which an easement could be created which would be
 enduring; one can ask well, is the easement... does that remove
 the possibility of state taxation? It does not remove it

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1 explicately or it may not, that may depend on the legislation
2 setting it up. But one thing would be true, if the land was
3 burdened by a conservation easement its value would be far less
4 than it would be if it is sitting there as a potential for either
5 timber harvest or development or whatever. So, the tax base
6 would be very low. Conservation easements might be designed for
7 subsistence, for open space, for fragile ecosystems. Some things
8 that would benefit the Native population, some things that would
9 mutually benefit the non-Native population as well. The Alaska
10 Land Bank looks something like that. The problem with the Alaska
11 Land Bank, as far as this is concerned, is that a change in
12 ownership or change in attitude of the Native population of the
13 corporation can un-bank the land and then it is out of that
14 protection. The conservation easement is a more permanent
15 methodology. There might be legislation, Congressional
16 legislation affirming sovereignty, affirming governing powers.
17 One particular kind of either Federal legislation or
18 Constitutional amendment or judicial action that might be
19 achieved is to compare... is by comparing to the "equal
20 protection" clause of the federal Constitution. Let me put that
21 a little bit simpler. If Congress passes a law affecting voting
22 rights in the United States, a voting right is conceived to be a
23 fundamental right. Any legislation that affects a fundamental
24 right will receive strict scrutiny by the federal court system,
25 which means that Congress... that the courts will not simply say,
"oh, well if Congress wants to do that, we will accept Congress'
motives". The courts will look at it strictly, go back through
the background, ask what does it do, how does it affect voting
rights and they will not sustain a law that affects voting
rights, or I might say race relations, unless it is found to be
necessary to achieve a compelling governmental interest. It is a
tough test to meet and, in fact, if you look at the cases, you
find that almost no legislation can meet that test if you are

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1 going to change the voting rights from a "one person, one vote".
2 Or if you are going to enact legislation that bears especially
3 upon people because of their race. Well, the result of that is
4 that there is a very strong protection of the "one person, one
5 vote" rule and there is a very strong protection against racist
6 legislation. Such legislation or such a constitutional amendment
7 might be possible as one's substantive response to protection of
8 Native land tenure or of Native governmental power.

9 Lastly, it seems to me that one of the movements that
10 is very much in place in Canada, and that is potentially in place
11 in Alaska, is that of negotiation. Is recognition that there are
12 legitimate rights, there are legitimate concerns, there are vital
13 interests that are to be served by the Native population, there
14 are vital interests that are to be served of the non-Native
15 population of the State and Federal Government. But the way to
16 handle that is to sit down at the table and negotiate, and I
17 don't mean negotiate on the sense that you are going to take this
18 and you are going to take that. But negotiate, as was done; for
19 example, in the Passamaquoddy settlement in the Northeastern and
20 the Maine area and in the Menominee Restoration, where people sat
21 down at the bargaining table and pounded it out as we found in
22 the COPE Settlement in the Northern Territories Settlement in
23 Canada. I think that is a movement that deserves most serious
24 consideration. Thank you very much.

25 MR. BERGER: Thank you, Ralph.
Well, with that overview in mind, maybe we should turn now to
David Case and have him become very specific about this and
advance an idea for Village Home Rule in Alaska. So, David...

 MR. CASE: Thank you, Mr.
Chairman. I don't know if you have had a chance to look at the
paper, I guess it's available. I will not read it either,
thankfully, and attempt to summarize what I have put forward here
in the paper. I say in the paper, I think, that this is written

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1 from the standpoint of an advocate, in other words, the paper
2 itself is advocating a particular approach to the questions of
3 Native land and governance in Alaska. There is a danger always
4 in advocating anything. That is the danger that one will say
5 either too little, in other words, take a position that is giving
6 up too much or will say too much and attempt to take a position
7 that stakes out too much territory and is simply not defensible.
8 There is also a danger, I suspect in those of us who do not live
9 in villages, to which this paper and this concept of "village
10 home rule" is principally addressed. There is a danger, for
11 those of us who don't live in villages, in advocating anything,
12 because we don't have to live with the consequences of that
13 advocacy. Nonetheless, one is either faced with the choice of
14 saying something or saying nothing, and for better or worse, I
15 have chosen to say something. The paper is intended to be
16 attacked and is intended to... as just a matter of self-defense
17 to be something that is provocative of discussion and which I
18 reserve the right to disavow. But in any event, I would like to
19 put forward an idea for people to discuss, if you wish and I
20 suppose you don't even have to do that. One final point, I
21 guess: it should be clear that what I have written here and am
22 about to say is not necessarily the position of the Commission
23 and does not pretend to prejudge that position. I think it is
24 important for me to start out, as I do in the paper, by declaring
25 some of the assumptions and the limits that I have put on my
thinking about village home rule. The first of these (there are
others that I have mentioned in the paper, I will just touch on a
few of the more important ones) the first assumption or limit is
that we are faced, in Alaska, at least at the present, with an
off-reservation situation. There is only one real reservation
which the lands are held in trust or restricted status and that
is Metlakatla. That, I believe, is a fundamental restriction on
the ability to apply all the doctrines of Indian law assuredly in

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1 Alaska, the same way in which they can be applied with slightly
2 more assurance in the Lower 48, in the reservation situation.
3 There is also, I think... it is my impression, a resistance in
4 general, to reservations in Alaska. Not only among non-Natives,
5 where one would expect it but among Natives as well. Now, this
6 is not true of all people in Alaska, of Natives or non-Natives
7 and indeed there are some obvious places where reservations and
8 the Native communities in those places are in fact desiring and
9 demanding reservations and feel it has been an injustice that the
10 reservations were terminated in the first place. Of course, I
11 think I am speaking of Venetie in particular. There are other
12 places in Alaska where reservations would seem to be, if they are
13 desired by the people living there, a positive development and
14 those are places in particular where there are large areas of
15 land under village corporation or tribal ownership which are
16 isolated. Those seem to me to be the best situations where a
17 reservation kind of structure would work. I guess I am thinking
18 there of St. Lawrence Island, for example, Venetie, the former
19 Chandalar Reserve and even Tetlin, which is a large area. Which
20 is not to say that people there wish those things, but those
21 offer large areas of land over which the problems of defining
22 jurisdiction are simplified and all the rest. So, I am not
23 suggesting that what I have called 'village home rule' is the
24 answer, by any means, for everybody or even anybody. But I do
25 think, and this paper does address the question of land and
governance in village situations, and by that I am excluding
regional corporation situations or regional land-holding
situations. I am not suggesting that home rule is a concept that
could apply to an entire region... Native region or Native
corporation region in Alaska, but it has its application
principally, in my mind, to isolated villages with small
populations, which I think are the villages in which this
Commission has focused its inquiry.

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1 Finally, in the way of an introduction, I have skewed
2 or slanted my title of this paper to imply that what I am
3 suggesting is practical and you should be aware of that. That is
4 a loaded term, of course. Practical means... to some people
5 anyway, that it's a good idea. It's good just because it's
6 practical. But practicality implies some kind of compromise and
7 compromise between competing interests that will be addressed in
8 the course of reaching some "practical conclusions". It also
9 assumes that things as they are now... it assumes that the
10 doctrines of federal Indian law, as best as we can understand
11 them are as they are now, it assumes that there are no
12 reservations in Alaska or no general authority to create new
13 reservations in Alaska. But things I think we should remember,
14 can and have changed. Ada Deer reminded us of that at one of the
15 very first roundtables that this Commission held. When the
16 Menominee were "terminated" it was viewed by many, a few years
17 later, as just impossible, crazy, outrageous that the Menominee
18 could ever be restored. Nevertheless, Ada Deer has described it
19 to us, the thinking, the assumptions that people had regarding
20 the Menominee changed and they changed because the significant
21 numbers of people that were affected by the Menominee
22 termination, and the Menominee themselves, made them change.
23 That can and could happen in Alaska. In which case, perhaps,
24 "village home rule" would be saying too little. So, needless to
25 say, if things change then one's view of what's practical also
will change. I'll leave that caveat out.

 Well, what do I mean by "village home rule"? To me it
is a two-pronged idea, it means on the one hand that there are
substantial powers of self-government, home rule that would be
exercised and clearly lodged and unquestioned in a village and
the second part of the idea is that these are in villages, small
communities, not home-rule boroughs, not communities of... not
even first class cities with 400 or more people, which is the

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1 current requirement... the current first hurdle on the way to
2 home rule in the state, under municipal law, is that you have to
3 be, first, a community of 400 people in order to be able to
4 obtain a home rule charter. So, I am suggesting that there is
5 room and a place indeed for home rule, substantial control at the
6 village level, even outside of a reservation and outside of the
7 municipal laws of the State of Alaska. It is, in short, an idea
8 which, to me, seems to be one way to bridge the gap between the
9 expectations and aspirations that village people have for self-
10 government and sovereignty and the political philosophy of the
11 state, which is opposed to those ideas, at least as far as anyone
12 can tell. Which, on the other hand, accepts the idea, at least
13 in terms of municipal government of home rule and indeed home
14 rule and local control is an ideal that is entrenched, if you
15 will, in the Alaska State Constitution. I am simply suggesting
16 that the concept of Native American sovereignty is an ideal that
17 is also consistent with that ideal in the Alaska State
18 Constitution. In other words, it lodges village home rule,
19 Native American sovereignty lodges self-government at the local
20 level and assumes that that government has substantial powers
21 unless proven otherwise.

22 Why am I suggesting that there should be such a thing
23 as village home rule? Well, first, I take it as given that in
24 most villages, that is villages that have corporations with
25 relatively small land holdings and a few assets, that in most
villages these corporations simply aren't working. More than
that, they put the lands, the ancestral lands that are retained
under the Claims Act at great risk and the corporations
themselves are subject to either corporate failure or takeover by
outside interests and that these risks are simply unacceptable.
There has to be another institution to assure that land and
community control will exist into the future and the profit
making corporation isn't it. Perhaps I said that with too much

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1 conviction, but nonetheless it is the assumption that I have made
2 here.

3 MR. BERGER: Nothing should be
4 said with conviction, that's always a mistake.

5 (LAUGHTER)

6 MR. CASE: Too much conviction.
7 The other point is, as to why there should be a village home rule
8 or something like it, is that there are simply too many
9 institutions in most villages. Most villages, we have heard it
10 said over and over again, will have typically four, if they are
11 lucky, institutions and may have, in fact, many more. There may
12 be a municipal government, or municipal council, a tribal
13 government -- either IRA or traditional council, a village
14 corporation board and then an advisory school board, in most
15 communities. And then there will be people in the communities
16 who will be called upon to act in or interact with subsistence
17 committees, local subsistence committees under ANILCA and state
18 law, who will then also be required to interact with regional
19 subsistence councils and you may even have participation in a
20 Coastal Resource Management Area council and it goes on and on.
21 That is not the end of it. There are many, many institutions
22 that affect... with which these communities have to interact and
23 it is absolutely ridiculous, as we hear. From a community of 25
24 to 200 people to have the necessary individuals to interact with
25 all of that, they are simply being overwhelmed by outside
institutions and the result is that people in these communities
don't have power and they are, in effect, even though they may
have the aura of being consulted about things, there are too many
places that you have to go to have your "input", a very powerless
word I would suggest, into state decision-making and that is
something that is not good. It is not good from a village
standpoint and I would suggest it is not good from a state policy
standpoint either.

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1 Finally, perhaps not finally, another point as to
2 village home rule, I guess I see it as one way to resolve by
3 negotiation and there are risks in negotiation, but in terms of a
4 strategy to approach these things, it is one way to resolve the
5 uncertainties of off-reservation jurisdiction. In other words,
6 to negotiate the scope of village home rule in an off-reservation
7 context as Alaska would be one way to resolve these
8 jurisdictional questions without creating new reservations. But
9 it would be a way to reserve, if you will, in law and in people's
10 heads and in the legislature's mind, if there is such a thing,
11 the scope of Native American rule in Alaska Native communities.
12 As I said before, home rule as I have suggested implies a partial
13 satisfaction of competing interests and that means, I think it
14 should be said, that everybody loses something. Maybe that is
15 the negative way to look at compromise, you can also look at it
16 as everybody gaining something and, of course, the main thing
17 that one gains in a compromise and a negotiated settlement is
18 certainty as to the result. And, so, I suggest that what I have
19 described as 'village home rule' in this paper may be a scenario,
20 and this may be a red flag, but a scenario for the possible
21 negotiation of the scope of Native sovereignty and if you are
22 unhappy with the scenario, when you get done with the paper or
23 listening to this discussion then I would suggest that you may be
24 unhappy with negotiation as a way to approach this issue.

19 Let me turn now to what I think that village home rule
20 would do for the 1991 issues, or at least some of them. There
21 are two that I guess I am principally addressing. One is the
22 question of land protection: We have heard it cussed and
23 discussed as to the effect that Native sovereign ownership of
24 land might have on the protection of that land from all the
25 various risks; corporate loss, taxation and so forth. I guess
that this is an idea, the more I think about it, the more I think
it will really work and that is, that the idea of Native American

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1 sovereignty carries with it the legal immunity of the sovereign
2 from suit and so it is impossible for, since these things have to
3 be resolved in the courts of the United States or the State, it
4 is impossible for a creditor or any one dissatisfied with the
5 Native government to sue it and to acquire principally its lands
6 or other assets by judicial procedure. It is a procedural
7 impossibility. In other words, the dissatisfied person may have
8 a legal right against a government whether it is the United
9 States government, the State or a Native government, but it has
10 no remedy. The result is just as good, as far as the government
11 is concerned, as the creditor or other... person opposed not
12 having any right at all. There has been some question, of
13 course, whether Native communities in Alaska have sovereignty or
14 sovereign immunity, a question which I think is answered with the
15 response that, "yes, they do", but recognizing that courts can
16 change a lawyer's idea or firm conviction. Beyond that, though,
17 there are statutes which I don't think can be read any other way
18 but to say that, if a Native community in Alaska has complied
19 with the statutes or falls under them that they do indeed have
20 the power to prevent the disposition of their lands or assets
21 without their consent and that is one of the specific provisions
22 of the Indian Reorganization Act. I can't imagine that it means
23 anything more or less than what it says and that is, that Native
24 tribes organized under IRA, whatever else they may be able to do
25 or whatever other powers they have, can indeed prevent the loss
or disposition of their lands or other assets without their
consent. Maybe I am just slow on the uptake, but I can't see
that a statute that says that, means anything else.

22 Finally, there is the question of the Indian Non-
23 Intercourse Act in Alaska. The solicitors, as probably most of
24 us are aware and for whatever it is worth, some years ago said
25 that the Non-Intercourse Act which prohibits the disposition or
alienation of Native tribal lands without a treaty doesn't apply

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1 in Alaska, or at least it doesn't apply to ANCSA lands and that
2 is a conclusion that is, every scholar I have ever talked to
3 says, "What? You've got to be kidding." But, nonetheless that
4 is the conclusion of the solicitor. If the Non-Intercourse Act
5 were to be held to apply then it would be an additional
6 protection for all tribally owned lands, whether they were owned
7 by an IRA or traditional council, I would suggest. Well, really
8 the land protection questions are the easy ones.

9 MR. BERGER: You said the
10 solicitor, you mean the solicitor for the Department of the
11 Interior?

12 MR. CASE: Right, that is who I
13 mean. The solicitor for the Interior Department. The land
14 protection questions, it seems to me, are really the easy ones.
15 If you were to want to protect lands perpetually without a change
16 in the law, then transferring them to a tribal government,
17 preferably one organized under the IRA, would almost surely do
18 it. How you get there? How you transfer the lands? Those are
19 other issues. But the real question... I think the questions
20 that we always find ourselves debating about and which are
21 probably the focus of this roundtable, are the questions of
22 jurisdiction and governance, political authority, political
23 control. And these are... I'm not so sure that they are such
24 difficult legal questions but they most assuredly are difficult
25 political questions and so it doesn't really matter whether
they're big legal questions or not, because politics can
influence law. The greatest problem, of course, the greatest
question arises in Alaska, it seems to me, and I have thought
about it a long time and that's about all I can say as to why my
thinking about it should be legitimate. But it seems to me that
the big problem is that there are no reservations. There is
enough problems with Indian law frankly and the question of the
scope of government, tribal government, on reservations -- the

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1 current Supreme Court is cut away at the scope of tribal
2 government inconsistently but with some serious effect over the
3 last years. But nonetheless, absent reservations, I think there
4 is nothing else to do but assume that the rules are going to be
5 different.

6 In fact, the Supreme Court has said so in an Alaska
7 case, one that is much criticized and is confusing and perhaps
8 confused -- but that is *Kake v. Egan* -- but the Supreme Court is
9 fastened, at least in that case and in subsequent cases, on
10 reservations as being significant when it comes to the
11 determination and maybe even determinative of the scope of tribal
12 jurisdiction. In the absence of reservations, I would suggest
13 and do in the paper, that tribally owned land is the next best
14 thing. That means that the ownership of the land in the village
15 corporations has got to change, if your intention is to assure
16 tribal jurisdiction. It is possible to argue that tribes and
17 the Native villages, and it is creditable, have jurisdiction over
18 corporately owned lands. The argument is just stronger when it
19 is tribally owned land. I say that because of the tests that, it
20 seems to me, the Supreme Court is using to describe the scope of
21 tribal and state jurisdiction when those two powers compete and
22 that test essentially is two-pronged, two independent tests. One
23 test is whether the state's jurisdiction is pre-empted, precluded
24 by a specific Federal law from applying to a tribe. The other
25 test, which the Supreme Court has talked about over the years,
but to my knowledge has maybe only once, and perhaps never,
employed, is the infringement tests. That is a test, as I
understand that says not too simply, that in the absence of a
Federal law... in other words, in the absence of preemption,
state laws may not infringe on the right of tribes to govern
themselves. Now, what the Supreme Court always has said though,
is the right of reservation Indians to govern themselves.

There is only one case, to my knowledge, where the

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1 Supreme Court has analyzed the effect of the infringement
2 doctrine and that was in a case called, and I won't read much of
3 this, a case called McClanahan v. the Arizona State Tax
4 Commission in 1973, it is on page 8 of the paper at the bottom.
5 There the court, in McClanahan, cited to Kake v. Egan in this
6 discussion and it said that there are two circumstances in which
7 the infringement test is employed or should be employed and that
8 is when the tribe is attempting to exercise jurisdiction over
9 non-Natives, non-Indians and when the State is attempting to
10 exercise jurisdiction off the reservation, the Alaska situation,
11 and it cited Kake v. Egan. Then it said: "In these situations,
12 both the tribe and the State could fairly claim an interest in
13 asserting their respective jurisdictions. The infringement test
14 was designed to resolve this conflict by providing that the State
15 could protect its interests up to the point where tribal self-
16 government would be effective". In other words, in either the
17 off reservation or non-Native situation, the tribe and the State
18 may both have interests and those can be balanced. The Court has
19 gone on in later cases, in very recent cases, to discuss the
20 nature of the balance... the criteria that are to be put in the
21 balance in weighing tribal and State interests and, basically,
22 the closer you get to internal tribal affairs the greater the
23 protection of tribal government. Likewise, if the tribal
24 government can attach its exercise of power to its political
25 integrity or economic stability or health and welfare of the
members of the tribe or if it can attach it to consensual
relations between it and non-members, then the powers of the
tribe are given greater weight in these balances. So, that is
why I say that tribally-owned land tends to enhance all of those
criteria. If the tribe owns the land then its economic interest
in the land may be a lot stronger than if their land is owned by
a corporation.

25 Similarly, if the tribe owns the land, it is in a

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1 position to require consent from people who operate on the land
2 and to establish its jurisdiction that way. So, it seems to me
3 that a prerequisite for effective village home rule, as I have
4 talked about it, is that the land or some substantial portions of
5 village lands be owned by the village Native governments. It's
6 possible that you can do it without that, but it makes things a
7 lot stronger.

8 Let me turn now, if I can, to some of the reasons that
9 I think village home rule makes sense to the State of Alaska and
10 not just to Alaska Natives, if it makes sense to them at all. In
11 the first place, there are big difficulties with municipal
12 government in Alaska and it's no secret to anybody who lives here
13 or reads the paper or keeps up with what the legislature does or
14 does not do. The legislature, we probably realize, one or two
15 years ago attempted to pass a complete revision of Title 29, the
16 State's Municipal Codes and that is in limbo as far as I know.
17 But small communities organized under the laws of the State of
18 Alaska, second class cities typically, less than 400 people, do
19 indeed have many powers and they are all specified in 55
20 provisions of three statutes and they can regulate everything
21 from vehicles to insects. But you have got to read those 55
22 provisions and you have got to figure out what they mean and
23 you've also got to rely on the State bureaucracy to tell you what
24 they mean. And that, it seems to me, is the absence of power and
25 local government and local control. It is a system of laws that
makes it very difficult for people to know what they can and
cannot control in their communities, and moreover municipal
government offers no protection for Native lands. In fact just
the opposite, the temptation on the part of the municipality is
going to be to tax property if it has that power and most second
class cities don't. Home rule in Alaska, on the other hand,
moving away from second class cities and limited municipal
government, is somewhat similar insofar as the scope of powers

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1 that local governments have, somewhat similar to the kinds of
 2 powers that Native governments have. In other words, home rule
 3 municipalities in the State are presumed to have powers of self-
 4 government unless they are prohibited by the laws of the State.
 5 One can similarly say that Native American governments are
 6 presumed to have powers unless they are specifically taken away.
 In fact, this idea of home rule is really entrenched in Article

7 I do think though that the village home rule as I have
 8 described it would be a broader kind of home rule and have a
 9 greater scope of authority for Native villages than would be
 10 possible, in many respects, for Alaska municipalities. Most
 11 notably, villages have the authority to establish their own
 12 courts. Alaska municipalities, no matter whether it's Anchorage
 13 or a small second class city, have no such authority. Alaska,
 14 for better or worse, is constitutionally required to have a
 15 unified court system and that has been held to mean that Alaska
 16 municipalities cannot have their own court system. If you want a
 17 magistrate in a small village, a presence of the State Court in a
 18 small village, you have to meet criteria and it has to be funded.
 19 That, in my experience, has been a notoriously slow process.
 20 Furthermore, if you have a magistrate and a criminal problem
 21 comes before the magistrate there is a right for the defendant to
 22 require a District Court Judge to hear the case. So, a smart
 23 defendant can effectively prevent any local judicial hearing on
 24 an infraction or any other matter. Native courts are not
 25 burdened by that requirement. So, I would suggest that village
 home rule would be a way to include within the powers that
 village governments could have, the interests that the Native
 community may have, and that those interests could be protected
 in the Native community and excluded from substantial control by
 the State.

I think this idea that I have suggested, suggests

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1 probably most importantly the risks and the possibilities of
2 negotiating a settlement or a resolution of the claims of
3 jurisdiction and sovereignty that Alaska Natives, I think
4 justifiably, assert. We have patterns of previous negotiated
5 settlements, particularly in the case of the Menominee and the
6 Passamaquoddy. We had hoped that someone from Passamaquoddy
7 would be here but perhaps... and they were unable to make it, but
8 perhaps there are those at the table who can discuss the
9 Passamaquoddy situation, and perhaps the Oklahoma situation which
10 I understand is largely off reservation, and we can come to some
11 appreciation of the possibilities, if there are examples of this
12 kind of home rule as a negotiated settlement with states
13 elsewhere. This idea that I have suggested may appeal to some
14 because it is an attempt to balance what, let's say, are
15 legitimate interests. For those of us who are interested in
16 balance, that may be a good thing.

13 In any event, and in conclusion, I would hope that if
14 there is discussion of this proposal it will enable those of us
15 who are concerned with this issue to better determine the best
16 strategy to pursue when it comes to the question of Native land
17 and governance in Alaska. If negotiation is likely to give up
18 too much or result with too little then that says something about
19 the advisability of negotiated resolutions of these issues and
20 says something conversely about other alternatives which Ralph
21 Johnson has suggested and which we may well come up with here.
22 Thank you very much.

21 MR. BERGER: Thank you, David.
22 We'll break for coffee in just a moment, but I should welcome
23 Sheldon Katchatag, President of the United Tribes of Alaska who
24 has joined us since we began and I see Sam George here. I don't
25 know whether Willie Kasayulie is coming, Sam, or whether he is
going to be late, but if you want to take his seat when we resume
after coffee, please do. Then when he comes, if he does, we will

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1 leave it up to him to him to throw you out of there.

2 Maybe after coffee we might resume this discussion and
3 I have a suggestion to make about that, in light of the fact that
4 members of the Governor's Task Force on State-Tribal Relations
5 are with us today and cannot, I believe, be with us again
6 tomorrow. So, perhaps when we resume after coffee, we might ask
7 Tony Vaska to give any comments that he wishes to on David Case's
8 paper and we might also ask Bob Arnold if he wishes to offer any
9 observations that he thinks are appropriate. I was told you had
10 to leave later on today, Bob. So, this is your opportunity. We
11 might also consider the question of principal that I suspect is
12 in the minds of the Governor's Task Force and always comes up and
13 that is, if you have the kind of home rule set-up based on Native
14 limited sovereignty that David has suggested, you have the
15 philosophical question that non-Natives are excluded from
16 participation in that government and that is something that is
17 always at the root of these discussions and anyone who wants to
18 say something about that should feel free to do so. That is, the
19 question of ethnically based governments is one that we are going
20 to have to struggle with throughout this whole Arctic region. In
21 the James Bay Settlement in Northern Quebec, the Inuit have a
22 regional government under provincial legislation and it is not
23 ethnically based but there just as in the North Slope Borough,
24 the Inuit constitute a great majority of the population, about
25 90% of all the people, they are not at all perturbed about losing
control of that government. The Cree under the James Bay in
Northern Quebec Settlement are a minority, so they insisted they
have an ethnically-based government under the Indian Act.

So, it is something that comes up everywhere. Others
from the Lower 48 might, perhaps, be willing to comment on
David's paper and what, of course, Ralph said and tell us: well,
you've got these things in the Lower 48, you've got IRA's, you've
got reservations, you must have IRA's with some off reservation

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1 jurisdiction. Does the whole thing work or is it falling to
2 pieces. I think that we would like to hear about that. Well,
let's take a break for coffee then.

3 (HEARING RECESSES)

4 (TAPE 2, SIDE A)

5 (HEARING RESUMES)

6 MR. BERGER: Well, maybe we could
start again. I said that Tony, who is one of the members of the
7 Task Force, might like to comment on David's ideas. So, Tony, if
you would like to go ahead, please.

8 MR. VASKA: Thank you, Mr.
9 Chairman. It is difficult to sit here: I haven't read either of
10 the papers except for listening to Mr. Johnson and Mr. Case. But
11 basically it seems to me, in addition to the discussions that
12 have been going on concerning the... I think what it is, is the
13 desires of people to govern themselves locally in relation to the
14 federal or State governments, as well as with other local
15 governments around them. There has been a lot of discussion,
16 that we have listened to, the Task Force has listened to in the
17 last month from people in the villages, people that represent the
18 different governmental organizations, as well as individual
19 organizations. The discussions basically from the villages are
20 quite simple and they are that we want a locally controlled form
21 of government. What shape that takes doesn't seem to quite
22 matter when you get to the specifics. What is probably more
23 important to the local village governments is, in fact, that the
24 governing powers by the local governments be internal to the
25 village, internal to the community and that it work in relation
to both the federal and State governments. So that, from my
perspective at least, my preliminary perspective from the Task
Force, is that the problem doesn't seem to be within the village
in terms of what they want for local governing powers. The
problems seems to be with the State and federal governments

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1 recognizing that local governments can in fact govern themselves.

2 That is probably a more difficult concept from the
3 legal standpoint of the State of Alaska trying to give certain
4 powers, sometimes undefined powers, to local government. If in
5 fact the State legislature can't see its way through to passing
6 the mostly technical revisions of Title 29, the municipal code, I
7 hardly expect that the State Legislature would be willing to
8 grant limited or unlimited powers to local governments other than
9 what are defined in Title 29. So, from my perspective it's a
10 matter of a political decision that is probably more difficult to
11 make than the practical aspects of giving local powers to local
12 governments for specific purposes. There arise a lot of
13 questions, at least in my mind, throughout the hearings that we
14 have had and basic to a lot of the testimony is, in fact, the
15 practical responsibilities of that local government to its
16 citizenry. How that translates into the State looking at a local
17 government and saying, "what benefits are you going to give your
18 citizens?" I don't know the answer to that and we have not
19 gotten a clear answer from the general public nor from any state
20 institution what the answer to that question is. I think there
21 is a lot of fear on the part of non-Native members when they look
22 at a Native community, and I think Mr. Case is right, it's
23 sometimes difficult to understand the analysis that people like
24 him go through in analyzing the local governments and what it is
25 that they want. The discussion so far today brings to mind one
question in my mind and that is; while we get a brief glimpse of
what is happening to the aboriginies in Australia and a brief
look as to what is happening in Canada, how might those examples
be applicable to the State of Alaska, when in fact we can't
identify specifically the actual differences between the Alaska
Native experience and local governments and the Native Americans
experience in the Lower 48.

As far as the historical sequence that was given by Mr.

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1 Case, about termination and what that meant and its applicability
2 to Alaska Natives... I don't know what the discussion was that he
3 had with Ada Deer but I would ask the question of Mr. Case and
4 that is; in a termination, what gets terminated and then
5 restored? I don't know the answer to that question and I don't
6 know the answer to the question of whether, in fact, we can
7 identify sovereignty in its ideal form in the State of Alaska and
8 apply it to local Native governments and how they might exercise
9 local control in a fast changing world. I stated it in that way
10 only because the influences on those communities by the State,
11 whether it's influx of oil money going to those communities in
12 capital projects or revenue sharing or municipal assistance, and
13 how the local governments might deal with identifiably public
14 monies and that's basically how the State has viewed those public
15 monies going into the local governments. As far as the different
16 jurisdictions are concerned, it's probably easier to identify the
17 powers of a local government in criminal law, and admittedly I
18 know less about that than either Mr. Case or Mr. Johnson, but
19 basically I view the villages wanting to take control of that
20 aspect of their lives, as well as other aspects, and the comments
21 that we have heard from many, many people point out many examples
22 of how, in fact, they can control their own lives in relation to
23 what responsibilities both the State and Federal governments
24 have. I'll stop there. I can probably ramble all day, but I'll
25 stop there.

20 MR. BERGER: There was a question
21 about the Menominees. What gets terminated and what gets
22 restored? I think that really should have been directed to you,
23 Ralph. Do you want to just answer that?

23 MR. JOHNSON: I would like to
24 refer to Charles Wilkinson, who participated actively in the
25 Menominee restoration. Why don't you comment, Charles, on what
was the status of the Menominees after restored?

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1 MR. WILKINSON: I would just like
2 to say that I really am honored to be included in this. I'd
3 wanted to come up on two earlier occasions and had scheduling
4 conflicts that I couldn't break. It seems to me that even in the
5 Lower 48 states, many, many people involved in this field would
6 consider what this Commission is doing to be perhaps the most
7 vital and progressive movement in Indian policy today. I
8 congratulate you for that. It is nice to be dealing with a
9 Commissioner whose most controversial policy is his coffee break
10 policy.

11 I represented the Menominees, as a lawyer, in the
12 passage of the Menominee Restoration Act which went through in
13 1973. I know Ada Deer was here earlier and I really think before
14 talking (and I won't go on at too much length, I will take
15 questions if anyone has them), but I think, rather than
16 mentioning specifics on that Bill first, I think I will mention a
17 general point, which is that to an almost astounding degree,
18 Menominee Restoration was what the Menominees wanted it to be and
19 it seems to me that's a concept that Alaska Natives need to be
20 working with all the way through this process. What is practical
21 and what works is what will happen, but you must start first with
22 your dream. You must clearly have in mind what you believe is
23 right and then work back to the practical. I think it is much
24 too easy to compromise from the beginning and I think because of
25 the unique leadership of Ada Deer and some others, that's what
was done at Menominee and they set their chart and were
reasonable, backed off it somewhat but it came very close to what
they originally wanted.

In an era now, when many are critical of some aspects
of ANCSA, I think it is important to remember that there were
strong elements of that in ANCSA. Alaska Native leaders who
worked so hard for ANCSA, in my judgment, were enormously
idealistic. They talked amounts of land that no one was willing

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1 to consider and amounts of compensation financially that no one
2 was willing to consider. So, it seems to me that's a crucial
3 part of this Commission's work, is to identify what you believe
4 is right, not in a radical sense but just in a sense that was
5 stated earlier that Alaska Natives want self-rule. To turn to
6 the Menominee situation, there are just a whole series of
7 parallels between the Menominee termination and ANCSA. Both
8 groups had large holdings of land in a state corporation. The
9 Menominees had over a quarter of a million acres which is a large
10 amount in a much smaller state; Alaska Natives here have, of
11 course, a large amount.

12 Most basically what the Menominees did was to re-
13 establish the full range of the Federal relationship and they
14 were able to re-establish courts without criminal jurisdiction
15 over non-Indians, they were able to re-establish their tax exempt
16 status and able to re-establish a central concept of tribalism
17 that has been troubling Alaska Natives which is that, you don't
18 determine tribal membership by means of people who were alive on
19 certain date and then go to inheritance as you do with
20 shareholders but rather a tribal group is one that is constantly
21 expanding and contracting and people pass away and are born and
22 the Menominees were able to do that.

23 I think what Ralph said earlier, many people have said
24 in earlier hearings, is absolutely true and I endorse it, which
25 is that the vested rights problems here, to the extent they are
raised, can be overcome, in my judgment, by Congress and we could
have technical discussions on that but it seems to be much more
important to recognize Congress' broad power if Alaska Natives
decide they wish to remedy the injustice that children born after
1971 have suffered, if I am correct in phrasing that. I think if
Alaska Natives want to remedy that, Congress has the power and
there aren't going to be vested rights obstacles. So, what the
Menominee Act did was to re-establish the Federal relationship,

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1 all aspects of it. The Menominees today are in substantially the
2 same situation as tribes in the Lower 48 are concerned. What
3 strikes me as important about the Menominee situation and I do
4 think it most important is that a whole or partial termination
5 (and Alaska Natives have been partially terminated because of the
6 way in which the Federal relationship has been removed, in some
7 respects), that that can be corrected but that Congress has
8 enough authority that it can be corrected in a creative way. The
9 Menominees chose one way. What's important is not the way they
10 chose but the fact that the flexibility is there for your model
11 to be adopted.

12 To just make a brief statement about a matter not
13 involving the Menominees, I really believe that the look you have
14 taken at international matters is of great importance, because
15 when one looks at the international sphere, what one sees is that
16 in almost every nation aboriginal people are struggling for self-
17 rule. The fact that the concept of self-rule is not just
18 circumpolar or is not just in the United States but is literally
19 world-wide, I think attests to the force and dignity of that
20 concept. There is a deep moral component here of aboriginal
21 people around the world who are simply not willing to let go of
22 that ideal. The reaction of other nations has not comported with
23 the ideal. Around the world we have seen many situations in
24 which aboriginal movements have not... their requests have not
25 been met with legislation granting self-rule. But, as I think
Professor Johnson's studies and other have shown, the movement
has been quite extraordinary because it was a concept that wasn't
going anywhere, it seemed, even 15 years ago. But in a number of
nations, and China is another one where there are developments,
are recognizing to some degree self-rule. I feel that all who
deal with this problem must appreciate the depth of that desire
for self-rule. I think that Natives need to appreciate its force
because I think it is your greatest ally, other than your own

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1 will. I think that those who are not Natives who are dealing
2 with this situation, must appreciate the impetus and the force of
3 that ideal, and I think that means that, for those who wish
4 Alaska Native self-rule well or ill, I think there will be
5 changes here because of the force of that movement and the
determination of Alaska Native people.

6 I believe that if you set your ideals, and you are
7 going to have to back off of them, but if you set your ideals
8 there is every realistic chance that a fair remedy can be found.
9 I guess I draw that from my experience with the Menominees and
10 also with the Siletz tribe and a fascinating situation a couple
11 of years ago with a Texas band of Kickapoos who have a
12 reservation in Mexico and in Texas. And legislation was passed
13 in early 1983 by this Congress, and it just seems to me that it
14 is realistic to be impractical as a starting point.

15 MR. BERGER: Thank you. Could I
16 just ask you a couple of questions about the Menominee
17 Restoration while we're on that subject? As I understand it, the
18 Menominee tribe was terminated, in the sense that they ceased to
19 receive any Federal aid and their tribal holdings were turned
20 over to a corporation and they were all issued shares in the
21 corporation. Those shares were to be transferable but the day of
22 transferability was postponed a number of times, I believe.

23 MR. WILKINSON: Yes, and
24 interestingly enough it was postponed by State legislation,
25 Wisconsin State legislation, so that their "1991" date kept
getting pushed back by the State effectively.

MR. BERGER: But the movement to
restore the Menominees led to the re-establishment of the tribe
and was the land and the other assets held by the corporation
transferred to the tribe?

MR. WILKINSON: What's not
commonly realized about the Menominee Act, the first piece of

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1 legislation by Congress was passed in December 1973, it did not
2 transfer land title. Rather, Congress directed that the tribe
3 negotiate with the Department of Interior to come up with a plan
4 for transfer and we spent the next year negotiating a very
5 complex transfer agreement in which these questions of share
6 ownership were resolved. Then, the transfer agreement went into
7 effect in early 1975 and the transfer, Judge Berger, yes, was
8 from a State corporation, with Menominee shareholders roughly
9 parallel to the ANCSA corporations, back to the Menominee tribe
10 of Wisconsin, to be held in trust by the United States. So,
11 there was a transfer from one entity to another, much like many
12 here advocate a transfer from, let us say, village corporations
13 to the IRA's. It seems to me it was conceptually the same
14 transfer and it was approved.

MR. BERGER: Approved by whom?

MR. WILKINSON: The plan, in a
13 procedure that might now be subject to constitutional objections
14 under the Chada decision that came down a year and a half ago,
15 but the provision of the Menominee Restoration Act was that the
16 plan would be negotiated. The idea was to keep Congress out of
17 these extremely complex issues involving stock ownership. The
18 idea was for Congress to set a broad provision and then have the
19 parties negotiate out the details - a concept that I think will
20 be very important in whatever recommendations that you come up
21 with here, because it is so hard for Congress to deal with all of
22 these details. So, Interior and the tribe were directed by the
23 Act to come up with a plan and then the plan was submitted to
24 Congress and would go into effect unless it were disapproved by
25 either House of Congress within 60 days. So, we lodged with
Congress, there was no objection from either House of Congress
and it went into effect in 60 days.

MR. BERGER: During the
negotiations or since, has the whole question of the relationship

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1 of the tribe with the State of Wisconsin come up? Was the State
2 a party to those negotiations?

3 MR. WILKINSON: Yes, they were
4 and, certainly my view is -- I think this goes without saying,
5 that there just have to be early negotiations with the State. In
6 the case of the Menominees, the Bill we drafted was basically...
7 well, not "basically", it was a negotiated settlement with the
8 State ahead of time and then the State supported the Bill as it
9 went through the legislative process.

10 UNIDENTIFIED: How many years was
11 this possibly?

12 MR. WILKINSON: The Menominee
13 people began objecting in the late '60's but the Bill was
14 introduced in February 1972 and was passed on December 11, 1973.
15 The Bill went through very quickly. There had just been a crisis
16 reached with the Menominees that is somewhat different from the
17 crisis here, in that the State corporation that owned the land
18 was just not viable economically and was almost at the point
19 where it was going to have to keep selling off more land to pay
20 the bills.

21 MR. BERGER: That's not
22 altogether...

23 MR. WILKINSON: I understand that
24 and all I mean is, that isn't the case across the board with all
25 the corporations.

MR. BERGER: Well, in the end,
what was the relationship that the State acknowledged with
respect to the Menominee tribe? Where does that sit?

MR. WILKINSON: The... and again,
for a basic concept, the Menominees were fit back into the system
of Federal Indian Law with relatively few deviations from the
basic Federal-Indian relationship. That was thought to be
desirable at that time. One advantage of that, of course, is

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1 that you have a relatively well-established body of law and so
2 your tinkering and making modifications can mean that you have a
3 kind of instability because you can't plug into an existing body
4 of law. The Menominees did plug into the existing body of law.
5 The Menominees are now a non-Public Law 280 tribe. In other
6 words, the State of Wisconsin does not have jurisdiction under
7 Public Law 280, by an agreement with the State.

8 MR. BERGER: And what about, if
9 you are able to answer this, the question of receipt of State
10 funds by the Menominees. That's a matter of some moment in
11 Alaska.

12 MR. WILKINSON: As to whether a
13 separate federally-recognized government should receive State
14 funds, the Menominees do receive State funds. One way in which
15 they receive State funds is that Menominee County has the same
16 boundaries as the Menominee reservation, so that some State funds
17 go to the county. I would say... and I appreciate, this is an
18 important philosophical issue obviously, it seems to me what the
19 Federal-Indian relationship has always been is a measured
20 separatism in that the tribes are largely separate from State
21 law, but the treaties and implementing statutes have provided for
22 some federal support, and indeed, some State support. That is a
23 relationship that remains somewhat controversial in the Lower 48
24 states but I think is generally accepted. It seems to me that,
25 since under the Federal-Indian relationship, federal-tribal
relationship, a tribe is not truly separate and there is some
state jurisdiction in there and they remain state citizens and
they are not foreign nations, it seems to me, consistent with
that, that some State support can fairly be provided. But I
realize that that issue will always be controversial to some
degree.

MR. BERGER: Tony Vaska.

MR. VASKA: My only familiarity

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1 with the Menominee case is through the work of Dr. George
2 Spindler, who is an anthropologist, but basically what he states
3 in terms of the economics of not only the Menominee tribe in its
4 relation to the federal and State governments, but he identifies
5 the Menominee County prior to the termination of the tribe (if
6 that's a way to put it, he puts it that way), as being one of the
7 richest counties in Wisconsin and years after that termination,
8 where the Menominee tribe had to be like every other county, it
9 became one of the poorest. Do you have any comment on the
10 economic conditions of that and why the economic conditions took
11 a downfall?

12 MR. WILKINSON: Afterwards? Well,
13 the reason is that the federal support was withdrawn and with the
14 budget adjustments in Washington, you are getting a different
15 financial flow in Indian country on federally-recognized Indian
16 reservations than was the case a few years ago. Nonetheless,
17 most studies that have been done reach the result you suggest
18 which is that Indian reservations are not drains on the State
19 but, in fact, there is sufficient federal support that the
20 demands on the State are minor, or indeed are a benefit. This is
21 a matter which... I don't know if this has been done but at some
22 point it would probably be good basic data under current economic
23 conditions to have an analysis made; and again I'm not
24 suggesting, I'm here to listen on this issue. So, I'm not
25 suggesting that we should have a reservation system in the
villages. I'm not suggesting that, but it seems to me that you
should obtain that data. You should determine what the cash flow
difference would be if we take a hypothetical question; which is
that all or a certain percentage of village corporation land were
transferred to IRA's and the land were taken into trust, and make
an analysis of the cash flow to see what the burden on the State
would be. I have done that in regard to three states now in
tribes I have represented, the State of Oregon with the Siletz,

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1 the State of Wisconsin with the Menominees and the State of Texas
2 with the Texas Kickapoo. Each of those states was very satisfied
3 with the result and found that the economic situation, from the
4 state's point of view, was improved as a result of having federal
5 trust land within the state. Other studies have reached that
6 result too. But you could have, I think, a very cooperative
7 study of some kind done with, and maybe the Governor's Task Force
8 is working on this, but with representatives from the State and
9 Natives and the Federal government to come up with an estimate of
10 cash flow.

MR. BERGER: Spud Williams.

MR. WILLIAMS: I think that's
11 already been done in the State, but this State is such short
12 sighted and they got such knee-jerk reaction against any type of
13 Native entities being maintained in the State, that they are
14 willing to forego that economic consideration, especially in
15 times of wealth that this state has. I mean, the schools alone
16 is going to be millions and millions of dollars of drained State
17 revenue, you know, through... forever now, with the position the
18 State is taking. The social service functions of the federal
19 government and Alaska Natives: "no problem, go ahead, we'll fund
20 it." This has been the State's position. They're very, very
21 short sighted but shooting themselves in the foot because they
22 think they are overly wealthy. They're assuming these functions
23 despite the long-range advantages of maintaining Native
24 sovereignties and jurisdictions in the State.

MR. WILKINSON: One lesson from my
25 experience is, and I can understand that and I can see that
happening here, at the same time one of the great advantages you
have from a prolonged deliberative process such as this, coupled
with the Governor's Task Force, is that you are building a record
and there are, let's say, ten sets of concerns among Alaska State
government officials and citizens at large. By taking the time

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1 to do the spadework and meet those concerns, there is a chance,
2 over time, that those kind of attitudes can dissipate, and for
3 example, there are green eye-shade people in the State government
4 who collect taxes and people in the education department and my
5 sense is that, without making it sound too easy, that over time,
6 if these studies are done, that those objections begin slowly to
7 dissipate, issue by issue.

8 MR. BERGER: Just before we move
9 on to Reed Chambers and David Getches, could I just ask you a
10 question about... and to Bob Arnold... a question about the
11 presentation that David Case made. There is only one Indian
12 Reservation in Alaska. If, instead of creating reservations, the
13 Native corporation land - at the village level, let's leave the
14 regions out of this for the moment - were to be transferred to the
15 IRA's and they were to hold it, David says they would, because of
16 sovereign immunity, not be liable to pay taxes and so on, and the
17 IRA government could exercise jurisdiction over that land. Is
18 that so that you would achieve...

19 MR. WILKINSON: Some of the same
20 results.

21 MR. BERGER: Some of the same
22 results but you wouldn't have a reservation. Does that
23 proposition make sense to you?

24 MR. WILKINSON: First of all, I
25 think the State is going to litigate that proposition and I don't
pretend to know who is going to win, but I think your result is
going to be by the Supreme Court of Alaska or in federal court
and I think, and David recognizes, that those are very close
questions as to whether that land would be taxable. I agree
there is a good argument for the Natives so that I wouldn't be
willing... I just think a court's going to decide that and there
is a good argument for the Natives. My general sense would be
that, if that result is to be reached, you shouldn't omit the

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1 possibility of trying to reach that result by federal or State
2 legislation because that would settle it. When you have a
3 legislative settlement, you can build in a kind of flexibility
4 that you never can in a court case. So, and again I am from the
5 Lower 48, and no sense in trying to tell people what this
6 legislature would do, I hope that... that is just obviously. But
7 I sure hope you don't rule it out. I think that there are
8 possibilities there that building goodwill over time, there is a
9 flexibility there and in Congress that is greater than with
10 litigation.

11 MR. BERGER: Charlie Edwardsen,
12 you had your hand up. Why don't you move up and take a seat at
13 the roundtable and we will... but before we come to you, Charlie,
14 some other people have their hand up. I wonder, we've got a few
15 minutes, Reed Chambers, did you want to add to that?

16 MR. CHAMBERS: I just wanted to
17 (INDISCERNIBLE - OFF MIKE) the odd thing is that the State of
18 Alaska, obviously maintains a government relations office in
19 Washington, and its Senators and Congressman are all the time
20 trying to get federal projects located here in Alaska. I mean,
21 it's a Washington political game called the "pork-barrel process"
22 and if anyone was talking about establishing, let's say a
23 military installation in Alaska or something like that, why the
24 Governor's office in Washington and the Senators and the
25 Congressman would be falling all over themselves to get it done,
you know. That gets federal dollars into the State and it's real
important... I think what Charlie is saying is absolutely right,
Charles Wilkinson is saying, if you get a federal Indian
establishment in Alaska, you get exactly the same process going
and you have that going now and you don't want to lose that. I
mean the State, it should be in the State's enlightened interest
not to lose that. In Maine, for example, I represent one of the
tribes in Maine, the Houlton band of Malaseets and the State

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1 resisted when we were negotiating to settle the Maine land
2 claims, resisted having the Houlton Band of Malaseets recognized
3 as a federal Indian tribe, but they now support that because,
4 into the town of Houlton you have a large number of federal
5 dollars coming in for welfare payments and the State is no longer
6 responsible and federal contracts getting set up under the
7 Johnson/O'Malley Program and the Indian Self-Determination Act
8 and, I mean I don't know whether it's a million dollars or three
9 million dollars but there is a good deal of federal money coming
10 into the town of Houlton, Maine that wasn't there five years ago.
11 So, it is something that, once you get past the knee-jerk kind of
12 resistance, it is something that I think State legislators and
13 State executive officials tend to come see, that it is in their
14 interest.

15 MR. BERGER: Well, this afternoon
16 perhaps we could ask you, Reed, and I think, Lawrence
17 Aschenbrenner; you were both connected with that Maine
18 settlement, and that's the most recent land claims settlement in
19 the United States. This afternoon, perhaps, you might tell us
20 how they sorted out these questions of State-tribal relations and
21 taxation and so on in the Maine settlement. But David Getches
22 and then Bob Arnold.

23 MR. GETCHES: Thank you, Judge
24 Berger. Thank you for inviting me, I am pleased to be back in
25 Alaska and privileged to be a part of this Commission's work. I
want to pursue this same issue that we have been looking at and
that is, the practicality, if you will, of some kind of
restoration legislation that... we have leapt into from David
Case's paper and kind of left the "home rule village" for a
minute, but I am intrigued by this notion that I agree with, that
Charles Wilkinson said, that you really ought to start with what
you would ideally like to have in terms of restoration and then
work back from there, that a lot more may be practical than one

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1 thinks. If you look at what really was terminated in the
 2 Menominee case and compare it to what's been terminated by the
 3 Alaska Native Claims Settlement Act, much less has been
 4 terminated by the Alaska Native Claims Settlement Act. You've
 5 terminated... the Act, in Section 4, terminates rights in land,
 6 aboriginal claims and claims against the Federal government pre-
 7 dating the Act. But it does not terminate sovereignty of the
 8 Native organization or the comparable organizations to tribes in
 9 Alaska, nor does it terminate a trusteeship relationship with the
 10 federal government. Now, if you are looking at State opposition,
 11 public opposition, I would like to ask, first Charles, and then
 12 people from Alaska particularly (I understand there are some
 13 legislatures here and people who deal with State government a
 14 great deal), first Charles, as the attorney who successfully
 15 represented the Menominees in their restoration battle; would one
 16 expect less State opposition as a result of the fact that we
 17 already have sovereign status that has been unextinguished, of
 18 Native people in Alaska? We already have continuing trust
 19 relationship. There is less to restore, should we expect less
 20 opposition?
 21

16 MR. WILKINSON: I feel as though I
 17 would be guessing on that in Alaska, so I will beg off on that.

18 MR. GETCHES: Well, I don't think
 19 you should talk about Alaska but what about in Wisconsin. Was
 20 the State of Wisconsin more concerned about the fact that land
 21 would be removed from the tax rolls or were more concerned that
 22 there would be another sovereign in their midst?

23 MR. WILKINSON: In Wisconsin,
 24 Oregon, Texas and Utah, the places I have dealt most specifically
 25 with in restoration, in each case their benevolent opposition to
 any increased sovereignty, as there is here, - over time it
 faded, as the spadework was done. Whether it might, I'm just not
 going to take it further. I don't feel comfortable with saying

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1 it's going to be easier here or not. I guess I happen to believe
2 it can be done, I think Alaska Natives have a set of human
3 resources that are in excess of any Indian group in the United
4 States except maybe the Navajos, I think that there isn't much
5 that they can't accomplish as a group. So, I would expect that
6 they could achieve that but whether it's easier than in the other
7 states, I guess I don't feel quite as comfortable.

8 MR. WILLIAMS: But the burr under
9 the saddle in these states was...

10 MR. WILKINSON: Very similar.

11 MR. WILLIAMS: Was related to
12 sovereignty, not just the land being restored to tribal
13 ownership.

14 MR. WILKINSON: Well, one burr
15 under the saddle which is a small percentage of the population
16 but is just there, is just racism against Indian people and
17 that's one burr under the saddle. Then, yes, and that you
18 ultimately can't deal with, and enlightened State legislatures
19 recognize that I think, they start getting mail and then months
20 later they realize that that is an irrational response and they
21 can't deal with it. But then yes, there is just opposition to
22 sovereignty. But here you are going to have hunting and fishing
23 issues, of course, which are almost a separate question that
24 would have to be resolved and then there is a separate
25 philosophical question which is just separate status. Were a
negalatarian nation, and it really isn't sovereignty so much,
it's just, "why should we single out any group?" And that has to
be overcome.

MR. BERGER: Bob Arnold, would you
like to make any observations on this as the...

MR. ARNOLD: I feel as though I've
an undeserved distinction because I am leaving early. I am not
sure that I have anything profound to say. I feel that I kind of

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1 lack the cumulative experience of those who have participated in
2 earlier sessions and found myself somewhat puzzled in arriving
3 this late in the Berger Commission to see clearly what objectives
4 would be served by the title given to today's session. For
5 instance, the use of the conjunction "and" between "land and
6 governments" made me... "And", of course, is a word that doesn't
7 tell much about the relationship between the two words. I know
8 from reading about the work of the Berger Commission, that
9 certainly central to the discussions is the preservation of land
10 base and so I made that connection for myself. But I think there
11 are other objectives that have to do with governance that have
12 not been fully spelled out yet and it would be beneficial to see
13 them spelled out in the course of four days.

14 For instance, if an objective is self-rule to the
15 exclusion of State oversight, it is very important to kind of say
16 that, because otherwise the solutions are hard to find.
17 Incidentally, speaking of the State, although I work for the
18 State I cannot speak for the State on matters related here.
19 Indeed I am not even a member of the Sovereignty Task Force.
20 Speaking of today's issue, however, in terms of preservation of
21 land base, I believe that Native corporations are in varying
22 stages... face varying degrees of jeopardy with regard to the
23 loss of lands. And honest persons might disagree how much
24 jeopardy there is, say from the standpoint of taxation, for most
25 Native corporation lands lay outside of taxing jurisdictions.
There seems to be as great a concern over the decisions of
shareholders to allow land to be sold or perhaps to allow their
stock to be sold which would obtain the control of land. Both
David Case and Professor Johnson spoke of alternatives.
Professor Johnson spoke of alternative approaches, David Case
talked of the distinction that he had made between large
communities, which can win first class status and have home rule
powers, and the small villages.

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1 My view, I think, is that it's hard to anticipate a
2 kind of global solution because the situation of communities,
3 Native communities in the State, not only varies with regard to
4 the jeopardy that they face with regard to the lands, but also in
5 the situations and the impulses that animate the people of those
6 places. To this point in the discussion, I am led to the
7 conclusion that a variety of approaches from which Native
8 communities might chose is perhaps what should be sought. For
9 instance, the federal land bank exists now, but exists in name,
10 in that it hasn't been enacted. At the State level, we have been
11 discussing a state land bank which might have some variant form,
12 though following the federal model and perhaps other kinds, and
13 for some corporations, given the impulses that animate their
14 members, perhaps the land bank will do. So, I know that
15 legislators and Congressmen, just as an observer, like to find
16 unanimity in the community that is seeking the legislation.
17 Perhaps it is useful to think of alternative approaches, not one
18 over against the other but alternative approaches from which
19 Native communities might select that scheme that is best in
20 league with the future, for their people, as they see it. So, in
21 my eyes that is one of the great benefits of forums such as this.
22 I only regret that I can't stay longer.

(TAPE 2, SIDE B)

18 MR. BERGER: Thank you, Bob.
19 Might I just return to Charles Wilkinson for a moment. David
20 Case outlined the multitude of local government authorities that
21 Native people in the villages must contend with but there is
22 another side to that coin. In some villages they have been able
23 to use all of these abominations of governmental authority to
24 assist them in the local scene and to obtain access to resources,
25 perhaps that might not otherwise have been available, and I got a
whiff of that in the Menominee thing because you said that, in
the end, they wound up with their IRA restored, their IRA

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1 government, their Native government; it holds their land and that
2 means it is immune from taxation and the... but you said that the
3 county, which is a State government, the county governments
4 boundaries are co-terminus with those of the Indian lands and so
5 the county government has remained and is a vehicle for providing
6 state funds, is that really what happened?

6 MR. WILKINSON: Yes, the county
7 government, though, is smaller and less important than the tribal
8 government. There are just more powers that a tribal government
9 has within Indian country than a county government. So, the
10 county government is just smaller. There are some state programs
11 though, that do go to the county. In an ideal situation, at
12 least, I would think this would be ideal. It might be that the
13 state could amend its laws to provide that some of those funds
14 could go directly to a tribal organization rather than a county.
15 I am not sure there are substantial benefits from the two
16 separate organizations. I suppose that would need to be thought
17 through.

15 MR. BERGER: What about non-Native
16 people living on the Menominee land. They can participate in the
17 county government, they cannot participate in the tribal
18 government?

18 MR. WILKINSON: They can and you
19 mention your unitary court system, of course, many of their
20 matters would go to state court. So, there are some functions of
21 county governments, one may be voting. Under Alaska law they may
22 have functions such as voting, there may be some non-Native land
23 where taxes could be collected, so there definitely are functions
24 that remain, I don't mean to suggest that. But it does seem to
25 me wise to explore the possibility of some state funds going to
the tribal organizations.

MR. BERGER: David Case and then
Sheldon.

1 MR. CASE: I have a couple of
2 questions about the relationship of the county and the tribe and
3 maybe the origins of it. Was that something that the Menominee
4 desired in the first place, as a part of the restoration to
5 retain the county or was that a matter that was negotiated?

6 MR. WILKINSON: Well, there just
7 has to be a county government in Wisconsin because there just are
8 county functions in there, so you could not, it seems to me, do
9 away with the county government. So, it wasn't so much that the
10 Menominees desired it, although I guess they did but it was
11 accepted that it was necessary and that there were functions that
12 continued.

13 MR. CASE: And it still accepts it
14 that it's necessary; is that?

15 MR. WILKINSON: Yes.

16 MR. CASE: And the county and
17 tribal government, are they separate... the peoples that are on
18 the governing councils are separate, different people or are they
19 overlapped or what?

20 MR. WILKINSON: They are more
21 separate, I think, than many of your... as in the case in many of
22 your villages. Generally, there are different people on the
23 county board as opposed to the tribal legislature.

24 MR. CASE: Are there any
25 jurisdictional conflicts between county law and tribal laws?

MR. WILKINSON: Yes. Although it
tends to be State laws more than county laws in the case of the
Menominees because, since the boundaries are the same, it is
mostly Menominees in the county government, so you don't have the
conflicts. On many reservations, most reservations, the county
lines are not co-terminus, so the county boundaries which extend
off the reservation include large numbers of non-Indians and so
there is a potential for conflict there that, it just happens,



1 doesn't exist at Menominee. I don't know of another reservation
2 in the country where the county lines are the same as the
3 reservation, so that is unique and certainly atypical... it may
4 be unique and is atypical.

5 MR. BERGER: Sheldon Katchatag.

6 MR. KATCHATAG: First of all,
7 Judge Berger, I would like to apologize for being a little late
8 but I was doing a little research that I had to catch up on. One
9 of the things that has been mentioned is the fact that tribal
10 governments are racist institutions and I think I must repeat
11 often, as often as I can, that tribal governments are not racist
12 and the IRA Act that recognizes tribal government... formalizes
13 tribal government, recognizes that we are political institutions
14 recognized by the Federal government to do those things for our
15 membership, our constituency, our tribal members, for their
16 common good. The constitution, "boilerplate" people call it, for
17 IRA Constitution and Bylaws, I have a copy of the Native Village
18 of Unalakleet's Constitution. Under Membership, Section 1,
19 Section 1, Section 5, Membership Rules: "The village may make
20 rules to govern membership either for the purpose of carrying out
21 this article or covering membership matters not taken care of in
22 this article." Traditionally, village people have accepted or
23 rejected participation in the village life of our society on the
24 basis of are you or are you not a contributing, viable,
25 constructive addition to our tribe and as a result, I think there
are a number of non-Natives that are even members of tribal
councils. One that comes to mind immediately is Bill Miller, who
happens to be president of the IRA council or the traditional
council of Dot Lake. But there is an understanding there, there
is still only one chief in that particular village and his
obligation is to oversee the functioning of that council, to
provide for the common good of the tribal members. Even if it
means abiding by a non-Native president. If he is at the present

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1 time, that person that is qualified, who has been approved by the
2 membership of the village to be a member of the village and if he
3 has the expertise necessary to carry out the will of the chief
4 and his council, then it is their obligation, to provide better
5 government for their people, that they must utilize him until
6 such time as one of their own can assume those responsibilities.
7 Again, if that is the wish of their people. Federal Indian Law,
8 one of the bases of it, says that statutes passed for benefit of
9 dependent Indian tribes and communities are to be liberally
10 construed for the benefit or in favor of Indians, and for all
11 intents and purposes, the Natives of Alaska are Indians.

12 I would like to state at this time that the tribal
13 governments, the rightful governments of our people which pre-
14 date not only the State of Alaska but also the United States of
15 America by thousands of years are legitimate governments. We
16 trusted the Federal government with certain things, lands
17 protection, education and educational services, health and
18 medical services. We didn't entrust these particular rights and
19 protections of our government to the Federal government forever
20 and we didn't entrust them to the Federal government to be
21 diminished in any way. Our understanding of this relationship as
22 tribal governments is that, if anything, our rights, our powers
23 as tribal governments are to be maintained unchanged and if
24 possible, if possible the Federal government has an obligation by
25 whatever means available to them, to improve not only the
effectiveness but also the authority and rights of that tribal
government.

There are a number of other things that I think we, as
tribal governments have a right and responsibility to our
membership to seek, when we see that legislation that has passed
regarding our people is seen by the government of our people to
be detrimental not only to our people, as ANCSA is, but it is
also very detrimental to the tribal governments of our people.

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1 ANCSA specifically states it is not a jurisdictional Act. But by
2 the very exclusion of tribal governments and their functions as
3 that most powerful protector, of not only our lands, our tribal
4 lands, but also that most sacred institution of our people, our
5 tribal government, we have an obligation to stand up and say,
6 that is enough! And we can demand, we have a right to, full
7 restoration to the peace, dignity and sovereignty which we
8 enjoyed, not only prior to the Statehood Act, but prior to Treaty
9 of Cession. Thank you.

(APPLAUSE)

MR. BERGER: Thank you, Sheldon.

(APPLAUSE)

10 MR. BERGER: Well, Spud, do you
11 want to...?

12 MR. WILLIAMS: I also have a
13 little trouble with the title of this roundtable commission. I
14 think a more appropriate title to this would be the Alternative
15 Native Governments with its Land, because I think there is
16 something very viable that is being missed that really we're not
17 looking at as thoughtfully and as fully as we should. Sheldon
18 mentioned the ages of Native governments, there is something very
19 valuable in something that has lasted thousands of years, that is
20 older then even most European countries. We must have gone
21 through those infantile stages that most of the European
22 governments are still trying to struggle with. If you really
23 look at what Native government is all about, it's nothing more
24 than an extension of the family, the very basics of any
25 government system and if you really sit down and look at your own
government in your own household, you don't stack the house with
books on the relationship between you and your wife, you don't
stack your house with ordinances and agreements between you and
your children, you don't stack libraries full of garbage with the
relationships between you and your other relatives (your mother,

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1 your father, your grandparents, your in-laws and some out-laws),
2 you don't have that garbage and I think we are losing something
3 very basic when we started dealing with paper and pencil. We're
4 getting entangled like a fly on flypaper and every time you stick
5 out and go a different direction you get stuck harder. I think
6 we have to look at the value of Native governments, why they
7 lasted so long and why we're fighting so hard to retain them?
8 Something that can last that long has some very real values and I
9 think it's in the best interests of all governments, if you want
10 to look at this internationally, to find out why they lasted so
11 long. What made them function? What made them work? It's
12 basically a government by consensus, which is the same that you
13 do in your own household, a government by consensus and I think
14 the technology today in the world is getting to the point where
15 we can now use that on a much broader basis.

16 Before, you used to have to put everything on paper
17 because the information had to be passed in that form in the
18 western types of governments, you didn't trust each other so you
19 had to put it on paper so you could go back and refer to it
20 later. There was no real mutual trust, and there still isn't,
21 and that is part of the problem that we are seeing with our
22 negotiations of retaining our own governments today. So, when
23 you are considering these types of discussions, also consider the
24 value of something so old that nobody can really remember where
25 it is coming from, something that is just an extension of
ourselves and our families and see if that can be passed to you
instead of you trying to think that you are taking something away
from us.

MR. BERGER: Thank you, Spud.

Well, I think that that's been a good morning's discussion and if
Tony will give you the last word before we adjourn then.

MR. VASKA: Thank you.

MR. BERGER: Tony Vaska.

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1 MR. VASKA: Thank you,
 2 Commissioner Berger. What I wanted to do was, for the record,
 3 identify what the function of the Governor's Task Force on
 4 Federal/State/Tribal Relations is doing here. What we are
 5 doing... well, we have been doing all fall, is collecting public
 6 testimony to give to the Governor to make a recommendation to the
 7 state legislature and there are four legislators on the task
 8 force plus seven other members from the general public
 9 representing the State, the Governor's office and a variety of
 10 other organizations and individuals. We are gathering public
 11 information and we have been traveling throughout the State,
 12 holding public forums and we have one more public forum before we
 13 meet next week in Anchorage to analyze some of the public
 14 information that we have gathered.

15 Our purpose here today was, once we looked at your
 16 agenda and saw who was going to be discussing the different
 17 facets of tribal governing bodies or tribal governments, we
 18 thought it was well for us to come and listen to other
 19 experiences in other states or countries. Most of us who are
 20 sitting here from the task force will probably apply what we hear
 21 today and probably gather more information from not only the
 22 Commission, but other individuals in the next couple of days.

23 MR. BERGER: Thank you, Tony. By
 24 the way, if members of the task force are returning this
 25 afternoon and I hope they do, and have any questions that they
 would like to throw out to some of these folks who are here from
 the Lower 48 and other places about State/Tribal Relations,
 please feel free, through Tony or Mr. Hope, you or any of the
 others because we are quite informal here. Well, let's break now
 until two o'clock.

(HEARING RECESSES)

(HEARING RESUMES)

MR. BERGER: Well, the first thing

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1 I want to mention is, for the folks in the audience, the
2 Governor's Task Force is meeting tomorrow at the Egan Convention
3 Center in Room #6, that will be a public hearing by the
4 Governor's Task Force and you're all welcome to go over there and
5 Jennifer Fate pointed out, it's just a block away and so you
6 would be able to take in both the roundtable and the Governor's
7 Task Force hearing. So, I hope you will feel that... perfectly
8 free to go over to the Governor's Task Force hearings, they're
9 tomorrow, December 13th at the Egan Convention Center, 10:00 a.m.
10 to 6:00 p.m. Jennifer assures me there will be some very
11 interesting testimony from some groups recently featured in the
12 newspapers who take a somewhat different view of sovereignty, I
13 gather, than has been expressed here.

14 Well, we'll just carry on with the discussion of the
15 matters that came up. This morning we heard from Ralph Johnson
16 and he told us about the history in the United States and other
17 countries of IRA's and Native governments generally, and then
18 David Case presented a proposal that he wanted us to discuss for
19 "village home rule". And then we had a discussion, generally, of
20 State/Tribal Relations and this afternoon I was going to call,
21 first of all, on Reed Chambers and before I do that, I want to
22 welcome Willie Kasayulie and Sam George from Akiachuk, who have
23 joined us since we adjourned at noon. And maybe we could talk a
24 little bit, Reed, I mentioned that you and, I think, Larry
25 Aschenbrenner, would be able to tell us about the Maine
settlement in 1980 and how it dealt with the question of
State/Tribal Relations, taxation of land and so on and so forth.

MR. CHAMBERS: Well, thank you
very much, Tom. I represent one of the three tribes in Maine.
It's the Houlton Band of Malaseet Indians. The Native American
Rights Fund, which Larry is counsel for here in Anchorage, at
that time represented the other two tribes in Maine. Now, in
describing the Maine settlement, my client came into the

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1 settlement rather late, they showed up in my office in the summer
 2 of 1979 and I frankly had never heard of a third tribe in Maine
 3 at that time, I learned about them subsequently. But they came
 4 in and said; "Look, we have an aboriginal land claim in Maine
 5 too." I said, "well, you do. How could you have a... this has
 6 been on the Walter Cronkite news show for the last seven years
 7 and you are coming in now when there is about to be a bill before
 8 Congress and putting together an aboriginal claim in Maine." And
 9 they said; "Well, yeah, we always had a deal with the
 10 Passamaquoddy's that they would cut us into their claim and
 11 they're not doing it now and we've got to get this put forward."
 12 It turned out they had a quite viable aboriginal land claim to
 13 about a million acres in that part of Maine that looks like a
 14 camel's hump. It's called Aroostook County and there was once a
 15 war fought, or almost a war, a war of words fought between Daniel
 16 Webster and a British foreign secretary named Ashburn about
 17 Aristic County, whether it was going to be part of the United
 18 States or whether it was part of Canada. But fortunately we
 19 don't have those kinds of controversies between our two countries
 20 anymore, Tom, but that was in the 1830's and I guess Daniel
 21 Webster won. But what it really was, was Indian country; the
 22 Malaseets Indians in 1838 clearly had a subsistence lifestyle in
 23 that area very much like Alaska Native groups do today. There is
 24 even a town in that part of Maine called Caribou, Maine and at
 25 that time they did have caribou in Maine at that period. They
 don't any longer.

In any event, when I got into the Settlement Act negotiations dealing with the two tribes and with the State of Maine, the deal had pretty much been cut. So, when I describe this deal I can't really tell you that it's a deal that I crafted in any way, in fact, to some extent I was unhappy with it. I still am. But I can describe... ultimately, we came in late enough so that we were sort of given, we were ultimately included

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1 in the deal but we had to pretty much take the cards as they had
2 been dealt at that time.

3 MR. BERGER: Why don't you
4 describe the deal to us? Criticize it and then Larry can defend
it, if he's of a mind to?

5 MR. CHAMBERS: All right, let's do
6 that. Well, essentially the arrangement was... the one thing
7 that the State of Maine would not give on at all was having the
8 concept of a separate political structure in the State that was
9 going to be separate from the State government, that the State of
10 Maine had been exercising or thought they had been legitimately
11 exercising jurisdiction over, of the Maine Indian tribes ever
12 since there had been a State of Maine, 1820. So that they were
13 simply unwilling to negotiate very much about that so, we had to
14 take that. They were willing, however, to support the concept of
15 ultimately \$81 million in payment for the three Maine tribes and
16 about 300,000 acres of land to be purchased for the tribes. So,
17 the way that it was structured was that the other two tribes, but
18 not the Houlton Band of Malaseets, would become home rule
19 municipalities within the State of Maine and that the State would
20 have... the general State laws would apply to them including the
21 laws dealing with municipal government. There were a couple of
22 areas that the other two tribes, they had small reservations, the
23 other tribes, the State was not willing to agree at that time to
24 a reservation for the Houlton Band of Malaseets, my client, and
25 that is still something actually we're still in negotiations now
with the State about, in terms of acquiring land for the
Malaseets, but that need not detain us here. Essentially the
structure is that the Passamaquoddy and Penobscot tribes do
function as home rule municipalities within the State, they have
a court system that is like, in Maine there are municipal courts,
so they have the tribal court system really is a municipal type
court system. They do have some latitude about hunting and

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1 fishing laws, that was one thing they were able to negotiate
2 about, but otherwise, I suppose that if the State of Maine was to
3 change its laws dealing with home rule municipalities it would
4 affect the Indian tribes to the same extent that it would affect
the other municipalities in Maine.

5 One of the results of that, for example, has been that
6 Maine Indian tribes cannot play Bingo on their reservations, that
7 other tribes in the Lower 48, including some of my clients, have
8 found it very lucrative to set up Bingo games on the reservation
9 and to some extent to be immune from the State laws setting
10 limits on the amount of prizes you can have for Bingo games and
11 the hours you can play and some tribes do have very lucrative
12 Bingo operations. The Maine Supreme Court held, I think
13 correctly so, given the Maine Settlement Act, that the Penobscot
14 tribe, one of the two tribes that's a Home Rule Municipality,
15 simply had to comply with the State laws dealing with bingo and
16 the Maine Indian Settlement Act had abolished any special
17 immunities that the Panobska tribe would have had from State
18 jurisdiction there. Now, I happen to believe that it's very
19 important for Indian groups to have as much immunity as they can
20 from State jurisdiction. I mean I, and some others around this
21 table, have spent a good part of their career fighting notions
22 like Public Law 280 and trying to get it construed perhaps more
23 narrowly than Congress really intended it to be construed. We
24 have generally been successful in that. But I think it's
25 important... Tom, I think it's important for the same reason that
the land preservation is important, because Indian groups in the
Lower 48 and certainly Native villages here, do live a separate
cultural and political existence, they just do. To have the
State be able to essentially impose its laws on those communities
does make it much more difficult for the Native communities to
have a separate culture and a separate polity, so I think that
State jurisdiction is something that I have always resisted,

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1 where I can, for my clients and I guess if I'd had the chance, if
2 I had gotten into the Maine Settlement negotiations earlier, I
3 would have tried to resist there. I don't know if I could have
4 succeeded, it was one thing that the State of Maine seemed
5 absolutely insistent on and it was important to get the Maine
6 Settlement legislation passed in 1980 for various reasons, I
7 think correctly. Those of us representing the Maine Indian
8 tribes did foresee that it would be more difficult to get that
9 kind of legislation through with a Reagan administration, which
10 did seem probable then, than with the Carter Administration which
11 we had and there were other reasons to rush it through as quickly
12 as we could. So, I don't know that I would have been successful
13 but I think that the other two Maine tribes did have the feeling
14 that being exempt from State jurisdiction was not as important to
15 them, after all, they had been subject to it and, actually, so
16 have the Native groups here in Alaska and it was something the
17 State was unwilling to give on, in any event. So, when I am
18 being critical of it, I don't know that the soup would have taken
19 the pepper I would have tried to put in it, in terms of trying to
20 get a different kind of arrangement than the one that was crafted
21 between NARF and the State. I don't know that I could have
22 effectuated that, but it is something... I don't necessarily
23 endorse this concept of a home rule municipality. But I think
24 it's an interesting concept that David's put forth in the paper
25 this morning. I think it may be a necessary compromise with the
State government because I do think, if you look at all of the
settlement legislation that has been passed dealing with Indians
by Congress in recent years, none of it... certainly none of it
overrides any state. If the state takes the position they want
jurisdiction over the Indian country, none of the legislation
overrides that. You have either got to do what Charles Wilkenson
did, which is persuade the State of Wisconsin or whatever state
it is, that it doesn't really need this kind of jurisdiction or

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1 you've got to accommodate it some way.

2 The Maine Settlement Act does represent an
3 accommodation to State jurisdiction, the Narragansett Act does
4 that, the Western Pequot Act, I mean all of the eastern land
5 claims that have settled, have settled on the notion of the State
6 having broad jurisdiction over the Indian area. The Gayhead
7 Wampanoag Settlement that's going to Congress, went to Congress
8 late last year and will go again to the new Congress. All of
9 these do have the feature of State jurisdiction. I mean, I have
10 a feeling that that's something that's going to be pretty hard to
11 beat in Congress right now. I think that with all of the... I
12 mean, unfortunately, what Ralph Johnson was saying is very
13 correct. The kind of political consensus that the rest of the
14 country reaches at a given point of time, tends to govern what
15 Indian legislation is going to be, whether you've got a liberal
16 or a conservative government it doesn't much matter. The kind of
17 political consensus that the rest of the United States is
18 reaching now, is a political consensus in favor of
19 decentralization, federalism, state government governing the
20 things closest to it and things like that and I think that's a
21 pretty hard tide to swim up against, so in that sense, I think
22 that the Maine Land Claims Settlement Act represents a useful
23 model. It's too early to say how it's working out really. I
24 mean you can't sit there and say that, because the Indians can't
25 play Bingo it's a failure. I mean bingo is, after all, something
of a windfall... it may be viewed as something of a windfall for
the groups that are able to profit by it. Notwithstanding the
place that we're meeting in today. But I... so I don't know
that... I can't...

23 I find it a nuisance. I mean it does mean that things like
24 the... you do have hassles, for example in representing the
25 Malaseets, I find that I have hassles with the Maine Equal
Employment Opportunity Commission, that the Malaseets end up

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1 discharging an employee and the employee complains that he or she
2 is being discharged because she's not an Indian or something like
3 that. Well, that is just the kind of thing you don't have to put
4 up with in any other state. I mean if you get some hassle from
5 the North Dakota Equal Employment Opportunities Commission, you
6 politely write them a letter and say, "you don't have any
7 jurisdiction here, bug off". I mean, you don't have to mess with
8 a Commission hearing and you don't have to go educating a State
9 Commission about Indian preference laws and that is really a
10 federal contract we're implementing and the federal regulations
11 allow Indian preference and you know, all of that is costly, all
12 of that is time-consuming and you're always much better if you
13 can just write the letter and say, "you don't have any
14 jurisdiction and were not going to have to do further business
15 with you". So, there is certainly that. I can't really say that
16 I have run into situations as General Council for the Malaseets
17 that have really impinged on their self-governing authority yet,
18 I think the jury is still out on it and I think it is probably on
19 the other tribes too. It is different than representing say a
20 Sioux tribe in North or South Dakota or Montana.

16 MR. BERGER: You said that under
17 the Settlement they received \$81 million and the money was made
18 available to buy 300,000 acres of land.

18 MR. CHAMBERS: Some of that was
19 from the \$81 million, there was a land purchase fund and then
20 there was a separate fund for the tribes that was set up.

21 MR. BERGER: What is the status of
22 the land? Who owns the land? If you went to the Land Registry
23 Office and said, "who owns this land", whose name would be on the
24 title?

24 MR. CHAMBERS: It depends on where
25 the land is, Tom. For the Houlton Band of Malaseets, when we
ultimately purchased land, the United States will own it in trust



1 for the Malaseets. That's also true of the traditional
2 reservation lands for the Passamaquoddy's and Penobscots. The
3 other land though, the 300,000 acres less the 5,000 that's going
4 to be acquired for the Malaseets, 295,000 acres for the other two
5 tribes, is going to be acquired in what is called a "restricted
6 fee" status. That means that the tribes will own it, but they
7 cannot sell it. They can lease it, they can make timber sales on
8 it. There was the same feeling that, again and Larry may be able
9 to speak to this better than I would be able to, I certainly had
10 a sense that the attorneys for the Passamaquoddy's and Penobscots
11 in Maine had the same feeling that some of the leaders of the
12 Alaska Native groups had in the late '60's and early '70's, that
13 they didn't want federal supervision of what they could do with
14 their land. Now, I think that is an open question, whether you
15 are better with federal supervision or without it. I tend to be
16 more cautious about this, I tend to think that getting federal
17 approval for land transactions is a basically healthy thing in
18 the long run for Indian tribes, but it does subject to a
19 bureaucratic review of your actions that tribes can reasonably
20 resist and it's a question of... I think in the long run if you
21 have Federal supervision of it, you may have to be more
22 conservative about your use of your land but you are more likely
23 to have it after awhile. As I say, the Passamaquoddy and
24 Penobscot land is restricted against alienation, so it can't be
25 sold but they don't have to get some of the same approvals from
the federal government that other tribes do in the Lower 48.

21 MR. BERGER: So, the two larger
22 tribes always had reservations and they then acquired, between
23 them, 295,000 additional acreage that is held in restricted deed?

23 MR. CHAMBERS: That is correct.

24 MR. BERGER: But it's not part of
25 a reserve?

25 MR. CHAMBERS: It's not part of a



1 reservation and indeed, as to those lands, Tom, they tend to be
2 out in the forest. They are not around the subsistent, I mean
3 the Indians live in Indian colonies or reservations essentially,
4 which are like other reservations. Those have been State-
5 supervised reservations until this land claim was brought and now
6 they are federally supervised, as a result of the land claim
7 settlement. The other land is investment land, forest timber
8 land out in the unpopulated areas of the State. As to those
9 lands, they have to comply completely with State law, say when
10 they market the timber and harvest it and so on.

11 MR. BERGER: Is that land liable
12 to State taxation?

13 MR. CHAMBERS: Yes, it is. They
14 make payments in lieu of State taxes. They have set up a system
15 where they make payments, they're not liable to the exact tax but
16 they are required to make payments that are the same as the tax,
17 in lieu of taxation. The State is able to invade the settlement
18 funds to get that money if the tribe should not pay it. Now, the
19 taxes are pretty low. You are dealing with unorganized territory
20 in the State of Maine, it is rather like the unorganized borough
21 here in Alaska, or analogous to that. It's funny, if you go up
22 to Maine as I did the first time I went up to see the Malaseets,
23 I looked on the map and you fly into Bangor, which is a fairly
24 large city for Maine, 50- or 60,000 - 40,000 something like that,
25 and then you see on the map that there is an interstate highway
going up to Houlton where my client lived. I got on that highway
and once I got out of the suburbs of Bangor, I didn't see
anything. There was no, I mean it was undeveloped as the most
undeveloped parts of the west that would have a highway going
through them. Say the Bitterroot Valley or something like and you
started going through areas that were called Township 2 North,
Range 5 East. I mean it just didn't even have any name. Every
once in awhile you would come across a gas station. Now, I have

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1 never driven on the Alcan Highway, so I can't say what it's like.
2 But I mean it really is, there are large areas of Maine that are
3 simply unorganized territory in the northern and western part of
4 the State, so there isn't substantial taxation going on there but
5 there is a State timber yield tax of some sort and they do have
6 to pay equivalent payments for that.

7 MR. BERGER: Well, just one other
8 question. You said they were making payments in lieu of taxes?

9 MR. CHAMBERS: That is what it is
10 called under the statute.

11 MR. BERGER: Is that a federal
12 statute?

13 MR. CHAMBERS: That's right. That
14 is the Maine... well, let me back up. I guess need to tell you
15 maybe a little more than you want to hear. The way... once an
16 agreement was reached between the tribes and the State of Maine,
17 it was embodied in a state statute. I don't know why they did it
18 this way, frankly. I mean, it wouldn't, again, been the way I
19 would have preferred to do it, but I didn't have any choice on
20 it. So, that the agreement between the tribes was first embodied
21 in the state statute and then some draft federal legislation was
22 taken to Congress and proposed to Congress and enacted with some
23 changes. Now, I believe the payments in lieu of taxes are in the
24 state statute. Aren't they, Larry, do you know? I think there
25 is a provision in the state statute that talks about payments in
lieu of taxes in the same amount. Probably, the federal statute
ratifies the state statute, which again, is a funny sort of thing
because then you don't really know whether the state statute is a
creature of federal law or state law. But it's... I don't think
the payment in lieu of taxes provision is in the federal statute,
except to the extent it ratifies the state statute.

MR. BERGER: David, you had a
question?

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1 MR. CASE: Just a couple of small
2 points. Are the tribes themselves deemed to be home rule
3 municipalities or are there two separate institutions? A tribal
4 government and a home rule government?

5 MR. CHAMBERS: I think it is just
6 a single entity. Now, again, I don't represent either of those
7 tribes, David. So, I...

8 MR. CASE: The Malaseets aren't in
9 that position.

10 MR. CHAMBERS: The Malaseets I was
11 able to get... rightfully or wrongly I got the...

12 MR. CASE: Take credit.

13 MR. CHAMBERS: Malaseets out of
14 that particular provision. In other words, whether it's an
15 advantage or a disadvantage to be a federally-recognized Indian
16 tribe without being a home rule municipality, the Malaseets are
17 simply a federally-recognized Indian tribe.

18 MR. CASE: Do the Malaseets have
19 any difficulty getting State funding, any more than the
20 Penobscots and the Passamaquoddy would have?

21 MR. CHAMBERS: I don't think they
22 get any State funding. I was just thinking of that when Charles
23 was answering the question for the Menominees. I could be wrong,
24 but I think I would know about it if they did get State funding.
25 I don't think they get any direct State funding. They do have
very substantial, I mean for a small tribe, they are about a 400
or 500 person tribe, enrolled membership, they do get pretty
substantial Federal grants and contracts under Public Law 636 and
Johnson/O'Malley and so on.

MR. CASE: Are there any powers or
authorities that the tribes have, either as tribes or as home
rule municipalities, that go beyond the powers and authorities of
the normal Maine home rule municipality? You mentioned fish and



1 game authority.

MR. CHAMBERS: Yes.

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MR. CASE: Was that something that is acceptable?

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MR. CHAMBERS: They do, and again, David, I would have to look at it and we could do that. I mean, I can supply you with that. It's not any mystery. Again, it just wasn't something that I was particularly concerned about in terms of representing my client, I didn't want it and we didn't have it. I think they do have some powers. They certainly have taxation powers on their reservations, but I think that is just the normal powers of a home rule municipality. But I think in terms of fish and game laws, they do have some fish and game powers that a normal home rule municipality would not have.

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MR. CASE: So, there may have been some negotiations beyond the "super-home rule" powers, judicial powers...

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MR. CHAMBERS: And they would have been provided as a matter of state statute. I mean, in other words, when the agreement was made it was put into a state statute, and the state, to that extent, did differentiate between these two tribes and other home rule municipalities. So, it is certainly possible to do that and again, it may be an inviting thing to do. I think that, in terms of making any kind of settlement here, I think you do have to bring the state along with you. Now, in Maine there was a substantial club over the state. I mean there was litigation that threatened the title to land of two-thirds of the State that would be brought if there couldn't be a settlement. So, there was a very substantial inducement to the State to settlement. I don't know that the advent of 1991 puts the same club on the State or whether Indian country kind of jurisdictional litigation here, puts the same kind of club on the state. Maine had a very substantial club...



1 gun at its head to come up with some kind of a deal there.

2 MR. CASE: But, nonetheless, there
3 was some negotiation of...

4 MR. CHAMBERS: Oh, yes,
5 substantial.

6 MR. CASE: Jurisdictional
7 perimeters for these two governments, let's say, or the three.

8 MR. CHAMBERS: That's right, and
9 that was really before I got into it. But there was a lot of
10 negotiation and again, the attorneys for the other two tribes
11 felt they had been very successful on that.

12 MR. BERGER: Well, Larry, you were
13 one of the attorneys, I believe, were you?

14 MR. ASCHENBRENNER: No, that's
15 just a mistake. Don't charge me with that any longer. I had
16 nothing to do with it really.

17 (LAUGHTER)

18 MR. ASCHENBRENNER: That was Tom
19 Tereen that handled the Penobscot and Passamaquoddy negotiations
20 and settlement act.

21 (TAPE 3, SIDE A)

22 MR. BERGER: Okay. Well, Charlie,
23 you had a question?

24 MR. EDWARDSSEN: On the
25 propositions that we have heard today, I would like to make an
observation of the home rule concept and the first home rule
concept that has been applied uniformly in America is the Indian
Reorganization Act. This is an outcrop of liberal institutions
in the name of Americanization of Indians. So, "American Indian
law" is not a foreign institution, it is a creature of the
American people. They have opted for themselves these
responsibilities by their desire, by their choice, we did not ask
them to do this for us. So, when you take a look at American

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1 administration, you Anglo-Saxons better watch out whose
2 administration it is. It is your laws. So, State of Alaska
3 is... came into the brotherhood of states and the primary
4 condition... the primary condition for the evolution of
5 government in this country is with the Treaty of Guss (sp),
6 Alaska Natives have a treaty. I would like to put this question
7 to rest; do Americans have a treaty? The only treaty that we are
8 entitled to talk about here at this time is how American
9 administration came in and we were a victim of selection by the
10 desire, by the imperial desire of American expansion, American
11 administration came upon Alaska Natives. And so the good faith
12 that I would like to demonstrate, and where the good faith of the
13 United States have not been demonstrated is, what it did for us
14 in the name of ANCSA. So, this legal relationship that everybody
15 is talking about, I am a victim of the process of which we are
16 dispensing our peculiar situation. We did not get involved in
17 this unilaterally, we were volunteered by Congress to be in this
18 mess. So, bear with me because some of you are responsible
19 agents for having created such an archaic mess by being blessed
20 Americans.

21 Alaska Native land claims and State of Alaska upon our
22 entry, what we have in the State is when the land claims
23 negotiation process came about, all of us volunteered that this
24 would be a meaningful way and a dialogue for the Alaska Native
25 people and the United States government can harmonize and resolve
a question of real estate transaction. So, we went in in good
faith and some of us came out a lot less than what we thought
we'd come in from. So, since this is an American law, the people
that were victimized by this were not asked their permission if
they would participate as consenting adults to this
Americanization, to this process of liberation or process of
being free. In the... which we call "land claims", the
definition of freedom to an Eskimo is different from a definition

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1 from an Alaska, what he thinks freedom is in State of Alaska,
2 under the eyes of Section 6 person. The definition of freedom is
3 still different from a person that you have exempted, the people
4 of Alaska have exempted to exempt from its laws, from its claims,
5 the Alaska Native people. This compact, the Alaska Statehood
6 Act, we came in as equal... Alaska Native people came in equal to
7 the State. So, those of you who are concerned about violation of
8 equal footing, I think that our equal footing has been destroyed
9 in the assumption greed, exploitation of States' rights and
10 character, which are contrary to Federal law. So, where we are
11 today and where we were in pre-ANCSA settlement is taking a look
12 at the Bureau of Land Management, State of Alaska and all of the
13 regional corporations and all of those valid existing rights that
14 are about to be shut out by FLMPA, which some of you feel that it
15 is not important to reveal what are the implications of FLMPA to
16 Alaska Native people and here again is that the misanthropic
17 American assumption of Indian justice, we automatically assume
18 that we are going to give Indians and Eskimos their due by taking
19 something away, not even asking their permission. When you do
20 this, when you mandate this aggression, this alienated aggression
21 that came upon and pounced upon the Alaska Native people, by an
22 alien force called legislation. ANCSA has become that alienating
23 force which is destroying or has destroyed the basis that the
24 American people have so aptly volunteered to put it under its
25 administration this responsibility called "trust responsibility".

20 So, what we did in Alaska is, when the Indian
21 Reorganization Act was planted, what we found out was the charter
22 of this Home Rule charter was uniform. It had everything in it
23 except the boundary of the land that the Indians and Eskimos
24 decided on was defined. Whose responsibility under the United
25 States is it, that the boundary question resides at? This is
very important to Alaska because of this, because ANCSA was not a
jurisdictional Act. So, what we have done in the name of

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1 Americanization of Alaska Natives is that we have created another
2 land enclave, which we now have colored and say, "native
3 corporations". Although by law State of Alaska cannot
4 discriminate, but it has these discriminating corporations where
5 in her own Constitution that it forgave title, interest and
6 equity in Section 4 of the Statehood Act. So, when we talk about
7 the Indian/Eskimo process, I think that you have to be so clear.
8 Are you talking about the victim by the State or are you talking
9 about that cherished product that the Bureau of Indian Affairs
10 have under their responsibility, or are we talking about a group
11 of people that have not been conquered by legal and civil
12 procedure. And these rights today, in the American context, are
13 important.

14 How we deal with the Alaskan question is equally
15 important on how we deal with the Indian question in South
16 America. So, the American administration, the John Marshall
17 Doctrine and its implementation and its legal effect today in
18 Alaska, if we were to exercise and the Bureau of Land Management
19 and the BIA, if the government was in an ideal situation where we
20 exercise all of our rights that we are entitled to and those
21 thirteenth regional corporations provided that the legal
22 abandonment of the United States, when it no longer wants its
23 responsibility of trust be executed according ex-statute, that it
24 has a statute for abandonment by itself and those people that it
25 had abandoned in Alaska are entitled to the level of relief that
the United States is going to give and this level is... with this
level of support of abandonment that the United States, providing
that these people wish to abandon themselves, in Alaska Native
Land Claims we did not even ask them, they were volunteered to be
abandoned. So, is this a taking question? In Section 14(c)3 a
taking issue of lands without compensation? Carry that you give
these people a creature of, called "exile", this is what you are
going to do; however, on 1280 acres you are now going to

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1 voluntarily surrender to somebody who you don't know. You don't
2 know this creature, but you have to do it. Are these questions
3 of equity, are these questions of conscience that were imposed
4 upon the Native people, how do you think we feel about this? No,
5 we feel this type of intrusion unwarranted, it didn't happen to
6 the rest of the Americans, but it happened to us and State of
7 Alaska, who some of you think so highly of and thinking that it
8 is so great, let me tell you in my role in the development of
9 home rule for our area, I was one of the principals that
10 organized the petition for the North Slope Borough and went
11 through the constitutional self-development from the IRA charter,
12 from the Federal authority. When we had found out that we were
13 going to receive less than entitlements that we had desire from
14 Congress in the Alaska Native Land Claims Settlement fight, we
15 saw the American corporate invasion coming in to annihilate the
16 Eskimos with whatever means necessary and this also incorporated
17 the mischief that it created with the oil industrious State of
18 Alaska.

19 The North Slope Borough is a first class Home Rule
20 Borough. To this very day, this great State of Alaska who has
21 been crying to Congress that we are not giving any... that it is
22 not receiving any of its lands, but the lands that it had
23 selected on the North Slope Borough, it has not given one acre to
24 the North Slope Borough government. So, when the citizens of
25 Anchorage, or when the citizens of Juneau, or Fairbanks, cry
about "the Eskimos up north are flooding high schools", is that
an un-American activity, desiring the services that the State of
Alaska in its Constitution had chartered, is it - what is wrong
with local people doing it for themselves. Somehow that the
people and Senators from Anchorage think it's an un-American
activity to have a high school. So, we on the North Slope had
attempted to preserve the corpus of the Inupiat empire under any
administration. If we were to implement the law that we have in

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1 front of us in State of Alaska, of giving us the ten percent of
2 our land selection entitlements and we were the only people. If
3 it was not for Native American Rights Fund, the creation of local
4 rule, local self-government would still be retarded if it was for
5 the industry and State of Alaska. We had to go to court to prove
6 the versatility of American citizenship is so versatile that it
7 also encompasses Inupiat and even though that the political
8 nature and the greed of these elected officials in State of
9 Alaska, the 25 years of her management of natural resources has
10 been deplorable. This assumed knowledge and grace and goodness
11 that it has, is completely non-existent. Everything that we had
12 to do up north, we had to go for it ourselves. Everything that
13 we got in Alaska Native Land Claims Settlement Act, in there that
14 is of any substance, was brought by us. The American
15 administration, the State of Alaska is part of that
16 administration, I know that it has its appetite and desires but
17 more importantly it is a self-... the Constitution of Alaska is
18 also a surrender and a self-limiting document to what State of
19 Alaska can't do and cannot have. Once the American people start
20 dealing with the Native people not as a foreign alien force on
21 earth and to deal with them in the human context, and the problem
22 that was volunteered to us by the bureaucracy and by the weight
23 of the bureaucracy. Today, the past twelve years have been
24 horrible and the future looks brighter for the simple fact that
25 they forgot one big thing on who we are, they forgot to erase...
they may steal your land but they forgot to erase the Eskimos,
Indians and Aleuts, as a race. So, the human rights, the rights
that we cherish and the rights that we want to pass on, we do not
want them terminated in the manner like the Federal Land
Management Policy Act did to the Alaska Native people, slapped
the Americans in the face and tell the rest of the American
people that they are not no longer going to enjoy the fruits of
the public land of America and block everybody out, including

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1 Eskimos, Indians and Aleuts.

2 I think the most disgraceful event occurred in the year
3 1976, when the Federal Land Management Policy Act was passed.
4 However, it was so shocking that the Federal government felt
5 slightly embarrassed so that they could go back in 1980 and wash
6 their hands because some people could eat and make a living off
7 the land that they love and so cherish. So, the question of
8 jurisdiction and where we are today is real. The option that we
9 feel, that it is essential in order for justice to be rendered to
10 the Native Alaskans, is that we should ask them; what would you
11 like to do? Would you like to re-establish? I would like to see
12 Restoration Act passed and to give Title 25, take this monstrous,
13 headless wonder called ANCSA and give it a head called Eskimo,
14 Indian and Aleut under Title 25 and then we can go and deal with
15 normal, federal-tribal relations as they had been originally
16 designed for. And so, for my part and where we are coming from.
17 I was involved in all of the process of negotiations and I would
18 feel delighted that if the Commission would submit its report to
19 Congress and this Commission asked the Inuit Circumpolar
20 Conference to file their report and ask for it to be codified
21 under Title 28, 1492. The findings of the Commission and a Bill
22 for compensation would be drafted in remedy to either House and
23 under Title 28, 1492 and to correspond with Title 28, Section
24 2509. I believe that the facts that this Commission is going to
25 have recorded are correct and true and I believe that the
certification of the truth to the United States and its full
impact of a law that crippled three cultures. I am sure that
this findings of this report can come into law and for their
certification to be submitted to the U.S. Court of Claims and I
would like to make this procedure open, that before the report is
finalized, that the Commission submit to the Inuit Circumpolar
Conference the possibility of submitting the findings directly to
Congress under Title 28, 1492 and then to be submitted to the

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1 U.S. Court of Claims to be filed to the U.S. Court of Claims and
2 that the findings of this would become law, and that remedy that
3 the Commission have found would be corrected. That would be the
4 last draw, provided that the government is not embarrassed enough
5 on their own initiative to have a Restoration Act as part of the
6 American administration. But I say to you, as an American on the
7 ICC, that I will seek for certification of this report and that
8 we take it, that we are so serious at ICC that we will sponsor
9 Title 28, 1492 recommendation to be made for ICC to certify the
10 findings of this body so that we can bring it to justice.

11 MR. BERGER: Thank you, Charlie.
12 (APPLAUSE)

13 MR. BERGER: Well, Charlie has
14 helped to give us some idea how we got here. Maybe I could bring
15 us back to David Case's proposal for village home rule, and David
16 Getches, you wanted to...

17 MR. GETCHES: I wanted to follow
18 up on something that was suggested by Charlie's points that he
19 made. I guess from the beginning here I have been wondering
20 where all of this, that is this week's meetings, all of this
21 should end up. I guess you have to ask where are we coming from.
22 Charlie did address where we are coming from, but I think that
23 there has been this underlying, this notion, since we got here,
24 that something is wrong. Something is wrong in particular with
25 ANCSA and we have gravitated immediately to the Indian law
notions. Now part of that may be that the deck is stacked here,
that is all any of us know about is Indian law and so, maybe we
are seeking that out as an area of solutions. I would like to
turn the clock back for a minute and look at what the late 1960's
notion of all this was, what this discussion would look like if
it were the late 1960's, the year 1970 when the final
negotiations were taking place for what ANCSA would say. I think
that the view at that point of Lower 48 Indian organization, was

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1 a view of poverty, paternalism, powerlessness. It wasn't a very
2 desirable scenario. Alaska Natives could look at their own
3 villages and see a replication of that poverty, paternalism and
4 powerlessness and I don't think that they wanted very much to be,
5 as the same went under the thumb of the Bureau of Indian Affairs.
6 I think that at that time, there was a rejection of Indian law,
7 of the Indian organization that we are talking about today. I
8 don't know how much thought was given to that, the things that I
9 was told and I'm much a late-comer to this, when I first got
10 involved the Act was almost passed and people were saying, "Look,
11 we don't really want to hear much about Indian law and Indian
12 organizations, we've got a better way here. The corporate form
13 is better suited to doing business, it gives us more
14 independence, it avoids the overbearing influence of the Bureau
15 of Indian Affairs and never mind some of these alleged
16 advantages, we have the declaration in the Act that the
17 settlement is to be accomplished without establishing any
18 permanent racially defined institutions, rights, privileges or
19 obligations without creating a reservation system or lengthy
20 wardship or trusteeship without adding to the categories of
21 property and institutions enjoying special tax privileges or to
22 the legislation establishing special relationships between the
23 United States government and the State of Alaska." The Act is a
24 clear rejection of these Indian law notions that we are now
25 returning to. Now, either...

20 MR. BERGER: No question about
21 that.

22 MR. GETCHES: Now, either what
23 happened at the time that this Act was drafted and the provisions
24 negotiated was wrong or something went wrong between that time
25 and now. I would like to start by asking Charlie, I know there
are a couple of other people in here that were involved in that
process but I don't think anybody was more involved than Charlie

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1 Edwardsen in this room, in the process of getting to this Act.
2 The question I have is; what were the discussions then?

3 MR. EDWARDSSEN: The processes that
4 were involved was, at that time, had we not come up with a
5 corporate form as a mechanism for resolution, Alaska Native Land
6 Claims would not have passed today. So, the methodology of the
7 corporation brought the settlement into a scope that the Anglo-
8 Saxon community can deal with.

9 MR. BERGER: Excuse me, Charlie.
10 Could I just intervene here for a minute? We went into this at
11 length in March, David, and for about three weeks, and Charlie
12 and many others who were in on the ground floor participated and
13 I think it's fair to say, as I think and this was Charlie's view
14 and the view of most others including some of those from
15 Congress, that Congress wasn't willing to consider a settlement
16 with the tribal governments. It was not prepared to duplicate in
17 Alaska the story of failure that Indian reservations meant to
18 Congress in 1971. So, they weren't prepared to consider that.
19 Now, all I am saying Charlie is that, I don't want us to go back
20 over all that ground again because we considered it at length. I
21 am really concerned now and for the next three days; okay, where
22 do we go from here? We all know what is wrong with ANCSA and we
23 all know what 1991 means. I have been in the Bush and I know
24 what those people have told me. They want a measure of local
25 self-government. They want to retain their land. How do we
manage that? How do we do that?

MR. GETCHES: Well, I think that
we may not know completely what... we know something is wrong
with ANCSA, but how much of it do you want to do away with and
how much of the old Indian law and Indian forms of government do
you want to bring back? That is, I think, more in tune with what
we are supposed to be doing here.

MR. BERGER: Okay, but I really



1 want to know whether the... see the people in the villages are
2 talking about IRA's because that's what they've got. They've got
3 IRA's and traditional councils, not all of them but many of them.
4 So, it naturally occurs to them: "well, let's transfer the land
5 to the IRA". But the IRA, as a government, isn't just a title
6 deed. So, I am really concerned about what an IRA implies in
7 Alaska. What tribal government implies, where that gets these
8 people, if after all of this 13 years of concern and debate, can
9 we make advances combining the advantages of ANCSA, and there are
10 advantages to ANCSA, Federal Indian law and perhaps foraging some
11 new pathways ourselves. We are not locked into all of these
12 structures. I mean, they aren't the only structures that Native
13 people can consider, that Congress can consider. I just think
14 that, having brought all of you together, I don't want to spend
15 your time going over the ground that we discussed at the very
16 beginning of this work in March.

13 MR. GETCHES: How much of the IRA
14 form do you want to revitalize? Isn't that the question?

15 MR. BERGER: I want to know more
16 about it and does it work in the Lower 48?

17 MR. GETCHES: In the process, how
18 much of ANCSA do you want to throw out?

19 MR. BERGER: Well, let's talk
20 about IRA's. We have talked about ANCSA for nine months. Let's
21 talk about the way in which Native people are governing
22 themselves in the Lower 48 and in other places and how it is
23 working.

24 MR. EDWARDSSEN: (OFF MIKE) on the
25 degree of what you want to cut off. I have a proposal here from
ASRC's 1991 committee and it gets to the very point of what we
are dealing with and so, I would like to get to the root of the
matter. If you cannot go back to Section 4 (INDISCERNIBLE - OFF
MIKE) and then look at this proposition and show that you will

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1 not deal in ANCSA as an abstract, but only get the definition of
2 Section 4 and go down with the proposal that is in front of you
and see how one region views this situation.

3 MR. BERGER: Well, I'll tell you
4 what I think I am going to do. I am concerned that we should...

5 MR. EDWARDSSEN: And that your
6 concerns may be answered.

7 MR. BERGER: Well, Charlie, let me
8 finish. I am concerned that we spend the time dealing with
9 things that will show us where we go from here. This is a
10 resolution that, no doubt, a lot of thought has gone into. But
11 until we have had an opportunity to take a look at it, it seems
12 to me that, we should carry on as planned. Sheldon and Reed
13 wanted to say something and then I think we will take a coffee
14 break.

15 MR. KATCHATAG: Yes, as far as the
16 question you had, Dave, regarding how far do you take this. The
17 answer lies in the fact now, where were tribal governments in
18 Alaska, not in 1971 but before 1959. Okay, we were the sole
19 local government in the territory of Alaska in our areas and it
20 is time the State realized that. Our councilmen were the sole
21 reference at all to law and order. The federal government, by
22 imposing upon itself the trust responsibility, says it will
23 guarantee to at least maintain whatever peace, whatever dignity,
24 whatever sovereignty that we as tribal governments had. If an
25 Act such as ANCSA totally demolishes not just our tribes, but our
tribal governments, then this is conquest by paper and it is a
greater sin than conquest by war because it is devious. We have
a right, as tribal members, as tribal governments, to have those
responsibilities carried out not to the worst of the United
States' ability, but to the best of their ability. The primary
thing that you have done with the Land Claims Settlement Act and
especially with 14(c) of that Act is that, you have taken Native

1 people in whom the federal government has sworn that they have a
2 trust responsibility to maintain their peace, their dignity and
3 their sovereignty as a tribe and as tribal governments. You have
4 taken that protection of the federal government, with no
5 compensation whatsoever, by a few words on a piece of paper you
6 have made Alaska's Native citizens into law abiding, tax paying,
7 voting citizens of the State of Alaska and thereby liable to all
8 such liabilities as that may be. In violation of their own right
9 to government. Our governments have been here since time
10 immemorial. Nobody knows how old they are. Why can you come in
11 and say, because we have this piece of paper we now have extended
12 our jurisdiction over not only you and your tribe, but over your
13 tribal government as well. If that is not conquest, I don't know
14 what is and you have no right to do that. Nothing can be taken
15 from us, our people, our tribes, our governments, without our
16 consent. No matter what you write on paper.

13 MR. BERGER: Reed.

14 MR. KATCHATAG: Genocide by
15 legislation as genocide by war. Thank you.

15 (APPLAUSE)

16 MR. BERGER: Reed, did you want to
17 add something?

18 MR. CHAMBERS: I think the answer
19 to your question is that there is no alternative, but what he is
20 saying. In other words, what you will find if you inquire
21 about... not how IRA's work because there is some, as we have
22 said, there are some governments that are IRA's and there are
23 some that are just traditional governments. That's true in the
24 Lower 48, that's true up here. There is really no alternative
25 but supporting it and trying to make it work because that is the
only way people can control their own environment, whether it's
Native people in Alaska or whether it's Indian people in the
Lower 48 or whether it's any people anywhere. I mean, aboriginal

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1 people or non-aboriginal people. I mean, what you find in the
2 Lower 48, I represent a number of tribes and, of course, I can't
3 tell you which ones work well and which ones don't. That would
4 be disclosing confidences and saying things that I would rather
5 not about particular clients. It's certainly true that you have
6 some... I mean, a lot has happened since 1969. Dave and Charlie
7 and I got into representing Indian tribes about then, and
8 whatever the fairness of somebody saying in 1969, that in the
9 Lower 48 the Indian tribes were pockets of poverty and were
10 controlled by the BIA and were not functioning well as tribal
11 governments, a lot has changed since then. There are still some
12 tribes in the Lower 48 that don't function very well and there is
13 some tribes that function very, very well. Some tribes have
14 separate judiciaries. David and Ralph, of course, can report and
15 probably should report to you sometime during these four days
16 about the enormous strides that have been made by tribal courts
17 in the Lower 48.

18 Tribal legislative institutions function much better
19 than they did, there are whole tribal executives now that have
20 been set up mostly by federal grant programs, although sometimes
21 by tribal taxes. Setting up service departments or setting up
22 regulatory departments, a minerals department, for example; to
23 oversee oil and gas leasing on the Wind River Reservation in
24 Wyoming is just one example that springs right to my mind. But
25 whether these institutions are working well or working poorly
isn't the only solution to the problem that you're addressing is
that, there has to be concerted effort made both by, obviously,
the Native groups that are the tribal governments and by others
in the society that support them. To enable an answer to the
question ten years from now that, yes, these governments do work
well. I mean, obviously, the people are capable of governing
themselves. The question is whether they have the resources and
financial support to do it and a lot has happened in the last ten

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1 years to bring that about through 638, particularly through
2 Public Law 638, but also the Tax Status Act and the Indian Child
3 Welfare, the Indian Financing Act, a lot of very positive things
4 have been done on that.

5 So, I guess I suggest that, isn't what we've got to do
6 is not ask the question about whether they do work other places
7 or not, but really how can we set up institutions or help, really
8 help Sheldon and Charlie and the other Native groups that
9 represent the tribes of Alaska, to set up institutions here that
10 can work within this framework to control land use, to protect
11 subsistence.

12 MR. BERGER: Rosita? Ralph?

13 MR. JOHNSON: I never cease to be
14 educated by these proceedings. At the last session we had three
15 days of intense discussion on 1991 issues, which was largely
16 devoted to discussions of corporations and intensive debate about
17 what the nature of the corporation as mergers and so forth. I
18 heard people like Glen Fredricks, and a number of others, say how
19 happy they were with certain corporate structures. What came out
20 of that, as far as I could see, was not a denial of what Charlie
21 or Sheldon or some others are saying here, but there are some
22 places out there where the corporations seem to be accomplishing
23 what a lot of people want and there are a lot of places where
24 those are not and that in a simplistic sense, if one wanted to go
25 back to the IRA kind of government for all of Alaska or for
places where regional or village corporations are successfully
accomplishing what I heard a lot of people say they should be
doing. That would be contrary to the interests, at least of what
we heard in this room, in fairly unanimous support.

By the same token, if one sorts out and looks at two-
thirds or three-fourths of the villages and sees that in those
places the corporate structure is not effectively carrying out
the wishes of the people, and I think the hearings as I



1 understand it from Commissioner Berger, indicate that is their
2 belief, that is not doing what they want, then to consider the
3 IRA or traditional form of government then, indeed, is one of the
4 most serious possibilities. But to change some of the village
5 corporations near Anchorage, I can't name them but those that
6 seem to be eminently successful business corporations, to change
7 back some of the regional corporations or regional lands - that's
8 a different set of questions, and I guess the way I heard the
9 last session was that there are some places this would seem to
10 work and there are other places it would not. I would be curious
11 to know from those who know more about it than I do whether that
12 perception is accurate.

10 MR. BERGER: Spud.

11 (TAPE 3, SIDE B)

12 MR. WILLIAMS: It seems to me that
13 if village governments act as a city government or a state
14 government they are considered a success. We heard this
15 gentleman say that we have some successful and some unsuccessful
16 ones and he mentions the successful leaps of tribal courts. At
17 what yardstick is he making these judgments. You know, he is
18 looking at it at his perspective and this seems to be one of the
19 fallacies of groups like this or state or federal governments
20 looking at Native governments. They have the wrong yardstick.
21 They don't know how to measure successes or failures. If we do
22 things your way, we are a success but if it's different and you
23 don't understand it, you don't know how to measure it. We are
24 not speaking the same thing and I think that is part of why this
25 dialogue is having trouble getting off the ground. I think that
you're trying to enforce a value system, instead of listening to
ours. Mr. Case, a fairly nice paper, very short-sighted, very
western in nature, still paternalistic. He is trying to put a
system that he can recognize, because he can't recognize
traditional forms of governments, he is trying to merge the two

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1 systems, instead of accepting what we are asking. He is again
2 falling into the trap of trying to teach us. I find that very
3 revolting at times, that you won't sit down and listen to what is
4 being said.

5 Part of the reason for the dissatisfaction with the
6 Claims Settlement Act is not that it's throwing away our lands,
7 not that's political genocide, as was discussed earlier, but is
8 actually true cultural genocide as well. Our systems are
9 inherently our culture and you are sitting there trying to tell
10 us that a municipal form of home rule is the answer. Very short
11 sighted. Sooner or later with the crunch of population of non-
12 Natives, that municipal system is going to be taken over by non-
13 Natives and then their value systems will be shoved on us. We
14 are not dissatisfied with the corporation, we realize the
15 subsistence economy is an economy that is going. Sooner or later
16 it is going to be gone. We are not against making money. I
17 mean, that is the system we are going to be forced... if we are
18 going to survive economically and have food on our tables. I
19 mean, that's a fact of life. Every culture changes but there are
20 some things we want to retain and our systems of government is
21 one of them, because that insures our cultural survival.

22 You talk about racially segregated political
23 subdivisions. If we are going to survive as a people, we have to
24 maintain a separate political entity. There is no other way we
25 will be able to survive as a people. I mean, this is a proven
fact as western society came across the country. What is making
it a little difficult in Alaska, is Alaska still has some of that
old basic pioneer spirit. I mean, this is the last frontier and
there is still kind of a mentality that the only good Indian, is
a dead Indian. Not as much as there was when I was a lot
younger, it is fading because we are being invaded by a second
group of non-Natives and that is the new generation from America,
who have lost most of that pioneer spirit, thank God. They have

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1 finally come to realize they are part of the community of man and
2 that man should be able to live as he so desires. But we still
3 have that fringe element. It just rose its ugly head in the
4 paper the other day. The Klu Klux Klan type of organization.
5 Even in America, the Americans finally realized that that wasn't
6 the way for people to get along but this state still can embrace
7 those concepts because of the last frontier mentality, the
8 domineering mentality.

9 Our governments were not understood and so, one of the
10 systems that was getting rid of our governments was that you
11 ignored the systems. You tore apart the credibility of the
12 systems themselves by total ignorance of them. You turned your
13 back on those systems, put in place your own systems. Those
14 elements of any society, those violent elements of any society,
15 those will not conform, are also alive and well in the Native
16 community, as well as they are in your community, when they saw
17 that they could subvert their own governmental systems and
18 controls, they readily did it. When they were able to use the
19 excuse that the white man says, your law doesn't apply to me
20 anymore. You very successfully tore apart those local value
21 systems by giving those people who will normally break laws
22 because of human emotions; greed, avarice, whatever. You gave
23 them an out and every person will take an out if he can get one.
24 I mean that is just human nature. None of us are puritans. We
25 look for the easy way a lot of times. But the village
governments worked as long as they were respected.

When the IRA Act... I was in one of the villages doing
one of our sub-regional workshops on 1991 and an old lady came up
to me and she said, "Spud, tell me one thing. What is IRA?" You
know, we have been talking these things for the last few years
and using this bureaucratic jargon and I said to her, "really
it's just another word for your village government, village
council, sitting down making decisions, sitting down planning,

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1 sitting down making the rules, deciding issues". "Oh, okay."
2 Most of the people are so close to that government system they
3 don't even realize they have a government. They don't even
4 realize they are doing it, it is so natural, so easy and it is
5 done and most of the people don't even realize that they're doing
6 it. So, I wish when you are measuring success and what is a
7 success, that you will take out another yardstick and quit using
8 your own.

9 MR. BERGER: Thank you, Spud. I
10 think David and you are cross purposes. I think I should give
11 David the floor.

12 MR. CASE: Thanks. I knew there
13 was a danger in saying anything. Spud, I didn't intend to imply
14 that Alaska Native villages should become state home rule
15 municipalities. My point is that they should be treated as, with
16 the same dignity or more dignity actually, then a state home rule
17 municipality. That the state, in effect, should recognize
18 village home rule based on Native sovereignty and according to
19 Native institutions in Native communities and that should include
20 super-powers to control what is important to that Native
21 community, including exclusion of non-Natives, I would suggest,
22 and other culturally, necessary, appropriate, whatever important
23 powers.

24 The idea, though, in my suggestion is that, "Look, this is
25 an ideal in state government already." Not the exclusion of
people from a community that has to do with individual rights
under the U.S. Constitution, but it is the idea that a community
should be able to control itself is an ideal within the state
framework, the state legal framework at least. I am just
suggesting that you carry that a little further and what that
means is that a culture in a community should be able to control
itself. That is something that is not entirely inconsistent with
the idea of home rule in the state, but it can be carried a bit

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1 further and called "tribal home rule" or "village home rule", as
2 I have suggested. That's the point, I was not suggesting that
3 Native communities should be satisfied with State of Alaska
4 municipal home rule.

4 MR. BERGER: Mary, you wanted to
5 say something? Mary Miller.

6 MS. MILLER: Just to re-state what
7 Mr. Case just said. It is my understanding that you are
8 proposing that the concept of home rule can be applied and
9 implemented under the governmental powers of tribal government.
10 Is that correct?

9 MR. CASE: That is correct.
10 Right.

11 MS. MILLER: Given that fact, I
12 think that it's important for us to read the paper very carefully
13 before we just throw it out the door. It's very easy to look at
14 key terms and mistake them or misinterpret them, misunderstand
15 them. That is just one thing I wanted to recommend for all of
16 us.

16 The second thing is that, I have heard people talk
17 about identifying and defining our ideals. I agree with that
18 completely. I think it's been clearly stated and established by
19 the over 1,000 testimonies that Mr. Berger has collected, that we
20 have two very clear ideals, generally. One of them is to
21 maximize the protection of our lands, maximize them not negotiate
22 them away. The second thing is to honor our right to govern
23 ourselves. Our people... when you look at people generally not
24 the people who are in leadership positions, but people generally,
25 the average resident of our small communities, we are still very
26 confused. We have been trying to understand the Land Claims Act,
27 we have been trying very hard with the village corporation
28 structures to make them work, we have been trying to figure out
29 what to do with city governments because a lot of the people are

1 afraid of losing state funding. So, I think it is important to
2 realize that these are very agonizing tasks that we face as
Native people.

3 One thing that, when we think about our ideals of
4 protecting our land and guaranteeing our right to self-government
5 and also recognizing that there are some village corporations who
6 are succeeding, who have had the luck of succeeding. Looking at
7 the option of separating out the business activities of that
8 corporation from the land ownership and then, in that context,
9 look at tribal governments as a viable, feasible option. We have
10 been trying to make everything work and being in a generally
11 confused state. I don't mean to say that as applying to
12 everybody, but generally people still are confused. Now, we are
13 looking at questioning the very feasibility of these institutions
14 that we have been trying to hard to make work. So, as we look at
15 options that are available to us, I think it is very important to
16 try to include in our discussion process, a means of people being
able to start at the right points in figuring out what to do, to
deal with this confusion, clarify the issues and come to a good
starting point so that it will maximize participation of all of
those people whose future we are talking about. Thank you.

17 MR. BERGER: Thank you, Mary.

18 Charles Wilkinson.

19 MR. WILKINSON: Just very briefly.

20 David, do I understand that what you are proposing would be a
21 system under state law that is similar to the current system
22 under federal law, in that Native villages would have self-rule,
23 choose their own court systems, membership would be defined by
24 Alaska Natives, but that it would be a matter of state law and
25 that, secondly, you are not addressing the issue of hunting and
fishing, you are addressing substantially all jurisdictional
issues except hunting and fishing, which you just don't deal with
here and presumably leave to other means.

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1 MR. CASE: Well, no. I guess I
2 even think that hunting and fishing would... although it is
3 politically difficult to see how that would be worked out. But
4 even that should be one of the important powers that, if home
5 rule is going to mean anything from a Native village standpoint,
6 that there really is, as I understand it from the villages we
7 heard from, there is an aspiration, a desire to control hunting
8 and fishing at that level.

9 MR. WILKINSON: What would be the
10 territorial limits of the hunting and fishing prerogatives?

11 MR. CASE: Well, that is a
12 difficult question. I mean, the easiest answer but the least
13 satisfying one is the lands that are owned by the village or
14 tribe. Now, I suppose you could carve and describe
15 jurisdictional boundaries beyond tribally owned land, but that is
16 pretty clearly going to get you into dealing with the federal and
17 state governments on those points. But it's concepts... you
18 know, you can think about it, it can be done.

19 MR. WILKINSON: But, doesn't your
20 whole pro...

21 MR. EDWARDSSEN: (OFF MIKE -
22 INDISCERNIBLE) territorial jurisdiction. So, some of these
23 things exist as... I mean, are real. So we have some real
24 dynamic functioning things that are not abstract.

25 MR. BERGER: Yeah, we had a look
at AEWC at the Subsistence Roundtable in October. But later in
the... tomorrow or the next day I would like to come back to the
kind of thing that you are referring to. That is, if you do
develop an idea for tribal government at the village level,
"village home rule" or whatever you want to call it, then is that
a concept that people feel can be extended and applied on a
regional level, that seems to me that's a tricky question in many
ways. But you were... you had another question, I think.

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1 MR. CASE: That point, you may get
2 to places where it would be possible to federate communities, the
3 lands that are close to one another, villages that have a common
4 history and family relationships and so on, could and I think
5 there is movements in that direction in some parts of Alaska, to
federate.

6 MR. WILKINSON: You see, it seems
7 to me, the reason I distinguish the two is that it seems to me
8 entirely reasonable to set up a system of tribal self-government
9 under state or federal law which is limited in fairly tight to
10 the villages because most issues will be near villages. But that
11 hunting and fishing just involves more acres, more land and it
12 seems to me that, hunting and fishing you ought to come about it
13 from a different concept. Which is that Alaska Natives can hunt
14 and fish for subsistence throughout substantially all the State
15 of Alaska and it doesn't seem to me you want to tie that into the
16 villages. So, that is why I would treat them differently. So, I
can see you borrowing from the reservation system for matters
such as zoning, taxation, child welfare, that whole range of
issues, and crimes. But not borrowing from the reservation
systems on the questions of subsistence.

17 MR. CASE: Well, that is a good
18 point. I mean, that is a good point and maybe when you get down
19 to thinking about it and how it should it really work, there
20 would be people that would conclude that another way would be
better.

21 MR. WILKINSON: Let me ask just
one more.

22 MR. BERGER: Excuse me. Could...
23 I think we will have to try to maintain some sort of order.
24 Charles, you had one more question and then Sam George wanted to
say something.

25 MR. WILKINSON: I do just have one

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1 more. Do you propose substantially the same system under state
2 law rather than federal law because you believe it would be of
3 greater long term or short term benefit to Natives, or do you
4 propose it because you see it as more practical and perhaps
5 easier to achieve politically? In other words, do you see your
6 proposal as creating a greater quantum of power for Natives or do
7 you propose it because it might be easier to implement?

8 MR. CASE: Sheldon said both. I
9 find I'm ambivalent, I'm not sure of the answer.

10 MR. WILKINSON: Oh, okay.

11 MR. CASE: But I think there is a
12 risk in taking a step because you think it is practical or more
13 likely to be achieved. I guess I agree with your earlier
14 statement that it is important to begin with what the communities
15 that are living with this want, whether it's the Menominee, the
16 Siletz or the Texas Kickapoo or communities in Alaska, because...
17 and as Spud maybe suggested, there is a danger that us "Outside"
18 consultants, and so forth, will take a narrow view of what is
19 practical and we don't have to live with the result of that. So,
20 I am inclined to say that if this suggestion is really... I mean,
21 I don't want to back away from it, it was my proposal, for
22 Christ's sake, I do. I don't want to own this thing and have it
23 swinging around my neck like a dead bird.

24 MR. EDWARDSSEN: I would like to
25 make a comment.

MR. BERGER: No, let David finish
Charlie.

MR. CASE: But I do think it is
important to start thinking in practical terms about what we got
on the ground and what will work and also in terms of what people
want and marry the two up. I do think we may be stuck with a
non-reservation situation in most of Alaska.

MR. EDWARDSSEN: (INDISCERNIBLE -

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1 OFF MIKE) more of the pragmatism side of it that causes you to
2 propose it, rather than the idea that Alaska law provides greater
3 protections.

4 MR. CASE: Absolutely right. If
5 you could have a reservation or means of holding land in trust
6 for Alaska Native communities and that was an achievable goal,
7 this wouldn't be a close second.

8 MR. BERGER: Sam George.

9 MR. GEORGE: I have been listening
10 and observing all this time and before we go any further I feel
11 that, I appreciate the panelists that came all the way from all
12 over the nation here. But the fact that we should point out is
13 that, all this time and all through the history of the dealings
14 with the Native people we have been victimized by so-called
15 experts from the Outside and we are the ones, we are the victims
16 of being planted and the victims that have to live with all these
17 creations, such as ANCSA. I don't mean to criticize the point,
18 but it's always the case and basically I think, look at the topic
19 of this discussion. You know, we are the ones that should decide
20 our future and I have been listening to all these so-called
21 experts and they're trying to figure out what is best for the
22 Native people and the answer to that is that we are the ones that
23 say what we want and they are the ones that should carry out our
24 wishes. As far as some of the topics we have talked about, such
25 as jurisdiction, more or less, the Native people have been told
that we have no such land base and so on, but the fact is that we
are the ones that know our land more than, you know, so-called
experts from the state government. As far as our hunting and
fishing activities, you know, there is no way the State of Alaska
can ever prosecute our people from breaking their state laws.
But we are the ones that are experts in that area. As far as
definition of Indian law, referring to reservation, I feel that
it is just by definition that we are not reservation. I am sure

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1 that you guys will agree with my point, that it is just by
2 definition that we are differentiated from other Indian tribes.
3 And with respect to the home rule, I understand the concept of
4 that but, you know, that's basically one of the main reasons why
5 we ever kicked out the City of Akiachak is to, you know, practice
6 our rights as self-government people.

7 As far as the home rule under the, you know, created
8 under the state law, I suppose you are referring to the state,
9 under the state law it is very easy for, you know, as soon as the
10 population changes such as in City of Bethel, then the power
11 changed hands. I am sure that all over the state that will
12 always be the case. It's not based on, one of the reasons why we
13 want to have a one tribal government is to have more control of
14 our own destiny and going back to the statehood, the fact is that
15 our people were not involved in the process of adopting the State
16 Constitution and here we are trying to convince the state to
17 recognize our rights as tribal governments. To this day the
18 state people do not even understand that we exist and do not wish
19 to recognize us. It's just... the main reason is that they
20 assume that, you know, it was for the best interest of the
21 people. I hope that the panelists here would address... not only
22 address but, I really wish there would have been more of our
23 people here to address this particular issue and very few experts
24 from all over the nation. But that is basically what I wanted to
25 point out.

MR. BERGER: Let me say that I
invited these experts here and there is a reason for that and
let's deal with this now. I have heard from a thousand Alaska
Natives, more than that, all year in 52 villages and they have
said, we are concerned about the possibility of losing our land.
That is the paramount thing. So, they have said; isn't there a
safe place we can keep it and many, many of them say; well, let's
transfer it to the IRA council. I think that they have made

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1 their wishes plain. Now, they would say sometimes let's transfer
2 it to the IRA, sometimes they say let's transfer it to a
3 cooperative or a non-profit association and sometimes they say,
4 well, let's take our chances with the corporation. Not many say
5 that but some do. In any scheme that is worked out, it seems to
6 me that you are going to have Native corporations still in
7 business, making money or losing money, whatever it happens to
8 be. You are going to have land, Native ancestral land that
9 people feel is theirs and ought to remain theirs for the next
10 generation and generations to come and you are going to have a
11 desire by Native people to have an awful lot to say about what
12 happens on that land and in their communities. So, I think that
13 on the basis of what people in those villages have said to me, I
14 have got a pretty good idea of what is in their minds. Now, it's
15 fine to say I could write a report that said, "well, here it is.
16 People want to govern themselves so restore Native government."
17 It could be said in one paragraph, if we wanted to proceed in
18 that way, but where in the end does that get people.

19 It seems to me that it's useful to bring these people
20 from all over the nation and from other nations together to talk
21 about how all of these things might be achieved and to see how
22 those ideas stand up under scrutiny and David has put forward an
23 idea about village home rule government. It seems to me that
24 gives us something to talk about, to explore the ramifications of
25 what he has said and I think it should... the discussion ought to
proceed on the footing, "well, this is an idea that is an attempt
to build legal structure based on what those people in the
villages have said." Now, I am concerned about this. All right,
you say you want tribal government, you've got traditional
councils, you've got IRA's. Well, is that all there is to it.
Are those functioning in a way that suits the people there? If
they got the land should the land be held in trust? What about
the supervision of IRA activities by the Secretary of Interior,

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1 is that what you want? What about reservations? Is that really
2 what you are talking about or are we talking about something else
3 that might, in the end, serve as a model perhaps for Native
4 people in the Lower 48? Then there is the question of hunting
and fishing. Now, it seems to me that is absolutely vital.

5 UNIDENTIFIED: (OFF MIKE)

6 MR. BERGER: Now, just let me
7 finish. Spud Williams said that he thought in the years to come
8 there would be no subsistence, that Native people wouldn't be
9 making their living that way. In parts of Alaska I have been to,
10 I think that he might find that people would disagree with him.
11 I think in Southwest Alaska, where you come from, the people
12 would say, "no, for as long as we can foresee we think we are
13 going to be engaged in making subsistence living here." So, what
14 is the jurisdiction that tribal governments ought to have in
15 relation to subsistence and what are the implications of all of
16 this from the point of view of the jurisdiction the state claims
17 and the federal government. If we don't spend the next three
18 days exploring these things, it seems to me, we will have lost an
19 opportunity and that's why I, Sam, that is why I told these folks
20 to come and I think it's been useful to have this discussion this
21 afternoon, but I would really like all of you to address some of
22 these questions that I have raised today. When we adjourn today,
23 I am going to ask Rosita and David to help me to present an
24 agenda tomorrow that might truly reflect where, in light of the
25 discussion today, perhaps we should be going. But I think to
imply that we send all these folks home and then say we know
exactly what has to be done here, I don't think that is going to
get us as far as we should be going.

MR. EDWARDSSEN: Your Honor.

MR. BERGER: No, you don't have to
call me Your Honor, Charlie. Go ahead.

MR. EDWARDSSEN: I would like to

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1 clarify one fact here. Some of us here are stockholders and
2 we're going to vote our share and I am glad that some of you are
3 not going to vote mine. So, let's be more cautious on whose
4 ticket, whose land, whose rights are we talking about. So, none
5 of you here have my permission to talk about what is mine and so
6 I would like to make that fact very clear and so, some of us are
7 highly desired to go back to a federal restoration program and I
8 have made a recommendation that this body reveal some Title 28,
9 their jurisdiction of the United States, to reveal this process
10 so that some of you who are not Americans will become familiar
11 with American jurisprudence. And that we want to exhaust this
12 remedy and the way to exhaust this remedy is that the findings of
13 the facts that have been made available to this body are not
14 going to change, they're not going to change if we go back to
15 Congress tomorrow or the next day. That the wrong and the degree
16 of the wrong is so large that what may change is the attitude,
17 the arrogance, the arrogance that the American Congress imposed
18 upon these things that they have never done to others, is what we
19 are mad about and so, those of us who are speaking from equity,
20 we are forced to tell you our alienation of this bad deal that
21 you guys gave us. So, since we are dealing with this horrible
22 process, that all of this is coming out, that it has to come out
23 it cannot stay in there. So, all of the social experiments are
24 over and so, the process and the evolution, this political
25 process that we are going through, Congress is going to have some
new assignments that there is a future to look forward to and I
would like to row this Alaskan body open so that we can go start
lobbying Congress so that we cannot talk about semantic injustice
here so we can take it to Congress, so we can start doing our
work and maybe that your professional opinion would be of some
merit to an Anglo-Saxon Congressman of your Anglo-Saxon view on
how bad we got shafted.

So, I view the gravest injustice that has been going on

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1 among the Alaska Natives, has been a failure by the United States
2 government to determine land in holdings of the Indian
3 Reorganization tribes in Alaska, number one. Number two is that
4 the valid existing rights that the United States purport to
5 protect has not received any protection, meaning that State of
6 Alaska on the core township has commenced trespass, therefore,
7 that there are numerous 2415 claims which the Bureau of Indian
8 Affairs have not filed proceed. So, we are behind, 70 years of
9 backlog cases and which have been compounded by ANCSA. So, what
10 is the easiest way out of this mess as we see it, is to go back
11 to and examine the American jurisprudence and to hop on the
12 American ship and this means federal preemption, Indian law is a
13 preempted field and once and for all, State of Alaska, you cannot
14 get into the Eskimo business without our permission and we don't
15 want you in our territory without our permission. So, when you
16 get back to the basics and deal with this sovereign relationship,
17 not that Congress has completely have plenary powers, it is not
18 an absolution and so, therefore, I think our attitude towards
19 this problem and some new ideas to wash out of your mind social
20 Darwinist attitudes about American administration which have
21 functions to this point that we have to look at some new
22 enlightened philosophies. And one of them definitely has to be,
23 why are these Alaska Natives don't like what they receive because
24 their consent was not sought out for the basic violation, the
25 basic human right, the basic bitter root of truth was they were
not asked for.

So, in order for justice to be done in the American sense, that we have to go back to Congress and say, by God we gave it a good try and look at the mess that we have made. What a great deal we have! So, otherwise that we may have to bring in and prosecute the expert witnesses who have given this corporation expert advice in the name of racketeering. Maybe that the greatest defense for the Alaska Native people is a

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1 racketeering act, is it illegal for a corporation to go in the
2 red. Is it unconstitutional when they go in the red. What is
3 this legality of profit? So, if you want to put some tighter
4 constraints, we don't know of any new tricks. So, the only trick
5 that I see that is going to get us out of this mess is to go back
6 and says, well, I am sorry, Scoop Jackson, that we did not mean
7 to be that mouthy, now that you are gone, but we are going to
8 have to re-look at Section 2 and Section 4. I am sorry, Scoop,
9 it didn't work. You know, we gave it a good try but we are going
10 to turn the other cheek and say we want to remain under American
administration, under American flag. What is so hard and so
desirous for Alaska Natives and Eskimos to have? Why is it so
hard for us to communicate to you our basic desire?

11 UNIDENTIFIED: (OFF MIKE)

12 MR. BERGER: That's a rhetorical
question, I think. Sheldon, you wanted to add something.

13 MR. KATCHATAG: One of the things
14 that has created a lot of the problems that we are facing right
15 now, has been a lot of propaganda on the part of that
16 organization that was supposedly looking out for our best
17 interests, that being the BIA. You ask the Alaska Natives, the
18 leaders at the time, what kind of an education they got regarding
19 reservations in the Lower 48. What was the attitude of the
20 Bureau of Indian Affairs? What was the direction that they
21 wanted you to go in identification with that old parallel,
22 Cowboys and Indians? The attitude of the Bureau of Indian
Affairs in that particular old ball game was that they wanted
Alaska Natives to think that they are special, and therefore
different from the Indian of the Lower 48.

23 Therein was the beginning, the germ that was set for
24 the orderly and "legal" takeover of the territory of Alaska and
25 hence, the State of Alaska. The IRA Act of 1934 purports to
identify the right of Alaska Native tribal governments to make

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1 for ourselves this Constitution and Bylaws. It goes on to state
 2 that as far as choice of governing body, at a general meeting
 3 following the acceptance of this Constitution, the village
 4 membership shall decide what kind of governing body it wishes to
 5 set up to speak and act for the village and to use the powers of
 6 the village.

7 You mentioned fish and game, as far as Natives are
 8 concerned there is no such thing as fish and game, it is all
 9 food. And as far as food is concerned; the location of our
 10 villages is prime evidence that we were concerned, number one,
 11 with the protection of that resource, that food, the renewable
 12 resources of our land and as such, the Constitution under the IRA
 13 Act recognizes that we have the power to deal with the federal
 14 and territorial governments on matters which interest the
 15 village, interest in land as the Act itself says. What is the
 16 Native interest in lands? Primarily subsistence resources. For
 17 Alaska's Natives, subsistence... I keep having to iterate this,
 18 subsistence is not a way of life, subsistence is life and
 19 anything done to regulate that is interference with our life and
 20 according to our Constitution that you wrote up and printed we
 21 have the right to protect that resource and be absent from any
 22 interference, not only by the federal government but also by any
 23 third party, including the State of Alaska.

18 MR. BERGER: Mary Miller.

19 MS. MILLER: I think that it is
 20 important for us to recognize where alliances are possible and to
 21 form these alliances and because of that, I am willing to listen
 22 and have a dialogue with people who have been invited to this
 23 panel. One thing that really concerns me as far as tribal
 24 governments are concerned, and our ability to govern ourselves,
 25 is that our people have to face the fundamental question of the
 continued existence of city governments, state-chartered
 municipalities in our communities. It's not working having a

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1 dual government, two of them. Especially if there are different
2 people who serve on both. There is one community in my region,
3 whose city government is the IRA government and whose IRA
4 government is the city government. I don't know if that works
5 but in that sense they have managed not to conflict with one
6 another, but that is not happening in the rest of the villages.

6 MR. BERGER: You mean there is
7 exactly the same people?

7 MS. MILLER: The exact same people
8 serve on both and on this point they are managing the situation.
9 But they don't know what the future will hold, as far as whether
10 that can continue. We are having difficulty facing this issue
11 but I think we have to do it. If we are talking about planning,
12 long-term planning for the governments of our people, we have to
13 face and contend with this phenomenon that we face right now in
14 our communities of having city governments and tribal
15 governments.

14 MR. BERGER: Thank you, Mary.
15 John Hope, you wanted to say something.

15 UNIDENTIFIED: (OFF MIKE)

16 MR. BERGER: Well, actually I
17 think coffee time has come and gone. So, it's all gone. Yes,
18 would you please.

18 MR. HOPE: Judge Berger and
19 members of the Commission. I think it's a fine commentary on
20 both the United States government and the tribes as still exist,
21 that after 200 years of formally addressing these problems, we
22 are still both here to address these problems.

22 (APPLAUSE)

23 MR. HOPE: I am not sure who is
24 going to be the survivor. I think when we talk about political
25 solutions and I think this is what this is going to end up, I
26 think that is the only way to solve these things. I think all of

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1 us have an ideal solution and I know we'll not reach that point.
2 As some of you might remember, John Collier was an activist who
3 really understood the Indian problem and he was attacking
4 government for its failure to meet responsibility and by chance
5 he became the Commissioner of Indian Affairs. He knew the
6 problems and he knew the solutions and he was not able to
7 engineer and get through all of the remedies that he sought, but
8 he did get the Indian Reorganization Act as we understand it, it
9 was a political process. He did get many of the things that he
10 thought were desirable and when you deal with a political
11 structure, you know that the end result is not going to be
12 perfect. It's going to be imperfect. We have experienced a few
13 years now under what was supposed to be an improvement. A lot of
14 people did not appreciate the Indian Reorganization Act and the
15 burdens of it, it carried with it. There are some people who are
16 still apprehensive of changing ANCSA into an IRA format. We have
17 had a chance to experience the flaws of ANCSA and when we address
18 them in forums such as these they come out and hopefully we can
19 craft a solution that will be meaningful to us, as Native
20 peoples, and the society, the greater society. As you know,
21 every once in awhile we get people who are on the other side of
22 the issue. We've seen that type sometimes dominate and usually
23 they come out because they want equality. I think there is an
24 association formed here in Anchorage, very recently, where it is
25 racial and their desire is to be equal. Usually...

MR. BERGER: Yes, an oppressed group of white, middle-class males. Everybody knows they are oppressed.

MR. HOPE: Right. Just a few days before that, you saw in the paper where the FBI were converging upon the same group on Whitbey Island. I mean, that type of mentality usually advances to the point where the FBI is chasing them. Our society usually controls these types of things and I

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1 am hopeful that the society will address these things. They look
2 at the instruments that were developed and they will examine and
3 Congress will begin to address these things. As far as ANCSA is
4 concerned, I think the Secretary of Interior had an obligation to
5 monitor the progress of that legislation and on an annual basis
6 was supposed to report to Congress what happened as a result of
7 that Act. So many things are obviously wrong, that he should
8 have had volumes and volumes going to Congress and we shouldn't
9 have had to wait until 1985 to seek remedies. I think on an
10 annual basis, the things that didn't happen as a result of the
11 legislation, Congress should have been dealing with that as it
12 occurred because some of the things were things that Congress and
13 only Congress could address. Personally, I am pleased that the
14 questions are being addressed from more than one forum. Your
15 forum has probably the most credibility. Hopefully, you didn't
16 have an answer before you saw what the problem was and hopefully
17 that will be how it is perceived. But I do believe that if
18 people who are looking for solutions and offering solutions, I
19 know there had been one offered and maybe three or four years
20 from now if we were all to embrace it, we would be all attacking
21 it and saying we had nothing to do with that and that is the way
22 it goes with these political solutions. Everyone of us, if we do
23 have a solution and I don't have a solution, I am just commenting
24 on the progress of what I perceive as happening. I think you
25 have to look back a little bit every now and then to see what
happened and I think a lot of us, maybe, if we were attacking the
Indian Reorganization Act legislation, do not realize that the
authors didn't get what they sought originally 100%, but they got
a large percentage of what they went for. When we look at these
things, when you look at the problems that were generated by
ANCSA, I think there are obvious solutions and I think they will
generate because people are discussing them with the idea of
correcting and I think if they do, if the United States continues

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1 that attitude it will really strengthen the United States because
2 we will still be around as a measure of their success. Thank you
3 very much.

4 MR. BERGER: Thank you, Mr. Hope.
5 Well, I think that the important thing is that... to explore all
6 of these avenues and I think if we keep talking we will find that
7 we've got clearer heads at the end of the week. We have to
8 vacate this place for Bingo at 4:30. So, I am going to adjourn
9 now but Rosita, David and I will be meeting overnight and we will
10 start again at 9:00 in the morning and thanks, all for coming
11 today and we will see you at 9:00 in the morning.

(HEARING ADJOURNS)

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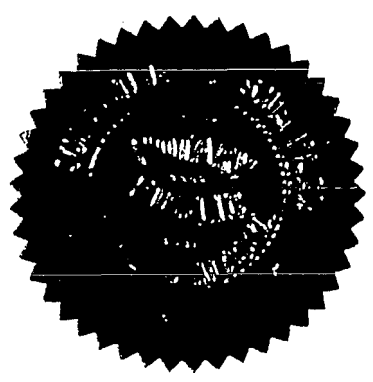
I, Sunshine V. Sheffler, Notary Public in and for the state of Alaska, residing in Anchorage, Alaska, and Certified electronic Court Reporter for Accu-Type Depositions, do hereby certify:

That the annexed and foregoing pages numbered 3 through 111 contain a full, true, correct, and verbatim transcript of hearing proceedings of the Alaska Native Review Commission, Governance, December 12, 1984, held at Anchorage, Alaska, as transcribed by me to the best of my knowledge and ability from cassette tapes provided for me by the Alaska Native Review Commission:

That the original transcript has been retained by me for the purpose of filing the same with Ms. Joyce Johnson, 429 "D" Street, Suite 317, Anchorage, Alaska, as required by law.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 15th day of April, 1985.



Sunshine V. Sheffler
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NOTARY PUBLIC IN AND FOR ALASKA
MY COMMISSION EXPIRES 8/07/88

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