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TRANSCRIPT OF PROCEEDINGS

ROUNDTABLE DISCUSSION

VOLUME XXV

ALTERNATE APPROACHES TO
NATIVE LAND AND GOVERNANCE

DECEMBER 13, 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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(DECEMBER 13, 1984)
(TAPE 4, SIDE A)

MR. BERGER: Well, good morning.

I have circulated revised agenda and I want to take a few minutes to discuss it with you. Before we do that, let me welcome the newcomers to the round table this morning. To David Case's right, Byron Mallot, President of Sealaska, and to David Getches' left, Browning Pipestem who is a practicing lawyer from Oklahoma, and next to Reed Chambers, on his left, Cindy Gilday of the Dene Nation, and here to Mary Miller's left, Tim Colter of the Indian Rights Law Center in Washington, D.C.

For the benefit of the newcomers and for my own benefit, maybe I could indicate where I think we have gotten to thus far and to say that I am grateful to the members of the Governor's Task Force for coming yesterday. They are holding their own hearings today, so they won't be with us. Let me just explain again that I was asked to undertake this job by the Inuit Circumpolar Conference and they asked me to review ANCSA, to hold hearings and to write a report. Well, we have been doing that now, for more than a year. There have been hearings in 52 villages and towns and there have been a number of these Roundtables and we are reaching the stage where this report has to be completed. Now, the message from the hearings, at which more than a thousand Alaska Natives have testified, seems to me straightforward and everybody in the State seems to be aware of it.

The paramount consideration is land. The people are worried, apprehensive that if there are no changes made to the Alaska Native Claims Settlement Act, they could after 1991 lose their land through corporate takeovers. They might even before 1991, or even afterward, lose it through corporate failures and in the 1990's after the period of 20 years immunity from taxation has expired, find that undeveloped lands are liable to taxation.

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1 That, of course, would depend on the condition of the State's
2 revenues in the 1990's, but I think you have to regard that as
3 something that has to be taken into account.

4 Now, people are concerned about the fact that children
5 born since 1971 don't participate in the settlement. They have
6 no right to be enrolled as shareholders; they make take shares in
7 the demise of their parents but not otherwise. There are many
8 complaints about the corporate structure itself, as being
9 complicated, out of keeping with Native traditions and so on.
10 Well, we've all heard about these things. But the paramount
11 question to which people keep returning is the question of the
12 land. They don't want to lose the land.

13 So, we had a Roundtable here last month and we talked
14 for three days about ways of insuring that the land remains in
15 Native hands and we discussed the possibility of restrictions on
16 the sale of shares after 1991, the possibility of issuing shares
17 to "new Natives", that is, the children born since 1971. On
18 considering the suggestion that is made many, many places that
19 the corporate structures are not a safe place to keep the land,
20 we looked at the possibility of transferring the land from the
21 corporations to some other entity and we looked at the land bank,
22 we looked at non-profit corporations, we looked at cooperatives
23 and we looked at IRA's. Now when you go into the villages, the
24 suggestion that is often made is that IRA governments or
25 traditional governments should be the places where the land
should be parked. That that's the safest place for the land and
so it should be transferred, many argue, from the corporations to
the tribal governments.

22 In Alaska we have IRA governments chartered under the
23 Indian Reorganization Act and we have traditional councils,
24 traditional governments that are based exclusively on inherent
25 Native sovereignty and do not have any explicate Federal
recognition under the Indian Reorganization Act. Well, why I

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1 thought we should meet now, at this round table, is to discuss
2 the question of tribal governments and how they would function in
3 Alaska if they were to become the repositories of ANCSA lands, of
4 ANCSA village lands and, conceivably as well, of certain regional
5 lands. It seems to me that this is an important question that
6 deserves to be considered on its own.

7 We have looked at the history of ANCSA, we have looked
8 at the Congressional record, we've considered the views of Native
9 leaders who were pressing for Land Claims in the late '60's and
10 early '70's, we've heard the views of people who worked in
11 Congress at the time and it seems to me that we should now be
12 looking at the future. What do people here in Alaska want to do
13 about their land and what measures do they want to take so that
14 they will have something to say about what happens on that land
15 and in their communities? Well, IRA's, traditional councils,
16 tribal governments, are not just places for parking land, they
17 are governments and that's what I wanted to talk about during
18 this Roundtable.

19 So, I have restructured our agenda and I've suggested
20 that we proceed in this way. I've asked... I thought that today
21 we could discuss the benefits of tribal government and the
22 barriers to tribal government and I asked Larry Aschenbrenner of
23 NARF if he would lead off by talking about a functioning tribal
24 government in the Lower 48. Specifically, the government of the
25 Navajo Nation. Then I have asked some Alaskans to talk about new
initiatives in tribal government in Alaska, and I have asked
Willie Kasayulie to talk about what the people have done in
Akiachak and what it is they are trying to do, what they envision
by way of tribal government in the future. I am going to ask
Spud Williams to talk about the initiatives taken in his region
when he returns and I'm going to ask Mary Miller of Bering
Straits to talk about this subject too, because it is one that
she has studied and written about. I hope that as each of you

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1 expresses your views that all of us can join in in an orderly way
2 and ask questions and make comments so that we will have a true
3 roundtable discussion. These names that I have got down here I
4 put down because I wanted to have something on the agenda that we
5 can pursue. I thought we might spend some time also talking
6 about tribal courts and I hope that Browning Pipestem will lead
7 that discussion for us and we will also ask Ralph Johnson to say
8 something on that subject. Then I thought we could ask the
9 people from other countries to mention the steps taken in the
10 field of self-government where they come from: Cindy Gilday from
11 the Dene Nation, Peter Jull could tell us about Nunavut,
12 Frederick Harhoff could tell us about Greenland Home Rule and Ted
13 Chamberlin, who has just returned from six months in Australia,
14 could tell us about developments there.

15 And then tomorrow... by the way, I hope that we can
16 talk about whether land, if it is going to be held by tribal
17 governments, should be held in trust or in fee. I hope we can
18 talk about the whole question of supervision by the Interior
19 Department and the BIA. I hope we can talk about State funding
20 and the barriers to State funding; are they legal and
21 constitutional barriers or are they simply barriers that exist in
22 people's heads and I thought we could talk about the tax question
23 as well. Then tomorrow, I thought that everybody was inclined
24 yesterday to dismiss State chartered governments, but before they
25 are trashed I hope that we can return to them and see what uses
they may have for Alaska Natives. I hope that we can talk a
little bit about the North Slope Borough, about the Kativik
regional government in Northern Quebec and perhaps about
Greenland as well and about other developments here in the State
of Alaska.

Then tomorrow afternoon, perhaps we could talk about
the relationship between Native governments. That says IRA
corporations, I meant ANCSA corporations. I don't know how it

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1 came out IRA but... it seems to me that in any future that you
2 can devise for Alaska Natives, you are going to have ANCSA
3 corporations. They are the most visible institution established
4 under ANCSA, they control a great deal of wealth in the state,
5 they employ many people, Native people and non-Natives, and I
6 think that they are part of any conceivable future regime. So,
7 what is the relationship going to be between Native governments
8 and ANCSA corporations? How will land be made available for
9 economic development and what about the subsurface estate? I
10 always bring up the question of the division of the estate
11 between the surface and the subsurface and I never seem to get
12 anywhere with it. But if people want to address that tomorrow, I
13 hope they will feel free to do so.

14 Then on Saturday, I hope that all of you will feel free
15 to tell me what you think I should say in my report. Yesterday
16 there was some consternation about the fact that I had brought
17 experts here and let me just tell you why I have done that. I
18 have held the hearings in the bush, I think that we only have
19 Bristol Bay to go back to and we are going to Bethel. But these
20 hearings will be completed early in the new year and I have to
21 write a report. Now, I don't want to closet myself with
22 Wilkinson and Johnson and Coulter and all of these, and Chambers
23 and Getches and Case, all these people who have written the book
24 on Federal Indian Law and Alaskan Native Law. I don't want to go
25 into a room and spend time with them hearing their views in
private. I wanted them here to say what they've got to say in
public and so that those of you representing the Native
community, whom I've invited here, could object to what they say
or say that that's just completely out of keeping with what the
people here want. So, that is why I have tried to assemble this
motley group and I hope that in the end, and I repeat this, it's
all very well as some of you did yesterday, to talk about
repealing ANCSA, but ANCSA is there. It seems to me that the

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1 objective ought to be to combine the best features of ANCSA, and
2 I mentioned some of them yesterday, with the advantages of self-
3 rule or self-determination or sovereignty or whatever you want to
4 call it. That's the approach I'm taking and I hope... I think it
5 truly reflects what people have told me at the hearings and I
6 hope that it is one that in the end will commend itself to Alaska
7 Natives and to other Alaskans and other people in the United
8 States. So, having said that, maybe we could start off and I
9 could ask Lawrence Aschenbrenner to just tell us about a
10 functioning tribal government in the Lower 48.

11 MR. ASCHENBRENNER: What may seem
12 perfectly clear to those of us that have practiced Indian law in
13 the Lower 48, may not be that obvious to those in Alaska or
14 Canada, and that is that there is enormous disparity in the
15 practical exercise of tribal government in the Lower 48. It
16 ranges from the Navajo tribe, the largest tribe in the Lower 48
17 with the biggest territorial area, about the size of West
18 Virginia, the largest population, about 160,000, which exercises,
19 practically speaking, more governmental power than any other
20 tribe in the Lower 48, down to some tiny tribes; like for
21 example, the Tunica Biloxi in Louisiana with approximately 200
22 members and it has exercised a very small amount of governmental
23 power, but is still recognized by the United States as a tribal
24 power.

25 Let's just look at the Navajo tribe for a moment and
just see what it does exercise. The Navajo tribe has 16
departments or divisions of government. It has a police
department, with countless numbers of policemen, it has a fire
department, it has a mineral resources department, it has a power
company, it has a phone company, it has a television company, it
has a department of education, forestry, education, welfare,
human resources, it has a transportation department for roads, it
runs a bus company, it has an air force and has a new justice

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1 department which I worked for for the last two years with 26
2 lawyers. More lawyers than the state of New Mexico has in its
3 Attorney General's office and probably as many or more than Utah
4 has, but I don't know the statistics on Arizona.

5 The Navajo Nation covers a part of Arizona, Utah and
6 New Mexico. It includes a number of counties in those three
7 states. It dwarfs the exercise of self-government power of those
8 counties. If you want to run for a powerful office down in those
9 three states, you run for chairman of the Navajo tribe or you run
10 for councilman on the Navajo tribe, you don't run for county
11 commissioner, that's a second rate office if you get right down
12 to it down there. So, the Navajo tribe exercises and actually
13 conducts itself very similar to a state does, far more similar to
14 a state than to a county, and enters into agreements with the
15 cities that border the reservation, with respect to water rights,
16 enters into agreements with the state.

17 The Chairman, Pete Zah, recently held a meeting there
18 in Windowrock, the capital of the Navajo Nation, with the
19 governors of the three states. The governors came to Windowrock,
20 he didn't go to Phoenix or Santa Fe or Salt Lake, they came to
21 Windowrock and they entered into an agreement that said that,
22 "Look, we've been suing each other regularly for all these years,
23 let's try to get along. So, before one of the four of us decides
24 to sue the other, let's give the other person adequate notice and
25 see if we can't settle it before we sue." Rather a simple
agreement, basically a little thing that you'd think they had
done years ago, but it has worked for the last year. Nobody has
sued anybody until they have given prior notice. The Chairman of
the tribe has entered into similar agreements with the counties
and cities, some of them, surrounding the area. There you then
have the Navajo Nation.

Now, I've also... when I worked for NARF in the Lower
48, worked for some of the littlest tribes. I mentioned the

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1 Tunica Biloxis which has about 132 acres of land down in up-state
2 Louisiana in Cajun country, that was a forgotten tribe that
3 DeSoto discovered back in 1541. Which is, they claim, the oldest
4 continuous recognized tribe, the one that was discovered first by
5 the Europeans of any tribe in North America, that is still
6 continuously in existence, now that is the Tunica Biloxi's claim
7 to fame. And historically speaking, the Tunica Biloxis, despite
8 the fact they're 450 years old or 443 years old from the time of
9 European discovery and had been forgotten for all those years,
10 and despite the fact that they were the most powerful tribe, at
11 the time that DeSota was there of any tribe in the Southwest and
12 now had dwindled down to a couple of hundred members, continued
13 to exercise some governmental powers. They continued to decide
14 how their 132 acres of land would be used, whether it would be
15 leased out or which members of the tribe would be on the
16 homesite, they dealt with the local city of Marksville, the chief
17 did, and the chief kept peace on that little piece of land
18 through all these years. That was about the extent of exercise
19 of governmental powers, up until three or four years ago when
20 they were formally recognized by the United States government and
21 the argument was used by some, "Well, they didn't exercise enough
22 tribal powers to still be considered even a tribe." Well, the
23 Department of Interior rejected that out of hand and said they
24 did exercise enough tribal powers and were a tribe and were
25 formally recognized, and this was very recently and that ought to
speak somewhat to the dwindling powers of some of the villages
and the practical exercise of that.

So, as we all know or maybe as you don't all know, the
range of the practical exercise of governmental powers ranges all
the way then from the Tunikabuluks to the Navajo tribe and there
is every other stage of development in between. If you want to
generalize, and I am willing to be challenged on this, but I
think generally speaking the smaller the tribe, the less power

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1 they actually practically exercise. I think theoretically, every
2 tribe in the United States has with minor exceptions resulting
3 from treaty provisions or particular states, with minor
4 exceptions every tribe in the United States has a theoretical
5 power to exercise all of the powers of the Navajo Nation. As a
6 practical matter they don't do it, they couldn't do it if they
7 wanted to, if you've only got 200 members you can't have 16
8 departments and hundreds of subdivisions and so on. But they
9 have those powers.

10 So, just having compared the two briefly, there is just
11 a couple points I would make. I thought somebody said yesterday,
12 I think it was David Case, but somebody said that we don't need a
13 global solution and I think that's a good point to remember.
14 That as a practical matter, although it might be nice
15 theoretically to have all the power of the Navajo Nation at your
16 command, that you could theoretically exercise, as a practical
17 matter it is totally unnecessary and unwanted and unneeded to
18 conduct the affairs of a very small tribe and to live amicably
19 with their neighboring governments. They simply do not need that
20 power and are happy without it. Secondly, you don't need a
21 global solution because states, as well as the federal
22 government, have countless times passed laws with respect to
23 individual tribes, tiny little tribes and huge tribes, states as
24 well as the federal government have done that. New York has got
25 a whole book of its code, it happens to be Volume 25, the same as
the number on the Federal code, that they owe solely with New
York Indians and in that they have separate chapters for the
individual tribes in New York. So, they have treated with them
and they have dealt with them separately and distinctly as
tribes, just as the Federal government can do. So, it's good to
remember that you don't have to put all the Natives in Alaska,
unless you want to, in the same bucket and have a law applicable
to all. It's just not necessary, there is loads of precedent for

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1 Congress doing otherwise.

2 I think... the last point I would make is that at least
3 in the Southwest, where I spent the last two years, there is far
4 more agreement and a spirit of cooperation between, at least the
5 Navajo tribe and I suspect some of the other larger tribes down
6 there, but at least with respect to the Navajo tribe and the
7 states and the counties and the cities surrounding them; they are
8 far more willing to talk about negotiating jurisdictional powers.
9 Who has the power to arrest, for example, drivers on highways
10 going from Windowrock to Gallop? They enter into negotiations
11 with the state and the counties to work out those things and
12 there is a willingness to, not only negotiate on jurisdictional
13 powers, but with respect to water rights. The Federal government
14 and the state of Arizona and the Ak Chin tribe and the Department
15 of the Interior recently entered into an agreement which became
16 law which divided up the water rights down there amongst the
17 state and the city and the tribe, which was ultimately agreed to
18 by all. So, when the State of Alaska or some its officials,
19 occasionally seemed to reject or in the past have seem to reject
20 the idea that they can't negotiate or enter into contractual
21 arrangements with tribes, I suggest they look to some other
22 states where it is being done and changing the atmosphere. A
23 formally pretty racist atmosphere sometimes, into a greater
24 spirit of cooperation. Thank you.

19 MR. BERGER: Could I ask you a
20 couple of questions, Larry? The Navajo tribal government, is
21 that an IRA government or is it a traditional government, or what
22 is it?

22 MR. ASCHENBRENNER: No, that is a
23 traditional government. The Navajo tribe rejected the IRA,
24 refused to adopt a Constitution, it doesn't have a Constitution
25 to this day. They simply exercise the power, that's their
inherent power, and started passing laws and they have a set of

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1 code books. It has about 9 volumes now and once we ever get it
2 recodified, it may be 20 volumes. But they do not have a
3 Constitution and they are not an IRA.

4 MR. BERGER: You say that they
5 don't have a Constitution under the Indian Reorganization Act?

6 MR. ASCHENBRENNER: Or any other
7 Constitution. They simply do not have a Constitution, which
8 means that the tribal council, just like a parliament I assume,
9 has the absolute ultimate power.

10 MR. BERGER: Rosita?

11 MS. WORL: Larry, I will have two
12 questions. Could you tell us how the Navajo Nation generates
13 revenues? And then secondly, a major concern that we have had up
14 here is BIA oversight; could you tell us how that effects their
15 resource development?

16 MR. ASCHENBRENNER: Well, they get
17 most of their revenue from oil and gas and coal leases, plus
18 governmental assistance from the Federal government. They hope
19 to shortly start implementing their tax program which is in place
20 and ready to start, as of next year we'll be ready, except the
21 Supreme Court accepted the cert. (certiorari) on this case and
22 it's still up in the air whether they will actually be able to
23 implement it that soon. What was the next question?

24 MS. WORL: BIA oversight.

25 MR. ASCHENBRENNER: Well, you
can't answer that so simply. The BIA, up until very recent
years, is the one that negotiated and handled all these leases.
Which a lot of them were bad leases, a vast majority of them,
they did a terrible job in negotiating the royalties and other
provisions and to the disadvantage of the tribe. Now, the tribe
has its own mineral department and when these come up for renewal
or if we are able to cancel them, the tribe is doing a lot better
job then the BIA did. In other words, the tribe has just kind of

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1 taken over the leasing and control of its own land and what has
2 turned out to be a practical matter, maybe to really answer your
3 question, is that now the BIA rubber stamps the deals that the
4 tribe's negotiating team negotiates because the tribe has more
5 expertise, more actual... we have civil engineers, petroleum
6 engineers, hydralogists, economists, mineral economists, on the
7 staff. So, we have more expertise than the BIA does in the field
8 of mineral development. So, actually they just simply rubber
stamp our deals, although we have to have their approval, it's a
minor detail...

9 MR. BERGER: You say that you have
10 to have their approval. So, the BIA oversight applies equally to
traditional governments, as well as to IRA's.

11 MR. ASCHENBRENNER: Right. That's
12 because of the Indian Non-Intercourse Act of 1790, which says
13 that you've got to have Congressional approval if any tribe,
14 whether they are IRA or not, is going to give away an interest in
15 land, which a lease is. So, Congress has said; the only way you
16 can lease land is to get the approval of the Secretary, he
delegates it to the Superintendent down there and so somebody has
to sign off.

17 MR. BERGER: Go ahead, Rosita.

18 MS. WORL: With the oil and gas
19 development, who handles it? Is it the tribal government that
handles it or do they form a corporation?

20 MR. ASCHENBRENNER: No, the tribe
21 handles it itself. Now, the tribe is considering turning it over
22 to a tribal enterprise which would be a... have a connection with
23 the tribe and be ultimately responsible to the tribe, but it
24 wouldn't be just like a tribal department. Right now it is
25 handled by a tribal department.

MR. BERGER: So, if you turned it
over or if the Navajo tribal government turned over the

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1 exploitation of a particular resource to a tribal enterprise;
2 would that be more or less the equivalent of an IRA corporation,
3 a membership corporation?

4 MR. ASCHENBRENNER: I think, yes.
5 I think it would be very similar. See, the tribe has the Navajo
6 tribal utility authority, which is a tribal enterprise which runs
7 the power lines, the power company. That's a separate
8 corporation, has its own books, charges customers. It is an
9 independent entity chartered by the Navajo tribe.

10 MR. BERGER: Can it be sued? Can
11 its assets be seized or does it claim sovereign immunity from
12 suit and attachment, just as the tribal government would?

13 MR. ASCHENBRENNER: I can't answer
14 that question. They had separate attorneys handling that and I
15 just can't... maybe some of the other experts here can.

16 MR. PIPESTEM: You cannot the
17 seize the assets because they are the assets of the Navajo tribe.

18 MR. BERGER: I see. Maybe I could
19 ask a dumb question.

20 MR. PIPESTEM: Let me clarify
21 that, just one point. The tribal enterprises that are created
22 are there, are particular subject matter of the tribe. For
23 instance, the forest that is owned by the tribe is a tribal
24 chartered corporation, so to speak, called the Navajo Forest
25 Product Industries, which the forest is placed in its hands and
it has a management board that oversees that resource for the
Navajo tribe. The creation of the utilities and water and sewer
and electricity and things of that nature, was then given over to
another group that Mr. Aschenbrenner was speaking of called the
Navajo Tribal Utility Authority. Now, the vitality of those
organizations depends for its source upon the delegation of power
from the Navajo tribe. So, it's still the Navajo tribe's forest,
it is still the Navajo tribe's land, it's still the Navajo

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1 tribe's utilities and they have done that in a myriad of
2 circumstances. At one point, there was a Navajo air force, I
3 mean it's called the Navajo Aviation Authority. The building of
4 homes, there was a group for that. Just every single subject
5 matter... the Navajo tribal council functions as a government so
6 that it's form of splitting off business activities and making a
7 more efficient operation is to give subject matter jurisdiction,
8 so to speak, over various things that the tribe owns to different
9 tribally chartered corporations is what that boils down.

8 MR. BERGER: Reed Chambers.

9 MR. CHAMBERS: I thought I might
10 mention that, there is no reason though that a tribe cannot
11 create an enterprise that could be sued or that would not have
12 immunity. I mean, some tribes have done that. At Fort Peck, for
13 example. The Fort Peck tribe has a tribal corporation chartered
14 like Browning Pipestem is saying, by the tribe not by the state.
15 That actually now is the largest industrial employer in the State
16 of Montana, with the copper industry going bust there. Why there
17 are 300 members of the Fort Peck tribe that work in an industry
18 there that mainly produces defense contracts. Now, that's a
19 tribally chartered corporation, it's called the Assiniboine and
20 Sioux Tribal Industries. Now, that business can be sued like
21 other businesses. It has assets that could be attached, it tends
22 to be a successful business.

23 One problem some tribes have had in setting up these
24 separate business entities, which may be of interest to you or
25 you may want to explore further, is that unless you set up some
structure that is separate from the tribal government body you do
tend to get a situation that has tribal politics intervening in
it some. For example, one tribe, and without going into
specifics about it, that we represented, ran a grocery business
for awhile, a supermarket kind of business. That tended not to
work after awhile because the people running the business were

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1 really basically, I mean the tribal council would intervene with
2 them about who they hire, who they would give credit to, put
3 pressure on them to give credit to people that ended up not
4 repaying and the business ended up ultimately not being able to
make a profit and just ceased. They stopped doing it, failed.

5 One thing to give some thought to in structuring
6 business, I think it is different when you are structuring...
7 essentially the Navajo thing is somewhat like government
8 agencies, where they are using tribal assets, like the tribal
9 forest or the tribal minerals or something like that. You do
10 have to give some thought to separating the political running of
11 the tribe, the governmental aspects of the tribe from the
12 proprietary aspects. Some tribes have done that under the Indian
13 Reorganization Act by setting up business charters, but not too
14 many, but setting up separate business corporations and having
15 some assets for those. As I say, at Fort Peck they have done it
16 by just chartering a separate corporation. The tribe as a
17 sovereign charters the corporation, the tribe owns it but the
18 assets of the corporation can be attached or subject to suit. It
19 can make contracts, be sued and sue, and so on.

20 MR. BERGER: Sheldon and Charlie
21 have some questions too, but let me just pursue this for a
22 moment, if I may. What about the business that Larry
23 Aschenbrenner mentioned, that the Navajo Nation makes contracts
24 with the state governments surrounding the Navajo Nation. Is
25 that...

MR. CHAMBERS: All large tribes do
that, Tom. I mean, I think Larry is right, that the Navajo tribe
because it is larger and tends to have a larger organization
apparatus, may do it more. For example, we are just in the
process at Fort Peck in negotiating exactly that kind of an
agreement with the State of Montana about picking up drivers,
arresting drivers on the highways. If they are Indians the tribe

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1 does it and something happens to the Montana drivers license, if
2 there are certain kinds of offenses and it goes to tribal court
3 and if they are non-Indians then the state does it. If a, you
4 know, a tribal police officer gets cross-deputized to pick up a
5 non-Indian, he ultimately ends up taking the license and taking
6 it into state court and issuing the citation for the state court.
7 If a state officer picks up an Indian, why he ends up issuing the
8 citation to tribal court. So, that all over the country Indian
9 tribes are making agreements with state jurisdictions all the
10 time like this. They have to, I mean they can't function
11 otherwise.

12 MR. BERGER: Sheldon.

13 MR. KATCHATAG: I have a question
14 regarding... you mentioned something about a taxing program of
15 these tribal governments down there. These are all related to
16 tax: What kind of tax program are they implementing? Are they
17 taxing industries such as oil and gas? Do they tax property, and
18 if so, whose? Do they have a sales tax or do they have an income
19 tax?

20 MR. ASCHENBRENNER: Right now
21 they've got two taxes, what is called a possessory interest tax
22 which just effects the oil and coal companies, and uranium
23 companies if they were still in business. There is also a
24 business activity tax, which again only effects people, I think,
25 that have a gross income of over a quarter of million, or
something like that, a year. So, it effectively eliminates every
other business on the reservation except the coal and oil
companies. There is talk of perhaps implementing some other
taxes, but I don't think they are seriously considering a sales
tax because they don't... at the moment. But those are the only
two in place.

MR. KATCHATAG: Also, over and
above this, are they required to pay state and federal income

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1 tax?

2 MR. ASCHENBRENNER: Individual
3 members of the tribe are not required federal income tax for...
4 I am going to defer the answer to that question because there is
5 other people who know more about taxes than I do. Let's let
6 somebody else answer that.

7 MR. KATCHATAG: One last question.
8 It seems to me that the Navajo Nation seems to be well on their
9 way towards self-determination. You mentioned 16 departments of
10 their government, covering everything from police and fire
11 departments all the way to education. Now, my question is, in
12 1971, was in fact, the Navajo Nation functioning like this, and
13 if so, why was that not brought to the attention of those people
14 negotiating ANCSA.

15 MR. ASCHENBRENNER: I would say
16 that the answer is essentially that it was. The Navajo tribe, it
17 was essentially the same as it is now, there is some improvement
18 but essentially the same.

19 MR. BERGER: Browning Pipestem,
20 did you want to add something about this taxation question?

21 MR. PIPESTEM: Let me add
22 something from a slightly different perspective. I'm from
23 Oklahoma and my firm represents several Indian tribes in the
24 state and in my view there are no little Indian tribes. There is
25 Indian tribes and there is Indian tribes and the nature of what
they function and what they choose to do as a people, it really
becomes an affair of the heart first. They must decide where
they stand with respect to things because the exercise of what's
being bandied about of tribal self-government or sovereignty, or
whatever, becomes a function of the heart. Then it becomes a
function of what can we realistically do and what kind of things
that we can handle.

Now, let me give you the example... and what I always

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1 think is interesting is, every time we have an example, we have
2 an example of the Navajo tribe. Now, I worked for the Navajo
3 tribe in the development area back in the '70's, but let me give
4 you the example of the Sachenfox (sp) Nation in Oklahoma which is
5 probably a whole lot more applicable to what I see of people here
6 in Alaska. I feel a certain kindred to the Alaskans because
7 there is also, at the same time that there was an Alaska Native
8 Welfare Act there was an Oklahoma Indian Welfare Act, and what I
9 think is interesting about that, is that there are no Oklahoma
10 Indians. That became a special designation to denote a fifth
11 class, kind of a legal status, of those tribes and over the years
12 the fifth class legal status resulted in certain assumptions
13 about those tribes, about how... well, just plain bluntly, about
14 how sorry and little and scroungy that they were. That they were
15 nobody and that they were going to be treated as nobody and the
16 functioning nature of that has, I guess I could report to you,
17 has changed significantly.

18 Now, the Sachenfox tribe is a tribe of about 2,000
19 people. They have a limited amount of land and about three years
20 ago they decided that they were going to function as a government
21 rather than a social services provider type activity, like a non-
22 profit corporation. Since that time, they have passed what they
23 call the General Revenue and Taxation Act of 1982, which to my
24 understanding, the Navajo tribe has never collected a dollar nor
25 have they spent a dollar on their oil and gas severance tax. I
can report to you that the Sachenfox tribe has collected and
spent the oil and gas severance taxes that they have collected.
They have 11 different taxes that range from motor vehicles to
sales tax, to taxes on cigarettes, to a tax on bingo.

(TAPE 4, SIDE B)

MR. PIPESTEM: I don't know
whether they have bingo in Alaska, one of the largest money
makers for Indian tribes in the Lower 48 is bingo. Indian bingo

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1 is successful simply because of the nature of the jurisdiction
2 and the tribes prescribe for larger prizes and people come in
3 droves. The tribe of which I am a member has the largest single
4 bingo operation in the world. It has a bingo hall that seats
5 7,000 people. There has been several millions of dollar that
6 have run through that. People fly in, they have a busing system
7 from several states, you know, you can talk about little tribes
8 if you want to. Little is a function of the heart. Now, you can
9 be little or you can be nobody but the nature of the power to say
10 that a people have the similar powers to the Navajo tribe who
11 have millions of acres of land and a tribe who is limited in what
12 it has, that is happy with that, I think I have problems with
13 that understanding.

14 Now, the Sachenfox have limited land holdings. I do
15 not think that is going to continue to exist. They are in the
16 process of purchasing land and quite simply, I would say to you
17 that what we have in Alaska, as best I can understand, is a
18 circumstance where some entity other than the government actually
19 has control of the land. The Sachenfox tribe has an aggressive
20 land acquisition program which is an investment in tribal
21 government because the tribe's laws continue to apply to those
22 properties, as they acquire them. It is going to be
23 interesting... now, there are a number of Indian tribes in
24 Oklahoma that have undertaken in the last several years to say
25 that they are governments, that they intend to function as
governments, there will be whole number of tribal taxes. The
court just ruled in our favor recently, on license tags that were
issued by the Sachenfox tribe to people who are domiciled in, and
are subject to, the tribe's jurisdiction. They drive automobiles
with tags from the Sachenfox tribe. Now, there are people who
laugh and they think that that's funny and you really need to
decide where you stand on that. Whether you see that as a
function of governmental authority or if the Sachenfox just got

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1 out of hand and bought up from Wheaties whatever was left of
2 those little tags kids use to put on the back tricycle.
3 Sachenfox take themselves very seriously.

4 They have begun to negotiate various kinds of
5 agreements where there are Indian housing projects. They have
6 just offered to the county, a substantial amount of money to pave
7 the road because the road runs along and when it gets to the
8 Indian owned properties, it turns into a wash board. Sachenfox
9 tribe have said, there is no sense in us investing in a whole
10 series of graders and road equipment; why don't we just give
11 money to the county that we have collected from our tax money so
12 that they can maintain the road and it has produced an
13 interesting situation, where nobody knows whether they can enter
14 into a contract with an Indian tribe. You can enter into a
15 contract with any little guy walking around the town, but you
16 can't enter into one with an Indian tribe and I think that will
17 probably be resolved here shortly.

18 I would just offer the experience of the Sachenfox
19 tribe, which is a smaller tribe in terms of numbers and in terms
20 of property, but is a much bigger tribe and I will lay down the
21 Sachenfox's laws, the Sachenfox's attitudes and the position
22 where they moved from, to a government with anybody or any tribe
23 in the United States. They see themselves in those terms, they
24 see themselves as a government, they measure off what they do
25 what they do as a government, in terms of actions that they take.
Everything that they view now, becomes a function of law, a
function of law, a function of law. Rather than a function of
writing a proposal or writing a resolution to somebody. Let me
tell you that I think that one of the good answers and a question
and a reason for the taxation, is that there is a balance sheet
to the exercise of sovereignty. It does you no good to exercise
sovereignty, if what it does is you don't have the money to
function. When we get to the tribal courts, I think I can

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1 probably give some indication as to that. It is important for
2 tribal governments to have basic monies.

3 Now, the tribes that have forests, coal, oil and gas
4 and all those things, they don't have those problems. But for
5 people who are in a more limited resource circumstance, they have
6 to be, I think, a little more thoughtful about the directions
7 that they go and the things that they can collect. So, just on
8 the tax, let me limit that. The Sachenfox tribe collects 11
9 different kinds of taxes, they have sale tax, they have tax on
10 tobacco, they have a tax on bingo. In fact, they have a 45%
11 surcharge on bingo games. They do not run the bingo game. I
12 mean, as a government they have chosen not to operate the bingo
13 game. They passed the bingo laws of the Sachenfox tribe and if
14 you want to run a bingo game, you come and get a license. All
15 they are interested in is the revenue. They are not interested
16 in running the bingo game. On Monday... and there is certain
17 kind of tax benefits, by the way, that they have structured that
18 flow to the bingo operator.

19 So that... I would offer to you the experience of the
20 Sachenfox. Now beginning next year, the amount of tax money that
21 they have selected, and the reason I say there is a balance sheet
22 to sovereignty, over all of these years the Sachenfox tribe has
23 maintained their governmental functions out of the revenues that
24 they receive from oil and gas and other kinds of claims money and
25 the interest off of their monies. They never collected one
single dollar in taxes, their services were limited because they
didn't have the resources. Next year, I think, that they will
begin to fund their entire government, not out of their claims
money, not out of their income from their properties, but out of
the tax monies that they have collected. So, I would offer the
Sachenfox as, one of these little bity scroungey Indian tribes,
who I would say is bigger in heart and bigger in direction and is
organized to the direction that they intend to go as a part of

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1 this, as tribal government.

2 MR. BERGER: You said that they
3 were going to buy land and you said that that land would be under
4 the jurisdiction of the tribal government. When they buy land,
5 do they place it in trust with the Secretary or do they hold it
6 in fee or what?

7 MR. PIPESTEM: They place all of
8 their land in trust. They have bought several tracks. Within
9 the last year they bought several tracks which have been placed
10 into trust. They intend to buy more and more tracks of land
11 within what was, you know, their traditional area of operation.
12 I don't think they have set a total goal on how much property
13 that they intend to acquire but they are beginning to look for
14 lands that are strategically developed... situated for economic
15 development, which are attractive for various kinds of reasons.

16 MR. BERGER: What about the
17 question of BIA oversight? In 1971, many Native leaders in
18 Alaska rejected the idea of tribal governments because they were
19 under the thumb of the BIA and that was one of the marks against
20 them. What happens with the Sachenfox and the BIA?

21 MR. PIPESTEM: Let me give you
22 just about two minutes worth of history on that. I have served
23 on the tribal council most of my adult life. The time that I was
24 on that tribal council, although I am no longer a member, is the
25 evolution of the role of the Bureau and I think that Reed and
some of these others that have a day to day operation with
tribes, that the Bureau of Indian Affairs use to be a significant
resource to tribes in their development efforts. I think that
most of the more organized and more able tribes have now in fact
moved beyond what resources that the Bureau of Indian Affairs in
technical areas. Such as in the formation of laws, the
jurisdiction of the tribe, the courts. Many of the functions of
the tribe... I think the tribes are actually beyond the resources

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1 of a technical nature, that the Bureau of Indian Affairs has to
2 offer. So, that role, I think, is largely in evolution as the
3 tribe grows, as a more powerful entity.

4 I remember we use to meet in a building where the
5 ceiling was about five times this high and had a little gas stove
6 on one end and people use to come out and try to talk us into
7 doing something, and we wouldn't be talked into it. If you were
8 on the tribal council long enough, you got to lease the tribal
9 land one time anyway. That went in two years, to people
10 administering several million dollars worth of programs, but it
11 still was a program agency. The people were looking for Federal
12 dollars and other kinds of dollars to run programs, it was not a
13 government. It didn't see itself as a government, it saw itself
14 as a money hustler, and all states function that way too. The
15 states mix the monies that they can receive from whatever sources
16 and I think that that's the direction...

17 Let me give you an example of that, the State of
18 Oklahoma, and I think one of the problems in the
19 intergovernmental relations has been what states are going to
20 view the Indian tribes as being, because in a sense sometimes
21 they are competitors for jurisdiction directly. We've had an in
22 and out kind of... let me give you an example, Oklahoma law says
23 that an Indian tribal organization can get a tax exempt tag for
24 \$5.00. Now that doesn't sound so bad, does it? Then there is a
25 comma, it says; however, this will never serve to recognize them
as a governmental entity of any kind, for any reason, for
whatever purpose. Yet the nature of the relationship between the
tribes of the United States is one of a government to a
government and I really think that what Mr. Aschenbrenner is
describing is a growing up of the relationships between the tribe
and the states to define that relationship of, not as a bunch of
Indians who belong to the Elks club and happen to own some money,
and there is some kind of a weird corporation traveling around

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1 out there. In their case they own a lot of land, but as one
2 where the Arizona government becomes a recognition between the
3 Navajo tribal government and the state governments. They have
4 legitimate reasons to deal as governments. I think that that's
5 the evolution of all of the relationships that I see developing
6 between the tribes and the states, is to put that test. That we
7 are dealing one government to another government and I think it
8 very easily solves the conceptual basis from which the state and
9 the tribe operate with each other. I don't know whether I have
10 responded or not.

11 MR. KATCHATAG: One question I
12 have, I am glad you brought up weird corporations. In 1971, as
13 times had it, I was over in Okinawa at the time; I was in the
14 Marine Corp, so I had no connection whatsoever with what was
15 going on up here in Alaska with regard to ANCSA. When I left, it
16 was still in the works and I thought it was a good thing.
17 Anyway, getting back to corporations. Did it ever enter into
18 anybody's mind, the possibility of using IRA corporations? These
19 are Federally chartered corporations designed to go do business,
20 not only across the state but across the nation. If you believe
21 everything you are suppose to read, supposedly these have the
22 ability to work and do business world-wide.

23 MR. BERGER: Could I just answer
24 that? We had a lot of folks here in March to talk about that
25 Sheldon and I can summarize what I got out of it. The leading
figure in the Senate when it came to ANCSA was the late Senator
Henry Jackson and he made it clear to Native leaders from Alaska,
or at least his people did, his staff and so forth, that they
were simply not willing to consider turning over all this money
and all this land to tribal governments, IRA councils,
traditional councils. So, Alaska Native leaders who were not
greatly enamored of tribal government anyway, in some parts of
Alaska it had a bad reputation, that is IRA governments. They

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1 felt they couldn't press the issue. I think that I'd like to
2 leave it at that, because otherwise we go back into this history
and never get out of it. Browning and then David.

3 MR. PIPESTEM: The question I
4 think he asked me directly is on the oversight. The Sachenfox
5 Constitution does not contain any approvals by the Secretary of
6 the Interior for the approval of their laws. We have a law suit
7 going now with one oil company who has maintained, and I guess
8 the Supreme Court will tell us, that they are not going to pay
9 their part of the oil and gas severance tax, not because the
10 tribe doesn't have the power to impose it, but because the
11 Secretary of the Interior didn't approve it. Even though the
12 tribe's Constitution... and we have a letter from the Secretary
13 that says he doesn't have any power to approve it, so a lot of
14 times the oversight by the United States on matters other than
relating to trust property and income, in the governmental area,
comes by virtue of the fact that the tribe has placed the
approval powers in its Constitution over parts of its authority.

15 Now, the United States has independent authority with
16 respect to the tribes trust property and income and things of
17 that nature. So, to simplify that I guess, the Bureau of Indian
18 Affairs approves leases, they approve various kinds of... the
19 tribe has income that comes into what is called IM accounts, they
20 have to approve disbursements of those to the tribe. But I would
21 not say that any tribe has found that so onerous that they can't
22 deal with it. It rubs from time to time, you know, the approval
23 by the United States of various activities, but I would not
24 say... that becomes a function of the nature of the relationship
between the two. I think in practical terms, that most of the
tribes have worked out a way of handling that. In other words, I
don't think that in its present form, that it has stunted the
growth of the Sachenfox tribe.

25 I gave you an interesting application of that. The

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1 Sachenfox Constitution says that they have all power to transact
 2 whatever business and to act in all matters in which the tribe is
 3 empowered to act. The courts have said, that means that they can
 4 tax non-Indians, they can do all kinds of things. But the Bureau
 5 of Indian Affairs has taken the position that they can't hire a
 6 lawyer under that authority. Which I think is kind of cute. You
 7 can tax people, you can issue motor vehicle tags, you can do all
 8 this sort of thing, but you've got to have these several hurdles.
 9 But I think those are more unusual on the oversight part of it
 10 than other parts. I had a conversation about this with some
 11 people from Maine several years ago. I just really think that
 12 people have over-emphasized, and maybe that's what happened in
 13 1971, the oversight of the BIA. I think we have blown that into
 14 some mystical, something that gets resolved I think on a
 15 practical standpoint.

12 MR. BERGER: David Getches.

13 MR. GETCHES: Yes, I have a follow
 14 up question for Browning too, on this same point. The question
 15 is whether oversight is overbearing when it's in the hands of the
 16 BIA. Browning has said it is not in these business contexts.
 17 What about when you have land that you want to have taken in
 18 trust? I know I have represented some tribes where the BIA has
 19 refused to take land in trust; the tribe can own it but it's up
 20 to the Secretary of Interior whether it goes into trust or not.
 21 Have the Sachenfox had problems with the BIA being resistant or
 22 dragging their feet on that question? That would be very
 23 important, I think, to Alaska Natives.

21 MR. BERGER: Yeah, very important.

22 MR. PIPESTEM: Well, the taking of
 23 land in trust by the United States has become a more important
 24 issue in recent times and the Sachenfox, in my view, have had
 25 normal kinds of difficulties in having land put into trust. But
 they have always been successful, I guess is the way to say it.

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1 Sometimes there are problems with the title from the property
2 that they have purchased, which have to be resolved ahead of
3 time; there are Federal title standards that they have to meet.
4 But, the more recent issues that have come up about taking land
5 in a trust have been resistance from local, state and local
6 governments. But I don't think that that's made any difference.
7 Then the United States published regulations on what, and under
8 what circumstances, they will take land into trust. I guess what
9 it boils down to, finally, is that it becomes a matter of
10 discretion. I think what the statute says. So that it becomes
11 one, I think, of tremendous importance.

12 The only places I know that the United States has
13 refused to take land into trust, and there may be many others,
14 have been on the purchase of bingo property in cities to put
15 bingo operations in. Most notably was one just recently, where
16 the city of Duluth gave a tribe some land downtown, because the
17 bingo operations, I don't know how they are other places, but
18 they are a tremendous tourist attractions. In part of the state
19 that I was telling you about, where I am from, you can imagine
20 7,000 people is a pretty nice little town and so all of the...
21 and the tribes don't have any motels or anything like that. So,
22 you know, they stay in the regular motels. I know of one motel
23 that was about to go under and the Indians saved it by bingo.
24 Now, I am not a bingo advocate, don't get me wrong.

19 (LAUGHTER)

20 MR. PIPESTEM: But I am just
21 saying to you that those are functions of the jurisdiction that
22 have... many of the tribes could not keep their buildings open,
23 they were not able to buy gasoline for their cars if it weren't
24 for the revenue generating activities that they have had through
25 bingo. Now, the great big tribes have got 44 to 50 to 60 million
dollars a year income, they don't have that trouble. I am trying
to talk to you about all of the rest of us, to us pitiful ones,

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1 that you are probably closer to than the Navajos, and some of
2 these that have huge incomes and things of that nature. So, the
3 trust land is, I think, extremely important. But I don't know of
4 any tribes who have wanted to acquire land that was not in trust.
5 But under the Trade and Intercourse Act, I assume that if you
6 acquire land as a tribe, even if you use money as you got from a
7 car wash, it becomes the land of the tribe and is subject to
8 those same things. If you have a bake sale or pie supper and use
9 the money to buy, then it comes in the name of the tribe, and it
10 seems to me, that those same restrictions come along and I have
11 so proved in two cases where they came to take buildings away
12 from them.

13 MR. BERGER: The point that David
14 Getches made is important in Alaska because the Secretary of
15 Interior in the spring of this year was in Alaska and
16 indicated... I don't know whether this was a statement of policy
17 intended to be etched in concrete, but he indicated that he would
18 not be willing to accept in trust, conveyances of Native
19 corporation land to tribal governments. I think that's what he
20 said. We are going to adjourn for coffee in just one second.
21 I've got the names of some people that want to speak. When we
22 come back after coffee, I wish that some of you would tell me
23 whether there are any examples of tribal authority in the Lower
24 48 being exercised over fish and game on tribal lands, on state
25 lands and on federal lands. Charlie, I will give you the last
question before the break, if we can make it short.

MR. KATCHATAG: What I would like
to ask, our problem in Alaska is tribal in nature. It deals with
land and in other cultures. So, maybe to correct the mess of
ANCSA, what we probably need is an authority like the conflict
between Navajo and Hopi, and so that we can go back to Congress.
So that, when they first commandeered us to the conference
table... we were not asked, so we were commandeered at the table

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1 and I feel that the Hopi and the Navajo land conflict authority
2 is probably the correct way for us to resolve these problems of
3 equity jurisdiction, and then to examine the preempted field.
4 Here is a case where the Alaska Natives were preempted by their
5 membership, of their membership, by Congress. So, this field of
6 federal preemption and tribal preemption, when they gave us to
7 the State of Alaska without our permission, I feel that the
8 preemptive powers of the Federal government are as such that we
9 can get back to them and to resolve some of the authoritative,
10 totalitarian regimes that they had imposed upon us in ANCSA. So,
11 how did Oklahoma, New Mexico, Arizona and Alaska who are very
12 similar in character... we have a lot of... the IRA councils
13 here are executive order tribes just like Oklahoma, and Oklahoma
14 and Alaska came in as tribes on the same bill.

15 So, what happened to Alaska, Browning, is that they had
16 created these tribal governments and failed to define Section 2
17 of the Indian Reorganization Act, which is the basis of the
18 boundary of these governments. So, what we have in Alaska is we
19 have IRA enclaves whose extra-territorial powers are as large as
20 the capacity of the United States because the boundaries have not
21 been defined. So, between the boundary conflict of the Hopis and
22 the Navajos, since states themselves, by themselves and the
23 Bureau of Land Management do not resolve boundaries, I think that
24 we have a major Federal question here that we can take back to
25 Congress to resolve the boundaries of these tribal governments,
these instrumentalities that have been in existence for 50 years.
So, we were commandeered into a... since ANCSA is not a
jurisdictional act, that we can probably now come in, and then to
create an Alaska Native Authority where membership is defined by
those people who are affected on a vote. Say, if Sealaska
shareholders were given the privilege to make that determination
of the infra-structures that are available, which do they desire.
Had the democratic process come to maturity, the mess that we are

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1 in today would not be here.

2 So, the Federal government came back in to resolve
3 tribal conflict between the Hoppes and the Navajos and I am of
4 the opinion that the Department of Interior and Congress
5 warrant... we have an issue where preemption had occurred without
6 consent. But at the same time that the fuzzy trust
7 responsibility, gray area, is showing here and because the
8 Secretary of Interior approves our attorney, the normal attorney-
9 client relationship do not exist here. So, we are at a
10 disadvantage. When the Secretary of Interior creates a problem
11 and says that he is going to give you a hostage and then you are
12 the hostage because you don't have counsel, when you become a
13 hostage to the tribe, a hostage to the United States by the
14 Secretary of Interior and he has made this mess without and had
15 preempted you to the State government, where does one go?

16 MR. BERGER: Okay, well, let's
17 reflect on that over coffee and just take a five minute break.

18 (HEARING RECESSES)

19 (HEARING RESUMES)

20 MR. BERGER: Maybe we could ask
21 David Getches to take a stab at the question I asked about
22 jurisdiction over fish and game and then I am going to ask
23 Charles Wilkinson to say something about taxation. So, David,
24 would you start off then.

25 MR. GETCHES: Yes. I think the
question that you posed before we went on the break was the
question of whether tribes could regulate off their reservations
and who they could regulate on their reservations with respect to
hunting and fishing. It is true that a number of tribes regulate
both members and non-members of the tribe on the reservation and
it is also true that many tribes regulate their own members off
their reservations. But there is a special problem, as it
relates to Alaska, that needs to be pointed out. The ability to

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1 regulate off the reservation, regulate members off the
2 reservation and regulate members and non-members on the
3 reservation springs from some very special relationships that may
4 not be present in Alaska. The ability to regulate non-members,
5 non-Indians on the reservation is only present where certain
6 conditions are existent. The Supreme Court in dealing with the
7 question said that, it has to... the regulation has to relate to
8 the political integrity, economic security or social welfare of
9 the tribe and that leaves it wide open for courts to deal with
10 it. I would think in a subsistence economy you could show that
11 regulating non-Natives on Native land was essential to economic
12 security and some of these other factors.

13 The problem is, what is the reservation where
14 regulation is possible? And I think that that's a question that
15 needs to be dealt with not only in the context of hunting and
16 fishing but in the context of all types of regulation, like
17 taxation which Charles will address. Similarly, the question of
18 off-reservation regulation arises. Unless you know what the
19 reservation is, you don't know what off reservation is. Off-
20 reservation regulation, in any event, is only possible by Indian
21 tribes where there is a special law or treaty that gives them
22 rights off the reservation. Unfortunately, the Alaska Native
23 Claims Settlement Act extinguished special hunting and fishing
24 rights, to the extent they existed at the time of the Act and
25 that is a serious problem in trying to make an argument that
there is an ability of the tribe, village as the case may be, to
regulate beyond an area that could be defined as a reservation or
Indian country. So, while it is possible in the Lower 48, it's
possible only because of these special laws for off-reservation,
for regulation of non-members.

MR. BERGER: Charles Wilkenson.

MR. WILKINSON: I'll just briefly
mention some of the principles of taxation in the Lower 48, in

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1 the hope that they will be of use to Alaska Natives here. State
2 and tribal jurisdiction is geographically based and so for many
3 purposes, Indian reservations are extra-territorial to the states
4 and they are areas in which only the tribes can regulate. You
5 define the geographic area by the term David mentioned, Indian
6 Country, and in the classic Indian law terms perhaps the
7 fundamental issue for governance for Alaskan Natives is whether
8 Indian Country exists here now, and if so, how much? Similarly,
9 if you wish to extend your self-governing authority, what you...
10 one mechanism and maybe the most likely one, would be to
11 establish Indian Country under Federal law. Indian country
12 generally is described as all land within the exterior boundaries
13 of a Federally recognized Indian reservation. That includes non-
14 Indian land, non-Native land. So that if you have a checker-
15 boarded reservation, all land within it, not just tribal land, is
16 Indian country. The second definition doesn't relate to a
17 reservation but is dependent Indian communities, and certainly,
18 it seems to me, there is a live argument today that village
19 areas, some boundary, is a dependent Indian community... but that
20 hasn't been resolved.

21 For the purposes of this Commission, certainly one
22 recommendation could be that areas around villages be determined
23 by Federal statute to be Indian country. Now, if that were to be
24 done and there were a parallel concept up here to what is done in
25 the Lower 48, you would have roughly this situation in regard to
taxation. I might say that many of these or some of these
propositions are not completely settled and you can have many
permutations here that could get very technical. But I am going
to avoid that because I'm not sure that it is important for our
purposes.

There are three kinds of taxes that have come up here:
State, Federal and Tribal. To look at State taxes first. Indian
land, trust land within Indian country is not subject to State

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1 tax, a State property tax. We need to make an important footnote
 2 there that ties into a subject we were talking about yesterday.
 3 In fact, the most important use State tax funds is for education.
 4 The State can't collect that tax money but the Federal government
 5 pays in lieu taxes through an impact aid program that goes up and
 6 down as to its funding. But the idea is to try and compensate
 7 local school districts, so they will have operating funds even
 8 though they can't collect a property tax. So, Indian lands are
 9 tax exempt. Secondly, as far as State income taxes are
 10 concerned, they don't apply to Indians within Indian country.
 11 Third, sales taxes don't apply to sales to Indians within Indian
 12 country. In some cases if a sale is made, say of cigarettes to a
 13 non-Indian in Indian country, that is subject to State taxation.
 14 So that the direction the court is going, is to exempt from State
 15 taxation, any tax that would fall on an Indian and to exempt, in
 16 some cases, non-Indians who operate within Indian country. As
 17 Browning suggested earlier, there are definitely situations in
 18 which a tribe can hold out a tax advantage to a non-Indian
 19 corporation within Indian country and that can be an inducement;
 20 and it is marginal in many cases, but it can be important for
 21 some businesses, to give them an incentive to come to Indian
 22 country.

23 Second is the area of Federal taxation. The states
 24 have limited authority to tax Indians within Indian country. The
 25 Federal government doesn't have any limit on its authority, it
 can tax as it wishes. But in defining taxpayers, Congress has
 not included Indian tribes, so that the Federal income tax scheme
 doesn't apply to Federally recognized Indian tribes; they are not
 taxpayers.

MR. BERGER: The tribes or the
 people living...

MR. WILKINSON: The tribes. Now,
 individual Indians within Indian country are exempted from

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1 Federal taxation if they receive income that is directly derived
2 from trust property, such as an allotment. So, and there has
3 been a long body of case law there and so if a person is grazing
4 cattle or selling timber or farming on their allotment, that is
5 not subject to Federal taxation, it's trust property. On the
6 other hand, if you run a motel on your land, the income from
7 the... the allottee's income probably is taxable. There is now a
8 case in the 9th Circuit involving the sale of reindeer products.
9 The Alaska Natives are arguing that the reindeer are held in
10 trust and that therefore the sale of the products is not taxable.
11 That hasn't been decided yet. On the other hand, if an
12 individual Indian is working within Indian country and receives
13 income that isn't tied to an allotment, that is subject to
14 Federal income tax but not State income tax.

15 Then the third area is tribal taxation. Tribes have
16 brought authority to tax their own members and, so far anyway,
17 quite broad authority to tax non-Indians doing business within
18 Indian country and so tribes have successfully, in some cases,
19 taxed, for example, extraction of minerals by corporations from
20 within Indian country. None of us here would make this out to be
21 some magic body of law, but there is a range of protections that
22 are now getting quite well established that have allowed the
23 tribes to raise revenue in this matter. Similarly, as Browning
24 suggested at some length, tribes are able to operate outside the
25 regulatory jurisdiction of the States, and so are not subject to
State environmental laws, State laws regulating bingo, and can
offer, if they choose to extend it, marginal incentives,
sometimes more than that to people wishing to locate in Indian
country.

I want to address very briefly a question that Sheldon
Katchatag raised, and I think Charlie Edwardson has been talking
about it too, and I just want to give my own perspective on it.
In addition to Senator Jackson's opposition to tribal entities

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1 when ANCSA went through, it seems to me there was another reason
2 that Alaska Natives did not end up with tribal entities and some
3 of the potential they have. And that was in 1969, '70, '71, when
4 ANCSA was being determined, the truth is at that moment, in
5 history, offering out the possibility of tribal powers wasn't
6 that attractive. I would rephrase an answer Larry gave to a
7 question he was asked by Sheldon. "Well, was the Navajo tribe
8 doing all these things in 1971?" I would answer that by picking
9 up on a concept Larry was using. The Navajo tribe in 1971 had
10 all the potential power it has today, all the potential power.
11 Many of its divisions existed on paper. The Navajo tribe was not
12 exercising as much actual power as it was today, and if somehow
13 you can measure the actual exercise of power, the amount of taxes
14 you raise, the amount of regulation you produce, the amount of
15 informal sanctions, the amount of action in your tribal court...
16 If you could somehow measure that, Indian tribes have just gone
17 way up over the last 12, 13, 14, 15 years. In fact, the truth
18 is, a major case that David Case referred to yesterday, the
19 McClanahan Decision came down in 1973 and that was really the
20 first case in modern times that explained that Indian tribes are
21 for most purposes extra-territorial to the states and they can
22 govern themselves.

23 My own guess is that even if the McClanahan case,
24 which was a beginning point compared with some of the decisions
25 that have come down since, that if you had McClanahan available
to you in 1971, I think Alaska Natives would have seen the
potential more clearly and we would have had a different result
in ANCSA. So, again I am not trying to make too much of this. I
don't think anybody from the Lower 48 is trying to say, we've got
a terrific system, its perfect, it ought to be adopted up here.
That's not any of our intentions. What we are saying, though, is
that there is a real difference between corporate and
governmental powers. Governmental powers can be exercised in an

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1 informal way, and Spud Williams talked about this yesterday and I
2 agree with that, but governmental authority means that you can be
3 substantially free of the values of the State because that is
4 what jurisdiction is and governmental authority is; it's social
5 values are an important part and that potential is there. It was
6 only potential in 1971 and the law has moved ahead substantially
7 since then and I, at least, am one... I'm very reluctant to
8 criticize the contract that ANCSA was in 1971. Because I think
9 the world, as it existed then, was very different then it is now
10 and I think, for all of you, the really important issue is not
11 that ANCSA was a mistake... by today's lights maybe it was in
12 some respects... but how to rectify it. Those decisions were
13 made in a very different setting than we have today.

14 MR. BERGER: Rosita? Thanks,
15 Charles.

16 (TAPE 5, SIDE A)

17 MS. WORL: Protection of the
18 environment is a major priority for hunting and fishing people,
19 such as in Alaska. From our Alaskan experience, it seems that
20 there is an inherent conflict between development and protection
21 of the environment. And the question that I have is, I wonder
22 how this conflict resolves itself or transforms itself, when
23 tribes act both as a government and also as a business entity?
24 Perhaps Browning Pipestem or some others who have had experiences
25 with this might be able to answer how do tribal governments... do
they have and do they enforce environmental protection laws and
regulations? When, at the same time, they are also involved or
engaged in resource development? The second part of that is, how
do tribal developments relate to NEPA, the National Environmental
Protection Act?

MR. PIPESTEM: Let me give you a
limited understanding on the business development or the
development of resources and the interest of the tribe in

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1 maintaining some controls on understanding. In 1982 the
2 Sachenfox tribe, and I'll give you a specific, over all these
3 years has had oil and gas production from tribally owned lands.
4 The regulation of the lessor/lessee relationship has fallen
5 largely to the United States. To my knowledge, the only tribe in
6 the United States that has a tribal law, that is in fact directed
7 toward regulating the lessor/lessee relationship, is the
8 Sachenfox Mineral Leasing Act of 1982, which dovetails with both
9 the Federal laws and the regulations that are provided. Now, the
10 Federal regulations provide that a tribe may supercede the
11 Secretary's regulations by the positive adoptment of tribal law
12 on the same subject. Sachenfox did so. Now, let me tell you why
13 they did that.

14 They have been property owners and owners of an
15 interest in mineral production, and over the years they had no
16 idea how much they got or whether it was adequate, whether they
17 got what was in the contract: they didn't have any idea, and the
18 Federal agency that was charged with executing the trust
19 responsibility with respect to the production of minerals, etc.,
20 and who is to be there, who in fact is extracting the minerals,
21 whether there have been assignments of the right to be present,
22 whether trespassers are there. All of those things were was
23 regulated by someone else. In several years they had people run
24 for the tribal council under the theory that they were going to
25 find out what happened to their mineral end count, whether they
were getting what they should have had and all of these sort of
things.

Well, in 1982 one group finally said were going to find
out. So, they passed a Business Corporation Act which says that
any corporation that does business within the jurisdiction of the
tribe must register as a foreign corporation in the same way that
it does with the State and that they will be issued a charter of
incorporation and authorization to do business within the

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1 Sachenfox jurisdiction. Now, that is not a mouse that roared
2 type deal. Okay. It is practical to know what corporations are
3 doing business within the tribes jurisdiction, on minerals for
4 instance, because if you have ever looked at the way that a oil
5 and gas deal is financed, there are innumerable assignments of
6 overriding interests, interests and back-interest and they have
7 all this nomenclature and names that goes along with how you
8 finance a deal. There may be all kinds of people producing
9 various kinds of minerals from property and the tribe doesn't
10 have any idea who is there. There is a designation of operator,
11 so the point being that the tribe passed the Business Corporation
12 Act that says that any corporation doing business within our
13 jurisdiction must register.

14 The second thing that they did, they passed the Mineral
15 Leasing Act which requires certain kind of reports and certain
16 kind of responsibilities on any lessee of their property. What's
17 interesting about it is that the Act itself, that grants the
18 lease, the question becomes whose lease is it? Is it the
19 Secretary of Interior's lease or is it the tribe's lease? The
20 law itself says that, the counsel speaking on behalf the tribe,
21 will lease and the Secretary got into it under later kind of
22 provisions. So that the tribe itself, the Sachenfox tribe, took
23 under its own initiative to begin to regulate the lessor/lessee
24 relationship. Now, that flowed out of the fact that they
25 believed that there were salt water injection wells that nobody
knew existed. Now, salt water injection is, you know, the
separation between the oil and the salt water. They have to do
something with it, so the choices are you spray it all over the
ground out there or you put it in wells or you use it for
something, so that there were environmental considerations in
that. That became an interest in both the tribe regulating and
knowing who is doing business, the conditions under which they do
business and things of that nature. So, to my knowledge, the

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1 Sachenfox tribe is the only tribe in the United States that has a
2 regulation of mineral leases and it is directed toward that very
end.

3 Now, Brother Charles would take some... there is some
4 magic to these laws. There is great magic to these laws and in a
5 way that our Indian people see this, there is great magic in
6 these laws. Most of the Sachenfox have one of these, and for the
7 record I would identify this as the Constitution and Bylaws of
8 the Native Village of Unalakleet, which is this four or five page
9 husk of a document which is just some dead pieces of paper. But
10 the power to exist, the power to function, the power to make laws
11 and to be governed by those laws, the people of the Native
12 Village of Unalakleet breathed life into this. And that life can
13 be breathed into these husks in a magical kind of a way and these
14 laws as we look at them, they are just simply symbols that people
15 make on a piece of paper and a tribe, so to speak, because of the
16 magic that its people have breathed into this husk become a
17 people of greater significance than they were the day before. I
18 think that much of this is the feeling of what is the nature of
19 that relationship. There is magic in it. There is a need for
20 responsible exercise of this magic, but there is magic, there is
21 power, there is freedom, there is the interest in being a people
22 and to be a people of some substance that is the part that is
23 this. This is just a simple piece of paper and the people of
24 Unakleet breath life into it.

25 Now, that is something very special that no other group
of people, of a minority status, have in our country, something
of great significance to them. Now, the Sachenfox have one just
like this and for years and years and years they were told that
they were nobody. They were told to be happy with what little
income they had and they were, I guess. I don't know whether
they were or not, I can't get into their head. But one day they
said that there are things that we need to do as people that

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1 nobody else is going to do for us, and experts and people, I
2 mean, the words. Let me give you example. The law itself
3 functions in categories. If you allow yourself to be branded as
4 an off-reservation people, you are looking at terrible
5 consequences. If I were you, I would allow nobody to tell me
6 that I am an off-reservation people because that carries with it
7 a whole triggering of certain kinds of activities. Because if I
8 understand *Kake v. Egan*, is there just wasn't any. It wasn't a
9 conscience choice to have one and then there is some over here
10 that is off. If I understand ANCSA correctly now, and I
11 probably don't, if that 40 million acres is not Indian country,
12 it ought to be. Now, there is some reason for that 40 million
13 acres being there and if that is not Indian country, then it
14 ought to be. I think you ought to reject any theory that doesn't
15 come up with consistent with that 40 million acres being Indian
16 country. I guess the significance of that, in terms of the
17 question that you asked me, is there is magic to it and the magic
18 is that there are people who see themselves of significance and
19 they begin to move into complimentary areas with other
20 governments because the *Sachenfox* see the laws that they passed
21 as being complimentary to the those of the United States in the
22 overview of the leases and the protections of their tribal
23 property. Now, I hope that makes some sense because you need to
24 be very careful. Let me give you an example of that. The
25 *Sachenfox* were a tribe that were called Oklahoma Indians. Now,
the legal significance of Oklahoma Indians is they might of well
have called them the Kansas City Chiefs or the Atlanta Braves or
somebody.

(LAUGHTER)

MR. PIPESTEM: But what it
resulted in is a whole body of literature and non-Indian legal
experts who branded the *Sachenfox* out of business. We begin
talking about off-reservation, like their lands got up and walked

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1 out, their property got up and walked somewhere. They said; Oh,
2 were looking for an off-reservation to be so we can be nobody.
3 So the categories, of the law are extremely important to you, and
4 don't think they aren't because the law is served by categories
5 and the facts that make up those categories and they trigger off
6 certain kinds of responses. So, if you stand still to being the,
7 oh, "off-reservations," whoever you are, well that is going to
8 have certain kind of legal significance. I think that, in the
9 case of the Sachenfox, most of those ideas have been eliminated.
10 There is tremendous misunderstandings about what the nature of
11 the tribe was and who it is and it really boils down to what you
12 think a tribe is. If you don't see a tribe as being very
13 significant, then it won't be. If you see a tribe as a
14 government of significance, then you will build it to be that.
15 But if you don't see it as anything, it just won't be, it will be
16 nothing. And if you accept the definitions that are cast by
17 people about it, that it is nothing, then it will be nothing
18 because you won't act.

19 Because the nature of this abstract, good parts of the
20 law in its very beginnings are metaphysical and there is nothing
21 more metaphysical than the notion that the people of Unalakleet
22 blew life into this. I mean, that is a metaphysical idea that
23 becomes, and people then hook the abstraction of that into a
24 practical exercise. I think that that is something that all
25 Indian people can understand because of the nature of the
relationship that they have with the powers of the world. That
this is another function of that. I hope that I haven't gotten
completely off the point. But I wanted to take you from what I
saw as being the specifics of the Sachenfox Mineral Leasing Act
and the Business Corporations Act, which requires any corporation
that does business within their jurisdiction to register with the
tribe and subject itself to the regulatory powers of the tribe
and, secondarily, to the Mineral Leasing Act which regulates the

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1 lessor/lessee relationship, which is also attached to the General
2 Revenue and Taxation Act of 1982.

3 MR. BERGER: Thank you, Browning.
4 I think that I am going to take advantage of my position as
5 Chairman to move on because you've brought us to a point where I
6 think I should call on Willie Kasayulie to tell us what the
7 people of Akiachak... maybe somebody could lend you a microphone
8 Willie... are doing; and there are some people who had questions.
9 Ralph, you had a question and some others. I think we can weave
10 those into the discussion as we move along. But Willie, go ahead
11 and tell us what you folks are doing at Akiachak and where you
12 want to go.

13 MR. KASAYULIE: Thank you,
14 Commissioner Berger. We must have a lot in common with the
15 Sachenfox people down south, but as far as Alaska is concerned,
16 we have this beast up here called a municipality. Last year,
17 1983, the city council submitted their resignation and we didn't
18 know who that resignation was supposed to go to, so the IRA
19 Council in our community assumed the responsibility of a
20 government that the municipality had in our community. There has
21 been a lot of discussions between Akiachak and the state
22 government as to the legality of the dissolution process which
23 has taken place in our community. Through the powers of the IRA
24 government, we called for the election of our tribal membership,
25 also the non-Natives that were living in that community, a vote
was taken whereby the majority of the eligible voters voted to go
ahead and dissolve the city and to transfer the property over to
the tribal government. To the existence of the municipality
there, back when things were happening, the State of Alaska ruled
the election process that would have taken place legal. In our
views we were doing the right thing because that was one of the
powers that the tribal government in Akiachak had. There has
been several dialogues that we have talked about within the

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1 perimeters or the vicinity of the villages of Akiachak and there
2 is a lot of unquestioned answers still existing.

3 Last summer we met with the three villages to form a
4 unified government called the Yupik Nation. We do have
5 membership on this organization from the three federally
6 recognized IRA governments namely, Akiachak, Akiak, and Tuluksak.
7 Also, in these three villages, we have an existing contract with
8 the Federal government, namely to run our own schools through the
9 638 process. We have been notified by the Department of Interior
10 that these schools will no longer be funded as of June '85;
11 whether these communities like it or not we are supposed to be
12 transferred over to the State system. These three communities,
13 along with the two other villages from the coast, Chevak and
14 Chefornak, we have proposed the transfer of our schools to the
15 State system. We still want to maintain some kind of control of
16 education, because we view education as important for the
17 existence of our people and to understand today's society and
18 utilize what we learn through education. But number one thing,
19 we cannot forget who we are. We need to educate our children of
20 their culture, our language, our history.

21 By the action that the community took last year, I
22 think we made the state aware of the tribal governments have been
23 in existence in the State of Alaska and in my mind, I think all
24 of the Native communities of Alaska need to re-evaluate their
25 priorities and look at the type of government which might be more
compatible to their needs. Not in the sense of those communities
becoming an IRA government, but in the sense of becoming an
effective tribal government. IRA isn't the only tribal
government that can work for these communities. There is also a
traditional form of government which exists. We have been, since
last year, in the process of establishing our tribal ordinances
and we are also looking at establishing a tribal court. The
State of Alaska has never been challenged as far as our rights as

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1 the Native people within the state. Last year during the United
2 Tribes of Alaska conference, or a year before, there was some
3 talk of establishing a State tribal task force on sovereignty.
4 At that time we thought that task force would consist of the
5 tribal governments in Alaska, but the membership of that
6 organization or that task force is spread out now and we are
7 opposed to it because we were saying that we didn't want any
8 organization to come up with something that they can deal with
9 us. We wanted the State with our views on how the State of
10 Alaska should deal with the Native communities or the tribal
11 governments.

12 During our convention last summer, we made an agreement
13 between the three village corporations located within the
14 jurisdiction of the Yupik Nation boundaries and we identified
15 lands where we would like to assume jurisdiction over, and these
16 lands that we identified were the ANCSA lands selected by the
17 village corporations. We identified the Native allotments, we
18 identified the traditional lands where our people went hunting
19 and subsistence for their survival, and also the historical
20 sites. We also identified the term Indian country as the basis
21 for our jurisdiction of our tribal government. This Land
22 Jurisdiction Agreement that was agreed upon by the three
23 communities, we still need to sit down and come out with
24 ordinances.

25 Also, on the land issue. I think back in 1971, or
somewhere in that area, there was a case that was brought into
the courts, namely the Gustafson v. Kluwak case; in that case our
village was one of the Native townsites and during the course of
the proceedings of that law case, somewhere along the line we
were involved without our knowledge and somewhere along the line
the Gustafson side lost their case against Klawok and we were
billed, saying that this case was a benefit for our community.
We were sent a bill for our... supposedly our interests were

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1 represented in that court case. Well, we didn't pay the bill
2 that was sent to us. Gustafson or his department went ahead and
3 auctioned off two pieces of land, supposedly to cover the costs
4 of that case. These kinds of things needs to be worked out with
5 the local communities or the tribal governments, because like in
6 our case in the village of Akiachak, we do have that
7 Constitution, similar Constitution that Unakleet has. I would
8 like to think we blew a breath of fresh air into that
9 organization to revitalize and utilize that Constitution to work
10 for us.

11 But right now, the State of Alaska does not recognize
12 the tribal governments, in the sense to receive state funding
13 where we can provide adequate services for our membership, and
14 it's not just membership that we are providing these services
15 too, it is also to the non-Native memberships that might reside
16 in these communities. We have had several long discussions in
17 several of our Yupiat Nation board members, our discussions take
18 us into early mornings, it's not just us young people that are
19 coming up with these ideas. It's the elders that are also
20 involved in those discussions. If you think we are radical, you
21 should come to our village meetings and listen to these elders
22 talk.

23 There was some mention of bingo games a little while
24 ago. In many of our villages we don't have a whole lot of
25 dollars to play with where we can provide effective services to
our people. In our community we are looking at, well, we will be
conducting hearings on whether to legalize gambling in our
community and that's a source that needs to be tapped. There are
a whole lot of things, ideas that we throw around between
ourselves and a lot of things, in our views, the State of Alaska
will fight us on the things that we come off with. But I think
in our village we recognize the number one thing of who we are,
we are Alaska Natives, and we have own cultures and we have our

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1 own languages, we have our own history, and it's not just the
2 people in our region should look into these. The other parts of
3 Alaska, like the Inupiat Nations, the Tlingit and Haida Nations,
4 the Athabascan Nations, they need to sit down and talk with their
5 people. We recognize today that there are three main entities
6 within most of the communities, and these entities are fighting
7 each other, and we would like to think in our village we have
8 found a solution. That solution was through vitalizing of the
9 tribal government. I have a whole lot of things to say right
10 now, but I am kind of nervous.

11 On the education again, coming back to the education
12 side. Like I mentioned earlier, there is five of us villages
13 that are putting the 638 law working for us, under education.
14 But the Federal government is saying that as of June '85, they
15 are going to withdraw Federal funding and whether we like it or
16 not we are going to be turned over to the State education system.
17 Well, we oppose that naturally and we want to still maintain the
18 control of the schools. By Federal government getting out of
19 education, we would also say that the Federal government is
20 getting out of its trust responsibility of educating our people,
21 of providing some trust responsibility to deal with the Native
22 people. This scares us because it affects all the Native
23 communities and our villages in the State of Alaska.

24 In many of the villages. There is very little
25 understanding of Federal Indian law, there might be experts like
the Roundtable; I think we know in our minds what course of
action our Native people needs to take, but we need to go out to
the communities and talk to those people out there. They are the
ones that are effected by these dialogues that we are throwing
back at each other today. I guess with that.

MR. BERGER: Could I ask... oh,
Reed, you have a question?

MR. CHAMBERS: Tom, I just wanted

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1 to ask how... Willie, how long has the Federal government been
2 supplying funds for the schools in your village?

3 MR. KASAYULIE: I am not sure. I
4 guess as far as contracting our schools, we are into our fourth
5 year. But previous to that the schools were under, they were run
6 under the BIA system.

7 MR. CHAMBERS: They were BIA
8 schools, not State schools?

9 MR. KASAYULIE: No.

10 MR. CHAMBERS: And now the BIA is
11 saying they are going to cut out any funding for your schools?

12 MR. KASAYULIE: Yes.

13 MR. CHAMBERS: It sounds like the
14 makings of a good lawsuit.

15 (APPLAUSE)

16 MR. CHAMBERS: That just seems
17 unbelievable.

18 (UNIDENTIFIED VOICES - OFF MIKE)

19 MR. BERGER: Well, I think that's
20 coming. Willie, could I ask you about the idea behind all this.
21 You said that you had three entities in the village at odds, I
22 take it you mean the city government, the IRA council and the
23 village corporations?

24 MR. KASAYULIE: Yes.

25 MR. BERGER: Well, you dissolved
the city government and the IRA has taken over its functions.
You have an arrangement with the village corporation, by which
you said they agreed to put their lands under the jurisdiction of
the IRA. What happened?

MR. KASAYULIE: Well, the
agreement was for the tribal governments to, namely to enforce
the trespass ordinances within the ANCSA lands, the corporate
lands, because we are faced with a lot of non-Natives coming into

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1 our lands without the permission of the corporations. I had
2 heard some talk from some of the people around this table about
3 forming some kind of a State chartered organization to work along
4 with the tribal government to receive State funding. I think by
5 the actions of the village, by dissolving the city, we prefer to
6 utilize the tribal government to deal with the State or the
7 Federal government. Now, if we look at the village corporations,
8 these village corporations are also State chartered organizations
9 and what comes to my mind is: why not utilize the State ANCSA
10 corporation to receive funding on behalf of the tribal
11 governments from the State?

9 MR. BERGER: Let me ask you
10 another question. When I was out in Akiachak, and in that whole
11 region, Southwest Alaska and western Alaska generally, the main
12 thing... just about the main thing that people talked about, at
13 my hearings, was subsistence, restrictions on access to hunting
14 and fishing. People felt they had been pushed back and they
15 wanted to assert their right to the fish and game resources that
16 they felt traditionally had belonged to them. Now, you didn't
17 mention subsistence at all in your presentation just now, but
18 could you tell me where that fits into this whole thing.

17 MR. KASAYULIE: Well, under the
18 Yupiat Nation organization, those are some of the things that we
19 are talking about. Like I mentioned earlier, the State has never
20 really challenged the tribal governments in the courts, and one
21 of the things that we're looking at under this organization is to
22 establish ordinances to cover basically everything, also the
23 subsistence side. I think our Native people in the State of
24 Alaska, when they are going through the State court systems, in
25 the areas of subsistence, there is no mention of any of the
Federal law case, Indian law cases, in the State courts.

24 MR. BERGER: I think that... Ralph
25 Lerner.

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1 MR. LERNER: I have a small
2 question about something that has hovered around the margins of
3 the discussion this morning. It's about BIA. When Mr.
4 Aschenbrenner was speaking about it, it seemed to be some entity
5 that many or some of the Native groups had outgrown. As though
6 one graduates from high school and doesn't need that kind of
7 stuff anymore. The word that had come to my mind as I was
8 listening to that discussion, was a word that was later mentioned
9 by Mr. Pipestem, namely discretion. I just... this is the
10 question, I don't know to whom to address it. Doesn't the
11 discretion of the Secretary of the Interior remain under any of
12 these IRA arrangements and isn't that a discretion that's his?

10 MR. BERGER: Could I...

11 MR. WILLIAMS: Let me answer that.
12 That's a very important question.

12 MR. BERGER: Use the microphone;
13 would you Spud?

14 MR. WILLIAMS: It's a very
15 important question that he has just brought up and something we
16 probably should have more discussion on, is the discretion of the
17 Secretary of Interior. I think it's a misconception, he doesn't
18 have that discretion. When you really look at the formation of
19 Indian governments and that husk that Mr. Pipestem was holding up
20 there, a lot of people view that backwards, that the Secretary of
21 Interior transfers or gives those powers and authorities through
22 that piece of paper. That is completely erroneous and backwards.
23 That husk and piece of paper is not them giving those powers to
24 the tribal governments. It's more of a review process because,
25 in most cases, our laws can't conflict with the Constitution of
the United States and that is what he is really reviewing. That
piece of paper is really the tribal members outlining the powers
that they are giving to the tribal government. It's like when
you charter a municipal government, you form committees and

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1 commissions and groups to draft the powers that you are willing
2 to confer to that municipal government. Indian governments are
3 no different. There are many, many forms of Indian governments.
4 The Feds want to kind of mold them into something that they could
5 recognize and they did that through the IRA Acts and these pieces
6 of paper, trying... if you read these across the Nation, it looks
7 like they were printed on a Xerox machine and in those days they
8 didn't have Xerox machines. But they sent out their agents to
9 say, this is what is good for us. They really didn't explain the
10 functions that the people, in most cases, were outlining the
11 limitations of authorities that they were conferring to their own
12 governments and then agreeing to live under those authorities
13 that they were putting in those pieces of paper. So, the
14 discretion of the Interior is only to review to make sure that
15 those don't conflict with the Constitution of the United States,
16 because that is where the ultimate authority comes from. We have
17 many, many Constitutions hung up right now in this process,
18 because they know they don't have the authorities to hold or
19 disapprove, they can review but they... right now because of the
20 Alaska situation, are just basically sitting on them and they
21 don't have that discretionary authority. If they don't release
22 them shortly, we will probably end up in court to prove that
23 point.

18 MR. BERGER: Another lawsuit.
19 Mary Miller, you wanted to comment on this.

20 MS. MILLER: In regards to this
21 discretion that is spoken of, for the Secretary of Interior. It
22 is not unqualified discretion and I think that is something that
23 is admitted, even by the Department of the Interior. Any
24 discretion that is exercised is supposed to be exercised on
25 making decisions that are made in the best interests of the
tribal government and the tribes. That, to me, is not an
unqualified discretion.

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1 MR. BERGER: Ralph Lerner.

2 MR. LERNER: My question is
3 prompted by enormous innocence and ignorance, but one of the
4 things that is reinforced, even with the slightest acquaintance
5 with the history of Federal Indian relations, and it's documented
6 in spades in Mr. Johnson's summary account, is that government
7 policy generally, in BIA in particular, has blown hot and cold
8 over the decades and over the centuries. It gives, it takes, it
9 knows what the left hand is doing and sometimes it doesn't. All
10 this suggests to me, a great vulnerability. To be sure it is
11 done in the name of what would serve the interests of the people
12 for whom they are entrusted with certain care, but that's the
13 other man's view of it and that raises, it would seem to me, a
14 deeply disquieting aspect of the whole IRA route. I am not
15 saying that it's, hence, simply bad. But it raises problems in
16 my mind that the letter of the law doesn't answer and the spirit
17 that informs the administration of the law may be one way and may
18 be t'other. That would be something that I'd worry about.

19 MR. BERGER: Sheldon.

20 MR. KATCHUTAG: Yes, as far as
21 discretion of the Secretary of the Interior or any of his
22 employees and/or agents with regard to his dealings with any
23 village that has an IRA, it is strictly written in the approval
24 of the Constitution and Bylaws, the approval section to which the
25 Secretary of the Interior affixes his signature and seal; the
very last sentence of that approval states: "All officers and
employees of the Interior Department are ordered", it doesn't say
you are to interpret to your own discretion, you are "ordered to
abide by the provisions of said Constitution and Bylaws". Now,
another thing that has to clarified with regard to the United
States Constitution, is whether or not this applies to Alaska's
Native people and also American Indians. "We, the people of the
United States", did not include Alaska's Native or the American

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1 Indian. And as far as that goes, the Constitution which was
2 approved by the Secretary of the Interior for the village of
3 Unakleet states in its preamble that: We, a group of Eskimos,
4 make ourselves this Constitution and Bylaws. It also says, under
5 approval, all rules and regulations heretofore promulgated by the
6 Interior Department or by the office of Indian Affairs, so far as
7 they may be incompatible with any of the provisions of said
8 constitution, will be inapplicable to the village of Unakleet,
9 from and after the date of the adoption of this Constitution.
10 Now, if that's not a broad based enough, I don't know what is.
11 But this says that anything that the Department of Interior does,
12 in any of the affairs that concerns this government, primarily in
13 what we are talking about now is land, they have to get consent
14 of the tribe according to the powers of the villages listed under
15 Article 4, which they have not done.

16 MR. BERGER: Well, I think that
17 this is a good time to break. I would like to break for lunch
18 and come back to what Willie Kasayulie has been talking about and
19 then have Spud Williams talk a little bit about what's happening
20 in the Interior. It may be that the people of Akiachak, in
21 exercising these powers that they assumed, will bump up against
22 the Secretary's discretion. We might continue to bear that
23 problem in mind. As regards to the question, whether the
24 American Indians and Alaska Natives are under the U.S.
25 Constitution, I think that question has been settled; and in
international law there may have been no sound basis for
occupying this continent by the Europeans, but international law
is one of those things where you have to have a court that will
enforce it and the courts in the United States enforce the laws
enacted by Congress, and they enforce the Constitution of the
U.S., and I think that is an interesting point. But I don't
think we should detain ourselves on it. So, why don't we come
back at 1:30 and carry on.

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(HEARING RECESSES)
(TAPE 5, SIDE B)
(HEARING RESUMES)

MR. BERGER: Let's start this afternoon with Spud Williams. Well, let's just carry on where we were this morning and maybe we could ask Spud Williams to talk about some of the developments in the Interior of Alaska, in the Tanana Chiefs Region. I have the feeling that nobody can hear, but maybe that's just... does anybody know where to turn it off? Oh, the sound man isn't here. I've got everybody in their places.

MR. WILLIAMS: (INDISCERNIBLE - OFF MIKE) those imply that you're doing something that hasn't been done before or your recreating something that has gone away and that's why I don't like to use those kinds of terminologies when we are talking about tribal governments. The issues the Tanana Chiefs is dealing with are continuations of those authorities because, in most instances, the other forms of , governments that the State is putting on our villages are not adequate to meet village needs. There are things that villages have to do because there are no other authorities to do them. We've been dancing around fish and game issues for a long time because of the emotionalism that is perceived in this state when we talk on those issues. But there are some very basic issues and you might have misunderstood me the other day when I said that subsistence is going to be gone. I never meant in the very, very near future because a lot of our villages, it is still the economy. It is the way of life and it is the life. But in all practicality, in the next 100 to 150 years with the influx of people into the State, no matter what we do to try to protect subsistence, it will be something that will be impossible. Because there will be no game left to support that kind of economy, unless we are able to shut the doors from this state

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1 completely and keep anybody from coming in and I think we can all
2 sit here and agree that that would be impossible.

3 If we just follow the progress of the Lemmings from the
4 East Coast, you are finally getting ready to jump into the oceans
5 on the west coast, you have destroyed all the game in your path
6 as you came across; and subsistence lifestyles in the Lower 48,
7 even though they are spoken of, are very, very few and far
8 between. It is not a very important economic system. So, if we
9 look at the long range and we are trying to design something
10 that's going to work for the very, very long range, we have to
11 continue in the maturing process, in the changing process that
12 everybody goes through. So, on fish and game issues we are still
13 fighting for those management rights that haven't been taken
14 away. Who deals with the traditional trapline ownership and use
15 privileges of using traplines? There is nothing in state law
16 that deals with registration and ownership rights of trapping
17 country and hunting country. Tribal governments are the only
18 entity in the villages that can deal with that and they still
19 deal with it. Who can make the decisions on what family use this
20 eddie (ph) or that eddie, or where you can have your fish camp,
21 or where you can't have your fish camp? The allotment process
22 dealt with some of it and people have ownership rights now, but
23 how about those who don't? Who settles those disputes? The
24 tribal governments, the villages, the village councils.

19 Indian Child Welfare issues: we seem to be creating a
20 whole new body of law as we go along, in protecting those
21 traditional rights of our tribal governments to deal with our own
22 children. It's a little difficult in a state that doesn't even
23 think that you exist, refuses to admit that you exist. How do
24 you deal with critical issues that effect your children with
25 somebody that doesn't even admit that you are here? So, we have
been dealing with ICWA cases as they come up, dealing through the
state courts. We have some all the way up to the Supreme Court

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1 and we have even now appealed one into the Federal courts. We
2 deal across state lines, we deal across states in the Lower 48
3 and we almost got into one with Japan, almost had to go through
4 the State Department. So, we are dealing with ICWA issues at the
5 Tanana Chiefs conference and it's, like I said, it's a learning
6 process.

7 It's a whole new area of law. Where is our jurisdictions,
8 the inter-tribal jurisdictions, the inter-people jurisdictions.
9 Because you've got Natives, non-Natives, you've got inter-
10 tribes, you've got Tlingits, Athebascans, you've got Yupiks, and
11 as we go we are developing these things as we go because there is
12 nothing there to really guide us. We try to go back to some
13 roots and do it by the traditional methods and the traditional
14 methods can work within the single tribe. We never had the
15 transitory life that we do now, across tribal boundaries and
16 across countries and other boundaries. So, we are dealing with
17 the issues as we get to them. One of them was, if a tribe places
18 a kid in a foster home and you don't have tribal resources, who
19 pays for that placement? The state says, "we don't recognize
20 your jurisdictions and authorities, so we didn't place him, we're
21 not going to pay for it." That case has been going on for almost
22 a year and a half now. But who is losing? It's the children who
23 are losing. The State cannot react in rural Alaska fast enough
24 to resolve child abuse problems and things like that. There is
25 not the access to those services, those functions, in a small
village, in a timely manner. The village government is the only
one that can do it, it's there. Municipal governments don't have
those authorities, they can't do it. So, again, it is an area
where it's just a fact that it is a requirement that it has to
happen that way.

Alcohol issues, the whole social problems that creates
in our villages. The State cannot give those services like they
can in Anchorage. I mean, you can get on the phone here, call

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1 the police department if you are having trouble and you have a
 2 car in front of your house in five, ten, fifteen minutes, a half
 3 hour at the most. If you are sitting out there and there is
 4 weather problems and you call in to get a state trooper, maybe a
 5 week, a week and a half. If you've got somebody all drunked up
 6 running down the middle of the street shooting up the town, you
 7 can't wait a week and a half. The only authorities that are
 8 there, if they're not municipal, is the tribal government.
 9 They've always dealt with these situations and they are still
 10 dealing with them. They have to have the authority to do that.
 11 So they're forming their tribal courts, they are dealing with
 12 those issues: they're setting penalties, they're setting fines,
 13 they're putting things on paper because nobody believes that they
 14 are doing it unless they write it down anymore. So they have to
 15 do the formal ordinances, processes and everything else, and
 16 they're doing that.

17 Fish and game management, we went into that a little
 18 bit earlier. We are going into it on an international basis. We
 19 asked the State to get involved, we asked the Federal government
 20 to get involved in our porcupine caribou herd that effects eight
 21 of our tribal governments. The State does not have the
 22 authorities to do it, they cannot cross international lines.
 23 It's a very small issue to the Federal government, they really
 24 don't care. They could care less because oil. They look at the
 25 tribal self-preservation of those herds as interference with
 getting oil out of the Arctic reserve, right in the middle of the
 camping grounds.

I come from Nanana. We used to have caribou, they use
 to be called the Caribou People, the railroad came through. We
 met with the governments, we talked to the governments, the
 chiefs met from the villages on the Tanana River, we sent the
 Episcopal bishop back to talk to Franklin K. Lane, we asked him;
 if you are going to come in, at least move us. Because Indians

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1 at that time were fairly restricted in their movements, we
2 weren't even citizens supposedly then. They gave the church a
3 chunk and they basically told them, you keep the Indians on that
4 chunk of ground that we gave the church. They asked for a
5 designation on another chunk of ground further down the river;
6 they kept us there. Needless to say, there is no more caribou
7 left, so we can see the impacts of progress. The roads are
8 through, the railroads are through, the caribou are gone. We can
9 see the same thing happening to the Porcupine caribou herd. They
10 want to develop right in the middle of the camping grounds, the
11 caribou abort, they drop right there and in a few years the
12 caribou are gone. So, we had the only entities that could react
13 fast enough and start negotiating were the tribal entities, the
14 Dene Nation, CYI on the Canadian side and the village governments
15 on our side: met, formed, drafted our own conventions. When we
16 started taking those powers and authorities, the Federal and
17 State government all of sudden got a little excited and said;
18 well, maybe we better do something. So, if you do something, if
19 you assume the authorities that you do have, then the State and
20 the Federal feel that you are taking something away from them
21 because they know you have those authorities. If you use them
22 they are going to lose them.

23 You asked a question earlier about pollution
24 activities. Again, land management, fish and game management.
25 We have been fighting the State for quite a few years now on the
abuses of our waters in gold mining. We've got waters in some of
our streams that you can almost walk across and they haven't done
a damn thing about it, nothing. They took one guy to court, but
their case was so ill-prepared, that the judge... the State lost.
I am not sure if that was ill-prepared on purpose or not. But
the Feds are not enforcing their laws, the State is not enforcing
their laws, I think it is time for the tribes to again resume the
authorities and we will probably have to enforce our own laws

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1 again, because nobody else is going to do it. We're getting into
2 an area now of very gray jurisdictional areas, because
3 jurisdiction is one of the key issues that this group has been
4 talking about.

4 Game management -- we talk about assuming those
5 authorities and doing those things necessary for survival in
6 trying to maintain a subsistence economy. We have fairly well
7 organized our regions and our tribes in trying to deal with the
8 State system and using the State system. The Fish and Game
9 Advisory Board system, concepts, that we forced into the Land
10 Claim amendments. We forced Federal oversight into those
11 amendments, the State fought it but it's there as our protection.
12 If the State will not look after our interest, we do have Federal
13 intervention written into those laws. So, it's one thing that
14 the tribes can use. I think if the State continues to abuse our
15 rights, we do have rights to ask the Federal government to come
16 and intervene on our behalf, at least assist us. We have to use
17 a very wide brush when we are dealing with management, especially
18 of fish, because of it's very... its range. One little village
19 tribe can manage its own little area, but how does it manage what
20 the U.S. Government does when they're negotiating fish and
21 Toyotas. I mean, they'll give the Japanese a few more million
22 fish so that they won't bring in a few more million Japanese cars
23 and the tribal government can't control that. So we have to have
24 cooperation between the tribes, the State government and the
25 Federal government. We watch those things, we watch those laws,
we watch those meetings, we try to participate, we try to get our
members to participate and become familiar with those functions
because we know the impacts that those things have. So we can't
be too provincial in some things, like I say, that have very
large territorial areas and are international sometimes in scope.

Some of our villages have been looking at the Akiachak
situation. We looked at it before they did it. We are still

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1 looking at it. We are of the opinion that, maybe that will
2 probably be the only solution, is just to grab the bull by the
3 horns, kick out the municipal governments and just go back to
4 pure tribal governments. But there is one big flaw in it right
5 now that we can't, and haven't, really solved yet. In the Claims
6 Settlement Act, whether by design or accident, they took the very
7 ground underneath the communities and made sure that that went to
8 a municipal entity. I mean it is very specific in the way it was
9 spelled out. The very core of the towns have to be given to a
10 State municipal government. It was called the Minimum 1280, I
11 mean that's been negotiated down now. In those villages that
12 still have tribal governments and no municipal government, it has
13 to be given to the State in trust for a future municipal
14 government. So the big problem with dissolving a city, is how to
15 we get the land back to the IRA. Even the Federal Village
16 Townsite Act that unappropriated, un-subdivided has to be
17 given... I mean, the policy is now that it will be given, after
18 all the court fights and things are done away with, to the State
19 in trust for future municipal governments. So we've got to get
20 over that hurdle of how we are going to deal with that, within
21 the law so that it will survive. We'll probably have a municipal
22 land sale behind Jimmy Jimmy's dog house at one o'clock in the
23 morning; it will be the legal sale and the municipal government
24 will sell the land to the tribal government. We'll figure out
25 some way to do it. But that is the one thing that we've got to
figure out so that we can have the jurisdictional authority over
our own communities.

21 We've researched those things and try to make sure that
22 we can do something that will have the best chance of succeeding.
23 We move a little slow, but Athabascan systems of government have
24 always been slow. Decisions of any importance usually take two
25 to three years; consensus government is not a fast government.
It is a very, very slow type of government system. But when it's

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1 done, it's done; people can live with it. That was one of the
2 problems with the Claims Settlement Act. A decision of that
3 importance to pass in the time that it did, 10 years, was very,
4 very fast. I mean the chiefs had been working on that decision
5 already for almost 50 years and hadn't come to any real firm
6 conclusions yet. That settlement was a very, very important
7 document and it was rushed through without enough discussion,
8 people discussion.

9 We are doing that now with the 1991, we are rushing it
10 again. We are getting on this treadmill that's going to destroy
11 us with the speed that we are trying to do things. Since we are
12 forced into that, we are revising our systems to try to meet
13 those new timelines. Thank God for transportation and
14 communication that it is today. Part of the reason for the two
15 and three year process on the large decisions, if they were
16 inter-tribal, was just the transportation and the communication
17 to get back and forth. One meeting in Tanana, Luchu Luyai
18 (ph)... I mean a person would travel three months, round trip
19 from most of the villages to get there and get back, for that one
20 chiefs' meeting, four months. Andrew Isaac from up in the upper
21 areas of the Tanana River, almost a six month trip. That's a
22 long time to travel to a meeting. We are able to do things maybe
23 a little faster now, and we're using some of the new and modern
24 methods. We've got computers and satellite communication and we
25 do use tools, we are not afraid to take on some of the white
man's implements, some of them are damn good. We refused to go
back to bows and arrows and loin cloths, we're not going to do
that. That seems to be what is implied a lot of times when the
non-Native community hears about tribal sovereignty, tribal
governments, cultural protections, etcetera, they all of a sudden
see us with feathers and furs, and bows and arrows, and that's
not what we're talking about. So our villages are also trying to
dispel those types of things and disseminate information, not

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1 just within our own communities but the other communities, so
2 that we can sit down and talk to each other. We have tried for
3 the last six years now, to get an... one more IRA government
4 established since the Claims Settlement Act.

4 UNIDENTIFIED: (OFF MIKE)

5 MR. WILLIAMS: In process, we've
6 got 11 in process. They've been there for six years.

6 UNIDENTIFIED: (OFF MIKE)

7 MR. BERGER: You mean,
8 applications for IRA charters.

9 MR. WILLIAMS: Applications for
10 IRA charters. To dispell the idea that Land Claims did away with
11 tribal governments in the State, that is why its been taking that
12 long. Somebody is still trying to prove that that Act did away
13 with tribal governments in this State. Right now, as of last
14 week, one of those documents finally got on the Secretary of
15 Interior's desk, six years to even get to his desk. But it is
16 now officially on his desk.

15 (LAUGHTER)

16 MR. WILLIAMS: And that was a very
17 strange document in how the tribe has had to try to maneuver that
18 thing to, around and finally get there. Because the State's
19 position, or the State's supposed position.

18 UNIDENTIFIED: Is this Eagle or...

19 MR. WILLIAMS: This is Eagle.
20 When that document was first drafted and submitted by the village
21 of Eagle, they used a standard form of powers. The standard form
22 basically said, all powers not specifically denied them by the
23 Constitution of the United States.

23 UNIDENTIFIED: (OFF MIKE)

24 MR. WILLIAMS: The tribe had all
25 of those powers. The State government said: No, no, we can't
live with that. Too broad. We want you to specify the powers.

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1 The State was saying this, through the Federal government back to
2 us and somehow the Federal government was trying to get the State
3 in between us and the Federal government in negotiating this
4 tribal charter. They were trying to say what powers that tribe
5 had the right to give their own village council in governing
6 their own people. So, to be good guys they took it back and they
7 went through with it and with a very broad brush they painted out
8 three or four broad areas of powers. The one that seems to be
9 sticking in the craw of everybody, is they specifically said
10 taxation. How is a government going to be able to survive
11 without a form of income; we have heard about this at this
12 meeting and you have heard the implications and the serious
13 implications that could have, especially if the land goes back to
14 the tribe denying those tax resources to a State. But all of a
15 sudden the State says; No, we don't want you to delineate those
16 powers specifically, because if the Federal government approves
17 that in that piece of paper, the State then won't be able to take
18 us to court and challenge our powers to do that. So they want us
19 to take it back and put the broad powers, so they can pick and
20 chose the court cases and take us to court and hold us up for
21 another 50 or to 100 years in implementing those powers. The
22 State sits back and they pick and chose their cases on a case by
23 case basis, the ones they think and know they can win. The ones
24 that they are afraid of they stay away from until they get so
25 threatening that they are forced to go to court. And those that
we're threatening them with, is tribal jurisdictions; Venetie
signed their land over to the tribal government, gave it to them,
told the State where they stood, assumed all powers, all
jurisdictions. The State hasn't challenged them yet. They
started to consider oil leasing, told the State when and if we
find oil, all severance taxes, etc., go to the tribal government.
If they'd have found oil, more than likely the State would have
challenged them because you are talking significant sums of

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1 income.

2 Stevens Village has done some things reaffirming or
3 explaining their tribal sovereignty over lands, tribal lands -
4 not ownership - authorities, jurisdiction, dependent Indian
5 communities. And they are doing some things through the court
6 system and planning to do some things through the court system
7 and I'm really not at liberty to say here. But, again, putting
8 issues before the State, we are doing the same thing the State is
9 doing, we're sitting back looking for the case or the cases
10 because that is what they are doing to us, we are going to do the
11 same thing to them. We are assuming authorities, more than
12 likely within this year; we will take a city government out of
13 existence and the tribal government that has always been there
14 will still be there.

15 Again, the land transfer thing is something that we are
16 looking at, how to resolve that. We think we've got it fairly
17 well figured out. I think you are going to see a big movement in
18 the State to do that, dissolve the municipal government, because
19 in most cases they are a sham anyway. We've got five or six
20 villages where all they do is change hats in the meeting, they've
21 got their city council hat on one minute, they've got their
22 village council hat on the next minute, they've got their
23 corporation hat on the next minute. It's just a matter of
24 changing hats. It all smoke and mirrors and it's a lot of
25 nonsense they shouldn't have to go through. But it was done with
a carrot and stick; you become a city government we'll give you
this little bit of money here. It was a disservice to a lot of
those communities when that happened because they weren't told
the implications that that would have in the future. Some very,
very bad advice by the BIA. The BIA was involved in this process
in making these tribal governments municipal governments. Tribal
"ops" was actually out there encouraging it. Thank God for 638,,
we are now the Bureau. In essence, at least the Tanana Chiefs

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1 Region, we are the Bureau. We had that office whittled down to
2 three people and..

3 MR. BERGER: BIA?

4 MR. WILLIAMS: BIA. We'd take
5 stuff over there and tell them to stamp it and if he wouldn't
6 stamp it, we would go to Juneau and get a stamp and if they
7 wouldn't stamp it, we would go to Washington, D.C. and stamp it.
8 We assumed all of those authorities and jurisdictions of the BIA
9 except those specifically given to them. We contracted out
10 everything, even the trust programs, realty, tribal "ops",
11 credit. There wasn't one program left at the Bureau. The Bureau
12 still retained those authorities, those trust responsibilities,
13 those special relationships between the Federal government and
14 the tribal governments. But as a tribal consortium, Tanana
15 Chiefs is a State chartered non-profit corporation; but in reality
16 it's a tribal consortium and the tribes give TCC the authorities
17 through resolutions for those things, if they want TC, Tanana
18 Chiefs, as a voice to do for them. We're restricted and the
19 power still is maintained by the tribal governments, individual
20 tribal governments.

21 UNIDENTIFIED: (OFF MIKE)

22 MR. WILLIAMS: We, the Tanana
23 Chiefs, when we realized that we were the BIA, and other
24 agencies. I mean, it's not just the BIA, we have assumed almost
25 total health authority just this year. We run our clinics, we
run social service programs for the State, we run labor programs
for the Department of Labor. We are a money hustler, like the
gentleman said. We have become fairly astute at money hustling,
we are a \$20 million corporation, \$20 million a year in annual
expenditures. So we can go out there and hustle a buck with the
best of them. And when we realized that we were becoming a
larger bureaucracy than the one that we had intended to replace,
and solved the problems that we intended to solve... it's a hell

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1 of a trap when you get into that money hustling game. It gets to
2 be so much fun and the game is so much fun, that you forget what
3 you are doing sometimes. We finally had to sit back and look at
4 ourselves, to get some of those authorities back into the hands
5 and close to the people, that's what we intended to do when we
6 first started this game. We had to decentralize. We now have
7 six sub-regional offices. The largest one serving 10 villages,
8 the smallest one serving four villages based on communication and
9 transportation, relationships of those villages that are formed
10 in the sub-regional concepts. It's working. The flow of
11 communication is a lot better now.

12 So, when you go out there to reassume these
13 authorities, you can't do it in a large entity because you become
14 the entity that you are trying to get to reassume those
15 authorities. So, a broad regional concept of tribal government,
16 a regional IRA... be careful of those. We woke up one day and
17 found out that we were just as bad, if not worse, than the Bureau
18 and IHS; we had to do something about it quick because we were
19 taking powers away from the people that we were supposed to be
20 serving.

21 UNIDENTIFIED: (OFF MIKE)

22 MR. WILLIAMS: No. It was just a
23 self-evaluation. But you could see what you are doing, if you
24 would just sit back and look at it. So, villages are the
25 important entity. That has been the determination of the Tanana
Chiefs Conference. The seats of power are in the tribal
governments, the village tribal governments. That's where the
daily life is going on, that's where decisions effect the daily
life, that's where the decisions have to be made. Those powers
and authorities that the State doesn't have and that the village
governments have to maintain and exercise, because the State
doesn't have them. Like I said, fish and game powers, the
management across international lines. The day-to-day management

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1 of fish and game for cultural purposes... we've got cultural
2 things that we do with fish and game that cannot be legislated by
3 seasons and quotas and things like that. Our potlatches, our
4 religious programs, we need things that we have to do and we have
5 to break the law, the State law, to do those things. Unless the
6 tribe has those authorities too, there are abuses that the tribe
7 can't control. If you live there you see those abuses in those
8 communities that are still very tribal in nature; they are
9 controlled, there are ways of controlling of abuses and those of
10 us who have been there, we understand the abuses, we see them go
11 on. Unless you have a strong tribal government, they are not
12 stopped. The State needs us as much as we need them to manage
13 fish and game resources. They've got to be willing to recognize
14 tribal governments for effective management in rural Alaska, they
15 cannot police this country. The only police force out there that
16 can do it are the people and we are probably more strict than the
17 state in watching our food because, like Sheldon said, it's not
18 fish and game, it's food. We are not going to let somebody
19 destroy our table, so we have to maintain those authorities and
20 those functions. The State is too large for the State to do it,
21 the State can't even take care of Anchorage and Fairbanks and
22 Juneau and the major communities, let alone take care of rural
23 Alaska. They don't have the resources to do it, they don't have
24 the manpower. They can't do it, they need the cooperation of the
25 people to do it and they have to cooperate with us and then we
will cooperate with them, it's that simple. It's going to take a
partnership or they are going to destroy our State. Thank you.

MR. BERGER: Thank you, Spud.

Mary, you wanted to...

MS. MILLER: Spud, how many
municipal governments are in your region?

MR. WILLIAMS: We are about half
and half now.

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1 MS. MILLER: So that is how many?

2 MR. WILLIAMS: Oh, about 16
3 municipal governments, the other of the 43 are pure tribal
4 governments.

5 MR. BERGER: David Getches.

6 MR. WILLIAMS: Maybe a little more
7 explanation. Municipal government how? Municipal government in
8 name only in most cases.

9 MS. MILLER: Even in name only?

10 MR. WILLIAMS: Yeah, about 16.
11 There are very few, like I say, that function as an actual
12 municipal government.

13 MR. BERGER: David Getches.

14 MR. GETCHES: But you mentioned
15 that you would predict that these municipalities will eventually
16 go out of business and they probably should. Are there benefits
17 or funding advantages that are available only to municipalities
18 that will be lost to the communities? Are there things that you
19 can't achieve for a village, under State law as it currently
20 exists, that you need those municipalities for?

21 MR. WILLIAMS: There are some
22 slight variations and fundings between the municipal governments
23 and the tribal governments. We have worked out some systems with
24 the State. We are trying to cooperate with them. They can fund
25 village governments if they want to, the very same way that they
fund municipal governments; it's just a vehicle in the ways that
you do it. We have to do it through granting processes, etc.
This administration has been fairly cooperative in making those
avenues of funding available to village governments; that is not
to say that we will get a Tom Fink some day and the whole thing
will be cut off. If there is not a cooperative effort between
the State and the tribes, more than likely, they will blackmail
those communities by cutting off those sources of funds. So that

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1 is why I say it is going to take the cooperation of both sides or
2 they are just going to cut off everything out there.

3 MR. BERGER: Ralph Lerner.

4 MR. LERNER: Doesn't that
5 possibility, that the situation might turn and become very ugly,
6 argue in a way for what Mr. Getches was suggesting. That maybe
7 there is some utility in retaining forms that can't be undercut
8 without undercutting all the municipalities in Alaska. That's to
9 say, that you are an exceptional situation shouldn't be so
10 visible.

11 MR. WILLIAMS: I agree with you
12 fully and, like I say, it's not a move that we are going to take
13 very lightly and it is something that is going to have to be
14 negotiated and the State is going to have to understand the
15 reasons why were doing it and the reasons is that the State
16 system just does not work. Maybe what will end up happening is
17 they might start to change their system, get a system out there
18 that will work. So the efforts aren't in vain, you know;
19 whatever we do is going to be an improvement over what we've got
20 now.

21 MR. BERGER: Sheldon.

22 MR. KATCHUTAG: Yes. Those of us
23 that are live here in Alaska are well aware of the formation of
24 the Federal/State Tribal Relations Task Force. The United Tribes
25 of Alaska was one of the organizations that has been pretty much
forcing the Governor to back up his word with regard to what he
will do for us, those people that are responsible for his holding
the position of Governor of Alaska, namely bush Alaska. This
Task Force originally called a Sovereignty Task Force, is charged
with looking into what problems are out there in Bush Alaska.
What is the problem; why is not the State system working in rural
Alaska? I have been trying to stress all along, ever since I've
gotten involved with the United Tribes of Alaska, is that the

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1 only way in which this dilemma, this problem, this mess can be
2 resolved, is through negotiation. "An Invitation to
3 Negotiation," was a title to a speech that I gave to the AFN
4 convention this year. Which I might add, was pretty well
5 received. The thing that we have to remember before we can enter
6 into those negotiations, is the fact that we must realize that
7 there are tribal governments out there and that they have been in
8 place since before statehood and that they are viable, stable,
9 respected authorities for those people that make up the
10 constituency of those governments. I would hope that the State
11 of Alaska and their Task Force would be responsible in carrying
12 out the charge of their commission, so that eventually, and I
13 mean within the very near future, I would like to see this
14 negotiation begun. We cannot continue to function in this
15 climate of distrust, ignorance and confusion. Those of us that
16 live in Bush Alaska cannot get on with our day-to-day lives with
17 the way things stand now, if in fact we are concerned about our
18 people.

15 Sure, anyone of us out here that are involved in this
16 movement can drop it and say, okay, I'm going to get on with my
17 day-to-day lives and I'm going to go out and make myself a
18 million dollars. Whether or not that's possible, is not the
19 question. The question is, what about the rest of our people?
20 We have an obligation to make sure that this Darwinistic system
21 that has been imposed upon us, not only by the corporations, but
22 by the State of Alaska and the Federal government, does not
23 annihilate that great majority of our people, the silent
24 majority, those people that cannot afford to take the time or the
25 money to come to here, to Anchorage, to make their views known.
I know the Honorable Judge Berger has managed to reach some 50
plus villages, but I am sure he has also heard the same things
that I have heard from the smaller villages; why couldn't he come
to my village too? We have concerns just as strong or stronger

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1 than those expressed already, and it comes back to the same thing
2 that he asked, funding. He can't get the funding to reach all
3 212 villages. Those residents of those 212 villages cannot take
4 the time, they do not have the money to make their views known
5 and they are the people that ultimately will suffer from this
6 confusion. I think it behooves us to remember that, that they
7 are the people that must consent or not consent to any solution
8 to this problem. Therefore, I think it behooves everybody to
9 realize that they have to be brought into this dialogue because
10 it is their lives that we are talking about. It is their
11 survival that we are talking about. Those of us that are
12 urbanized Natives can function within urban Alaska. Those of us
13 that are not will not and cannot and therefore we, as leaders of
14 our people, if in fact we are leaders of our people, have an
15 obligation to make sure that they enjoy all the success that they
16 are entitled to in whatever facet, whatever direction that they
17 choose to move their lives because that is their birth right.

14 MR. BERGER: Rosita, and then
15 Mary.

(TAPE 6, SIDE A)

16 MS. WORL: In the mid-1970's, I
17 bravely wrote a paper trying to define... remember when we had
18 those task forces on the definition of tribes?... and from my
19 work up on the North Slope, I saw a movement of villages, you
20 know, unifying themselves into regional entities and I, maybe
21 bravely or naively at that time, said that if it had happened a
22 hundred years ago, they would have been called tribes, and then a
23 few years later I saw movement back or I saw villages beginning
24 to assert or trying... they were assuming a lot of the
25 jurisdictions, that I think a lot of the regional organizations
were administering. I am not too sure what I see in the future
for regional organizations, regional non-profits, and I am not
too sure where they all fit. I have a lot of questions about,

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1 you know, where... I know that some regional authorities get
2 their jurisdiction from villages, village IRA's, primarily under
3 93-638, give their authority to a regional entity. Then I know
4 that there are some regions where the regional corporation gives
5 a regional association the authority to contract under 93-638.
6 So, I see a difference there.

7 MR. WILLIAMS: The one point that
8 you are making about the regional corporations, the profit
9 corporations giving that authority, is because we have two
10 classes of Alaska Natives now. We've got those that have shares
11 back in the village as well as the corporation, and those that
12 only have regional corporation shares, the at-large members.
13 There is no other entity to give those authorities for those at-
14 large members. So, that's why, in the contracting process, they
15 have the regional profit corporations. They can only give the
16 authorities for those at-large members who don't have a real
17 recognized tribal enrollment, because unless they are a member of
18 a tribe, the tribe can't serve them and nobody there to speak for
19 them.

20 MS. WORL: I guess that the
21 problem that we have here, particularly the one that I am
22 familiar with is in the Anchorage area where we also have a large
23 population of Native people who are not from CIRI or who are not
24 from any of the villages in the region. So, those Native
25 peoples, their rights...

UNIDENTIFIED: Off reservation?

MS. WORL: That's a word were not
going to use anymore. Right? Anyway, that's an issue, I think,
that needs to be clarified. But the one point that I do want to
make is that a movement that I see in the state is that the state
is beginning to contract with regional associations to administer
services and, from the one study that I did on the economic
studies of Native women, it was very clear that when regional

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1 associations administered programs that there was a greater
2 percent of Native hire and local hire. So, we do see, you know,
3 the state moving towards contracting health and social service
4 kind of programs to regional associations. So, I am just, you
5 know, I just don't know about the life of... what do you see in
store for our regional associations or non-profits?

6 MR. WILLIAMS: I see a very
7 definite need for a regional organization, for us it's
8 traditional. As a group of tribal entities, we have been meeting
9 that way for centuries, coming together and having our meetings
10 and making decisions as a unified group when there was those
11 necessities. I see a continuing need for regional groups for
12 purposes of strength, for purposes of unity, for purposes of
13 making those decisions that will effect all of us, you know, that
14 are outside the community itself. Anything that unifies us does
15 give us strength. It gives us an opportunity for those things
16 that we disagree in, we can do that in-house, we can clean our
17 dirty laundry in-house and come out with a unified decision
18 making process so that people can't tear us apart using one
19 against the other. The services aspect that you are talking
20 about, the economy of scale. We are able to use our best
21 expertise in using those funds made available to us through
22 various programs and hiring the best brains to assist us in
making decisions. To give us the options, not to tell us what to
do things, but we can buy the options, get the information and
the knowledge and control. Control of programs and how those
services are delivered. We have to be able to control those
systems ourselves, so that they are done more efficiently and we
have proved that we have been able to do that.

23 MR. BERGER: Dave Case, you had
24 a...

25 MR. CASE: But, Spud, I think you
mentioned earlier on that you were skeptical about regional IRA's

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1 perhaps, or regional tribal governments; I'm not sure you used
2 that term.

3 MR. WILLIAMS: (OFF MIKE) without
4 the approval of the village people themselves, yes.

5 MR. CASE: But jurisdiction, I
6 mean, political authority then would be at the village level and
7 could be delegated, in certain instances, to a larger regional
8 body.

9 MR. WILLIAMS: It's very similar
10 in aspect to state's rights and federalism.

11 MR. CASE: Okay. So, a federation
12 of villages could have their own institutions that would have
13 region-wide authority.

14 MR. WILLIAMS: But more on the
15 Canadian model, where the provinces have more authority than the
16 Federal government in most cases, and are able to make those
17 local determinations.

18 MR. CASE: So the authority would
19 ultimately reside at the village level rather than at a regional
20 level?

21 MR. WILLIAMS: The ultimate
22 authority has to lie with the people, yes.

23 MR. BERGER: Provinces own the
24 land in Canada, Federal government doesn't. Mary Miller.

25 MS. MILLER: In 1983, I bravely or
naively, as the case may be, also made an effort to write about
our people's future. And in the paper that I did write I tried
to take a perspective of just the average person at the local
level, and what I did was try to look at what options Alaska
Natives were looking at for protecting their land in the future.
Then evaluating these options as to their legal feasibility,
their economic feasibility and their cultural feasibility, given
the local context of each village. I identified several options

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1 that were being discussed at the time and that are still being
 2 discussed, being the Alaska Land Bank, transfer of ANCSA lands to
 3 IRA or traditional governments, corporation reorganization
 4 strategies, the possibility of land use planning, the option of
 5 mergers or consolidations, half a page on granting title to
 6 municipalities, maybe a third of a page, and the ANILCA
 7 provisions that are in place now. Since then, having worked
 8 for... this will be my second year, with tribal governments in
 9 the Bering Straits region, I believe that my views have become
 10 much more in favor of, at least exploring, the feasibility of
 11 utilizing our tribal governments in one way or the other, given
 12 the local context of each community. What we are looking at in
 13 our region now, is to form some kind of regional consortium. In
 14 doing that, we would delegate no governmental authority from the
 15 villages to a regional group, whatsoever. It would just be
 16 mainly to have a collective voice in addressing issues.

17 The first thing that we want to do is provide a
 18 structure for being able to intelligently look at the feasibility
 19 and possibility of establishing some type of tribal court system
 20 in our region. We do have villages, tribal governments, who do
 21 act on Indian Child Welfare cases involving foster care and
 22 adoption matters. However, as this process has gone on and since
 23 the Indian Child Welfare Act has passed, we have seen how the
 24 State of Alaska is not the proper forum to be addressing these
 25 issues. We have seen that if we can establish our own system of
 adjudication, in the field of not only child custody matters but
 other civil matters, it is in our best interest to do so and that
 is what we want to look at. One thing that's very, very
 encouraging is that we are beginning a more realistic and a more
 stronger dialogue with our neighboring region, Maniilaq, in the
 Kotzebue area. One of the reasons is that the jurisdictional
 district for the state court system covers both the Maniilaq and
 the Kawerak areas, the Bering Straits and the NANA Regions. If

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1 we... at this point, we all know that the state is the one that
2 is still handling our child custody cases. If we could establish
3 a state tribal agreement on the tribes involvement, real
4 involvement in these cases, in the absence of tribal courts until
5 a tribal court system can be set in place, I believe that is in
6 our best interest.

7 As to what Rosita was saying a minute ago about
8 regional groups and the future of them. Currently we have three
9 villages that are contracting for services themselves. This has
10 taken away from Kawerak contracting for Federal services from the
11 Bureau of Indian Affairs. We foresee that probably more villages
12 will be doing the same thing and I can proudly state that the
13 administration of our tribal non-profit is open to that idea and
14 realizes that that is a real possibility.

15 MR. BERGER: Do the IRA's in the
16 villages, are they the parties that contract with BIA then?

17 MS. MILLER: Yes. Some contract
18 for just two or three programs, some contract for more. The IRA
19 council in the community of Nome contracts for all of them.
20 Another thing that we see happening is, on our own... in some of,
21 hopefully, most of our communities in our region, is that the
22 village corporation and the IRA councils are starting a real
23 dialogue about how they can work together. I see this very
24 strong, particularly in the communities on St. Lawrence Island.
25 I would also like to state for the record, that we do have three
communities who were former reservations. Who, at the time of
the Land Claims Act, opted to take the surface and subsurface
title. These three communities, I believe, are at a very real
advantage in making use of their tribal governments; they don't
have to deal with a regional corporation that claims title to the
subsurface estate and that's something that's, I believe, they're
very lucky to be in the situation they are in. On St. Lawrence
Island we have... the communities are starting to adopt some...

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1 draft and adopt some ordinances on, for instance, on preserving
2 what they call valuable tribal resources. They want to eliminate
3 people coming in and buying up artifacts and the community not
4 really benefiting, except for individuals who usually settle for
5 a lot less than they can settle for. That's very clear that's
6 happening. It began with Gambell, and Savoonga is now looking
7 very seriously at that also. We have not really, over the past
8 10 or 15 years... our villages really have not come together to
9 talk about tribal government issues as one body, one group of
10 people. That is becoming something that is more and more needed
11 and requested by our villages, so that we can have a collective
12 focus on issues and are able to speak in a unified voice on
13 political issues.

14 The last thing I would like to emphasize again, is that
15 there is a very fragmented effort when you have too many
16 organizations or entities in one small village. People become
17 very burnt out with holding meetings and when you do have to
18 change hats so often, what it does is that you are not able to
19 provide the focus that you could if you had only one group
20 speaking and addressing all of the issues that the villages are
21 facing. I can't emphasize enough the need that we have to face
22 this dilemma head on. One community in our region made some
23 effort to do that in a meeting in late October or early November,
24 but nothing was resolved. The intent of the meeting was to just
25 understand what the implications were of dissolving a city
government. I am glad that they at least did that, but I don't
see that any real action in the near future will be taken on that
issue. That's all I have right now.

22 MR. BERGER: Thanks, Mary. David
23 Case.

24 MR. CASE: You mentioned the
25 subsurface, the absence of a subsurface problem on the former
reservations. What about the 14(c) question? How is that being

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1 handled in those communities?

2 MS. MILLER: I can't speak to
3 that. I can't say, I am not familiar enough with what they are
4 doing with that.

5 MR. BERGER: I wonder if we
6 could... we promised to have...

7 UNIDENTIFIED: I had my hand up
8 here.

9 MR. BERGER: Just let me suggest
10 how we are going to proceed. We haven't had a coffee break, I
11 think we should have one. After the coffee break, I suggest that
12 since Spud and Mary have opened up the question of tribal courts,
13 that we might move on to the next item in the agenda and ask
14 Browning Pipestem and Ralph Johnson to tell us something about
15 the way tribal courts function in the Lower 48. I think it's
16 worth covering that particular ground this afternoon, if we can.
17 I still have some questions that have accumulated as we've
18 proceeded with the discussion about supervision by the Secretary
19 of Interior and the whole question of holding land in trust or in
20 fee. I'd like still to come to those some time today. Okay,
21 Charlie, you can have the last question before we adjourn for
22 coffee.

23 MR. EDWARDSSEN: The question of
24 the Secretary of the Interior and the question of governmental
25 jurisdiction. Under the January 2, 1976 amendment, I would like
to read to you what it says and ask me if this is what it says.
I would like your interpretation and your participation, if this
is not trust responsibility and so I would like to get away on
the assumption of termination versus termination. The 1976
amendments to Alaska Native Land Claims on revenue sharing. The
problems that we have had with State of Alaska is that the Alaska
Native people need a stick, a big enough stick to put the State
on the line, so that we can deal with the problems of equity and

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1 distribution fairly. So, the biggest strength that the Alaska
2 Native people have is their ability to say no to the United
3 States Government or State of Alaska or to you, Mr. Berger. And
4 so, this under Title 25, Section 162(a) it reads: Further,
5 provide that this section shall not be construed to create or
6 terminate any trust relationship between the United States and
7 any corporation or individual to receive the benefit under the
8 Settlement Act. And so, what does this do for us? Does this
9 mean that we can now transfer assets to a Federal IRA or does
10 this mean that we have to excuse ourselves and let racism reign
11 in America? When tyranny by the State's rights people getting
12 organized and here... and it further reads, and if this is not
13 enough then I don't know what is: To the extent that there is a
14 conflict between the provision of this section and the extent the
15 other Federal laws applicable to Alaska, the provisions of this
16 section will govern. So, to me, it is beyond a reasonable doubt
17 that there is a responsibility and a function.

14 The State of Alaska, all of its land entitlement, came
15 from the United States. That our political development on the
16 North Slope, is that we had a Home Rule Government, but State of
17 Alaska has not given us the land. So, we go through this
18 horrible process. We have spent millions and millions of dollars
19 in court to maintain our right and so, since 1972 to this day,
20 the North Slope Borough has not received one acre of land. And
21 that here is this great State that is supposed to give these
22 obligations to us, pass them on down to citizenship, it's been
23 over 12 and a half years that we have not received one acre. So,
24 they hostility, the structural racist hostility of the Anglo-
25 Saxon community is real. The Bureau of Indian Affairs is
politically whimp, they are the whimp stick of the Anglo-Saxon
community and they are spineless to rise against the rest of the
Anglo-Saxon tyrant. Here State of Alaska has not decided to
share the land that it has received and to a Borough government

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1 that it organized. And so, the structural hostilities of the
2 State are real.

3 So, I think that it should behoove the Commission and
4 all of the regional corporations and the village corporations
5 that it is high time that we get the State on these problems and
6 the way to get the State is to utilize a recommendation by Mr.
7 Browning Pipestem, is to utilize the 1982 Indian Revenue Act and
8 then we incorporate this responsibility to these areas where the
9 revenues from oil and gas would be severed and if State of Alaska
10 is continue to racistically deny the Inupiat people their land
11 entitlements, that the permanent fund should be locked up and
12 once you start locking up the State's funds, they are going to
13 start playing. So, all the people here have said, of all of
14 these problems, how do they stop? They stop when you get to
15 their money and Alaska Native people and the people of the United
16 States and State of Alaska get their funds from the Revenue Act.
17 So, if you are dealing with tribal governments, your capital
18 formation powers come from the land, the land and the resources.
19 State of Alaska is no different. It gives oil and gas leases,
20 tribes give oil and gas leases but, no, Venetie cannot have its
21 own gas leases. So, when this self-denial by the Anglo-Saxon
22 community, to deny Eskimos over here, we cannot understand that.
23 We cannot understand why the barrier exists, when the law says
24 otherwise. So, the Section 5 on Subsection 29(5), I got to read
25 this again.

20 MR. BERGER: Well, you don't have
21 to read it again, we heard it once.

22 MR. EDWARDSSEN: Here is another
23 section, wherein that same law is said that trust responsibility
24 exists. For your benefit I am reading this to you. The funds
25 that we were entitled to and the entitlements of the Thirteenth
Regional Corporation and the at-large corporation, the Land Bank,
everything that we have is tied to these numbers. If these

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1 numbers are not dealt with at the inception from the recipients,
2 you have to know what your numbers are. So, what they have done
3 with Alaska Native Land Claims Settlement Act, is that they have
4 given you a deregulation corporate activity without any
5 government. So, for the last 50 years, the Bureau of Indian
6 Affairs and the Secretary of the Interior has never defined our
7 lands and ANCSA came in and now that we have a structural
8 conflict, but the biggest catch-all is, but subject to valid
9 existing rights. Those valid existing rights mean that you must
10 have a proper accounting of your oil and of how much.. How much
11 of the fund from the Alaska Native fund has been received? Why
12 this royalty accounting is of great importance to all of us here,
13 is that this is a way to attack the Governor and the Secretary of
14 Interior where it hurts. We have been abused long enough and
15 waiting. So, when we talk about tribal configuration, yes, it is
16 possible. It is in law, but where we have problems is in human
17 administration.

14 The Bureau of Indian Affairs are so swift and the
15 Bureau of Land Management that since 1975, that there has been
16 only one court-ordered townsite. There are 75 Native townsites.
17 Of the 108 village entitlements and groups, 131 have never
18 applied. So, when you multiply 131 entitlements times a
19 township, that's a lot of land. When you multiply 30,000 Natives
20 who are enrolled in the Thirteenth Regional Corporation or who
21 are on the at-large, then those people who have voluntarily
22 abandoned their relationship with the blessing of the United
23 States, are entitled to 160 acres. The village corporations and
24 the regional corporations, nor the BIA, nor State of Alaska has
25 never seen them to fully implement the Tribal Abandonment Act of
the United States, which is Title 43.189. If an Indian is to
abandon its tribal relationship, my feeling is that he is
entitled to 160 acres for becoming an American and this what that
person is entitled to. So, these entitlements were taken off in

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1 1976, were taken off by FLMPA, the Native Townsite Act, the
2 Native Allotment Act, the Veterans... the whole trary economy of
3 America was striped out when they took away the Homestead Act.
4 So, what happened to the Alaska Natives, also happened to the
5 white people in Alaska. The white people can no longer make
6 these allotments, we got all wiped out in 1976. All of the
7 American people can no longer get any public entry from public
8 lands, what is because American people were silent in 1976 when
9 this country was trying to determine under the Federal Land
10 Management Policy Act of 1976, they saw... Congress sought in its
11 wisdom, that it is not (INDISCERNIBLE) to erase all of the public
12 land grant that it gave to the American people from now on. So,
13 from 1976 on up, Americans, citizens, have no birthright from
14 public lands. So, it should behoove those racist organizations
15 that want equality. I would like for them to tackle FLMPA and
16 then we can go to Congress jointly and say, that he too was a
17 victim, that bigoted, racist hunter extraordinary.

18 So, what happened to us and why we are crippling over
19 the spoils is we have not yet fully received the benefit that was
20 promised to us in ANCSA, because we have delayed it with FLMPA,
21 we have delayed it with other techniques and yet, yet on paper,
22 oh you are not terminating. You are not terminating. But that
23 BIA: Oh, we have a question. I'm sorry we are going to delay
24 this contract because we are not sure. We are not sure what
25 Congress had intended, so therefore that they sit on it. So, the
developments that we are facing with here and the agonizing
process that ANCSA is, and it is a agonizing process, and those
of us we would like to see an accounting of what is due today.
See, in my area we had organized the Inupiat Community of the
Arctic as a way to protect, as our reaction against ANCSA, on the
bad of ANCSA. So, we found out that was not good enough, so the
next line of defense was the North Slope Borough. So, all of our
defenses are easing off and then so, that was not enough, so we

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1 had to create a new complete jurisdiction within the American
2 administration called the Arctic Science Policy. The Arctic
3 Science Policy is an administrative unit within the United States
4 doctrine and the boundaries of Arctic are defined. So, when you
5 the Alaska Native people, are absent that does not mean that all
6 tribes are absent. So, the Arctic Slope has been busy working
7 with itself and we now have a new administrative unit which Mr.
8 Reagan has signed into law, which is a national policy dealing
9 with the Arctic and these lands are not in U.S. jurisdiction.
10 They are now in a new definition and I will read to you this new
11 definition. This new American administration.

9 MS. MILLER: Mr. Chairman.

10 MR. BERGER: Yes.

11 MS. WORL: I really share the
12 frustration that Charlie is expressing...

13 MR. EDWARDSSEN: The definition of
14 the word Arctic.

15 MR. BERGER: Let Rosita say a
16 word.

17 MR. EDWARDSSEN: Excuse me, I have
18 the floor.

19 MR. BERGER: No, let Rosita say a
20 word, please.

21 MS. WORL: Mr. Chairman, I share
22 the same frustrations that Charlie is expressing and I would
23 suggest that perhaps that the Commission get together with
24 Charlie and maybe sit down and listen to him. However, at this
25 point in time, we have invited people from all around the world,
we have experts from many different areas. I would like to have
the benefit of, and I am sure that there are others, who would
like to have the benefit of hearing from the other seven people
who are scheduled to be on the agenda today. I would like to
have the opportunity to hear them. I would like to have the

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1 opportunity for myself and others to ask them questions and would
2 suggest that we get together with Etok at a later time.

3 MR. BERGER: Let's stop for
4 coffee, Charlie, and let's have a discussion.

5 MR. EDWARDSON: It's better to
6 have a discourse than it is bullets.

7 MR. BERGER: Well, look, I am
8 going to adjourn this for coffee and I will talk to you about
9 when you can make this presentation, but you can't simply take up
10 the time of everybody here on something that isn't really germane
11 to our agenda. So, we will adjourn for coffee now.

12 (HEARING RECESSES)

13 (HEARING RESUMES)

14 MR. BERGER: Just before we move
15 on to tribal courts, Chris McNeil wanted to say something.

16 MR. McNEIL: Yes, Mr. Chairman.
17 Does this mike work? I want to say that I have certainly
18 appreciated this discussion that we have had here today,
19 especially in looking at and talking about the various powers of
20 tribal governments. It seems to me there has been a lot of work
21 done in the past and (OFF MIKE) that the range of the powers of
22 tribal governments, but if I had my ears tuned halfway right, I
23 thought I hear a couple saying that to some degree tribal
24 governments are also defined in a specific context and that
25 context in some degree defines the meets and bounds of the
exercise of those powers. It strikes me that here in the state
of Alaska, that in looking at some of those questions that you
have to also look at some of the broader impacts that are out
there right now and things that we foresee; and it strikes me
that one of the things that is important is that, in this state
of course, the oil revenues have been tremendous and have
generated tremendous revenue streams throughout the state. In
addition to that, apparently the forecasts are that those revenue

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1 streams will diminish sometime in the early 1990's. At this
 2 point, through the state legislative process, Alaska Natives do
 3 obtain some benefit of the generation of state revenues. Another
 4 thing about that, is that it seems to me that it does raise a
 5 question, as were looking at the question of tribal governments
 6 and especially in rural Alaska, what impact there may be in so
 far as the use and generation of those revenues in so far as what
 would be available under different circumstances.

7 Another thing that at least strikes me as somewhat
 8 important is that the state, demographics of the state, is
 9 changing considerably. 1990 will come around and there will be
 10 another census and of course there is always the potential and
 11 possibility that there could be a significant political
 12 realignments in so far as the manner in which this state is run,
 the impact of the rural areas on the policy formation at the
 state level, and of course, 1991 itself.

13 One of the reasons that I was thinking about the impact
 14 of state revenues is a comment, I think that was made earlier by
 15 Browning. It related to the "balance sheet" of tribal
 16 government, I think he called it, and it strikes me as a very
 17 important thing to talk about because you really do have to have
 18 some form of capital formation it seems to be able to make these
 19 tribal governments work. That is to say, even if everybody
 20 agrees on what those tribal governments ought to be and you also
 21 assume that we would be able to have what we want, nevertheless,
 22 it will take something to run it. I don't know what the answers
 23 are, but it seems to me, that as you are looking at how you form
 those that there has to be a lot of thought given to the manner
 in which those tribal governments would be, I don't know, funded
 or would operate.

24 The reason that I was thinking that is because in the
 25 definition of the meets and bounds of the authorities of a tribal
 government, you can talk about a lot of things that it could do

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1 including education, police powers, judicial powers, regulatory
2 powers related to environment, fish and game management,
3 employment opportunities. The more you talk about those things,
4 the more it strikes me, anyway, that what you are talking about
5 are even larger infusions of money, in some form or another, that
6 would have to deal with a rise in expectations about a tribe
7 itself. I don't think any of this is impossible and I don't know
8 what the answer to that is, but it just seems to me that even if
9 we had in its purest form all the authorities and so forth that
10 we think exist and should be recognized by the Federal and State
11 governments, that there still would be those nuts and bolts kinds
12 of problems of making the whole thing work. I think the question
13 of capital formation is really a critical one in that context and
14 I think it is even more critical when you look at, for example,
15 the ANCSA village corporations who are there who are supposedly
16 dealing with really a fairly narrow frame of reference and that
17 is the maintenance of the assets that were conveyed by the Claims
18 Settlement Act and attempting to make a profit. Even doing that,
19 of course, we all know that many of those village corporations,
20 for all intents and purposes, don't operate and that, in fact,
21 there even had to be some, a little bit of fanagling around at
22 the state level to make sure that they weren't, I was going to
23 say cease to be recognized as operating entities by the state
24 government.

19 In looking at the overall situation with tribal
20 governments, I can't help but think of one of the themes that
21 runs through a lot of the operations with ANCSA corporations,
22 today especially, and that is a question of the expectations that
23 you generate as to what you can and can't do. I really think
24 that in a lot of ways the Native corporations had just tremendous
25 expectations of them, generated over at least several
generations, wherein a lot of our forefathers thought that if
only we would get this land claims settlement that everything

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1 would be okay and that in some sense we would live happily ever
2 after. Well, we all know that that didn't occur and to some
3 extent maybe we have expected too much of it. But the reason I
4 bring this up is because in looking at tribal governments, it
5 strikes me that we have to be at least a little bit cautious as
6 to the expectations issue there too, because if its built up to
7 be maybe be something way more than it could ever deliver, the
8 possibility is at least there that, you know, three or four or
9 five years after it was clearly implemented or recognized,
10 however it occurred, that what you might have are again, tribal
11 members coming forward and being somewhat unhappy that maybe it
12 can't do everything that people thought it could or should do. I
13 am talking here mostly to raise the issue; I surely don't have
14 any answers to it. But I really think that these are some things
15 that one maybe ought to be thinking about a little bit. In
16 effect, defining the meets and bounds of what it ought to be,
17 because I think there can be maybe nothing more frustrating
18 especially in our case we're shareholders of the corporation,
19 than feeling that in some way they have been ripped off because
20 they are not getting what they thought they were going to get. I
21 think that risk is also here in so far as looking at tribal
22 governments.

18 MR. BERGER: Yeah, that's a good
19 point, Chris. I think that we'll... Charles Wilkenson.

19 MR. WILKENSON: I will be very
20 brief but I would like to use that opportunity to explain a point
21 I made earlier. I think I emphasized yesterday that tribal
22 sovereignty is profound and that it's a world-wide movement, and
23 I subscribe to Browning's characterization that it's magic; I
24 think it is. Earlier I said that the system in the Lower 48
25 isn't magic. In other words, the form of tribal sovereignty in
the Lower 48 reservation system isn't magic. What we have to
realize is that you can take the ideal of tribal sovereignty and

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1 put it in many different forms. Perhaps the most pure form is in
2 the form of international sovereignty where an Indian tribe would
3 be something akin to a nation; then you have the form in the
4 Lower 48 where you have the Indian Country concept; you also have
5 tribal sovereignty in the fashion that it's exerted in a somewhat
6 informal way without formal legal protections up here in Alaska.
7 But I think Chris is absolutely right in saying that just moving
8 the Indian country idea up here may not be the best form for
9 tribal sovereignty. And two quick examples that I will give, is
10 that many tribes in the Lower 48 are looking to Alaska because
11 many of your corporations have shown the advantage of having your
12 assets liquid and tribes in the Lower 48 are beginning to wonder
13 if maybe the trust relationship isn't too rigid and that you have
14 invested funds and assets and achieved a return that tribes in
15 the Lower 48 haven't. Second, is the matter of the Bureau of
16 Indian Affairs and its discretion; you can't get around the fact
17 that there is a transaction cost from dealing with the Bureau and
18 whether it's slowing up new constitutions, constitutional
19 amendments or ordinances... the Bureau can slow you down and
20 sometimes stall you. So, I just feel that's an excellent point
21 that has just been made and I hope that there is wide-spread
22 agreement that tribal sovereignty is something special that you
23 must establish, I think in a somewhat more protected form than
24 you have now. I think the Lower 48 form has much to commend it,
25 but I hope you can find something that is somewhat different,
more creative, more tailored to your needs here.

(TAPE 6, SIDE B)

MR. BERGER: Just before we move on, maybe we could... Tim, would you like to add something to that and then Sam.

MR. COULTER: Well, I could add a great deal to that but mostly I just agree that that's really quite right. I think there has been a tendency, especially on

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1 the part of those of us that are called experts, to assume that
2 other things that we're familiar with, these known entities, this
3 thing called Indian Country or IRA governments or reservation
4 status... that all of these kinds of things are somehow
5 desirable, when they may be desirable in part. Some of those
6 forms of organization and management might be better than some
7 things that are now being done here but there not necessarily
8 what one should aspire to. I wanted to respond to Browning's
9 remarks this morning in that way; that, yes, it might be good
10 advice to say, don't accept anything less than reservation
11 status, but is it necessary to stop there? Why can't Alaska
12 Natives have it their own way and have at least those rights and
13 some additional ones? Maybe a lot of additional ones. Why not
14 come up with a new kind of approach that would be more suitable
15 up here and avoid the problems that we have down home. I mean,
16 of course, when you are down in the Lower 48, you hear nothing
17 but complaints about the system that we have there and it's
18 really sort of odd to be in a position of ever suggesting that
19 anyone else ought to adopt that. That's my primary criticism of
20 most of what I have heard, is this tendency to assume that
21 somehow the existing models are something that we should try to
22 use.

17 MR. BERGER: Sam George.

18 MR. GEORGE: Basically, I (OFF
19 MIKE) some of the points made by Mr. Spud Williams and Mary and
20 other legal experts here. Presently, you know, as I see right
21 now in the Native village of Akiachak, is that there is a lot of
22 tension where the development of, you know, a tribal government
23 and the State of Alaska, you know, is in the states right now.
24 They have not dealt with the tribal government authority. The
25 reasoning is that, you know, during the constitutional
conventions that were held there was very little involvement by
the Native people and, in most cases during the time, there was

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1 hardly anybody in the village that, you know, especially the
2 elderly, did not understand what's been going on. I guess that
3 is one of the main reasons why the state of Alaska, at this
4 point, doesn't recognize tribal governments, just because in the
5 constitution it states that they will only deal with the cities
6 and borough governments. But, I feel, you know, and the three
7 villages that have initiated the Yupik Nation, you know, we want
8 to establish a government was already in existence in our own
9 terms, not in terms of the expectations from the federal
10 government nor the state government. Our elders are getting to a
11 point where they want to formulate a government that would bring
12 back what we had before as pre-ANCSA and pre-Statehood. They
13 would prefer to, you know, reclaim all the land we have lost to
14 ANCSA that we feel was illegal. The reasoning behind the
15 formulation of this new government was that we initiated, in
16 mind, that some day in the future we would have a regional
17 government called the Yupik Nation, you know, looking at that
18 there is a lot of potential that have not been exploited in the
19 area of development of tribal government. At this point, in the
20 village level we have dealt with too many organizations and we
21 have meetings that last every week of the month and we meet, you
22 know, we serve under the village corporation. I myself, and
23 Willie here, he's is the Chairman of the IRA council, then I am
24 the Chairman of the village corporation, then I am working for
25 him and he is working the village corporation and that basically
is, you know. It gets to a point where we can't, you know, we
have a tendency to have a conflict of interest right there. I
have a tendency to get to a point where I really want to make the
village corporation as successful, as much as possible, and on
the other hand, I want to just get away with it. But some of the
ideas that I think, some of the discussions or some the ideas we
had were that, you know, a tribal government, you know, we can
have an umbrella of the tribal government of the Native lands and

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1 it does not have to be under trust status or any other status.
2 At this point our regional corporation is proposing a tribal
3 government, they call it tribal council and the reasoning
4 behind... .

4 MR. BERGER: Is it a regional
5 corporation?

6 MR. GEORGE: The Calista
7 Corporation is trying to initiate what they call a tribal
8 government just because there is too many organizations within
9 AVCP region that speaks for the region. So, I guess one
10 solution, I guess what we are going to do is go in and tell them
11 to bow down to Yupik Nation. But that is basically what we would
12 like to see. Lastly, I would like to point out that, you know,
13 in our villages we have always had some form of a court system
14 that was informal and it was cited, I think, by UCLA Law Review.
15 There is a lot of potential in the area of developing a strong
16 tribal government and I feel that the State of Alaska should...
17 Well, that I feel that the State, since it's been here only 25
18 years, they're serving their own government and where we want to
19 set our own terms as to what we want. Thank you.

16 MR. BERGER: Well, I think you
17 mentioned... Oh, David Getches.

18 MR. GETCHES: I just had a
19 question. If you set up that tribal government; would it replace
20 the regional corporation?

21 MR. GEORGE: Well, it's kind of...
22 it's where the regional corporation... they seem to want to form
23 a government, but more likely what we have in mind is a regional
24 government that would serve the interests of the people and have
25 complete jurisdiction over everything.

24 MR. GETCHES: That would add
25 another entity. You would have even more boards and meetings and
so on.

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1 MR. GEORGE: Well, there has been
2 some regional talks about, you know, dismantling some of the
3 organizations within the area. I guess it would come to a point
4 maybe we'll dissolve the regional corporation.

4 MR. BERGER: Sheldon.

5 MR. KATCHATAG: Yes. One of the
6 things that has, in thinking about possible alternatives,
7 possible solutions to the problems that we are talking about
8 that, that we are discussing... One possible alternative, and
9 this is just a rough structure, I have talked about it before the
10 Federal/State Tribal Relations Task Force when they were asking;
11 Okay, we have heard enough of the problem, what are some possible
12 solutions? One of the things, as I said, it's rough, is a
13 Congress of Alaska Natives. As it stands now, we are being
14 regulated, our laws are being written from quite a distance off
15 when you think of the perspective of the village. Juneau is a
16 long way off, not only in terms of distance, but in terms of time
17 and in terms of money. Yet, we are expected to abide by these
18 regulations written by people who do not live in our area, who
19 are unfamiliar with not only how we live but where we live and,
20 who, because of certain degrees given by generally post-secondary
21 educational institutions at some greater distance away, that
22 somehow that makes them an expert. It's our contention that as
23 far as our land and resources are concerned, there is no greater
24 expert than our own people. It's heartening to hear that the
25 Yupik Nation, the people of the Bethel region are talking about
regional councils. That is one of the things, I think, that
would be very necessary before we could in fact put in place
something on the level of a Congress for Alaska Natives.

One of the things that is foremost, before we can do
this, is that we must recognize the viability of tribal
governments. For the local people, it is their choice for a
governing body and they have the government powers. The Federal

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1 government recognizes that to a certain extent. A regional
2 tribal council, on the other hand, would provide that umbrella
3 which is sensitive to the needs of our people, to be able to say:
4 Okay. Sure, we have a tribal government, we have a local
5 government; but we are not sophisticated, we are not educated nor
6 do we have a desire to assume all the powers of government. So,
7 something must be done, some structure must be put in place which
8 will allow for the individual evolution at the local level of
9 government. ANCSA had no provision for this. ANCSA settlement
10 was a blanket settlement that applied equally to every village,
11 no matter how diverse they are, one from the other. If we are
12 going to have a solution, we must work in this recognition of the
13 fact that each and every village is different, not only with a
14 region, but also across the state. We must provide for the
15 desires of these people to say... if in fact they do not want any
16 government, and that is how the majority of people live in the
17 village. They are not governed. They live their life as they
18 see fit, they harvest those resources that they find necessary
19 for their day-to-day lives. And if in fact they say, we want the
20 barest minimum of government but yet we want these other powers
21 of government not to be lost; we want a regional council, to not
22 usurp these powers as is the case, but to say, okay, we will
23 safeguard these powers until such time as you feel that you as an
24 individual government can say, hey, give it back to me. I can do
25 it now. Is that too much to ask? No, of course not.

This would again provide for such things as we talked
about earlier, a tribal court system. It is unreasonable to
expect a village of 200, even 300, even 800, to say, okay, we can
support a tribal court system, especially given the lack of funds
that everybody says is the problem, not only at the State but at
the Federal level. We can do those things. The Federal law, the
State law, all say that they make allowances for and provide for
priority subsistence use primarily by Alaska's Natives. If in

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1 fact they do provide for priority use of subsistence resources by
2 Alaska's Natives, why then can they not regulate that on their
3 own. They are not children. They know their resources. If
4 anybody is an expert on those resources, the people that interact
5 with those resources are in fact the most knowledgeable. Is that
6 too much to ask? I don't think so. Again, I have to keep
7 emphasizing that these things must come out not just from the
8 village level to the non-Native population of Alaska or from the
9 Federal government to the Native population of Alaska, but that
10 we have to begin to inform ourselves of all these issues and then
11 say, okay, our designated governments will sit down and negotiate
12 these things to all our mutual satisfactions. Is that too much
13 to ask? Of course not. These laws, these regulations, and there
14 are stacks and stacks of books of regulations and laws, both at
15 the Federal and at the State level, which apply strictly to
16 Alaska Natives.

17 A point has been made by someone else, that the Native
18 American population, not only of the United States but of Alaska,
19 are the most regulated. There are more laws written concerning
20 the Native people, not only in the Lower 48, but up here in
21 Alaska than any other group of people including the whites. Why
22 don't you let us regulate our own affairs? Is that too much to
23 ask? This will provide, as far as subsistence resources... there
24 is presently a lack of responsibility as far as Native people
25 with regard to fish and game regulations. They say that does not
fit my culture, that does not fit my tradition, that does not fit
my heritage. I am not required by my own self to submit to being
licensed to harvest that resource which my parents, my
grandparents, my forefathers, have always told me, take care of
it, you forefathers took care of it for you so that they could
hand it down. We expect you to do the same thing. What happened
in 1959? That tradition, that legacy, that inheritance, all of a
sudden by Statehood Act and assumption by the State that they in

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1 fact now control these fish and game resources, what we call
2 food. In other words, they are now regulating our daily life.
3 Why can't we regulate our own? The United States does it. The
4 State of Alaska says they do that. Is it too much to ask to have
5 our own people determine at what level of government and who will
6 safeguard the other levels of government which we might not want
7 to assume at the present time.

8 In other words, the ability to say, yes, this is my
9 government, yes I will be responsible to it and, yes, this
10 government will deal with any and all other governments. But
11 none of this will come about until the Federal government, the
12 State government and the local governments can sit down, whether
13 individually or as a group and say, okay, let's outline the
14 problems, let's outline the possible solutions, let's make a
15 recommendation as to the best solution and then let's bring this
16 back to the villages to say, okay, these are the options; do you
17 have anymore? You have to do that, you have to say: are there
18 any more solutions? In other words, there might be an idea out
19 there which will supercede, as far as optimum use, anything that
20 we might come up with. Again, we cannot do the same thing,
21 especially we cannot assume to be experts for our own people.
22 Then we will be doing the same thing that everybody else has been
23 doing down through the years. That of saying, okay, I am an
24 expert. I know what is best for you. That is the primary
25 problem, with not only ANCSA, but with the problems that we are
having with the State and Federal government now. Everything
comes from the outside in and yet they're always saying,
everything has to be developed at the grass roots level. Thank
you.

MR. BERGER: Well, David Getches.
Was your hand out?

MR. GETCHES: Well, yes, it was.
I wanted to pick up on something that Sheldon said and relate it

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1 to something that I know you want to get into concerning tribal
2 courts. Sheldon made a statement that I think has been a
3 recurring or developing theme here. He said that ANCSA was a
4 blanket solution without allowance for the differences among
5 villages and different types of people throughout the State of
6 Alaska, different sizes of villages as far as population and
7 land, differences in culture and so on. We know those
8 differences are very real. He also indicated that you can't
9 expect a village of 200 people to develop a court system.

10 I would like to say, as far as the first statement, I
11 think that that is a developing theme and one that I heartily
12 concur in. The second statement, you can't expect a village of
13 200 to develop a court system, maybe is true if you have a notion
14 of a court system as being that kind of court that you find down
15 the street here under the auspices of the State or Federal
16 government, but I think that it might be good to hear from
17 experts here like Ralph Johnson and Browning Pipestem on the
18 different types of court systems that exist. I know from my own
19 experience - I've seen the Navajo courts - and if you look
20 through the window they look just like a court you would find
21 anyplace in the United States run by a State government. There
22 are nicely appointed courtrooms with judges in black robes and
23 lawyers sitting at tables or advocates sitting at tables and
24 their clients there with them. If you went inside you would
25 notice the first difference, and that is that most of the
proceedings take place in the Navajo language. But except for
that, the rules of evidence are very similar and so on.

On the other hand, if you go a few miles away to some
of the more traditional Indian Pueblos, you'd find that they
don't have a courtroom like that or judges that are proceeding
according the rules of evidence and Anglo-Saxon jurisprudence.
You might a Kazeeky (ph), the traditional religious leader of
the Pueblo listening to a story about how a young member of the

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1 tribe has done something wrong and listening to the sides of the
2 victim and the perpetrator and then deciding what needs to be
3 done based on his wisdom. That's a court too. I think there are
4 a lot of things in between, although I think the tendency is to
5 formalize. It's not impossible to do away with traditional law
6 ways and customs and so on and it's not necessary to squeeze it
7 into a mold. I would like to hear from others on the subject.

8 MR. BERGER: Well. maybe Browning
9 we could turn to you then and...

10 MS. HASH-PEAT: Your Honor.

11 MR. BERGER: Yes.

12 MS. HASH-PEAT: I have a very
13 short statement that deals with tribal courts. Its a long one-
14 liner.

15 MR. BERGER: All right, Evelyn
16 Hash-Peat, a one-liner.

17 MS. HASH-PEAT: In Indian way or
18 Indian law, in Inupiat law, women are the judicial branches of
19 our tribe or colligees (ph), and when there is a conflict between
20 two men or two brothers, a sister or a woman will go in and speak
21 to both sides and create a negotiation of sorts. A natural
22 liaison, an arbitrator if you will, but nonetheless an upholder
23 of the law to the finest degree and keep something from going
24 into our courts, which are still in existence. I'm going to... I
25 was appointed by my grandmother, right in front of you, Justice
Berger, on April 19th in Gulkana (sp) and I am going to be taking
that position in our tribe, in the Nelchina tribe and that is
before we go to a council and have to be embarrassed, I will come
in and scold someone. It is the Inupiat too. If you do
something wrong, someone will scold you and I saw a various
serious breach today that I felt I had to say this, because our
men are in high esteem. We always treat them that way. Thank
you.

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1 MR. BERGER: Thank you. Well, I
2 think we have finally reached the subject of tribal courts.
3 Browning, if you and then Ralph would tell us a little bit about
4 them.

5 MR. PIPESTEM: Well, let me give a
6 short explanation, I was a tribal judge for about five years and
7 I still hear cases on appeal for several Indian tribes. One of
8 the... before I get straight to the court it seems to me that if
9 I understand what's being said here, on one hand there are a
10 group of people, and maybe I am not hearing correctly, who are
11 saying; we are tribal governments. On the other hand, I hear
12 some people saying; well, we need to kind of study that out.
13 I've never been very big on that. It seems to me that those of
14 you who are tribal governments... Now I've been on a tribal
15 council, I live in tribal context, I'm a ceremonial leader. So,
16 I have live in the significance of the ways of my people, so to
17 speak. It strikes me that those of you who are interested in
18 getting off of high center, that you need to quit saying you are
19 tribal governments and be one. I keep hearing people say, we are
20 one. But I asked earlier if there are any laws, how do you
21 express your governmental status, and mostly what I hear here
22 today is somebody's waiting... you are asking somebody to
23 recognize you. Would it be all right if I could be a tribal
24 government? And everybody says no. Then we come over and gripe
25 about it. So, I am just going to kind of summarize the
conversation that way, because let me say to you that the reason
that you don't have a tribal court in Alaska is because you have
chosen not to have one.

About two years ago I did a training session for the
State Department of, whatever you call the welfare department, on
the Indian Child Welfare Act.

MR. BERGER: That's this state?

MR. PIPESTEM: Yes, here in

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1 Alaska. There was quite a bit of concern at that time over the
2 Indian Child Welfare Act and there were a number of Native
3 participants, none of whom worked for Indian tribes. They worked
4 for corporations or they did something, they were social workers
5 for the state or somewhat. Most of the major features of the
6 Indian Child Welfare Act point themselves to the exclusive
7 jurisdiction over Indian children and the transfer of cases
8 involving Indian children that arise outside of the tribe's
9 exclusive jurisdiction, to returning that jurisdiction to the
10 tribe. They placed the tribe in the first level of protection of
11 Indian families and Indian children; you have none of that. The
12 implementation of the Indian Child Welfare Act, its thrust, is
13 directed toward state courts and to state agencies that operate
14 with children. It's implementation is really in their court, so
15 to speak. The unspoken of the Indian Child Welfare Act is the
16 maintenance of the tribe's jurisdiction. There is a retro-
17 session provision in there. To my understanding, no group of
18 people in Alaska have applied for any retro-session. To my
19 understanding, no group of people have made any efforts toward
20 seeking transfer of cases to tribal courts to protect Indian
21 children, yet the authority under the most severe of
22 circumstances exists therein for the creation of a court that had
23 a limited jurisdiction of juvenile nature.

18 Now, let me move to the other parts of it because I
19 think it's a pretty simple and straightforward thing. An Indian
20 tribe is a government. That's end of discussion. Its main
21 function is to pass laws that define the nature of activities
22 that go on within the tribe's jurisdiction; its laws are enforced
23 in its courts. Tribal laws are enforced principally in tribal
24 courts. Now, the function of a tribal court is to make those
25 kinds of definitions and to apply the tribal law. Now, if you
are going to be an Indian tribe, you need to have some laws and
if you are going to have a court, you definitely have to have

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1 some laws. I mean, its just not going to... say to come and walk
2 around in Anchorage... say you're a tribal government and wait
3 for somebody to tell you to go ahead and be one now. I mean, if
4 you are then it seems to me that you need to exercise your
5 authority. If you are not, then you need to forget about it.
6 Now, most of the exercise by Indian tribes has been limited of
7 their authorities by the misunderstandings of people about what
8 those authorities are. The nature of the growth of tribal
9 government has come in these areas, as the Indian people have
10 better understood the nature of the authority that they have
11 exercised. The court systems, likewise, have become more or less
12 in that fashion.

10 Where we have the court systems that are imitation,
11 non-Indian courts, there are a lot of serious questions that come
12 up about that. I do know that two of the tribes... let me give
13 you an example of that. I have been a judge for several tribes,
14 and mostly in kind of controversial cases, but we had significant
15 cases that occurred in Oklahoma. Let me tell you one of your
16 worst problems is going to be, you need to settle the affair of
17 the heart first, because otherwise you will study and study and
18 study and study and study and the fuse is already lit on you.
19 You can study for however long you want to and I can tell you
20 that the court we established in Oklahoma... Now I had a first
21 hand experience in the establishment of more than one court from
22 scratch, where there was no court, where they said that the
23 tribes had no jurisdiction and we proved that they had
24 jurisdiction and we exercised it. Now, courts and police are the
25 most obvious expression of tribal sovereignty that there is.
Now, you can drive through the littlest town in Oklahoma, where
they got a 1947 Ford for a police car and a 68 year old man
sitting in there with a little bitty hat and if you're going 60
miles an hour you'll slow down when you see that old car sitting
there with that thing on the side of it. Now, I don't know

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1 whether you have any visible expressions of sovereignty but the
2 tribal court is probably the most -- and I think Professor
3 Johnson would agree with me -- it is the most obvious visible
4 element of the tribe's authority as it exists.

5 Now, if you are serious about having a tribal court.
6 I've put one together in one month and if you are in a hurry, I
7 can get you one in two weeks. So, let's don't make it into
8 something that's hard to do. If you are trying to set up the
9 Federal courthouse down here, you need to forget about that.
10 What you need to do is to work on the kind of a court that is
11 useful to you. If it needs part-time judges, if it needs certain
12 kinds of people, you don't have to have everything. We helped a
13 tribe establish a court that was purely for juvenile purposes.
14 We did the code, we went and put the code on the ground and
15 implemented it, where my partner actually sat down with the lady
16 that they said was going to be the court clerk and we simulated
17 somebody walking in with a piece of paper and stamped it as
18 filed, got a file and put it in there. I'm telling you, they
19 have exemplary court system. They are now moving into another
20 code that we have prepared for them, that is a full civil and
21 jurisdictional authority. But they have been exercising
22 jurisdiction over children for the last three or four years.

23 If I were to think of some area that may be of some
24 significance to you, it may be in the area of Indian children, of
25 establishment of a special subject matter jurisdictional court
that deals with juveniles. Maybe that's what you would want to
do and you would want to leave your law flexible enough so that I
could appear with my best friend. I don't have to have a lawyer,
I can appear with my best buddy and he says he is a good guy and
he wouldn't have done this and the judge can take that into
account. There are many forms that you can take, the best form
is the form that when you get through with it your court system
looks like Eskimo or its look like an Indian or it looks like

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1 something. If someone were to draw a picture of your court
2 system it would look like who you are as a people. Sometimes
3 that becomes difficult, in various kinds of areas. I mean, those
4 are goals, most people have not achieved, those. We have achieved
5 those in some ways by appointing people that are culture bearers
6 to be the judges. They don't know very much about due process
7 and the Indian Civil Rights Act; they know quite a bit about the
8 Indian culture. It may be that one of the tribes that we're
9 working with now is trying to set up within one system, both
10 forms. Where if its purely an Indian customary matter you appear
11 in front of one kind of a judge, if it's one where you want to go
12 get a lawyer and have a big hassle over it while then we have the
13 full blown set of rules where we can administer that and function
14 in that kind of fashion.

15 Now, I would just say to you that I don't know whether
16 I am being... let me give you the Oklahoma experience and we'll
17 be through with it. Your sovereignty, and I can hear that now,
18 is being subjected to a practical test of, is there funding for
19 it? Do we have any funding to be sovereign? That's an
20 interesting idea because what you end up with is, you end up with
21 the golden rule. You know what the golden rule is? The golden
22 rule is: we got the gold and therefore we make the rules. Let
23 me tell you, there was a time when it was determined that it
24 would be a lawless situation in the western part of Oklahoma if
25 there was no Indian court. We fooled around and fooled around
with the court and said; well, next month maybe we'll have, maybe
we'll do this thing, maybe we'll be one. I was the chief judge
and I finally got so frustrated I said; whatever the deal is.
August 1 we are opening the doors and it ended all the discussion
for everybody on what was the width and breadth and the extent of
our jurisdiction, and where do we go and who can say we can do
this and who says something else. We had everybody sniffing over
this carcass and looking it over and we eliminated all that when

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1 we said, August 1 the doors open. It got down to what color are
2 the files? Do we have a file cabinet? I tell you that the
3 person... that we would not have had a court if it had not been
4 for Dalee Sambo. Now, I don't know whether you know Dalee Sambo
5 or not, but the Indian court in Oklahoma, Dalee Sambo pulled it
6 off. I mean, we got down to where we were going to march in to
7 be sworn in and we wore black dresses... and there wasn't any
8 dresses and Dalee Sambo went over and got four black dresses and
9 charged them to the Bureau of Indian Affairs. Always before they
10 couldn't figure out any of these docket books or any of these
11 things... and see, nobody has ever bragged on our court system.
12 I saw where one of the groups got a grant to study a color-
13 coordinated files for different kinds of things. You know, we
14 already had that. We have huge leather docket books, we've got
15 file stamps, we keep them in real books, we do a whole lot of
16 things. All I know is we got down to the question of the
17 relationship between the court and the BIA, and Dalee Sambo
18 settled that. She went over and got the four dresses and put
19 them on the judges and charged them to the BIA and they paid for
20 them. We were down to... we were going to be embarrassed if we
21 didn't proceed.

22 So, at some point, somebody's got to decide that you
23 are either going to proceed or you're not going to proceed
24 because otherwise you keep sniffing the carcass. Is the Lower 48
25 model a good one? Well, who knows. Is it going to fit us?
Well, how are you going to know if you don't even know what it is
in the first place. I mean, most of you have never been to a
tribal court, so people will tell you that it's this big deal.
It's mostly like a municipal court, they have many forms and if
your tribe has lost lots of money... One of the tribes that I
have worked with are the Utes in Utah; they have lots of money,
they have a courthouse, it's got a jail on one end, its got the
whole works. It's the most beautiful place, you feel great when

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1 you go in there. It has an august courtroom. I have been where
2 they took out a folding table like these bingo tables, put one of
3 those over, and I sat down and conducted court for them. But the
4 function of that is the enforcement of law. Indian tribes are
5 people who make laws. Their enforcement function is carried out
6 in the courts. You don't have any laws, you don't need any
7 courts. If you're not planning on having any, you don't need
8 any. You can create those as narrow or as broad as to what you
9 want to do. Now, I am a great believer in traditional courts.
10 But those things - you need to set out what those are, because
11 many of those are extremely important to you. If your laws and
12 your ways, because the law itself becomes a function of cultural
13 retention, becomes a function of we are the people who make this
14 law, we are the people who believe this, we are the people who do
15 this, we are the people who think this, and that becomes the law
16 and it becomes expressed in that fashion. Because I think it is
17 based there, that is the whole nature of it. You cannot have a
18 tribal court that is not created. I think it has to be even
19 created by the tribe. You can have a nice CFR court, like what
20 we have, or you can do it anyway. But there are many ways to
21 form it, but it becomes an affair of the heart as to whether you
22 are or you are not. Because this whole idea is one that finds
23 itself in its expression.

18 As lawyers, we don't know a thing about sovereignty
19 other than what somebody wrote because some Indian tribe tried to
20 exercise it. I'll tell you that right now. You could not get
21 anyone to define the width and breadth of sovereignty, other than
22 what is in a bunch of cases and those have come when an Indian
23 tribe said we are the people who do this. Courts have either
24 confirmed it or denied it. Now, that doesn't mean that there are
25 impractical aspects to that, it means that its a matter of the
heart. Your people, much like my people, and I feel some kindred
to you, so I am not just... I could go around saying; well, I

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1 could do it like this and maybe it could be like that. I have
2 lived through an experience where the people that I come from
3 were told that they were nobody, in the terms that we're talking
4 about. That they couldn't have a court; and that is no longer
5 true. Now, whether you have a good one or not becomes a
6 different function. But the having one, that is an affair of the
7 heart and you either have it or you don't. I would just say to
8 you that the tribal courts, in that sense, are the most visible
9 and obvious expressions of the tribe itself. Once our tribal
10 court was established, we acquired all the jurisdictional
11 problems, but that was kind of a luxurious thing. Now, we can
12 sit around and talk about our jurisdictional problems. Before,
13 we didn't have any because we didn't have any jurisdiction. We
14 can now, we have acquired all kinds of inter-governmental type
15 agreements because that's luxurious now. We didn't have any
16 before because nobody wanted to enter into one with us. We can
17 talk about our codes and our laws and the problems that they
18 bring, and they do. Being a government is a problem, ladies and
19 gentlemen. It's no fun being a government. It's a serious
20 undertaking that you see and it becomes expressed in these many
21 terms. There is a balance sheet to it and that's one... but the
22 first element that goes into the balance sheet is the affair of
23 the heart; that's heavy, it weighs heavily on that balance sheet
24 because it won't do anything else. But it's a matter of the
25 exercise and I think that the tribal courts are the functional
exercise of that. I'll say it to you again. We have established
a court for one group of people in one month. If you are in a
hurry it can be done in two weeks. So that's not a... I don't
see that as an impossible task. Let me defer to Brother Johnson.

MR. BERGER: Well, before you do
that I think we do have to leave at 4:30. Do we, Don, or can
we...?

UNIDENTIFIED: (OFF MIKE)

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1 MR. BERGER: Let's defer to
2 Brother Johnson.

3 MR. JOHNSON: It's hard for me to
4 say anything but applaud the Oklahoma wit and sophisticated
5 intelligence that is demonstrated by Browning Pipestem. I just
6 want to make a couple of points and maybe we can pick up on these
7 tomorrow if they aren't adequately covered now. First, the idea
8 of moving out and moving in to government as a voluntary action
9 is demonstrated by the actions of about a 117, 120 tribal courts
10 that now operate in the Lower 48. In 1970, there was relatively
11 little tribal court operation, very rudimentary for the most
12 part. Between 1970 and 1980 there was a major movement by the
13 tribes to enhance, build-up, train their own tribal courts, they
14 set up a national association of Indian court judges and a
15 national training program, a very well run program in the sense
16 that the judges were able to get background training in the
17 operation of tribal courts however they wanted, in customary or
18 other methods.

19 MR. BERGER: Do they have to be
20 lawyers?

21 MR. JOHNSON: They do not have to
22 be lawyers. In fact, 95% of them are not lawyers and they, in
23 fact, some of the tribes do not permit lawyers to come into the
24 tribal court unless they pass a bar examination or a test that
25 shows they know what a tribal court is. Otherwise, they walk in
and they think it's a State or Federal court and they conduct
themselves in an inappropriate way. So, it is possible for the
tribe to set up standards by which people will be determined in
coming into the tribal court setting.

Well, just a couple points. If I've got five minutes,
you see, I have to say what's significant in just five minutes.
In the last ten years, we have had... Most of the western states
have now recognized tribal court judgments. If the tribal courts

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1 out and exercising their governmental powers. Twenty years ago,
2 you could count on just a, maybe your hands and feet, the Indian
3 tribes that were actually operating, exercising the powers that
4 they had. As those powers are now exercised by tribal courts,
5 the State courts move aside. They say; well, they've got a
6 tribal court, they've got judges. They recognize the exercise of
7 authority. So, it is very important to take that step and take
8 that exercise when you can do it.

9 MR. BERGER: All right. Tim, did
10 you want to add something?

11 MR. COULTER: A few minutes.

12 MR. BERGER: There appear to be.
13 until the people come in to play bingo.

14 MR. COULTER: It is very difficult
15 to disagree with Browning...

16 MR. BERGER: Do you want to pull
17 the mike a little closer.

18 MR. COULTER: I think actually
19 Browning may agree with the things that I am going to say. I
20 don't think courts are a necessary part of anybody's government.
21 In fact, in the non-Indian world courts are less and less
22 favored. Everyone is trying to find some other way to resolve
23 disputes without taking them to court. It doesn't seem to me
24 that courts are a particularly successful way in which people
25 exercise governmental power. I feel like there has gotten to be
an assumption in the room, that unless Native people act like
white people then they are not really exercising governmental
power. But courts are nothing other than a way of resolving
disputes. They are not really a way of enforcing laws, as
Browning said. It is actually the police and it's other people
who enforce the laws. The judges just decide the disputes. They
settle the disputes between one person and another or the dispute
between the enforcing authority and the accused person, in the

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1 case of a crime. But the judge doesn't arrest a person. The
2 judge doesn't take a person to jail. The judge doesn't take a
3 man's property and give it to someone else, it just decides the
4 disputes and there are many ways that disputes can be resolved.
5 I mean, I have sat on the Onandaga (ph) Chiefs Council, they
6 don't have a court but they sure resolve disputes. Civil
7 disputes, quasi-criminal disputes, juvenile matters, they just
8 call the people in and talk it over and work it out. It works
9 great and they have a fine relationship with the external white
10 people's governments, both civil and criminal. The Onandagas
11 have never passed a law in their lives. They insist that they
12 never make a law. They don't need any law other than their
13 traditional law, in their view. Of course, this doesn't apply to
14 everybody. Different people are going to have different ideas
15 and that is fine. That is why I think a lot of what Browning
16 said is just fine because some people are going to want a court
17 system that's something like the typical white, Anglo-Saxon court
18 system, but maybe not everybody. But the Onandagas, anyway, they
19 believe that every law they ever needed was given to them by the
20 creator and they have this unwritten constitution that's all the
21 law they'll ever need; and so all they do, all the chiefs ever do
22 is to apply that law, decide disputes and make decisions about
23 what's going to be best for their people and their communities
24 and that's how they run it. They never wrote a law in their, you
25 know, thousand year history and yet they do decide disputes, they
act as a government, they are very visible as a sovereignty and
quite successful at it. So, I guess what I am trying say is,
it's true maybe nearly all the villages will want to have courts
that look like white people's courts but there are other
alternatives. People can have a way of resolving disputes that
suits them and I know that's what Browning was saying, too, and
that is why I come back to that point, I think, in the end.
Browning and I do basically agree.

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MR. BERGER: Thank you. I think we have to leave and I just have a note here that the Governor's Task Force on State Tribal Relations is meeting at Egan Center and you are all welcome to go over there, if you haven't had enough of this kind of thing today, to sit in on their proceedings. We'll adjourn until 9:00 in the morning and we're a little behind in our agenda, but we'll catch up, we always do. So, we'll see you at 9:00 in the morning.

(HEARING ADJOURNS)

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