

20c  
Aug 85

TRANSCRIPT OF PROCEEDINGS

ROUNDTABLE DISCUSSIONS

VOLUME XXVI

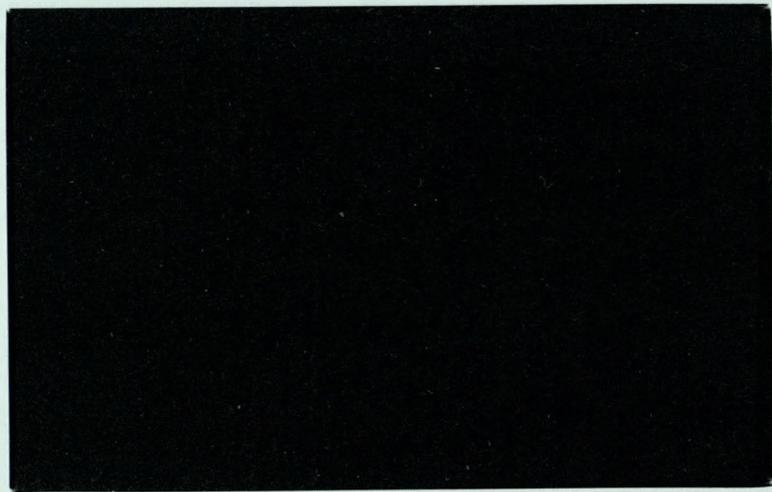
ALTERNATE APPROACHES TO  
NATIVE LAND AND GOVERNANCE

DECEMBER 14, 1984

ANCHORAGE, ALASKA

**ALASKA NATIVE REVIEW COMMISSION**  
**HON. THOMAS R. BERGER**  
**COMMISSIONER**

KF  
8208  
.A46  
1984  
vol. 26



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

TRANSCRIPT OF PROCEEDINGS  
ROUNDTABLE DISCUSSIONS  
VOLUME XXVI  
ALTERNATE APPROACHES TO  
NATIVE LAND AND GOVERNANCE  
DECEMBER 14, 1984  
ANCHORAGE, ALASKA

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

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

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

*Accu-Type Depositions, Inc.*

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



PARTICIPANTS\*

Roundtable On

Alternate Approaches to Native Land & Governance

Anchorage, December 12 - 15, 1984

Hon. Thomas R. Berger, Commissioner  
David Case, Commission Counsel  
Rosita Worl, Special Consultant

ARNOLD, ROBERT: Deputy Commissioner, Alaska Dept. of Natural Resources, Juneau  
ASCHENBRENNER, LARRY: Native American Rights Fund (NARF), Anchorage  
CHAMBERLIN, TED: Author, Professor of English, University of Toronto, Canada  
CHAMBERS, REID: Partner - Sonosky, Chambers, Sachse & Guido, Washington D.C.  
COULTER, TIM: Director, Indian Law Resource Center, Washington D.C.  
FISCHER, VIC: State Senator, Alaska State Legislature, Anchorage  
GETCHES, DAVID: Director, Colorado Dept. of Natural Resources, Denver, Colorado  
GILDAY, CINDY: Director of Communications, Dene Nation, Yellowknife, NWT, Canada  
HARHOFF, FREDERIK: Prof. of International Law & EEC-Law, Univ. of Copenhagen, Denmark  
JOHNSON, RALPH: Professor of Law, University of Washington, Seattle, Washington  
JULL, PETER: Advisor - ICC Canada, Advisor - Makvik Corporation, Quebec, Canada  
KATCHATAG, SHELDON: President, United Tribes of Alaska, Unalakleet  
KASAYULIE, WILLIE: Chairman, Akiachak IRA Council, Akiachak  
LERNER, RALPH: Prof. of Social Sciences, University of Chicago, Chicago, Illinois  
MALLOW, BYRON: President & Chief Executive Officer, Sealaska Corporation, Juneau  
MILLER, MARY: Tribal Operations & Rights Protection, Kawerak, Inc., Nome  
PIPESTEM, BROWNING: Indian Attorney in Private Law Practice, Norman, Oklahoma  
WILKINSON, CHARLES: Professor of Law, University of Colorado, Boulder, Colorado  
WILLIAMS, WILLIAM: President, Tanana Chiefs Conference, Fairbanks

\*This list includes invited participants at the Roundtable. It may not include others who contributed in the course of discussions; such persons are identified in the verbatim transcripts.

ANCHORAGE ALASKA  
GOVERNANCE  
December 14, 1984

<u>EXPLANATION</u>	<u>PAGE</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
Tape 7, Side A.....	2582
Mr. Berger gives Opening Address.....	2582
Mr. Peter Jull speaks.....	2583
Mr. David Case speaks.....	2591
Mr. Peter Jull speaks.....	2592
Mr. Ralph Johnson.....	2592
Mr. Peter Jull speaks.....	2595
Mr. Charles Wilkinson speaks.....	2597
Mr. Peter Jull speaks.....	2597
Mr. Ralph Lerner speaks.....	2599
Mr. Peter Jull speaks.....	2599
Mr. Charlie Edwardson speaks.....	2600
Mr. Berger speaks.....	2601
Mr. Peter Jull speaks.....	2601
Tape 7, Side B.....	2602
Mr. Frederick Harhoff speaks.....	2603
Mr. Tim Coulter speaks.....	2613
Mr. Frederick Harhoff speaks.....	2613
Mr. Reid Chambers speaks.....	2613
Mr. Frederick Harhoff speaks.....	2614
Tape 8, Side A.....	2620
Ms. Rosita Worl speaks.....	2623
Mr. Frederick Harhoff speaks.....	2624
Ms. Rosita Worl speaks.....	2624
Mr. Gottshalk speaks.....	2626
Mr. Frederick Harhoff speaks.....	2626
Ms. Cindy Gilday speaks.....	2627
Mr. Browning Pipestem speaks.....	2628
Ms. Cindy Gilday speaks.....	2628
Mr. Bryon Mallott speaks.....	2634
Mr. Cindy Gilday speaks.....	2635
Mr. Ted Chamberlin speaks.....	2635
Hearing Recesses/Hearing Resumes.....	2638
Tape 8, Side B.....	2638
Mr. David Case speaks.....	2645
Mr. Bill DuBay speaks.....	2646
Mr. Berger speaks.....	2657
Senator Fischer speaks.....	2657
Mr. David Getches.....	2662
Mr. Bill DuBay speaks.....	2665
Mr. David Getches speaks.....	2666
Mr. Bill DuBay speaks.....	2666
Mr. Sheldon Katchatag speaks.....	2667
Mr. Charlie Edwardsen speaks.....	2668

Accu-Type Depositions, Inc.

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



1	Tape 9, Side B.....	2671
	Hearing Recesses/Hearing Resumes.....	2672
2	Mr. Byron Mallott speaks.....	2672
	Mr. Tim Coulter speaks.....	2680
3	Tape 10, Side A.....	2686
	Mr. Browning Pipestem speaks.....	2687
4	Mr. Sheldon Katchataq speaks.....	2690
	Mr. Reid Chambers speaks.....	2683
5	Mr. Bryon Mallott speaks.....	2693
	Mr. Berger closes meeting.....	2693
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

*Accu-Type Depositions, Inc.*

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



PARTICIPANTS\*

Roundtable On

Alternate Approaches to Native Land & Governance

Anchorage, December 12 - 15, 1984

Hon. Thomas R. Berger, Commissioner  
David Case, Commission Counsel  
Rosita Worl, Special Consultant

ARNOLD, ROBERT: Deputy Commissioner, Alaska Dept. of Natural Resources, Juneau  
ASCHENBRENNER, LARRY: Native American Rights Fund (NARF), Anchorage  
CHAMBERLIN, TED: Author, Professor of English, University of Toronto, Canada  
CHAMBERS, REID: Partner - Sonosky, Chambers, Sachse & Guido, Washington D.C.  
COULTER, TIM: Director, Indian Law Resource Center, Washington D.C.  
FISCHER, VIC: State Senator, Alaska State Legislature, Anchorage  
GETCHES, DAVID: Director, Colorado Dept. of Natural Resources, Denver, Colorado  
GILDAY, CINDY: Director of Communications, Dene Nation, Yellowknife, NWT, Canada  
HARHOFF, FREDERIK: Prof. of International Law & EEC-Law, Univ. of Copenhagen, Denmark  
JOHNSON, RALPH: Professor of Law, University of Washington, Seattle, Washington  
JULL, PETER: Advisor - ICC Canada, Advisor - Makvik Corporation, Quebec, Canada  
KATCHATAG, SHELDON: President, United Tribes of Alaska, Unalakleet  
KASAYULIE, WILLIE: Chairman, Akiachak IRA Council, Akiachak  
LERNER, RALPH: Prof. of Social Sciences, University of Chicago, Chicago, Illinois  
MALLOT, BYRON: President & Chief Executive Officer, Sealaska Corporation, Juneau  
MILLER, MARY: Tribal Operations & Rights Protection, Kawerak, Inc., Nome  
PIPESTEM, BROWNING: Indian Attorney in Private Law Practice, Norman, Oklahoma  
WILKINSON, CHARLES: Professor of Law, University of Colorado, Boulder, Colorado  
WILLIAMS, WILLIAM: President, Tanana Chiefs Conference, Fairbanks

\*This list includes invited participants at the Roundtable. It may not include others who contributed in the course of discussions; such persons are identified in the verbatim transcripts.

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

(DECEMBER 14, 1984)

(TAPE 7, SIDE A)

Mr. Berger: Well, maybe we should begin. Well, good morning. What we'll do this morning, I think, is this. We've been looking at Tribal Government in the Lower 48 and in Alaska for the last two days, and this morning we'll begin by asking Peter Jull, and Frederick Harhoff, and Cindy Gilday, and Ted Chamberlain to tell us something about developments in other countries. And then we'll go on from there to the uses of State chartered governments and their counterparts, and the -- in that connection, Rex Okakok of the North Slope Borough is going to be joining us, I believe. Senator Vic Fisher of the State Senate is with us this morning seated to Willy Kisialies (ph) left, and we welcome Senator Fisher. And Bill DuBay of the Arctic Policy Review has a submission to make as well, when we reach that subject, and it may be that we can ask Peter Jull and Frederick Harhoff to tell us something about the Kativik Regional Government in Northern Quebec and about Greenland as well.

So, with that as our program for the morning, perhaps we might begin. After that, I would like to return to the subjects on the agenda for the afternoon, and to return, as well, at that time, to some questions that are still troubling me about the possibility of Native land being held in fee about the question of secretarial supervision as a concomitant of the trust relationship and so on. I think we should explore those subjects a little further, if we may, and I was going to suggest that we consider the question of the State tribal interface a little further at that stage as well.

So, having said that, maybe we could begin and maybe I could ask Peter Jull, who is with ICC Canada, to start the

Accu-Type Depositions, Inc.

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



1 discussion off.

2 MR. JULL: Thanks, Tom. I'm  
3 sorry that the Canadian Inuit leaders are unable to be here.  
4 They're in Ottawa at the moment at an Aboriginal Summit of the  
5 Indian Native, and the Inuit people, preparing for a Constitutional  
6 Conference. And, of course, the main subject in these Constitu-  
7 tional Conferences is the question of self-government.

8 The Canadian situation is quite interesting because  
9 although the aboriginal population in Canada is perhaps not more  
10 than five percent, if that, of the total population, it's spread in  
11 such a way that in the Northern portions of the country, the  
12 Northern, perhaps 75 percent of Canada, these peoples are in a  
13 majority situation in most areas. And therefore, have all kinds of  
14 opportunities to influence development policies and other policies  
15 in very large areas.

16 MR. BERGER: Could you move the  
17 mike a little closer.

18 MR. JULL: Sorry. So, I would  
19 mention that despite the dangers of looking at cases in other  
20 countries and given the differences in political culture, constitu-  
21 tional conventions, and so on, that in Canada, at the moment, there  
22 are a great many experiments, you might say, or proposals in abori-  
23 ginal self-government which are at various stages of development,  
24 and there will be many more coming up over the next few years. So,  
25 you might say that Canada is a virtual laboratory of these things,  
and they take many forms and each form, perhaps, has a certain  
logic in the local situation. But for those of you interested in  
these subjects, I think over the next years, you'll find a great  
many things to think about in Canada.

The one that I would talk about a little further, is the  
Nunavut case, partly because it's moving along fairly well.  
Partly because its a large one and I suppose mostly because I'm  
very closely connected with it. Nunavut is a concept which --

*Accu-Type Depositions, Inc.*

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



1 well; the word Nunavut simply means, "our land", is a normal phrase  
2 of the Inuits in Northern Canada. But in it's political sense in  
3 recent years since the Northwest Territories Inuit have developed  
4 their proposals for Land Claims Settlement's, an intrical part of  
5 their proposal was Nunavut, meaning the government over their  
6 traditional homeland, which they were controlling and which would  
7 provide the kinds of protections and attention to their interest,  
8 which other governments didn't provide. To give you one example of  
9 that Northwest Territories governments has no jurisdiction of any  
10 kind in relation to the ocean or off-shore questions, all the Inuit  
11 communities, with one exception, are coastal. The whole question  
12 of the ocean and its management, pollution, marine transportation,  
13 and so on, are absolutely essential to Inuit's, so, this is  
14 obviously something where they would like more attention.

15 Now, under Canadian jurisdictional conventions at the  
16 moment, they, perhaps, cannot hope for a great deal of jurisdiction  
17 all at once. On the other hand, if you've got a government that  
18 has the resources to hire staff, and conduct studies, and so on,  
19 there's a great deal you can do. Especially in a country like  
20 Canada where a very important element in our practicing  
21 Constitutional structure, is what's called Executive Federalism,  
22 meaning the Executives, the Cabinets of the National Government and  
23 the Provincial and Territorial Governments sitting down together  
24 and working out policies and programs. There's well over 300 such  
25 committees. The highest of which, you might say, is the Prime  
Minister and the Provincial Premiers, but also, Ministers of  
Finance, Ministers of Welfare, everything down to officials in  
charge of student loans programs, and so on. A great deal of  
Canada's public business is conducted in this kind of format which,  
by definition, is beyond the reach of legislatures and their  
ordinary course. Of course, this is something that troubles a lot  
of Constitutionlists in Canada but it's a fact of life. So,  
Nunavut Government, paying attention to off-shore issues, even



1 without immediate jurisdiction, could do a very great deal.

2 The question of Nunavut is one, first of all, of dividing  
3 the present Northwest Territories, which represents something like,  
4 something over one-third of the total land area of Canada, dividing  
5 that into two new jurisdictions. The one in the West being  
6 probably called Denedeh, the homeland of the Dene people, and in  
7 the East, Nunavut, the homeland of Inuit. A plebiscite was  
8 conducted in 1982, and people in the East voted four-to-one for  
9 creation of Nunavut, and they did so in a voter turnout that was  
10 unprecedented. It was very, very high and was so high that the  
11 Canadian Government couldn't possibly ignore it. The Canadian  
12 Government has been doing a lot of studies of plebiscites because  
13 they were nervous about referendums on independence in Quebec, so  
14 they knew that a four-to-one turnout in a very high, four-to-one  
15 vote and a very high turnout was a very significant statement. It  
16 was more significant because the press had been wandering around  
17 saying that really people didn't know very much about the situation  
18 and weren't really well-prepared, but the Inuit's just weren't  
19 telling, I guess.

20 The following plebiscite, the Northwest Territories legis-  
21 lature voted 19 to 0 to create new bodies to start working out the  
22 details of the new territory. These bodies were kind of mixed.  
23 The Northwest Territories Legislative Assembly, equivalent to your  
24 State Legislature, except without as much power, the Legislative  
25 Assembly had set up a committee a couple of years earlier, which  
had come back with the amazing report that the Legislature, and  
indeed, the present boundaries of the Northwest Territories were  
not meaningful or acceptable to the people, especially the Native  
people of the Northwest Territories. So, in a sense, the  
Legislature had shot itself in the foot, and this was not a bad  
thing. The Northwest Territories is the residual area in Canada.  
It used to be much larger, and over the years, Canada would chop up  
part of it and create the Yukon Territory, or create the Province



1 of Alberta. So, what's left is, in a sense, a vestigial area. It  
2 didn't have an inherent logic and it did contain, as I said, two  
3 indigenous homelands. The homeland of the Dene and the homeland of  
the Inuit.

4 These new bodies created, are rather like the New Ireland  
5 Forum which was supposed to bring peace to Ireland and perhaps it's  
6 not succeeded, it contained the leaders from the Nunavut area or  
7 the Denedrh area, in each case, is the Western Constitutional  
8 Forum, and the Nunavut Constitutional Forum, together with the  
9 elective leaders of the aboriginal groups. So, the Western Consti-  
10 tutional Forum has the Dene and Meti leaders as well as people from  
11 the Legislative Assembly, and the Nunavut Forum has the Cope and  
12 Inuit (INDISCERNIBLE) leaders with a Cabin Minister from Frobisher  
13 Bay, and another member from North Baifin Island. These two groups  
14 set out working. They've worked in somewhat different ways, you  
15 know, reflecting the needs and differences in their areas. In the  
16 Nunavut case, because there was already pretty well complete social  
17 and political concensus in the area on the need for Nunavut, what  
18 was decided was to proceed with as quickly as we could with  
19 concrete proposal and with some studies on the division of powers  
20 between the Nunavut government. But the basic project was to  
21 create a Territorial Government, not unlike the existing Northwest  
22 Territory's and jurisdiction. But something which over time would  
23 evolve, as others of Canada had evolved, to full Province. So, in  
24 other words, we're talking about a potential Province, not  
25 immediately, but some day, and that's presumably the destiny of any  
area of Canada under the present Constitutional approach. And for  
the time being, however, a self-governing territory was what was  
sought.

23 In Canada, that's not exactly a great novelty. Everybody  
24 knows, and everybody in school learns that in Section 91, Section  
25 92, the Canadian Constitution is two lists of powers. One, for the  
National Government, one for Provincial Government. Nevertheless,

Accu-Type Depositions, Inc.

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



1 there were many people, especially in Ottawa who were concerned  
2 that a new territory, especially one that was ethnically based,  
3 they said, would be very dangerous. That they seemed to fear that  
4 the Inuit would start legislating against Beethoven or something.  
5 It was point out, of course, that Nova Scotia, the eastern most --  
6 one of the eastern Provinces, is also ethnically based. 85 percent  
7 of the people are Anglo-Celtic, or rather, let's say Celtic. Every  
8 Province in Canada has a similar composition. None of it would be  
9 no more ethnically exclusive to one group than any other area of  
10 Canada. On the other hand, the other areas are dominated by  
11 European descent of the populations, and then it would be different  
12 in that sense -- would be a group of people speaking a non-European  
13 language with a non-European culture. And one can only speculate  
14 the extent to which that's been a factor in people's thinking.

15 Anyway, in order to play the game, we went to work  
16 producing little documents and we produced one called, Building  
17 Nunavut, a very glossy booklet here, in four languages. French,  
18 English, and two Inuit languages. And really, all it is, is an  
19 outline of the various powers typical of a territorial or provin-  
20 cial government jurisdiction in Canada, and explaining that we were  
21 looking at familiar structures. In each section, there's an  
22 explanation of why these areas are of interest and of particular  
23 importance in Nunavut, and what the particular concerns in the  
24 Nunavut area would be in relation to them. But, in a sense, the  
25 documents function was as much to reassure a jittery government in  
Ottawa as anything else. We thought that this would precipitate  
negotiations with Ottawa, and in that we were surprised because  
there was a deafening silence -- we found the people thought our  
book was interesting and they thought it was somewhat reassuring,  
but nothing much happened.

We continued holding, we continued with a number of  
things. A number of studies, holding public meetings and so on,  
and the most valuable thing was a series of community hearings in

**Accu-Type Depositions, Inc.**

550 West Seventh, Suite 205  
Anchorage, Alaska 99501  
19071 276-0544



1 every community in the Nunavut area. These hearings were useful  
2 because they gave the people in the communities an opportunity to  
3 voice their impatience and their strong support for creation of a  
4 Nunavut Government, but at the same time there were some cautions.  
5 And I suppose the most significant one was Inuit's in the North-  
6 west Territories have been pushed around and socially engineered  
7 for a generation and a half now. So that when you come talking  
8 about a marvelous new government, there's a somewhat ambivalent  
9 feeling. Certainly, people want a Nunavut Government, one that  
10 they will control but precisely that point, is the subject of  
11 concern. To what extent will it be controlled by local people.  
12 Meaning, will the local people have the qualifications and the  
13 opportunities to fill the jobs so that the administration is  
14 sensitive to local interests. The great fear being that it'll be  
15 another government where people move in from Ottawa and try to turn  
16 Inuit into some kind of a replica of a southern industrial  
17 society. So, the whole question of job preparation, accelerated  
18 training programs, and so on, is of the greatest possible  
19 interest. And that's one area where those of us working with  
20 Nunavut will be very interested to see how the North Slope Borough  
21 and other groups in Alaska have succeeded in increasing local  
22 employment.

23 The community hearings had a downside. People in Ottawa  
24 who were following them, the people who advised the government on  
25 constitutional issues, seemed to judge them not as a political  
sentiment by the people in the communities, which is what they  
were. But rather as some kind of college seminar where people were  
to be marked on their capacity to express complex issues of  
off-shore jurisdiction or whatever. There was a certain unrealism  
about it all, and this was kind of frustrating because people were  
voicing deep-felt concerns about their minority status and their  
inability to use their own language. Even their own village where  
no other language was spoken by the local people, and so on. And



1 yet, we felt that some of the people in Ottawa tended to see the  
2 exercise as academic and perhaps use the wrong criteria for judging  
3 it. Fortunately, however, at the political level, and in Canada in  
4 the last year we've had interesting political level. We've had  
5 three Prime Minister's this year, so policies are somewhat  
6 confused. But we've found that all the politicians have been  
7 reasonably responsive to the claims of the people in Nunavut.

8 Another thing that's come out in the meetings, is that  
9 despite the strong regionalism in Nunavut, and remember that the  
10 area that we're talking about is larger than the entire state of  
11 Alaska. There's actually some strong regions, but regardless of  
12 that, the main area of Nunavut, the Eastern Arctic, the represen-  
13 tatives on the Regional Council's, did meet with the Nunavut  
14 Constitutional Forum, and said that, yes, they want a certain  
15 regional structures in order to deliver public services more  
16 efficiently. But that they felt it was more important to have a  
17 strong Nunavut Central Government, one that was capable of dealing  
18 with Ottawa, taking on Ottawa, and issues like the off-shore. And  
19 having the resources to strongly represent the cultural unity and  
20 the overall interests of the people of Nunavut. I think that's a  
21 significant thing.

22 To conclude, the people in Nunavut are really working at  
23 three levels. And this is true of other groups in Northern  
24 Canada. There's the settlement of Land Claims, and through Land  
25 Claims, of course, we don't mean just land, there's a number of  
issues, but matters of self-government of all kinds of things can  
be brought in. Preferential hiring, whatever. And these are very  
important issues, now, because since 1982, a new Constitutional  
amendment provides that any Land Claims settlement is safe from the  
operation of the Canadian Constitutional Charter of Rights. In  
other words, any rights extended to a Land Claims Settlement, such  
as, preferential hiring practices, and that's an important one,  
would take precedence over, let's say, the new clause in the

*Accu-Type Depositions, Inc.*

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



1 Constitution on mobility rights which would guarantee any Canadian  
2 the right to move anywhere in the country to take work. So,  
3 achieving certain objectives through Land Claims Settlements has a  
4 very special importance.

5 Then, of course, there's the move to create the Nunavut  
6 Government reflecting interests of the people in the area. And on  
7 the level, there's the securing of further protections for Inuit  
8 culture, livelihoods, and self-government rights through the  
9 National Constitution. And as I mentioned at the outset, the  
10 Inuit's standing in other Canadian Native leaders are now meeting  
11 in Ottawa discussing this very point. Thank you.

12 MR. BERGER: Peter, could I just  
13 ask you a question? We're struggling here at one level with a  
14 philosophical question, I suppose, and that is whether their Native  
15 people should seek Tribal Governments, which are of necessity  
16 ethnically based? Or should be prepared to see their aspirations  
17 accommodated in structures of so-called public government? That  
18 is, here state-chartered municipal governments -- in Nunavut, if  
19 this new territory is established it will have, I take it, pre-  
20 dominantly Inuit population, and it -- are there any proposed  
21 measures that might be thought of as similar to Tribal Government?  
22 That is, any measures designed to secure the position of the Inuit  
23 majority?

24 MR. JULL: Yes. Well, first of  
25 all, of course, the Land Claims Settlement would presumably secure  
many rights, but for the Constitution of a Nunavut public govern-  
ment itself, and you're right, the population is about 90 percent  
Inuit, and of the remaining percentage many of the others are  
transient -- are in short-term workers, and we are seeking a  
three-year-residency requirement for elections. So that a teacher  
would have to be there three years before he or she would be  
eligible to vote.

There would be provisions for Inuktitut as an official



1 language, alongside English and French. This is very important and  
2 you would think a very basic thing, yet Canada's main national  
3 newspaper has been attacking an editorial one day, and ridiculing  
4 through cartoons on others at this point, so even a language  
5 policy, we thought, was well accepted in Canada. That's a  
6 problem.

7 There is discussion of Inuit customary law and this, we  
8 were very interested yesterday in the remarks of Mr. Pipestem and  
9 others, the whole question of the operation of Inuit customary law  
10 and how to develop that. Greenland has had some experience, some  
11 of it positive, and some of it not. So, we've been looking at how  
12 Inuit law is working there. But certainly, that's a major issue  
13 because for cultural continuity and so on, the whole question of  
14 the settlement of disputes in the Northwest Territories today, as  
15 you know, perhaps better than most, the inuit's simply do not use  
16 the administration of justice, you know, available through the  
17 Canadian state. Disputes either are not settled or are settled in  
18 other manners. But in a sense, there's a vacuum there. So,  
19 finding ways to put certain features like that into the Nunavut  
20 Act, which would be an Act of the Federal Parliament, and  
21 therefore, would be beyond the power of shifting majorities, or  
22 whatever in a Nunavut legislature to a fact. Or, indeed, we would  
23 want to constitutionally entrench so it couldn't be easily altered  
24 except through the general amending form on the Constitution.

25 So there are a number of features like that. It's a hard  
one to address because in Canada there are different Constitutional  
conventions then there are in the United States and in other  
countries. And so, there's certain subjects such as language which  
are accepted as one suitable for legislation in a public government  
form. Whereas other things are not so considered and have to be  
dealt with, perhaps, through a Land Claims Settlement.

MR. BERGER: David Case.

MR. CASE: I just want to be sure

*Accu-Type Depositions, Inc.*

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



1 I understand the point. Is it the case that in the Canadian Consti-  
2 tution, if a matter is included as a matter of a land settlement,  
3 including the establishment of a Nunavut Government as you -- with  
4 the three-year-residency requirements and all the rest, that that  
5 overcomes and expresses over, perhaps, contrary provisions of the  
6 Constitution? For example, those permitting free mobility?

6 MR. JULL: That's correct, except  
7 for one thing, and that is the Nunavut Act would not be brought  
8 under the Land Claims Settlement. There would be, they would be  
9 separate. And, for instance, you could achieve some of these  
10 things through a Land Claims Settlement, and some of them are  
11 important to achieve for that Constitutional protection. But at  
12 the moment, the thinking is not to have the Nunavut Act, itself, as  
13 part of the Land Claims Settlement, but have it as a separate  
14 statute which can, however, be appended to the Constitution as a  
15 Constitutional document and given various protection. But, yes,  
16 anything put in under Land Claims Settlement, such as preferential  
17 hiring, such as decision-making on wildlife, whatever, anything in  
18 relation to land, subsistence, you name it, anything that's in the  
19 Land Claims Settlement is now Constitutionally protected, so you  
20 couldn't go in and say, well, you know, I don't have equal rights  
21 with a Dene person, or a Ninuk person, it just wouldn't wash. The  
22 new Constitution protects -- gives the Land Claims Settlement  
23 precedence.

19 MR. BERGER: You know it  
20 overrides the Equal Protection Clause.

21 MR. JULL: Yeah.

22 MR. CASE: Aren't there other  
23 ways that the -- you said the Nunavut would include a three-year-  
24 residency requirement, for example...

24 MR. JULL: That's what we're  
25 seeking and it does seem to be no great difficulty yet.

MR. CASE: Yes. But it's not



1 part of the Settlement, the Land Settlement. It's part of another  
2 document, another statute.

MR. JULL: That's right.

3 MR. CASE: But it still has the  
4 -- it will overcome the problem with free mobility? The question  
5 would be right of free mobility?

6 MR. JULL: The Mobility Clause  
7 relates to employment. And effectively then, you know, nobody's  
8 going to move into Iglulik unless it's got the prospect of a job,  
9 and a house, and so on. So, you know, a number of these things  
10 haven't been fully discussed. For instance, one could make a very  
11 strong case, and some of the Inuit communities farther west than  
12 the Northwest Territories, are making such a case, that Land Claims  
13 Settlement should protect certain community government rights. So,  
14 you might have a dual system where perhaps you had an ethnically  
15 based, if you will, community government structure, and then at the  
16 Nunavut wide level, a more open system. I might say that one of  
17 the criticisms made by some of the Inuit in the Eastern Northwest  
18 Territories of the Cope Plain has been that because the community  
19 lands are not in the Settlement area. It means, the loss of  
20 certain possibilities for control of local government, and so on.

MR. BERGER: Ralph Johnson.

18 MR. JOHNSON: Yes. This is very  
19 helpful, and of course, Peter was very helpful yesterday in  
20 explaining some of the things to me at lunch. And although I've  
21 studied them, it's a lot better to have a personal description. As  
22 I understand the process and the Nunavut have proposed a  
23 settlement. That settlement was agreed to and ratified, or is in  
24 the process of ratification now by the Canadian Government, and  
25 then it'll go into Legislation. But that, essentially, will be a  
Land Claims settlement, and then the same process might be followed  
at a later time for the Government's side of it, for what we're  
talking about here is a government issue. Is that a fair

*Accu-Type Depositions, Inc.*

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



ATD

1 description of what's going on?

2 MR. JULL: Not quite. There's  
3 three things. First of all, on the Land Claims, there are negotia-  
4 tions under way, and something like 14 or 15 sub-agreements have  
5 been initialed between the Nunavut claimants and the Canadian  
6 government. We don't know exactly what attitude the new government  
7 will take, but it seems unlikely that they would throw out the  
8 agreements if (INDISCERNIBLE) wish to retain them. So those nego-  
9 tiations are dragging along.

10 The -- and one of the big issues, then, is the question of  
11 advisory power or decision-making power in relation to certain  
12 subject matter.

13 On the Nunavut Government side, we have been having dis-  
14 cussions with the Federal politicians and officials. They're aware  
15 of our proposals, discuss things back and forth. There is the  
16 possibility that things could move quickly if the political will  
17 were there, and really, that depends more, at the moment, on an  
18 accommodation being reached between the Eastern and Western  
19 portions of the Northwest Territories on mutual concerns, such as,  
20 the location of a boundary, such as, let's say management of  
21 caribou herds crossing any boundary, and things like that. In a  
22 sense, the ball is in the court of the northerners, so, one can't  
23 really fault the Canadian Government at the moment.

24 And then the third process, the National Constitutional  
25 one, Inuit have not yet tabled their self-government paper. And I  
can tell you whether the self-government paper, assuming it  
survives anything like its present form, does contain a lot of  
material on different cases. Including the North Slope Borough and  
other situations abroad, and is an attempt to look at practical  
achievements in self-government elsewhere, and as a result of this  
Conference, I'll be suggesting that we look at a few more. And  
then trying to persuade the Canadian Governments that progress is  
achievable. Actually, the Provincial Governments, who have nothing



1 whatever to do with Nunavut, Nunavut can be created without any  
2 reference to the Provincial Government. It can't be a Province  
3 without the other Provincial Governments agreeing, but you can  
4 create, as a territory this afternoon. The thing that's interest-  
5 ing is the Provinces who have no stake have been pushing for  
6 Nunavut because the fact that it is a Public Government structure  
7 has made some of them feel it isn't that nice, and really, that's  
8 the kind of model one could go with and they'd rather hear about  
9 that then in some proposals from different parts of the country for  
10 what they regard as extremely radical government structures. So,  
11 the Provinces have actually been cheerleading on this one to our  
12 surprise.

10 MR. BERGER: Because it's not a  
11 Tribal Government.

12 MR. JULL: Yeah. And it's nice  
13 and far from them.

14 MR. JOHNSON: And I have one  
15 other question...

16 MR. BERGER: Yeah. Sorry.

17 MR. JOHNSON: That is, that in my  
18 paper I described the COPE Settlement as having a number of  
19 corporate structures that were set up, and I think that it would be  
20 well to talk for just a moment, or ask you to respond. You were  
21 describing to me yesterday that the corporate, the ownership by the  
22 -- under the COPE Settlement by the Native population, although the  
23 ownership is in a corporation, it is a corporation in which every  
24 member of the Native population, as they come on, or born, are  
25 automatically members of that corporation. It's in fee simple but  
it is non-transferable. That is, in a sense, it looks like what  
we're talking about, land in trust held by the United States  
Government. It doesn't look like the corporate form of ownership  
that we see in a Regional or Village Corporations. I think,  
although, it's called corporate ownership, if you look through that

*Accu-Type Depositions, Inc.*

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



1 word, through those words, you see that it is permanent ownership,  
2 it is available to every child of a Native who comes into the  
3 community, and it is non-transferable except under unusual circum-  
4 stances. Now, having made that statement, Peter, could you correct  
me if I'm...

5 MR. JULL: No. That's correct,  
6 and Tom probably knows more about the intricacies. But, no, that's  
7 quite correct. And I should say that it's not a big issue in  
8 Canada. There's no particular opposition to that. It's an  
9 accepted principle, you know. In further Land Claims Settlement's  
10 it seem unlikely that people will be upset. In other words, it's  
11 readily accepted. And it's already at work, of course, in the  
12 James Bay in Northern Quebec settlement.

13 MR. JOHNSON: And lastly, the  
14 mineral ownership, although it's owned by the Crown, it essentially  
15 is substantially controlled or affectively controlled by the Native  
16 population. Is that how would you describe that?

17 MR. JULL: No. It definitely  
18 isn't so controlled. There are possibilities under legislation in  
19 relation to oil and gas, and administration of Federal lands that  
20 Natives share, and Native involvement can be developed, but  
21 essentially, the mining industry has told the Canadian Government  
22 that they want jurisdiction absolutely vested in governments. Not  
23 in aboriginal corporations or other aboriginal, specifically  
24 aboriginal structures. And I don't know if they needed to tell the  
25 government because I think the government would feel it that way,  
anyway. But the Inuit can participate in mining development. For  
instance, through development corporations is set up, but that's,  
you know, really no big deal. But, no, the question of non-  
renewable resources is really the big one and one where all the  
Native groups in Northern Canada are working together because the  
Canadian Government to date has been absolutely resistant to the  
idea of any amount of aboriginal control. Or even of a formula for



1 aboriginal revenue-sharing.

MR. BERGER: Charles Wilkinson.

2 MR. WILKINSON: To ask another  
3 question about the difference between Public and Tribal  
4 Governments, certainly one thing that I'm sure Alaska Natives are  
5 concerned about is possible demographic changes in the future in  
6 rural areas. And, of course, with a Public Government, if there  
7 are non-Natives who move in and become a majority then because it  
8 is a public voting situation, they can assume control. Over a  
9 period of 10, 25, 50 years, do you believe those demographic  
10 changes will occur in your region, and if so, what degree of  
11 disquiet do you have about the possible ramifications I'm  
12 suggesting?

13 MR. JULL: Well, yes, they could  
14 change over time. We don't foresee any immediate changes and we've  
15 got studies on the oil and gas and mineral picture, and so on. On  
16 the other hand, Canadian Government policy can develop and change  
17 rather dramatically. And if a government, for various reasons,  
18 wanted to promote oil and gas development in the Arctic, it could  
19 bring in something very quickly. So, you're right, that that's a  
20 problem. My own feeling, personally, is that the Nunavut Consti-  
21 tution work has insufficiently looked at this question because,  
22 although it's being considered under Land Claims, and again, I  
23 should stress that anything achieved there is absolute protection  
24 for all times. So that if one is looking at certain matters  
25 relating to culture, which indeed is part of the subject matter,  
and local communities, then, you know, there are protections  
achievable. So, that shouldn't be a problem, in terms of, you  
know, taking over an existing community. But, yes, in terms of  
political structures, there is a long-term danger. I don't think  
it's been adequately addressed, and yet, whenever it's been  
discussed in the Nunavut Forum, whose meetings are public, there's  
never been any will on the part of people to build in special

*Accu-Type Depositions, Inc.*

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



1 considerations. I think -- I don't, and I don't know to what to  
2 extent that's tactical. I don't know to what extent they're  
3 saying, well, look, let's not get the wind up in Ottawa any sooner  
4 than we need to. I think there's an assumption that with the Land  
5 Claims Settlement and with the Public Government, a Legislature  
6 controlled by Inuit is going to have a good many years to consoli-  
7 date the position of the population within the area, and, you know,  
8 whether that's an idle hope or not, I don't know. Certainly, if  
9 one of the Constitutional Conferences, the Manitoba Metis, the  
10 mixed-blood people in Manitoba, reminded the Inuit very forcibly  
11 that the problems of Manitoba which was created by the action of  
12 Indian and Matee people in 1870, had various rights guaranteed for  
13 that population. And these were very quickly eroded. So, I think  
14 that right now, it's a judgment call and -- but there are  
15 protections possible through Land Claims. And, certainly, the  
16 Inuit elective leadership are very, very anxious to make sure that  
17 a Land Claims Settlement in Nunavut is not just a cash and land  
18 settlement but contain a number of features that one might call  
19 political.

15 MR. BERGER: David Case.

16 MR. CASE: My understanding of  
17 the Northern Quebec Settlement, is that there are built-in -- maybe  
18 it's not part of the Settlement but in the Regional Government in  
19 Northern Quebec is that there is a fixed ratio for representation  
20 for communities. In other words, and I think the maximum that any  
21 community can have on the Municipal Assembly, the Regional Assembly  
22 is two per community. Which means that Natives, Native communities  
23 now are -- hold all seats in the government. But that if there are  
24 new communities that grow up, they will be limited of non-Natives,  
25 they'll be limited to two. Is there such a provision or an idea  
imbodyed in Nunavut, or is it more of one man, one vote arrangement.

MR. JULL: Well, at the moment,  
there isn't such a proposal imbodyed in Nunavut. Although, it's

1 being discussed, the whole question of having community based  
2 representation and there's some big problems with that, by the way,  
3 but it is being discussed. And you're right, the situation in  
4 Quebec is as you described, so that even if one new community were  
5 created tomorrow around a mineral resource, and it had twice the  
6 population of the total Inuit population in the area, you're  
7 right. It would still have minimal representation. However, of  
8 course, if you have a number of such communities, then the picture  
9 begins to change.

8 MR. BERGER: Ralph Lerner.

9 MR. LERNER: I have a question  
10 about the, what to me, surprising transconstitutional status of  
11 Land Claims Settlements? What is that special status rest on?

11 MR. JULL: An amendment to the  
12 Canadian Constitution agreed in 19 -- and that rather brought into  
13 force in 1982, Section 25 of the Constitution Act, 1982; and also,  
14 in 1983, at a Constitutional Conference there was a further  
15 provision agreed which is now being -- as I guess, I don't know if  
16 it's been enacted yet by all the Legislatures, but -- which also  
17 regards Land Claims Settlements as Constitutional documents and  
18 gives some further status of some kind.

17 MR. LERNER: So it's a Constitu-  
18 tional Amendment?

18 MR. JULL: Oh, yeah.

19 MR. LERNER: Is that an amendable  
20 part of the Constitution?

21 MR. JULL: It's amendable but it  
22 would take seven Provinces plus the National Government. Seven  
23 Provinces representing 50% of the Canadian population, and the  
24 National Government to do it.

24 MR. LERNER: You mean it's harder  
25 to unamend it then to amend it in the first place? Or it's the  
same process?

*Accu-Type Depositions, Inc.*

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



1 MR. JULL: The amending formula  
2 was one of the things that came into force the same day, so, it  
3 slipped in under the wire, you might say, but I think based on the  
4 experience of November 1981, when the Provinces and the National  
5 Government tried to take out some Amendments promised to the Native  
6 community. The national reaction was so viceferous that I don't  
7 think any Canadian government would ever try that again because the  
8 Canadian people may not know much about aboriginal concerns, but  
9 they certainly have an elemental sense of fairness which was  
10 violated by the attempt to break a promise.

11 MR. BERGER: Just a footnote to  
12 that, when the new Constitution was hammered out in 1982, Native  
13 people said, well, we are going to be settling Land Claims for the  
14 next generation and you've got all these provisions about equal  
15 protection and mobility of hire, and we're worried. And there are  
16 provisions in our Settlements that the land can't be sold, and so  
17 on, and so forth. And we're worried that the new Charter of Rights  
18 might be used to undermine our Settlements, so the Government's  
19 agreed that Land Claims Settlements were automatically be  
20 entrenched in the Constitution and could not be changed merely by  
21 Parliament passing a law. There had to be a Constitutional amend-  
22 ment. It's a remarkable provision.

23 Yeah. Question, Charlie?

24 MR. EDWARDSON: Yeah. In the --  
25 between Canada and United States, as you well know, that there is  
an Oil Treaty between Canada and United States. And as part of the  
American function, and the American responsibility that Native  
participation was mandated on the Transalaska Pipeline. And then  
it carried over to Canada, and what are the groups doing in Canada  
to secure those portions that the Americans and the Canadians have  
already signed in place, to secure these job preferences in energy  
oriented matters as part of the condition of the permit between  
Canada and the United States for the Eskimos, Indians and Aleuts of



1 Alaska on this side? What is Canada doing to secure these Rights  
2 and have been resolved by our governments?

3 MR. BERGER: Can you answer that,  
4 Peter?

5 MR. JULL: I can't. I'm sorry,  
6 Charley.

7 MR. BERGER: I wonder before you  
8 leave off, Peter, there's another country where there have been  
9 recent developments regarding Native government, and that's  
10 Norway. And the Norwegian Government has recently published a four  
11 volume report about Native Rights in Norway and, Peter, you're the  
12 only person I know who's able to read Norwegian. Could you tell us  
13 in five minutes what the Norwegian report says about the rights of  
14 the Sami people of Norway?

15 MR. JULL: Yes. There's a  
16 Committee, the Sami Rights Committee that was set up, I guess, in  
17 1980, and it represents, or rather it comprises various interest  
18 groups including some, shall we say, not dreadfully progressive  
19 social forces in the Sami areas, and a few Sami representatives.  
20 It's supported by an expert sub-committee of international  
21 lawyers. And Norway, interestingly, most of the legal and policy  
22 thinking in relation to aboriginal issues is coming from Inter-  
23 national Law, and this is something that certainly the Canadian  
24 Department of Justice finds intriguing.

25 There will be three reports of this Committee. The first  
one proposes that there be a National Aboriginal Parliament, a Sami  
Parliament, that has a direct link with the National General Parlia-  
ment. There's a controversy because in the first report, the  
powers proposed for this Parliament are merely advisory. Although  
the National Parliament is required to debate and discuss their  
annual proposals. However, the second report we'll study in more  
detail, the powers for such a Parliament, and there's pressure,  
certainly, within the aboriginal community for significant powers...



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

(TAPE 7, SIDE B)

MR. JULL: The report also proposes an amendment to the Norwegian Constitution which would say that the Norwegian state has an obligation to provide for the basis of continuing Sami culture. And, culture, in the report, perhaps one of the most interesting features of the report, culture is judged to include material resources, natural resources, traditional lands, the traditional homeland of the people. So, the question is somewhat significant. The report, also, concludes that Norway, because it contains a large number of the Sami, has a very special responsibility before world opinion and the world through international organizations to secure the collective future of the people, and certainly, I think, those of us working in Canada would be happy if the Canadian Government wrote reports with statements like that about the Inuit and (INDISCERNIBLE) homelands.

The report also proposes that the National Parliament have a full review of Sami policy in the life of every Parliament, which in Norway is four years, and review the guidelines for policy and development new ones, and also judge the way things are working.

There's also a proposal that there be regional, that is, sort of county level bodies and local ones where they're requested by a minimal number of Sami. And that these bodies would relate to local institutions and all funds for any of these origins would come from the National Norwegian Government.

I think the thing that's central in the report, really, is that in Norway, where many people have denied that the Sami are an aboriginal population, it does highlight their particular status. The legal chapter in the report is very interesting and is now being translated into English.

The second report, which will be coming out probably in a year, will have study of land rights in Northern Norway. And perhaps that's the report that will be most interesting to people in this room because it will be discussing the Norwegian Crown's



1 rights in relation to the land, and reindeer lands, and so on in  
2 Northern Norway. As well as waters, including coastal waters and  
3 coastal fisheries, and so on. That report will also, as I  
4 mentioned, discuss further powers for a Sami Parliament. So it's a  
fairly significant report.

5 Then the final report would be on land and water rights  
6 elsewhere in Norway. But it's the second report dealing with the  
7 core homeland, continuing homeland of the Sami people in Finmark  
8 County that's really the big one. There is a Parallel Committee,  
9 the Sami Culture Committee, whose report is probably coming out, if  
10 it isn't out this week, it should be out any day, and that  
11 Committee is a good deal more unified, shall we say, than the Sami  
12 Rights Committee. And it's expected that they too will make very  
13 strong proposals. Not only for a national constitutionally  
14 entrenched Sami language law, but also for language in education  
15 and so on. But also they are expected to discuss the question of  
political structures and argue very strongly that unless there is a  
significant power given to a Sami Parliament, the rest is really  
pointless.

16 MR. BERGER: Thank you, Peter. I  
17 wonder if we could move on to Frederick Harhoff. Frederick is  
18 Legal Advisor to the Greenland Home Rule Government. Perhaps you  
could proceed now. And thank you very much for coming.

19 MR. HARHOFF: Okay. And in  
20 return, Mr. Commissioner, thank you for inviting me and giving me  
21 this opportunity to provide you with some of the informations on  
22 the experiences that we have made in Greenland. I say, we, because  
I work in the Greenland Home Rule. Obviously, I'm not an Inuit,  
Ininuk (ph), I'm Danish, and I live in Copenhagen right now.

23 I think that it is important for you, in Alaska, when you  
24 have to revise the ANCSA, that you be given as much information on  
25 the experiences that we have made, as possible. Because basically,  
problems are very much the same, though there are differences, of

1 course, but we have dealt with the same problems as you have, and  
2 we have made the same mistakes as you have made already, or maybe  
will be going to make in the future.

3 MR. BERGER: Could you pull the  
4 mike a little closer?

5 MR. HARHOFF: Yes.

6 MR. BERGER: Sorry.

7 MR. HARHOFF: So, therefore, I  
8 think that there are very good reasons for exchanging all sorts of  
9 informations between us. And for myself, I must say, also, that it  
10 has been a very encouraging and instructive experience to be here  
11 and listening to what you have said. Especially that last remarks  
12 yesterday evening about the attitude expressed by Browning  
13 Pipestem. It was very encouraging and I'm going to take that back  
14 to Greenland and spread it around and see if it can grow up.  
15 Namely that, I'll, if you want to do it, then do it. And don't  
16 expect anybody to especially approve of it. That is the most  
17 encouraging I've heard for a long time.

18 I will confine myself at this stage to make comments in  
19 three issues. One is to just shortly describe what I conceive as  
20 the differences and the similarities between Greenland and Alaska.  
21 Secondly, I will quickly go through the organizational structure of  
22 our home rules so that I can provide you with some ideas of what it  
23 is about. And thirdly, I will try and come up with some of the  
24 suggestions on the basis of our experiences that I can say, sort of  
25 say, help you with if that is of any use.

26 Now, firstly, as to differences and similarities between  
27 Alaska and Greenland. One thing that strikes me here when we speak  
28 about the similarities is that the goal seems to be very much the  
29 same. Namely this of maintaining the cultural predominance of the  
30 Native population. And this seems to be the basic problem  
31 everywhere throughout the Arctic. Namely that industrial patterns  
32 carried out from the South, of being applied in Native communities,

1 and thereby, in many cases, leaving the Native populations in the  
2 wake of development. So, the struggle to maintain the highest  
3 priority of ones own culture seems to be very much the same.  
4 Probably goes through it all. And the results that is being  
5 strived for seems also to be that of achieving decisive local  
6 influence. And I will return to that when I get to the third part  
7 in my issue.

8 Also, another problem which is similar between Greenland  
9 and Alaska is that of the balance between the Federal authorities  
10 and the local authorities. To what extent are the authorities  
11 transferred to the local communities protected against interference  
12 from Federal authorities? And to what extent are they not? This  
13 seems, also, to be a very basic and through going problem, and we  
14 have been dumped with that also in Greenland.

15 Thirdly, I think that the similarities is also that of  
16 finding a workable, a viable balance between local governments and  
17 central government. I mean, within the Native community. David  
18 Case's remarks on day one of the hearings here, was very much one  
19 of giving as much power to the local level as possible. And we  
20 have heard other people coming up with issues saying that one  
21 should also see to that there be some central authority. Now, how  
22 can one successfully and viably balance the need of establishing a  
23 body and furnishing this body with some sort of central powers.  
24 And on the other hand, still securing what goes on at the very  
25 local village level.

Finally, when I see to the similarities between Greenland  
and Alaska, I think that the starting points was very much the same  
in Greenland as it was in Alaska, and also in Canada. Namely that  
there was -- seemed to be an ideological approach claiming  
assimilation of the Native population into Western industrial  
societies. And this was the very starting points of Greenland's  
history, when Greenland's colonial status was rescinded in 1953.  
Before this, Greenland was an isolated colony, closed out from the

1 rest of the world, but through an amendment of the Danish Constitu-  
2 tion in '53, Greenland's colonial status was rescinded. And it was  
3 done so exactly with the purpose of getting Greenlanders to become  
4 "real Danes". And fortunately, I should say, this, of course, this  
5 proves impossible. But this is another story. I only say this  
6 because what you have experienced here in Alaska is just the same  
7 as we experienced in Greenland just 30 years ago.

8 If you should just make a few remarks on differences, then  
9 it is obvious that being an island, Greenland has definitely  
10 certain advantages as compared to Alaska where there is a  
11 geographical cohesion with the Federal powers. Also, the  
12 geographical construction of the population is different. We only  
13 have one population of Inuit's, and they form about 80% of the  
14 total population of Greenland. We're speaking about a total  
15 population of about 50,000 people, 40,000 of which are Inuit's.  
16 And the last 10 are Danes, mainly. So, we do not have any  
17 difficulties with Benies (ph), or Metis, or Inuit because this  
18 apparently seems to make the whole situation much more  
19 complicated. So, we're mainly dealing with one Native population  
20 and they clearly form the majority. And there's no risk, at least  
21 not in the foreseeable future, that this picture will change. I  
22 mean, most of the Danes who go to Greenland stay there for two or  
23 three years, and they return to Denmark. So, hopefully, we will  
24 have this demographical combination going on for a lot of years in  
25 the future.

26 I think I will proceed to my second issue, namely just  
27 running through the topics of the Home Rule. And then you're free  
28 to ask all sorts of questions afterwards.

29 First of all, I would like to emphasize that the history  
30 of the Greenland Home Rule was that the original proposal was  
31 brought up by a Greenlandic and Inuit Committee which sit down and  
32 decided that now we want Home Rule. And they also pointed at some  
33 models of introducing Home Rule, and actually, this proposal was



1 the basis for what later became the Home Rule Act. Now, this is  
2 important because I think that it brought the Greenlandic Inuits in  
3 the offensive position against Danish authority. They were not, as  
4 I see it in many cases, both here in Alaska and in Canada, they  
5 were not in the defensive. They brought themselves in the  
6 offensive by coming up with a proposal saying, we want this. And  
7 that was later on approved of.

8 Secondly, the model was approved of in Greenland through  
9 plebiscite. So, everybody was at a certain level, at least,  
10 involved in the process, and they had the freedom to vote yes or no  
11 against it. There was a clear majority for introducing Home Rule  
12 at the plebiscite. Only a small part of the Left Wing voted  
13 against it because they said that the Home Rule was not good  
14 enough. But this is also an important thing, that having the whole  
15 setup approved of through a plebiscite.

16 Now, the main issue in the Home Rule is that of transfer-  
17 ring powers from Danish Parliament to the Greenlandic Parliament,  
18 or to the Greenlandic Home Rule. This means that the problem of  
19 protection against Federal interference is very much solved in this  
20 whole scheme. Because the idea is to transfer powers from one  
21 place to the other. So, that one area of revelation would be  
22 subject to only one authority, subject to only regulation from one  
23 authority, not two. And this is very important.

24 Now, having said this, I must add that it is being  
25 questioned, though, whether the Greenlandic Home Rule is actually  
irrevocable. The Greenland Home Rule has, very understandably,  
taken the position that our Home Rule is irrevocable, it is -- it  
jarrs the protection of the Constitution, even though no amendment  
was made in the Danish Constitution when Home Rule was introduced.  
So, we have no Constitutional evidence of the irrevocability of the  
Greenlandic Home Rule. So, in the lack of Constitutional  
amendment, which we definitely would have preferred, but that would  
have taken a very long time because the procedure is long and

*Accu-Type Depositions, Inc.*

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



ATD

1 heavy; in the lack of this, we say, well, the Constitution is open  
2 to amendment through customary laws. So, we have taken the  
3 position that through customary enactments, through customary law,  
4 that the Danish Constitution has been amended as far as the Ferrell  
5 Islands are concerned, and as Greenland is concerned. The Ferrell  
6 Islands also belong to Denmark, and they also have a Home Rule. It  
7 was established in 1948, and the model applied in Greenland is very  
8 similar to that applied in the Ferrell Islands. So, we say, there  
9 is precedence of introducing Home Rule, namely that in the Ferrell  
10 Islands, and these two cases, they now form the constitutional  
11 amendment through customary arrangements. So -- but this is being  
12 contested. We still have a lot of constitutional lawyers in  
13 Denmark saying that what this is really about is just a merely  
14 legal delegation from the central authorities delegation, which can  
15 at any time be amended or even reversed without the consent of the  
16 Greenlandic Home Rule. But there is a fight going on, and at this  
17 stage it is not possible to say what is right or what is wrong.  
18 Each of the two parties have taken their positions, and I guess  
19 that it is up to political strengths and struggle to have the whole  
20 thing carried on. At least, so far, everybody has acted, also the  
21 Danish authorities, everybody has acted as if the powers were  
22 irrevocably transferred.

23 The next thing that I would like to point at is that the  
24 arrangement that we have achieved in Greenland is very much a  
25 political one, in comparison to the ANCSA in Alaska, which I  
conceive of as a very economical arrangement. The main issue in  
the Greenlandic Home Rule is to transfer the right to legislate to  
a Greenlandic body under the Home Rule. It is the political power  
more than it is any economic rearrangement of the structure, such  
as the ANCSA expresses through village corporations and all this.

Legislative powers have been transferred, and also  
administrative powers. This means that the Home Rule which  
consists of a Legislative Assembly, 26 elected members, and a



1 Government consisting of seven Ministers, have the legislative  
2 powers to the Parliament, and the administrative powers to the  
Greenlandic Government.

3 Now, speaking about court systems, the judicial powers  
4 have not been transferred under the Home Rule Act. And one may  
5 question this and say, well, what is the Home Rule really worth  
6 then if the judicial powers have not been transferred? It's  
7 difficult to give any clear answer to that question because the way  
8 that this -- it works is that the Greenlandic Parliament passes --  
9 enacts the laws, and then the courts, also in Greenland, are  
10 obliged to follow these laws, and obliged to sentence punishments  
according to the provisions in the laws carried out and enacted by  
the Greenlandic authorities.

11 Secondly, to this problem of court systems, I should add  
12 that the court system in Greenland varies, very much, from ordinary  
13 court system, at least in Denmark. Because the population is  
14 scattered along the coast in small settlements consisting of from  
15 30 people up to 200 people, mainly. And then, of course, there are  
16 also a number of villages and a few cities. In each of the small  
17 settlements and villages, one would find a local court. But it  
18 would be seated by a lay judge, and it would be organized and  
19 functioning only with lay people. The local population choose, by  
20 themselves, who is to be designated as the Judge, and each of the  
21 two parties presenting their case before the Judge can choose a  
22 friend or somebody who they would like to assist them, pleading  
23 their case before the court. Decisions from these courts can be  
24 appealed to the District Court in the capital of Nuuk, and here for  
25 the first time in the system, you will find a legally educated  
judge, a lawyer. But this lawyer is appointed from the Danish  
Ministry of Justice. So, he is a part of the Danish legal system.  
So, are the local courts. If the whole system is setup in a Danish  
law, and Danish acts, which dates back to '63, 1963, setting out  
the specific provisions for the court system in Greenland. But is

1 all a Danish construction. Now, it was initiated there back in the  
2 '60's in order to take as much account of the Native law systems in  
3 Greenland as possible. So, that was the reason why a system with  
4 lay judges was introduced. This does not exist elsewhere in

5 I'll proceed and go to what is the main core of the Home  
6 Rule, namely that of the raw materials. The ownership to the  
7 renewable, or non-renewable resources in Greenland. Maybe I should  
8 -- I have tried to translate some of the Provisions in the Home  
9 Rule Act. The Home Rule Act's I will see to that it be sent to  
10 you, Mr. Commissioner, in an English version, and I will see to  
11 also that the translation will be safe. Now, I made one by myself  
12 last night. Just for your interest, I would like to read to you  
13 the Section One. It is only very short. It says, "Greenland forms  
14 a specific society within the Danish realm." That is Section One  
15 of the Greenlandic Home Rule Act. The Greenland Home Rule will  
16 regulate all Greenlandic matters according to the Provisions in  
17 this Act. And Paragraph Two reads, "The Home Rule consists of an  
18 elected assembly called the Linstik (ph) and Executive Body called  
19 the (INDISCERNIBLE)." So, this is fairly simple.

20 Then we have a Section Four saying that the Home Rule may  
21 decide that one of the fields of regulation listed in the Schedule  
22 to the Home Rule Act, maybe transferred totally or partially to the  
23 Home Rule. This means that attached to the Home Rule Act we find a  
24 Schedule of lists of 17 fields of regulation. I can just read a  
25 few of them. Like, taxation, like fisheries, conservation,  
planning, anti-trust laws, social affairs, employment affairs,  
industrial affairs, and so on. Seventeen points, 17 fields of  
regulation, only very shortly describe fishery, for instance. Home  
Rule may assume power over the regulation of fishery within the  
Greenlandic Territory, fishery territory. And the procedure is  
simply that the Home Rule writes a letter to the Danish Government,  
say from this date we would like to assume power over this area.

1 That's simple, it works. And then the Ministry for Greenlandic  
2 Affairs in Copenhagen sends back a letter, said, okay, we got your  
3 notice and we agree to the fact that from this very date you will  
4 have assumed powers over the specified areas.

5 Along with the taking over of each of these fields, the  
6 Greenlandic Home Rule Authority also takes over the financial  
7 responsibility, which means that they have now, from now on to pay  
8 by themselves. So, the costs attached to the regulation of each of  
9 these fields, which were formerly paid by the Danish Government,  
10 are now -- from now are paid by the Home Rule Act, by the Home Rule  
11 Government.

12 Now, turning to the raw materials, there's a Section Eight  
13 in the Home Rule Act, and this reads, "the resident population in  
14 Greenland have a fundamental rights to Greenland's natural  
15 resources." This was a political compromise which was achieved in  
16 the very long negotiations between Denmark and Greenland Territory  
17 to the introduction of Home Rule. Originally, Greenlanders claimed  
18 that they be given simply all rights to mineral resources, and non-  
19 renewable resources in Greenland. But this was clearly denied by  
20 the Danish Government. So, they ended up in a political compromise  
21 saying that at least the resident population in Greenland have  
22 fundamental rights. Now, there was even some trouble about the  
23 wording of this phrase in the eleventh hour of the conclusion of  
24 the negotiations. Because the Greenlanders said that the Section  
25 Eight should read, "the resident population in Greenland have the  
fundamental rights", thereby specifying what sort of rights we are  
dealing with. But Danish Government insisted that the little word  
"the" be deleted from the formula.

So, what is really left in the Section Eight isn't clear,  
unless -- apart from the fact that at least some sort of rights  
have now been recognized. That the Greenlanders have some sort of  
rights. The precise (INDISCERNIBLE) of these rights is yet  
unknown, but we're starting up.

*Accu-Type Depositions, Inc.*

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



1 MR. BERGER: This is really  
2 sub-surface resources, non-renewable resources?

3 MR. HARHOFF: Right. Yeah. Goes  
4 from the very top to the very bottom. The resident population was  
5 not -- is the expression used, and this goes for everybody who's  
6 lived in Greenland, and who stayed there for at least two years.  
7 So, that means also the Danes who decide to live in Greenland perma-  
8 nently, they are also entitled under this Provision.

9 And, then, Section Eight continues, and it sets out the  
10 procedural arrangement which is to be followed whenever decisions  
11 have to be taken about the exploitation of mineral resources. I  
12 read it, "in order to safeguard these rights to non-living  
13 resources, and to safeguard the interests of also the Danish  
14 state. It shall be established by enactment that preliminary in-  
15 vestigations, exploration, and exploitation of these resources, can  
16 only take place and be initiated according to agreements between  
17 the Greenlandic (INDISCERNIBLE), and the Danish governments." This  
18 is what we conceive of as the right to veto any decision concerning  
19 exploitation.

20 Now, let's just take one example. Let's say that, for  
21 instance, some private oil company want to explore for oil or  
22 uranium, or you name it, in Greenland. Then they would address  
23 themselves to the Minister for Greenland asking for permission to  
24 do so. Now, this application would then be dealt with in a joint  
25 Greenlandic-Danish committee, and if unity is achieved in this  
body, this joining Greenlandic-Danish committee, if they can agree  
on approval -- on approving of the application, then they will give  
an advisory response to the Minister, and then the Minister will,  
according to this agreement made up in the committee, will give  
permission to the oil company to go and drill for whatever.

MR. BERGER: But it's a double  
veto. Denmark can stop it, Greenland can stop it. They both have  
to agree for a go-ahead.

1 MR. COULTER: Yeah. Is the  
2 theory of the Danish governments veto based on the Danish  
3 Government's power of government, or because the Danish government  
4 is thought to own the underlying resources?

5 MR. HARHOFF: Private ownership  
6 does not exist in Greenland. This is one of the differences that I  
7 would be coming to next. We don't have in Greeniand at any, at  
8 all, private proprietary rights to land in Greenland. All the  
9 soil, the underground, the land is, sort to say, owned by the State.

10 MR. COULTER: One state though.

11 MR. HARHOFF: The total, the...

12 MR. COULTER: Oh, I know. But  
13 which government embodies the state (INDISCERNIBLE)? Is that the  
14 Danish Government, you mean?

15 MR. HARHOFF: The arrangement  
16 reached -- the resources arrangement sets up a procedure to be  
17 followed when decisions have to be taken about exploitation of  
18 resources in Greenland. But this is, as I said, this is just a  
19 procedure to be taken, and it does not deal with the rights of who  
20 owns these resources. This was also reflected in the wording of  
21 the Section Eight that I read to you right before, that the  
22 resident population in Greeniand have fundamental rights. What  
23 does this mean? Nobody knows yet. Only that, at least, the Danish  
24 Government cannot unilaterally decide anything in Greenland concern-  
25 ing the exploitation of resources, without the consent of the Green-  
landic Home Ruie. Neither can the Greeniandic Home Ruie decide any-  
thing unilaterally against the consent of the Danish Government.  
So, they're tied up, you know, in a balance of powers against each  
other, or with each other.

MR. BERGER: Reid.

MR. CHAMBERS: Frederick, what  
happens if, say, an oil company comes in and drills some oil. Now  
who does it pay when it drills that oil? In other words, who gets



1 the royalty from the oil?

2 MR. HARHOFF: The royalty -- now,  
3 there has been -- the first case of decision in this joint  
4 Greeniandic-Danish -- but it was taken here recently, just a month  
5 ago, concerning drills for oil in Eastern Greenland, and here is  
6 the -- I can submit it to you afterwards if you want to see it. It  
7 sets out the concession for this business. The royalties are paid  
8 to the Danish states. And according to Provisions in the Home Rule  
9 Acts, and in the Supplementary Act of Mining, the Law of Mining in  
10 Greenland, revenues have to be shared between Greenland and  
11 Denmark. And, now, this is getting complicated. Let's just keep  
12 to the principle that revenues have to be shared. Now, in the pre-  
13 paratory commission, which lead to the Home Rule Act, political  
14 agreement was made that the first of the revenues coming from oil  
15 exploitation in Greenland should go to the Danish state as  
16 compensation for the Danish expenditures to Greenland. It costs  
17 the Danish state about \$200,000 each year to have Greeniand. Most  
18 of these money go -- no, \$200 million...

19 MR. BERGER: Yeah.

20 MR. HARHOFF: Sorry. I have to  
21 transiate from (INDISCERNIBLE) to dollars -- \$200 million is the  
22 total expenditures in the Danish budget of having Greenland.

23 MR. JOHNSON: (INDISCERNIBLE, OFF  
24 MIKE COMMENT) to Denmark is about \$200 million.

25 MR. HARHOFF: Right.

MR. JOHNSON: That's not more  
than taken up for or paid back by resources. By oil development,  
or whatever.

MR. HARHOFF: No. I mean, the  
total expenditure that Denmark has, including the payments for all  
the officials working, for instance, in the Ministry of Greenland  
Affairs in Copenhagen, the Royal Grain and Trade Department, all  
located in Copenhagen. I mean most of these money go to pay people

1 who live in Denmark.

2 MR. JOHNSON: On that theory, the  
3 BIA (INDISCERNIBLE).

4 MR. HARHOFF: The total  
5 expenditures are about at least \$200 million. One-quarter of which  
6 are given to the Greenlandic Home Rule as a block grant annually.  
7 So, we're speaking about \$50 million being given each year to the  
8 Greenlandic Home Rule as a block grant, and this is part of the  
9 income to the Greenland purse. The Greenlandic Home Rule also has  
10 assumed taxation powers so they supply, also, with further income  
11 to the purse, besides the \$50 million that they get from the Danish  
12 state.

13 MR. BERGER: Well, carry on with  
14 wherever you were when we...

15 MR. HARHOFF: Okay. You can come  
16 back. But I hope I answered your question.

17 MR. BERGER: David, just before  
18 you go on, Frederick is just -- do you have a point?

19 MR. GETCHES: I have a question  
20 along these same lines about revenues from mineral exploitation.  
21 It seems like there's no incentive for the Home Rule to consent,  
22 since they would get no greater block grant, I presume, having  
23 mineral development in their community.

24 MR. HARHOFF: Very good. I --  
25 because I didn't end my story. What I said was that out of the  
money coming out of the oil exploitation, or mineral exploitation,  
the first \$200 million would go to compensate the Danish state. If  
there is a surplus, this surplus is to be shared according to  
formula which is not been decided on yet.

MR. GETCHES: (INDISCERNIBLE, OFF  
MIKE COMMENT)

MR. HARHOFF: No. It's --  
according to this, it probably will take place in about six, seven,



1 eight, maybe ten years.

2 MR. GETCHES: And that would  
3 allow sharing at the Home Rule level of some revenues? Or to just  
4 to the Greenland State?

5 MR. HARHOFF: The money will go  
6 to the Home Rule, as such.

7 MR. GETCHES: It will go to the  
8 Home Rule?

9 MR. HARHOFF: Yes. Coming out  
10 from after -- according to the formula, yeah.

11 MR. GETCHES: Is it contemplated  
12 that the Home Rules will be able to -- perhaps as a condition of  
13 their consent, or withholding their veto, demand some sort of  
14 monetary payment directly to them?

15 MR. HARHOFF: I'm not sure about  
16 that. I mean some of the revenues -- there are so many different  
17 forms of revenues, like all sorts of levies, and maybe some of them  
18 go directly to the Greenlandic Home Rule.

19 MR. GETCHES: But it seems like  
20 the Home Rule could demand a bonus, or else they would veto the  
21 transaction.

22 MR. HARHOFF: Sure. Sure. If  
23 this could be agreed upon in the negotiation with the private  
24 companies.

25 MR. GETCHES: And in so doing it,  
they could defeat the Danish share of the revenues substantially.

MR. HARHOFF: Sure. Sure.

MR. BERGER: David Case.

MR. CASE: To what extent does  
the Greenlandic Home Rule Government need greater revenues in order  
to assume greater powers under the Home Rule Act? In other words,  
is there any possible or probable connection between mineral  
development and the ability of the Home Rule Government to exercise



1 greater powers?

2 MR. HARHOFF: Sure. I mean,  
3 that's what it is all about. But I mean, let's face it. Greenland  
4 still belongs to Denmark in some way or the other. And it does so  
5 because it is not able -- it's not yet fully viable, economically  
6 viable society. They are stressing -- we are stressing, as much as  
7 we can, the importance of having redone the industrial patterns in  
8 the fisheries sector in order to become as much independent from  
9 revenues from mineral resources, as possible. So, -- and try to  
10 develop our fisheries to the largest possible extent in order to  
11 collect revenues from this source. On the long run, it is clear  
12 that whenever the resources, the flow of money following from  
13 mineral resources, gets big enough to pay for Greenland's total  
14 expenditures, and at that point we may talk about independence. I  
15 don't know, but, I mean, this is far out in the future, so I'd  
16 better not say anymore about that. Sorry.

17 MR. BERGER: I think it's time  
18 for a coffee break. We'll take a break, and then you just carry on  
19 with your presentation, and then we'll have some more questions.

20 MR. HARHOFF: Sure.

21 (HEARING RECESSES)

22 (HEARING RESUMES)

23 MR. BERGER: Well, let's take our  
24 seats. Shall we? Well, we had the question period before the  
25 presentation was completed, but I think we should take our seats  
now for the completion of Frederick Harhoff's presentation about  
Greenland Home Rule.

MR. HARHOFF: Yeah. One of the  
questions that I just got in the break was that whether Greenland  
contributes with money to Denmark? I mean this is not the case  
apart from the revenues flowing from resource development. And the  
fact that the Greenland Home Rule has assumed power in taxation  
matters, means that the Danish State does not collect taxes in

*Accu-Type Depositions, Inc.*

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



ATD

1 Greenland. This is solely done by the Greenland Home Rule.

2 Okay. I will proceed to just a few comments on  
3 Greenland's role in the international, on the international level.  
4 It is spelled out in the preparatory work, before the Home Rule,  
5 that there are few areas which cannot be assumed power over. This  
6 is the defense, this is the international relations, this is money,  
7 currency, and a few others. But these are the most important.  
8 This means that Greenland does not, formally speaking, have the  
9 rights to conclude in its National Treaty with a Third Country.  
10 Because this power will still be vested in the Danish State  
11 authorities.

12 Now, this is causing a lot of problems because it is  
13 obvious that, for instance, if the Danish States concluded the  
14 fisheries agreement with Canada, for instance, then the Green-  
15 landic fishermen would be the very ones who would be subject to the  
16 provisions in this international treaty. So, therefore, the Green-  
17 landic Home Rule has said that, well, if we don't have the power to  
18 conclude in its National Treaty, then we'll at least have the  
19 right, or retain the right, to have a very strong influence in the  
20 terms set out in this international treaty. This is the first  
21 step.

22 The second step is that we in Greenland, we look to what  
23 the Ferries have done, and the Ferries they have a similar  
24 provision in their Home Rule Act saying that its national relations  
25 are still vested in the Danish authorities. However, the Ferries  
have, regardless of this, concluded on their own international  
treaties with other countries in the North Atlantic. This goes for  
Iceland, this goes for Norway, and it goes for Great Britain. The  
Ferries government has simply, regardless of the provisions in  
their Home Rule Act, concluded fisheries treaties with these  
countries. And this has been done with no objections from the  
Danish Parliament, from Danish authorities. They have just  
approved of it or they didn't protest. They didn't come up with



1 any objection to it.

2 MR. BERGER: That's on the  
3 Pipestem principle, just go ahead and do it.

4 MR. HARHOFF: Right. Very much,  
5 and I'm sure that as the years go by, this will be the approach of  
6 also the Greenlandic Home Rule. Especially -- so that within the  
7 powers that we have assumed we will, I think, try at least to take  
8 the approach of just doing it and then see what happens. But this  
9 may not be fully legally, but...

10 Dealing with the international sphere, Greenland is with-  
11 drawing from the European community. The EEC, we became a member  
12 of the European Economic Community, along with Denmark in 1973,  
13 January 1, and right from the very start, there was a strong dis-  
14 agreement in Greenland as to this membership of this European  
15 community. Because, of course, Greenland does not feel a part, or  
16 even a member of the European societies, so therefore, there was a  
17 strong urge from day-one of the total Danish membership of the EEC  
18 that at some point we would try and withdraw. And as the first  
19 major task that the Home Rule Government took up when Home Rule was  
20 established May 1, '79, was that of presenting a claim towards the  
21 Danish, or government, asking for withdrawal from the communities,  
22 European communities. Negotiations took place during two-and-  
23 a-half years, and have now been concluded. So, we are now leaving  
24 the European communities from January 1, '85.

25 A few other observations should be made to the security  
role. Greenland is also a member of the NATO. And I think there  
is a lot of strategic importance of Greenland's remaining in NATO.  
So far, the membership of NATO has not been questioned by the Home  
Rule Government, but it is obvious that this may become an issue of  
discordance between Denmark and Greenland because there is a very  
heavy risk of having military bases, of which there are two in  
Greenland, and they are American. The Danish Navy only holds a  
small harbor in Greenland, and that is all there is of Danish

1 military presence in Greenland. Apart from this, there are two  
2 major American bases. One in Southern Strongford (ph) and one in  
3 Tewelut (ph), and if ever a nuclear war would -- I mean come up  
4 between the East and the West, Greenland is believed that one of  
5 the first targets of nuclear attack from the East, would be the  
6 American bases in Greenland. That would be catastrophic, that would  
7 be fatal to the ecology in the whole area if the American bases  
8 were bombed with nuclear weapons. So, this may come up as an issue  
9 in the years to come as to whether these bases should be allowed to  
10 still be there. At this point, the American military presence is  
11 considered as the Danish States major contribution to the NATO.  
12 And they don't pay for it. The Americans do not pay for the bases  
13 in Greenland.

14 I think I have run through some of the issues which are  
15 characterizing the Greenlandic Home Rule, and I will, therefore,  
16 just conclude with the third issue that I mentioned. Some of the  
17 proposals that maybe could be of some interest to you while  
18 revising the ANCSA.

19 The first thing that seems important to me is that of when  
20 you speak of self-determination to Native populations, then I think  
21 that legislative power rather than private ownership is what is  
22 important. Now, this means that I do not doubt the fact that owner-  
23 ship to land in Alaska and Canada has a very great significance and  
24 very great importance for the Native populations, but I'm only  
25 saying that you must see to the facts that you achieve some sort of  
legislative power, also political powers also, and fill this in the  
formula that you strive for when you go for your self-determina-  
tion.

(TAPE 8, SIDE A)

MR. HARHOFF: I think that  
legislative power is a very fundamental part of the concept of  
self-determination, and don't forget it.

Having said this, I also think that it is important to do

Accu-Type Depositions, Inc.

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



ATD

1 some thoughts about how you organize the contribution of political  
2 powers in the self-determination. Now, David Case came up with his  
3 proposal saying that the villages should be the ones who decide on  
4 local matters, and I certainly agree with him in doing so. But I  
5 also would like to iterate that you need, also, to have some  
6 central body on top of the village Home Rule arrangements that  
7 David came up with, some sort of central organization who carries  
8 and who's able to fight for at the global level, the general level,  
9 to fight for the achievement of further political rights. So, you  
10 have to build some sort of a construction on top of the Home Rule,  
11 the village Home Rule level. Otherwise, I think it would be much  
12 too easy to be played around with if there's no central authority  
13 which is able to carry the general interests of the Native popula-  
14 tion. So, my advice on my proposal would be to try and secure Home  
15 Rule at the local level, but also see to the fact that you create  
16 some sort of a body who carries the general interests of the Native  
17 population. This could be done regionally, or it could be done  
18 statewide. I don't know. You have to decide on that.

19 And I think the reason that this is important is, also,  
20 that you thereby make it possible to perform and to improve a  
21 general planning of the development of your society. Now, I  
22 mentioned going through the Nunavut Home Rule that the major task  
23 in these years, is to rearrange the industrial policy. Formally,  
24 industrial activities were carried out by the Royal Grain and Trade  
25 Department which, in Canadian terms, would correspond to the Hudson  
Bay Company. The Royal Grain and Trade Department was established  
200 years ago, and has mainly undertaken all sorts of industrial  
activities in Greenland. We are going to take over the Royal Grain  
and Trade Department, we're taking over a bit of it here January 1,  
and the remaining divisions of the Royal Grain and Trade Department  
are to be taken over in the years to come. This provides us with a  
tool to master, to manage the industrial development of our  
society. And thereby, we get the tool, also, to try and spread out

*Accu-Type Depositions, Inc.*

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



1 the economic base, the developments of the economic bases as to not  
2 only going for mineral resources, as is the case very much here in  
3 Alaska. I mean everybody goes for oil and gas here. Nobody thinks  
4 about the fishing, and the possibilities of making processing  
5 plants on-shore, and maybe even off-shore on the ships. This is a  
6 very important part, also. And I think much more consideration  
7 should be given to the planning and the developments of the  
8 fisheries sector here in the Native, in the Indian, and the Inuit  
9 societies in Alaska. And this is a task which could be taken up in  
10 a central body which I think should be traded on top of it.

11 Thirdly, I would say that when creating bodies, it is  
12 obvious from what I have heard here during the last three days,  
13 that there's much too much bureaucracy which is now tyrannizing the  
14 societies and the villages. We have evidence yesterday about, I  
15 don't know how many bodies were -- which are established in this  
16 small local levels, and it could become even worse when you have to  
17 create a central body. So, there's a very great risk of creating  
18 into too much bureaucracy, and we have made mistakes in Greenland,  
19 also, because it tends to -- becoming much too much bureaucracized  
20 in our Home Rule. It is a fact that, actually, after the introduc-  
21 tion of Home Rule, the number of white advisors of different  
22 academic educational backgrounds has raised dramatically. It is  
23 difficult for very young new administration, like the Home Rule in  
24 Greenland, to assume all these powers without importing specialists  
25 and people like that from the South. And because we do not have at  
this level sufficiently trained, skilled labor and academic people  
to carry out all these tasks. So, this is a balance of trying to  
get as much power as possible, but then at the same avoiding too  
much bureaucracy.

And I think, maybe, it could be of some interest to you to  
look into the Ferries Home Rule. Because actually they have  
organized their administration in a very different way than we have  
in Greenland. The model applied in Greenland was merely that we

1 took over all the Danish offices, including the Danish people who  
2 sat in these offices, and they're generally doing the same things  
3 now as they did before. Now, in the Ferrell Islands, they had a  
4 different starting point, and they have actually created an admin-  
5 istrative organization which is much more simple than we have it in  
6 Greenland. We have done the same mistake in Greenland, we are  
7 probably the most over-administrated society in probably the whole  
8 Arctic, or the North Atlantic Region. We are so over-  
9 administrated, and this is not necessary. And there are prece-  
10 dence, namely in the Ferrell Islands, just for one thing, which  
11 prove that it can be done otherwise. And so, I think I will  
12 conclude my remarks at this stage. I could add, returning to the  
13 first of these three points about the importance of achieving leg-  
14 islative powers, that when Peter Jull spoke right before about the  
15 Norwegian, the Sami government, I think that one of the weak points  
16 in their proposals is that they do not ask for legislative power.  
17 They ask mainly, in their proposal, they have mainly asked for the  
18 rights to be heard and to be taken in consultants whenever the  
19 Federal authorities or the state authorities in Olso, they carry  
20 out legislation. This is too weak, I think. That would be my  
21 criticism of the Norwegian approach. You have to ask for legis-  
22 lative powers, and see to it that you get them irrevocably. Thank  
23 you.

MR. BERGER: Yes. Peter.

MS. WORL: Thank you for those  
recommendations. I really think that you've hit some things really  
on the nail. I have a couple of questions. I've also been  
interested in the issue of local government and regional govern-  
ment, or the division of authority. And you said that you have 16  
powers that were transferred -- or that the Greenlandic Home Rule  
has Sixteen Powers Act, and I suppose that's at the Greenlandic  
National or State level. And then what happens at the local  
level? Do you transfer power to that level? And what kind?

*Accu-Type Depositions, Inc.*

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



1 MR. HARHOFF: Yeah, we do. Now  
2 -- yeah the schedule containing these 16 or 17, I think it is,  
3 fields of regulations, they have not been assumed, all of them.  
4 But this is just a schedule, you know, lining up a number of areas,  
5 and we have taken over most of them. Social, health, or public  
6 health is one that we have not assumed yet. So, the hospitals in  
7 Greenland are, for instance, still run by the Danish State, and the  
8 Danish State pays for them.

9 Okay, we take over powers in these areas, and then we  
10 delegated from -- the Home Rule Parliament delegates it to the  
11 municipal authorities which also created, and so this is...

12 MS. WORL: When you say municipal  
13 you're talking about a community, a local?

14 MR. HARHOFF: Yeah. We call them  
15 communities, also. Each -- Greenland is divided into 18 or 19 muni-  
16 cipalities, or communities, regional, local communities. And they  
17 get a lot of the powers that we have assumed in the first place, we  
18 pass it onto them and say, okay, there you are. And we also supply  
19 them with money to do so. So, they have a lot of authority to  
20 decide on their own. Only matters that are most appropriately  
21 dealt with on the central level, are being dealt with by the Home  
22 Rule Parliament, and the Home Rule Government. Whereas, powers  
23 that are most adequately exerted on the local levels, they are  
24 being passed onto the municipal authorities.

25 MS. WORL: How about education?  
I'm most interested in that.

MR. HARHOFF: Divided. Main  
provisions, general provisions on the education are passed by the  
Greenland and Home Rule Parliament, and the implementation of these  
plans are passed onto the municipal.

MS. WORL: The second question I  
had was, you mentioned, and I think, if I'm not mistaken, you said  
that about 25% of the population are Danes?

1 MR. HARHOFF: Yes.

2 MS. WORL: And you also said that  
3 they tend to be -- they stay there for a two to three year  
4 residency. What are the factors that lead to that transitory  
5 nature of that population? They stay there for two to three years?

6 MR. HARHOFF: Yeah.

7 MS. WORL: Okay. Why don't they  
8 stay longer? Or I mean, what limits their stay?

9 MR. HARHOFF: There's a bunch of  
10 confusion in this because the criteria of who is permanent  
11 population or resident population in Greenland is not spelled out  
12 in the Home Rule Act itself. It is spelled out, mainly, in the  
13 electorate systems and the electorate laws saying that people have  
14 to live in a certain time in Greenland before they can obtain or  
15 achieve rights to vote.

16 MR. BERGER: How long is that?

17 MR. HARHOFF: I thought of it as  
18 being two years, but I now get confused.

19 MR. BERGER: Yeah. Okay.

20 MR. HARHOFF: I will provide you  
21 with the precise information. But at least there is a time limit,  
22 and this time limit is the one which determines the rights.

23 MR. BERGER: But Rosita's  
24 question was, what accounts for the fact that Danes do not remain  
25 in Greenland for more than a year or two? Why do they leave? Why  
don't they stay?

MR. HARHOFF: Basically, because  
of the language I should say.

MR. BERGER: What about the  
weather?

MR. HARHOFF: Well, I mean, most  
of the Danes live in the cities, right? And most of the Danes are  
occupied in the administrations of either the Home Rule authority's

1 or the municipal authority's, running the schools, being brought as  
2 teachers, or whatever, doctors, and so on.

3 MS. WORL: Can they own lots,  
4 land, residential homesites?

5 MR. HARHOFF: No.

6 MS. WORL: They rent?

7 MR. HARHOFF: As I said before,  
8 we have no private proprietary rights, none whatsoever, in  
9 Greenland. You own the house that you build, but you do not own  
10 the land on which this house stands.

11 MR. BERGER: Do you lease the  
12 land?

13 MR. HARHOFF: No. You just build  
14 your house. Much to the contribution of Browning's approach, but,  
15 I mean, this has been the way that -- you build your -- if you want  
16 to build a house, then you address yourself to the local municipa-  
17 lity and ask, can I build a house there? And they are building out  
18 there. They are designing plans for the development of each of the  
19 small communities, and they look at your request, and they say,  
20 okay, this is fine, it suits us well if you build a house there,  
21 and you're free to go. Build it.

22 MR. GOTTSALK: (INDISCERNIBLE,  
23 OFF MIKE COMMENT)

24 MR. HARHOFF: They get --  
25 salaries are negotiated between Danish labor, unions, and the Green-  
land Home Rule Authority every second year. And additional to --  
it is normally included in these salary agreements, or wage  
agreements, that you -- when you travel from Greenland, from  
Denmark to Greenland, and settle there for a number of years, then  
you are, they you get a little more money, absentation,  
compensation, or whatever you'd call it.

MR. BERGER: But would you get  
more than the Greenland person hired right there on the spot?

1 MR. HARHOFF: Yeah. I didn't  
2 finish my answer to you, Rosita, because when you ask about, why is  
3 it so, then I -- formally, before the Home Rule was introduced, it  
4 was the normal way of employing Danes in Greenland, that they were  
5 on two year contracts.

6 MS. WORL: I see. That's what I  
7 want to know. I mean, does that continue or...

8 MR. HARHOFF: No. This has been  
9 diversified. I mean, most of the people, for instance, who are  
10 employed in the Home Rule Government, they are employed  
11 permanently. But there is a tendency, I must say, there is a ten-  
12 dency that they stay for a limited number of years, there, and then  
13 they go home, and I guess very much has to do with the difficulties  
14 of learning the Inuit language. And even there's a program set up  
15 in the Home Rule saying that every Dane who is employed in the  
16 Greenland Home Rule Authority is obliged to follow Greenlandic  
17 education, to take courses. And this has been provided for saying  
18 that they are free, even in office hours. Three times a week, they  
19 are free one hour, Monday, Wednesday, Friday, where they are  
20 obliged to go down and be taught to speak Greenlandic. But it  
21 hasn't really helped. It is too difficult simply. So, only a  
22 very, very limited number of Danes have actually learned to speak  
23 Greenlandic. It is mostly people who marry Inuit women or men.  
24 This is also a problem because the people that come up from Denmark  
25 to Greenland, they are lonely men, and they may marry, you know,  
but this is another problem.

MR. BERGER: Well, maybe -- well,  
thank you, Frederick. Maybe we could, before lunch, move on to  
Cindy Gilday of the Dene Nation, to talk about -- I think you were  
going to talk about what's happening at Fort Goodhope. Is that...

MS. GILDAY: Thank you, Mr.  
Berger. Sorry for being late this morning, but you're keeping in  
touch with the Denedeh tradition, you let the men go first. And I

*Accu-Type Depositions, Inc.*

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



1 guess they've taught you something, huh?

2 Anyways, women usually get the last say, though. That's  
3 the tradition. I'd like to -- I think pick up on the third Pipe-  
stem principle.

4 MR. PIPESTEM: Do I get to  
5 clarify the Pipestem principle at the conclusion of all of these  
6 interpretations? I haven't needed an interpretor yet, but maybe I  
may.

7 MS. GILDAY: And that deals with  
8 settling the affairs of the heart, and I guess I've had the luxury  
9 of coming here with no preparation, and being able to listen to the  
10 community that's here. And picking up on, I think, what are the  
11 main -- some of the common fabric that's running through the dis-  
12 cussion, and being able to pick some examples from the Denedeh, and  
13 with the Denedeh, there's always, it's always been the underlying  
14 theme that the way to really overcome, or fight colonialism is to  
15 really rise above it and use your own traditions and culture. Now,  
16 that kind of talk, you know, scare a lot of people because they  
17 think it's too radical and you can't do it in this day and age  
18 where you have to conform to departments and corporations and all  
19 that kind of stuff, and you have no right to develop these things  
20 in your own right, and adjust them to your traditions, and to your  
21 culture. So, there are three very specific cases which I feel  
22 relates to the discussion here that I will pick up on.

23 One is a community self-government that was evolved at the  
24 grassroots level. Very, very much at the grassroots level, and was  
25 also a survival gesture. And that's the Fort Goodhope -- I guess  
I'm running on a lot of assumptions, aren't I? Because I don't  
feel like an international person here, you know, with the -- this  
is the Athabascan country? Right? There are a lot of Athabascan  
speaking people in this neck of the woods, and when I came here,  
you know, it was almost like (INDISCERNIBLE) and a lot of people,  
locally, that I feel very comfortable with, and very much at home.

Accu-Type Depositions, Inc.

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



1 And, so, from that perspective, I don't feel like an international  
2 representative at all. And, anyway, I'm getting sidetracked, a  
3 little bit.

4 The second part is, just a minute. It has to do with the  
5 subsistence issue that I think all of the northern aboriginal  
6 people had dealt with in very, very recent times.

7 And the third is environmental monitoring. I think we  
8 have made some headways in (INDISCERNIBLE) Land on monitoring what  
9 goes on on the lands. So, those are the three items I will talk  
10 about.

11 Okay. First of all, the community government of Fort  
12 Goodhope, which is the 26 villages in the valley, in the McKenzie  
13 Valley, those are -- Mr. Berger is quite familiar with them because  
14 he's visited everyone of them during the great pipeline debate. It  
15 wasn't very long after that that the Canadian Government decided  
16 that they're going to go ahead and build a pipeline anyway. So,  
17 when they did that, there was a big Canadian bill called, Bill  
18 C48. It caused a lot of controversy in Canada. It was going to  
19 concentrate the powers over development of gas and oil in the  
20 valley, and the Department of Energy it was Mark Loloan's (ph)  
21 baby. If anybody knows the Canadian Government system, Mark Loloan  
22 used to be an Energy Minister. And it gave them a lot of power to  
23 lease lands to oil and gas companies. And in the community of Fort  
24 Goodhope, within the Satu (ph) Region, the Great Bear Region, a lot  
25 of exploration that was going on. So, the land, as you're probably  
aware, is still under negotiations, and the Dene have, you know,  
been held back over negotiations for the simple reason that they  
insisted on political rights. And the Canadian Government's  
policy, Land Claims policy, is total contrary to that. So, here we  
are sitting inbetween the government giving away leasing lands to  
oil companies, and running over trap lines, encroaching on areas  
where people were hunting, and the Lands Claims negotiation is  
being held up because we want political rights and every -- all the

**Accu-Type Depositions, Inc.**

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



1 others. So, the people at the local level were really, really  
2 caught inbetween. They're losing. People were -- they're being  
3 squeezed inbetween. So, their reaction was not only to what was  
4 going on on that level, but to what was going on on the local  
5 level, which is they're dealing with different systems within the  
6 village government. They have the Federal Government, (INDISCERN-  
7 IBLE) council system, although I keep saying that the Indian ad-  
8 mentality has not really taken hold in the Northwest Territory's  
9 with the Dene. But it still, they DIA, which is the Department of  
10 Indian Affairs, has injected a lot of money into that kind of  
11 government system within the past few years, and it obviously had  
12 taken hold in the community, and so there's the Band Government  
13 system, and there's the Territorial Government, as you know is a  
14 colonial government system. Doesn't matter what anybody says, it  
15 is a colonial government system regardless of the fact that the  
16 head of the government is a Dene. It still doesn't change the  
17 operation at all.

18 And that's the other level. There's two levels. And  
19 there's the whole business of the colonial government setting up  
20 its own government within the village, imposing it, and getting  
21 people caught up into meetings after meetings, after meetings,  
22 after meetings, you know, and they got to a point where there are  
23 too many pressures, and too many dual things that were going on in  
24 the villages where people were sitting on the Band Council, the  
25 community council, and umpteen other committees. So, the people  
finally said, look, we've got to do something about this. So,  
picking up from the Dene -- like they still operate on community  
assembly kind of -- regardless of what names or what brands  
everybody puts on in the village, outsiders I'm talking about, the  
people within the village still operated in a consensus community  
assembly style of decision-making with leaders, and the community.  
So, finally, they got some people to work with them. Six years ago  
they started working on two levels of agreements. One with the

**Accu-Type Depositions, Inc.**

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



1 territorial government, and one with the Federal Government. A  
2 year and a half ago, I guess, they signed a community government  
3 agreement with the Territorial Government, and prior to that, I  
4 guess about three or four years ago, they signed an agreement with  
5 the Federal Government. It's called an Intern Land Agreement, and  
6 what that does is before anybody can come into the community lands  
7 surrounding the community where the people hunt and fish and trap,  
8 they would have to take their proposals there for developing the  
9 land into the community assembly. So, this gave them -- but then  
10 you have the others that live you, right? And in a lot of the Dene  
11 communities, there are very few White people, very few outsiders,  
12 except for the southern part of the valley. And you have to still  
13 deal with the teachers and all the other Canadians who live amongst  
14 you, and give them the democratic right. So, there was -- the  
15 proposal had three-tier kind of an agreement. The core of the  
16 decision and the consultation rests with the Band Council and very  
17 much aboriginal rights oriented. The whole agreement that worked  
18 together is to really zero in on what the people want at the  
19 community level, and to try and reflect that in the agreement. So,  
20 had the Band Council, you had the community council which the Band  
21 is strictly for the Dene and descendants of the Dene. And the  
22 community council is for anybody in the community. And then there's  
23 the third part which is the community assembly, which is the whole  
24 village. And this is -- the third part is where the proposal for  
25 development on lands had to be processed. So, it's, I guess, it's  
really making something that reflects what the village wants, and  
using outside mechanisms to implement those because you have to  
deal with the governmental systems. And I guess it was a lot  
easier because the Legislative Assembly, regardless of whether the  
colonial government or otherwise, there are still the majority of  
Native people sitting on that, and so it made it easier to transact  
an agreement with them. So, that's the -- it's breathing life and  
using your culture, and having such a strong commitment to survival

*Accu-Type Depositions, Inc.*

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



1 that you make whatever comes into your hands, work for you.

2           Okay. I'll move into the second section. In 1981, the  
3 National Energy Board decided to give permission to the oil  
4 companies to build a pipeline between Norman Wells and Zama (ph)  
5 Bay, and it's called the Norman Wells Oil Field Extension. And, of  
6 course, it was not long after the Berger Hearings that our people  
7 are still not very happy about the unknown factors surrounding  
8 building of pipelines, but they gave some conditional approvals  
9 anyways. 'Cause they were just going to go ahead and do it, so we  
10 tried to get some things out of that extension, or the pipeline.  
11 And one of them is monitoring of environmental -- the effects on  
12 the environment because like all aboriginal people, the Dene are  
13 very concerned about the impact of development, exploration kinds  
14 of things on the land. So, one of the agreements is that the  
15 government would have a monitoring system to deal with the physical  
16 or the impact of the pipeline. And it so happened that they were a  
17 little slow, and once the Norman Wells, the community of Norman  
18 Wells started putting up all kinds of things and dealing --  
19 essentially developing right in Norman Wells, the effects were  
20 very, very quick. Like there were skinny fish in Fort Goodhope  
21 that people had not seen for a hundred years, and no fish at all in  
22 other parts, and oil spills, and stuff like that. And the  
23 government monitoring system was just very slow and very, very  
24 scientific oriented. What was going on was they were developing a  
25 monitoring policy that was very scientifically oriented and did not  
have anything to do with people. So, the Dene Nation, our office,  
the national office, decided to develop Norman Wells monitoring  
program to monitor the monitoring. That would be very much -- it  
is very, very community oriented. We have one representative from  
each community, and it's a community-base monitoring core where the  
people with the convictions of land values, and the traditions, and  
the culture of the people put a very much of the peoples angle onto  
monitoring. Not just the scientific angle. The objective is to



1 create a lot more sensible monitoring agency that would have both  
2 people and science working together to, of course, the one part to  
3 appease a lot of the governmental kinds of efforts. And the other  
4 part is to ensure that our peoples expertise on the land was being  
5 used to develop the monitoring. And there's three parts to the  
6 monitoring agency that we've set up. One has to do with environ-  
7 mental effects monitoring. The other one is the community social  
8 impact of the pipeline, and one has to do with training our own  
9 people to do the actual scientific monitoring like taking water  
10 samples and stuff like that. And it has not been very long. We've  
11 done a lot of work with it in this past year and it's really  
12 starting to pick up, and it's very much of the peoples program.  
13 Once again, the people from the village are the ones that are  
14 making up and doing a lot of the work.

15 I could talk a lot more about these two things but there  
16 are very, very specific papers that address these issues, and if  
17 you'd like, I can -- because I had no intention of talking them, I  
18 didn't bring any materials but I'd be very happy to provide you  
19 with the material addressing these issues.

20 And the third part that I'd like to address is, for me, a  
21 very personal issue. And it's got to do with subsistence. A lot  
22 of people don't -- we all have our concepts of what subsistence  
23 means and last November, our Chief's of Denedeh came together, had  
24 a meeting and said, look, we hear in the winds that the inter-  
25 national anti-harvest movements are threatening our way of life.  
Find out what's going on. So, we went and found out, and the  
bottom line philosophy of all these anti-seal, anti-trapping,  
anti-fur, anti-this, all the anti-groups, is very much of an animal  
rights philosophy where it goes that man has no right to assume  
superiority over animals because if we allow the squirrel to live  
on and on, it will evolve into an intellectual capabilities that  
will be equivalent to ours. So, that's the bottom-line  
philosophy. I'm not kidding. I mean it came from a Cambridge

**Accu-Type Depositions, Inc.**

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



1 professor. It was developed -- that's where it all began. And the  
2 variation of the groups, some of them are very militant, others  
3 like the Worldwide Life Fund are halfway inbetween. And Green  
4 Peace can't decide whether they're going to go this way or that way  
5 because their original philosophy came from the aboriginal people  
6 of this country, and things like that. But the movement is very,  
7 very massive, so the aboriginal people, the Dene Nation went ahead  
8 in August. We organized an international aboriginal nations  
9 meeting on the issue, and it was called Cultural Survival Meeting.  
10 It was in Yelanite (ph) and we had 27 nations. All from Greenland,  
11 Alaska, all across the top of the north and across the top of  
12 Canada. And it was very, very serious. All the people who were  
13 there were saying that our livelihoods are being threatened. Our  
14 way of life off the land are being threatened by these groups and  
15 it is -- it was said over and over again, it's a new form of  
16 colonialism that's being imposed on the aboriginal people of the  
17 north. So we organized an aboriginal solidarity movement to  
18 address this issue, and I think it's an issue that everybody should  
19 keep an eye on. For us, it's a preventative gesture because we  
20 really do feel threatened. So, nobody has brought this up in here  
21 because colonialism and the imposition of ones own peoples values  
22 on another -- in our case, it was by the Western society from  
23 Europe, I guess. And that's the way it is. And I think the only  
24 way you can really rise above it, like we're trying to do with this  
25 aboriginal solidarity movement is to use your own cultural and  
26 traditional values which a lot of people aspire to in this world,  
27 except they don't know how to express it. And I think we still  
28 have a chance to.

29 That's it. Thank you very much.

30 MR. BERGER: Thank you, Cindy.  
31 Thank you very much. Well, anybody want to ask any questions?

32 MR. MALLOT: I'd like to  
33 (INDISCERNIBLE, OFF MIKE COMMENT).



1 MR. BERGER: Yeah. Byron Mallott.  
2 MR. MALLOTT: Cindy, the first  
3 issue that you raised about how you function at the local level, I  
4 think you mentioned a three-tiered system. The Band Council, the  
5 community council, or I assume some municipal government which, of  
6 which all the community residents were participant. And then a  
7 third level wherein the two came together? Is that correct? Could  
8 you describe that a bit more?

9 MS. GILDAY: Okay. You know, I'd  
10 be very happy if you'll leave your name with me, I will be very  
11 happy to send you the specific agreements that addresses that, but  
12 what it is is the core of the government is the Band Council.  
13 Okay. Where only the Indians, or the Dene, can participate.  
14 Elected leaders. Okay? Of the community who are Dene. And in  
15 the middle is the community council, which is also elected, but  
16 anybody, like if you lived there, you can participate. And the  
17 community assembly is everybody all in, of the village.

18 MR. BERGER: All residents.

19 MS. GILDAY: So, the first two  
20 are the elected. That's how I understand it.

21 MR. BERGER: Okay. Well, maybe  
22 before lunch, we could ask Ted Chamberlin to report on recent  
23 developments in Australia. Ted.

24 MR. CHAMBERLIN: Thank you. I'll  
25 try to give a quick account of what's been going on in Australia.  
Last March, there were delegates here from the aboriginal community  
there, Shorty O'Neil and Stan Strutton, and others, who gave a  
fairly full description of the principles in forming the move, the  
aboriginal rights movement in Australia, so I won't go over that  
ground. But I'll quickly try to account for the recent  
developments by going back over the last ten years. A lot's  
happened in Australia in the last ten or fifteen years.

In 1967, there was a referendum altering the Australian

*Accu-Type Depositions, Inc.*

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



1 Constitution giving the commonwealth authority to exercise juris-  
2 diction over aboriginal affairs. It hasn't exercised that juris-  
3 diction in many cases, but with the shift of authority, it brought  
4 about a shift of thinking about aboriginal matters, and a turn  
5 towards the recognition of land rights and other aboriginal  
6 rights. And the same time, there were a whole series of activities  
7 going on. Petitions and protests and litigation and legislation  
8 through the '70's. Beginning in the early '60's with a petition to  
9 the government by the Yirkala protesting against mining on their  
10 land. Then, a few years later, an important walk-off, as it was  
11 called, from a cattle station at Wave Hill by the Gurindji, forcing  
12 the government to face questions of aboriginal land rights. Those  
13 lands were under leasehold, as indeed much of the bush land in  
14 Australia is. In that case, just to give you a sense of the  
15 continuity of these things, the leaseholder was a family called the  
16 Vestey family, a British family. Their history in land matters  
17 goes back to the enclosure movement in Scotland. They were part of  
18 the moving of the Highland Scots, (INDISCERNIBLE) Scots off thier  
19 land, had moved to Australia, have enormous holdings in Australia,  
20 were faced with the challenge by the Gurindji, as indeed was the  
21 government. The Yirkala, who had put in this protest about mining  
22 on their land, eventually took to court in 1968, and all of these  
23 pressures built up along with some protest activity. Specifically,  
24 a large-scale takeover of the lawns of the Parliament Buildings,  
25 called the tent embassy as it came to be known, through 1972, where  
the aborigines camped out on the lawns for about six months. And  
in 1973, the government moved first to establish a commission to  
look into how to grant land rights. Not whether, but how, and in  
due course, they granted the Gurindji their pastoral leasehold.  
Land rights legislation was passed in the Northern Territory and  
things began to get moving towards more broadly base land right  
legislation. Now, I'm giving that chronical because I think it's  
an important part of what's happened but what's happened since

1 then, is that the whole process has taken on a life of its own, and  
2 has in many ways, moved out of the control of the aboriginal people  
3 themselves. The Land Rights Legislation that is in place in the  
4 Northern Territory, and which provided the model for land rights  
5 legislation passed in New South Wales, and land rights legislation  
6 tabled in Victoria, another of the Australian states, and land  
7 rights legislation proposed in Western Australia, all of that land  
8 rights legislation deals with lands and not with political rights.  
9 It's legislation which pro-  
10 vides for a specific kind of definition of traditional ownership  
11 which has to be proven in land courts, and the land is then vested  
12 in trust, inalienable trust, freehold title, inalienable trust held  
13 by land councils which are set up on a regional basis to administer  
14 the land holdings, and to administer the monies that flow through  
15 from royalty payments, and compensation payments, and so forth.  
16 There's been considerable difficulty in -- for those land councils  
17 in maintaining their, maintaining contact with their constituents.  
18 They've tended to become increasingly distant from the people they  
19 represent, and increasingly bureaucratic with the best of  
20 intentions, as indeed bureaucracies often have, but with the worst  
21 of results, often. The commonwealth in Australia, which is the  
22 federal government, has promised federal land rights legislation  
23 which would override any of the state legislation, hasn't produced  
24 it yet, and it's a very contentious political issue in Australia.  
25 They've laid out the principles that would inform such legislation,  
and those principles, basically, flow from the Northern Territory's  
legislation that's in place, and they certainly limit the notion to  
proprietary rights, basically. They don't accommodate any notion  
of political rights or any notion of governmental powers. The one  
area -- I want to come back to that in a minute -- but the one area  
where there is a move away from a simple proprietary notion is in  
the definition of traditional ownership in the Northern Territories  
legislation. A traditional owner in that legislation is defined,

*Accu-Type Depositions, Inc.*

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



1 and I'll quote here, "as a local descent group of aboriginals who  
2 have common spiritual affiliations to a site on the land, being  
3 affiliations that placed the group under a primary spiritual  
4 responsibility for that site, and for that land, and are entitled  
5 by aboriginal tradition of forage as of right over that land."  
6 Now, what that does is extend a notion of material interests to  
7 include a broad sense of spiritual interests and spiritual attach-  
8 ment. And in the light of that, and true to that notion, the  
9 Federal Government, though it hasn't passed comprehensive land  
10 rights legislation, has passed an interim bill this last spring,  
11 what they call a Heritage Bill, providing considerable protection  
12 for sacred sites which are, in some ways, the locusts, the points  
13 of reference. The points of sort of mapping reference for the  
14 broad areas that constitute aboriginal land under the Land Rights  
15 Settlements. Now, all of this, as I've mentioned, has the funda-  
16 mental limitation that it deals not at all with political  
17 authorities, and with governmental responsibilities.

18 (TAPE 8, SIDE B)

19 MR. CHAMBERLIN: But at the same  
20 time that this movement towards legislating land rights, and  
21 confirming them through land courts, has been going on. There have  
22 been a couple of other things going on which deal more directly  
23 with the issues of governmental authority, and one is the develop-  
24 ment of a powerful rhetoric asserting aboriginal sovereignty over  
25 Australia, period. And the language of that assertion is simple,  
it's pay the rent. And it's directed to the White tenants to the  
settlers who came after 1788, and who took over land to just  
possess the aborigines who aren't about to admit that the  
possession is no longer their's, and are saying that they are quite  
happy to sit down and negotiate an appropriate rental. It's a  
notion which is not welcome to the commonwealth government and to  
the tenants, but it's one that isn't about to go away, and it's one  
that is providing energy for the move to broaden the notion of



1 aboriginal rights through that legislation. It's also providing  
2 the aborigines with some sense of what they're doing when they  
3 make certain kinds of accommodations. They're securing some lands,  
4 and the deals that they're entering into are land deals but they're  
5 maintaining their prerogative to talk about the questions of  
6 sovereignty at a more auspicious time. So, they've tried carefully  
7 to enter into the discussions about land rights as portrayed within  
8 the legislation in a way that will keep intact the notion of  
9 sovereignty. They're also moving in a different way, in a way  
10 similar to the kind of move that was described yesterday, acting as  
11 though they had sovereign rights. Acting as govern-  
12 ments. And what they're doing is all over Australia, moving back  
13 from the settlements, out to the country. The movement is called  
14 various things. The Outstation Movement, or the Move to Settle  
15 Down Country, but it's happening from the Central Deserts up to  
16 North Queensland, the tropical area down to the south, and  
17 aboriginal groups who over the years have been moved in or have  
18 moved themselves in to settlements close to town, or to settlements  
19 where several tribes have been brought together for administrative  
20 purposes, are going back to land and acting in every way as though  
21 it were their land, as indeed it is. They're refusing to accept  
22 that land as anything other than theirs, and they're defying the  
23 anxiety and the opposition of many of the state in commonwealth  
24 authorities that are saying, you can't do that folks, and it won't  
25 work, and that's not on, and so forth. They're just moving back,  
and that's having a powerful effect on people's thinking about the  
notion of aboriginal sovereignty.

The other thing that's happening, and it's part of this,  
is that out of the communities there are coming some very powerful,  
local organizations. The most interesting, and the most striking  
of which, in many ways, is the aboriginal medical service, the  
Aboriginal Health Services which are community-based, community-  
run, which are the product initially of urban aborigines Red Fern,

**Accu-Type Depositions, Inc.**

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



**ATD**

1 a suburb of Sydney, and of Fitzroy, a suburb of Melbourne, and  
2 which have federated together in a group called the National  
3 Aboriginal and Islander Health Organization. The communities,  
4 themselves, the local aboriginal medical services are service  
5 organizations. They provide a range of medical services from the  
6 technical to the more holistic. They rely on aboriginal people as  
7 much as possible, and hire others, doctors, technicians, and so  
8 forth, where necessary. They provide a broad range of social  
9 services within those communities, they act as a focus for what are  
10 essentially ascertains of aboriginal sovereignty. And drawing from  
11 that local energy, the National Aboriginal and Islander Health  
12 Organization has been one of the key proponents of land rights.  
13 Using the powerful argument that ill health, and that the ill  
14 health that's epidemic among aboriginal people, is a product of  
15 dispossession and dislocation, and the only way to good health is  
16 to provide the stability and security that broadly based land  
17 rights will provide. And that it would include, in due course --  
18 it would include that, excuse me, not in due course at all, as part  
19 of the notion, the power to govern the land and to control those  
20 communities. As an indication of the interconnectedness, that  
21 Outstation Movement, that movement that I described a minute ago,  
22 is not only strongly supported by the National Aboriginal and  
23 Islander Health Organization, but the -- most of the material  
24 relating to it has come through that organization. There's a book  
25 out called, Settle Down Country, which came out last year, which  
provides an account of what's going on, and that's published by the  
Health Organization. So, there aren't the tidy divisions that have  
often been the vein of aboriginal communities trying to bring  
things together. One of the difficulties, and this may be of some  
interest, and it's certainly related to the conversation yesterday,  
there are other local aboriginal organizations, one of the most --  
one of the earliest of which were the Aboriginal Legal Services,  
which came out of the local communities, and which, again, are



1 federated into a National Aboriginal and Islander Legal Service.  
2 The difficulty with those is that they've been bound into a legal  
3 system which is fundamentally alien, in many respects, to  
4 aboriginal life, and yet their defense of their clients, or claims  
5 against other parties within that system, reinforces the system  
6 itself. So, they've not been as effective as the aboriginal  
7 medical service has been in putting forward an argument that it's  
8 all part of a seamless web that said the aboriginal legal service  
9 has been a crucial part of the development of aboriginal rights in  
10 Australia, providing, as it were, survival rations to the  
11 communities, keeping them, holding them together until such time as  
12 they can work out a more comprehensive and coherent framework.

13 There are some other things which, again, which fall into  
14 this same pattern and may have, maybe of some interest, and one is  
15 -- and it's a simple thing in many ways, but it's a powerful  
16 expression of aboriginal rights in Australia, is the aboriginal  
17 flag. The circle in the center, red, black, and yellow. It's  
18 everywhere in Australia. No one in Australia can avoid the  
19 expression of aboriginal rights as embodied in that flag. It  
20 appears all over the place, it appears on -- it's the color coding  
21 of all of the aboriginal medical centers in the cities; it's a part  
22 of many of the buildings; it flies over the buildings; it's a part  
23 of all their publications; it's on bumper stickers. It may not at  
24 all be an appropriate thing for other indigenous people. As  
25 Browning Pipestem was saying yesterday, these things have to take  
on the image of the people they represent. And I'm not suggesting  
that everyone should have a flag. I'm just saying that it is a  
powerful expression of aboriginal identity. Along with it goes the  
expressions such as, the pay the rent concept, as it's called. And  
not leased. The enormously, articulate energy of the aboriginal  
arts. The painting in the --the spark painting, and the sand  
painting, but even more important, the writing and the theater, and  
the filmmaking that have been part of the assertion of aboriginal

1 land rights in the last ten years. And they've been important in  
2 ways that go beyond the -- any narrow sense of what the arts are  
3 all about. They have been the vehicle for the expression of  
4 aboriginal rights. They've also been a way for the aborigines to  
5 find a language that catches their own particular predicament.  
6 It's a language of ideals and aspirations; it's a language that can  
7 be taken seriously; it's a language that comes to life, into which  
8 they can breath life in a way that was mentioned yesterday; it's a  
9 language that it becomes part of their charters of -- becomes part  
10 of the constitutions of organizations like the National Aboriginal  
11 and Islander Health Organization. And it's a language that, in due  
12 course, will undoubtedly become part of whatever constitution  
13 enshrines notions of aboriginal autonomy, and aboriginal -- broadly  
14 based aboriginal rights. That notion of language is crucial, I  
15 think. And I'm not only talking about whether the language is Atha-  
16 bascan or Inuit, or whatever, it's a sense of a shaping of the  
17 predicament, the aspirations, and the anxieties in a particular  
18 kind of way, and no American could be ignorant of the importance of  
19 language. The American Constitution is a marvelous document  
20 because of its language and the expression of certain ideals.  
21 Ideals which have their own kind of impracticality. Ideals of  
22 life, liberty, and the pursuit of happiness, and so forth. The  
23 possibilities within aboriginal society for finding their language  
24 are no less crucial, and that language may take the form of laws,  
25 laws are nothing but language, or it may take the form of brining  
back traditions in a certain kind of way. One of the ironies in...  
early-on in my time in Australia, and again this picks up something  
that was raised yesterday, was that I kept hearing as I was out in  
the communities, references to tribal law. And I realized, even-  
tually, that I was hearing references to two things in an  
Australian accent. One was tribal law, l-a-w; the other was tribal  
lore, l-o-r-e. They both sounded the same, and indeed, in many  
ways they both were the same. They were inseparable. They were



1 part of the same thing. They weren't lidily divided up, and the  
2 similarity in sound matched, a similarity in what the people were  
talking about.

3 I'll just finish up by coming back to a point I raised a  
4 minute ago, the importance of the aboriginal arts. Because I want  
5 to quote a passage from a play that was -- has been very important  
6 in Australian aboriginal affairs in the last few years. Very impor-  
7 tant in the move towards a broader notion of aboriginal land  
8 rights. A play called, The Cake Man, by the black writer, Robert  
9 Merritt, and there's a character -- the main character's a man  
10 called Sweet William. He, at a certain point early in the play, he  
11 comes in and he says, looks at the audience, and he says, "Who are  
12 you?". And then he looks around, and he says, "You want to buy a  
13 boomarang?" And the boomarang, it turns out, is made in Japan, and  
14 the Australian champion boomarang thrower, it turns out, is a White  
15 fellow. But Sweet William, on the other hand, as he says, is a  
16 Kurri; a Kurri, the Australian aboriginee. "That's who I am, and  
17 what I am, made in England." And then he moves on in his sort of  
18 monlogue, and he says, "You still there? I still got something  
19 that you want. What you want from me that I got? Don't be scared,  
20 just say it. That's what I want to know too." And that question  
21 haunts the play, and it haunts Australia in many ways. And towards  
22 the end of the play, the question's turned around, but the riddle  
23 persists. So, William comes out, right in the last scene of the  
24 play, and comes out and speaks again to the audience. He says, "Ah  
25 well, it don't matter. Please don't give it another thought. Just  
forget all that shit they say about giving me back my culture, that  
shit. It isn't what I'm really after, not really. What I want,  
what I'm here for is something else again. If I could only get  
across what I mean. Look, I'll tell you something, no laughing,  
you're not allowed to laugh, but you've got to try to listen, and  
not call me a liar or laugh. I'm not no liar, ask Ruby, my Mrs.,  
she'll tell you that's one thing about me, that I ain't a liar.

*Accu-Type Depositions, Inc.*

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



1 Have you ever heard of a Eurie woman? You say it like that, Eurie  
2 woman. No? Never heard of 'em? Well, listen then, I'll tell you  
3 what's a Eurie woman, and what it is I want here. I was working at  
4 Kalera (ph) Station, after it had me feed, I went and laid down on  
5 the bed, and started reading this gubba book I got." A gubba is  
6 White man. "And all of a sudden I heard this emu drumming some-  
7 where close. I got up and went outside, and stoked up the fire,  
8 and all the time this emu was still drumming. I was trying to hear  
9 exactly where it was so I could find that nest. Then the drumming  
10 started closer to the tent. I was sort of curious like, you know,  
11 I thought, I won't have trouble finding that nest in the morning.  
12 By this time, it was right behind the tent. So, while I was  
13 turning around, I got the biggest fright of my whole life. It  
14 weren't no emu, it was a woman. And she had hair that was shining  
15 black, and it hung right down over her back side. She was the  
16 prettiest woman I ever saw. Yeah. She was a Eurie woman. I fair  
17 bolted out of there. You'd a thought I had wings the way I flew  
18 out of there. It didn't do me no good, though. Must of run easy a  
19 mile. But just as I ducked through the fence wires, there she was  
20 again, right in front of a man, between me and the road. And it  
21 was summer, hot as fuckin' hell, but I had this freeze cold sweat  
22 all over me. And then I took off again, running from me, like  
23 scarerder than I ever was before. Running fast. But it didn't how  
24 or where, she was always there in front of me, and at the same  
25 distance away from me. Her hair shining and swirling like it was  
made out of water, and her skin like black lightening, if you can  
imagine that. So beautiful she could never be bad. But she was  
scary anyway, and always there in front of me, but somewhere else.  
Well, all I remember then is the gubba I was working for was saying  
to me, what was wrong? What happened? And I said, didn't he see  
that Eurie woman? And just the way he looked at me, I knew he  
never had, and that he never would, and never could see that Eurie  
woman, a gubba. Ain't no Eurie womans for gubba's. She came to



1 tell me so I'd know. You know what? He said, gubba said, 'Come  
2 on, William, ain't no Eurie woman. Come back to reality.' Exactly  
3 what the Eurie woman was saying, too. Two realities, and I've lost  
4 one, but I want it back, I need it back. It's yours, it's mine."  
Thank you.

5 MR. BERGER: Well, thank you, Ted  
(APPLAUSE)

6 MR. BERGER: Well, I think this  
7 is a good time to adjourn for lunch and come back at a quarter to  
8 two, and we'll carry on.

(HEARING RECESSES)  
(HEARING RESUMES)

9  
10 MR. BERGER: I think we might as  
11 well start. We've had one whole side of the table here fall by the  
12 wayside, but what can you do? What I -- to start with, I should  
13 say that at 5:00 this evening, there's a reception at David Case's  
14 office, and you're all invited, including the folks in the  
gallery. And what's the address there, David?

15 MR. CASE: It's the Hunt  
16 Building, 550 West 7th, in Room 1380. And I think Joyce is  
17 printing up, the Commission Secretary, is printing up some tags to  
18 tell you where it is, and all. But it'll be from 5:00 to 7:00 at  
the Hunt Building, Room 1380.

19 MR. BERGER: And those of you  
20 who've been to the Commission offices after the roundtables in the  
21 past for our little receptions, know how grungey our offices are,  
well, this is -- today it's the Hunt Building. I mean, this is  
real...

22 UNIDENTIFIED: (INDISCERNIBLE,  
23 OFF MIKE COMMENT)

24 MR. BERGER: Anyway, what I  
25 thought we would do this afternoon is just look at the uses of  
municipal government and their counterparts. We've already looked

1 at Greenland, and there's been some discussion about the Katevik  
2 (ph) Regional Government in Northern Quebec, but I thought that  
3 this afternoon we would ask Bill DuBay to speak, and then Senator  
4 Vic Fischer, and then Bob Blodgett would like to say a few words as  
5 well. And after that, perhaps we could move on to the question of  
6 the relationship between Native governments and ANCSA corporations,  
7 and some of the issues that we're still wrestling with there. So,  
8 Bill DuBay, why don't you start off, and...

9 MR. DUBAY: Thank you, Mr. Chair-  
10 man. Thanks for the opportunity to address you, again. I'd like  
11 to announce that the Mayor's Assistant, Rachel Kakok (ph), was not  
12 able to attend and he sends his regrets. There was a death in his  
13 family up in the North Slope, and he flew back to Barrow this  
14 morning. And, well in his absence, I'd be glad to answer any  
15 questions you might have about the Borough.

16 I'd like to address just some comments regarding municipal  
17 government. Often times there is given the impression that because  
18 ANCSA did not address the question of governments for Alaskan  
19 Natives, that the Natives were left out on a limb, and that they  
20 have been operating without governmental procedures, or planning,  
21 or anything like that, since that time. And I'd like to present a  
22 little different perspective. I think one way of looking at ANCSA  
23 is seeing it as an adjunct of the Statehood Act. The Land Claims  
24 Act can be looked upon as a way of getting through to Statehood,  
25 and to proceeding with the promise of Statehood. And there was a  
lot of Native support for Statehood, but because of the failure of  
the Federal Government to settle Land Claims, the State could not  
be developed, nor could the promise of Statehood be fulfilled.  
And, so, there's that problem that had to be gotten out of the  
way. Of course, you get the suits that stop the development of the  
North Slope, and the freeze put on the entitlements that is going  
on in Alaska, and this lead, of course, to the Settlement Act.

Native governance was addressed in Statehood which



1 received a lot of support from Native leaderships and groups  
2 throughout the State, and I think the attitude of the time was a  
3 lot of the Native leaders were ready to opt out of the tribal  
4 system, and wanted to throw in their lot with other Alaskans, and  
5 saw statehood as a way out from underneath the often bureaucratic  
6 and unresponsive system that was run by the Department of  
7 Interior. And Bob Arnold talks about this in his book, he calls it  
8 an implied State/Native relationship. And John Havelock mentions  
9 this in his, you know, testimony here at the first overview  
10 hearings. He says it's a mistake to think that a lot of Federal  
11 governance responsibilities are passed from the Federal Government  
12 to the regional corporations, or the profit corporations in ANCSA.  
13 Those responsibilities really passed over at the time of Statehood  
14 from the Federal Government to the State, and so you see a great  
15 deal of implementation, and in energy, and involvement by the  
16 Natives of the State with both the Constitution, the implementation  
17 of the Constitution, and especially with writing of the Municipal  
18 Code in the Borough Act of 1961. I think there was an amendment in  
19 1963 setting up the State system of municipal government. And I  
20 think it's important to see these as Native governments. There's  
21 the implication, a lot of times, that IRA Governments, or other  
22 forms of government, are more Native than whatever else that the  
23 Natives are using. And I think there's a real trap in that because  
24 a lot of people can use that type of argument saying that tradition-  
25 al governments, or Native governments, have been disrupted. And  
just like the people who say that Natives cannot be given subsis-  
tence rights because they're no longer using traditional imple-  
ments. That they are also deprived of their aboriginal governance  
rights if they're no longer using traditional government. And I  
think just as they are entitled to use whatever implements that  
they choose, you know, to carry on their subsistence lifestyles, so  
they're also entitled to use whatever forms of government they  
choose in order to retain this very important political link with

**Accu-Type Depositions, Inc.**

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



1 their past. And a lot of them have become very involved in imple-  
2 menting these various levels of Municipal and State Government at  
3 the local level. It was mentioned yesterday that the corporations  
4 are the most visible institutions in the villages. I really think  
5 the civic governments, I mean municipal governments, are the most  
6 visible. They're certainly the ones through which most of the  
7 funding and the capital improvements projects and important  
8 services are channeled, including education, medical care, and that  
9 type of thing. But there are also a tremendous amounts of implemen-  
10 tation of other programs including planning programs, and advisory  
11 actions on every level of government that are implemented, you  
12 know, by municipal governments at the local level.

13 And I'd just like to issue a caution that the State has  
14 really involved itself much more in this whole issue of Native  
15 governance for Alaska Natives than the Federal Government ever  
16 has. And this was one of the key issues of the framers of the  
17 Constitution. They were very concerned about giving rural people  
18 the highest powers of government because of the bad way in which  
19 the Federal Government treated all Alaskans for so long, over such  
20 a long period of time. They conceived of the Borough as a way of  
21 giving the highest possible powers to rural people, and they were,  
22 in affect, talking about creating a mini-states where these  
23 regional governments had full state powers. And they're talking  
24 about such things as even abolishing the city governments because  
25 they saw the need for giving real full powers to these regional  
governments that were able to stand up to the multi-national  
companies, who they knew were coming to Alaska, had come to Alaska,  
and with whom they'd had very bad experiences in depleting natural  
resources during the, you know, hundred year history of American  
possession of Alaska. And I think it's really important for people  
at this stage of the game, to understand the thinking behind the  
planning of the Borough system. For one thing, they intended that  
the whole state be incorporated into different boroughs, and the

1 original framers of the Constitution thought that this would take  
2 place very soon. Of course, they didn't really legislate very much  
3 about the boroughs, but that was their hope. And we've heard  
4 several comments from people here at this meeting about the impor-  
5 tance of regional governments. David Case's paper talks about  
6 municipal villages, municipal -- excuse me, Home Rule villages, and  
7 that's a very good point. But his statement is weak when he's  
8 talking about monitoring the development of areas, you know, con-  
9 tiguous to the villages, and outside of the villages, and outside  
10 tribal lands. Because, boy, when a multi-national starts marching  
11 up your road, you need to assemble a whole army in order to protect  
12 your interests in the lands, and your interests often go far beyond  
13 tribal lands, or the ANCSA lands, or village ownership lands.  
14 Often times, subsistence use areas and what we are concerned about,  
15 involve State lands, involves Federal lands, involve private  
16 property. And it's important to retain, or to establish  
17 jurisdiction and planning powers over those things. And certainly,  
18 this might be possible in a federally located regime of some kind,  
19 and I would think of a regional Native group like the Inupiat  
20 Corporation, the Arctic Slope, or something like that, might be  
21 able to develop enough planning and negotiating powers to do  
22 something like that. But what I'm saying is that the Borough has  
23 already got those things set up. There's certainly strong tradi-  
24 tions in federal Native law, and federal Native tradition, you  
25 know, for the control of resources and -- but when you start  
talking about control of resources that are beyond the jurisdic-  
tion of the tribe, you know, municipalities have even more  
developed traditions and strengths.

One of the problems, of course, dealing with the boroughs  
was that after the Constitution was passed, there was very little  
legislation about what the rights or the duties of the boroughs, or  
how they're to be set up, and there's very little interest in the  
Legislature to do that until 1961, they passed a bill. And then,

**Accu-Type Depositions, Inc.**

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



1 1963, they passed a bill, and at that time we received, the State  
2 received, you know, its structure of government. You had unincor-  
3 porated villages, which we have about a hundred of out there. And  
4 then you've got your second-class villages, and your first-class  
5 villages, and then your Home Rule villages. And on the regional  
6 basis, you've got the unorganized boroughs, and everything in  
7 Alaska that's not in an organized borough is an unorganized  
8 borough, but also you can have second-class boroughs which can be  
9 unorganized, too. And first-class boroughs, which are able to  
10 exercise wide state like authority over their whole jurisdiction.  
11 The difference between a first-class borough and a second-class  
12 borough has to do with the powers exercised out of the urban  
13 areas. In the second-class borough, the borough has to confer with  
14 and get the approval of people in rural areas before they can  
15 engage in certain programs. And in the first-class borough, all of  
16 the powers are exercised borough wide. And then you have the Home  
17 Rule borough. And the Home Rule boroughs and the Home Rule cities  
18 are exactly the same as the first-class boroughs and the first-  
19 class cities except for the fact that they are not State  
20 Chartered. They evolve their own charter which they see as the  
21 source of their powers, and not the State Constitution, or the  
22 State -- or I should say, the State Municipal Code.

23 Now, one of the problems for rural areas is that the  
24 borough plan is envisioned by the framers of the Constitution was  
25 not implemented. And for obvious reasons, the State was very busy  
setting up its own structure, and the people were trying to get  
basic services out to the villages, and there was a lot of  
resistance that you are quite aware of of the State unwilling to  
give up powers. And you see exactly the same thing going on in  
Cope today. Under the Cope Land Claims Settlement Act, there's  
provision for the Western Arctic Regional Municipality. Well, the  
government of Northwest Territories is very reticent to give up any  
powers to that, and is campaigning actively, you know, to prevent

1 the formation of that municipality. And you've got the situation  
2 where Mr. Sebastian was the -- was in charge of regional gover --  
3 local government for the governing Northwest Territories. He's  
4 touring the villages of Cope and trying to get them to go along  
5 with just an advisory regional council, and not a regional  
6 government.

6 Well, you know, the plan was that Eban Hopson envisioned a  
7 whole chain of regional governments across the Arctic that could  
8 institute and implement wide-ranging planning powers, and he saw  
9 Arctic policy developing out of these strong regional governments  
10 that could actually legislate, set up an environmental regime that  
11 would regulate -- that would have the capacity of regulating  
12 offshore development.

11 The State was very remiss, eventually, in setting up  
12 regional governments, and I'm sure a lot of the problems that  
13 people find in rural areas, comes from that fact. I think the very  
14 existence of the profit -- or excuse me, the non-profit  
15 corporations in Alaska, is kind of an indictment against the  
16 State. And the non-profit corporations kind of sprung up willy-  
17 nilly without any governmental authorization. And what they are,  
18 they're "terminous with the profit corporation areas", and they  
19 act, I believe, in the absence of any borough government. You  
20 don't have a non-profit in the North Slope Borough because, you  
21 know, they've got the -- excuse me. Well, they've got the North  
22 Slope Borough that acts as the distributor of social services up  
23 there. In the other areas where you don't have organized boroughs,  
24 these non-profits sprung up, and they actually provide many of the  
25 social services that would otherwise be provided by regional govern-  
ment. And, this in itself, indicates the need for regional govern-  
ment and the importance of it. You have, you know, this kind of  
spontaneous expression that you need some stronger regional power  
that can provide these services that individual villages cannot  
provide for themselves. And the non-profit corporations are

*Accu-Type Depositions, Inc.*

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



1 incorporated, of course, and they're able to contract with the  
2 State and the Federal Government, and also with other agencies with  
3 the villages and other corporations in providing services. And  
4 they provided a wide range of services dealing with planning,  
5 subsistence provisions, wildlife management. And in some areas,  
6 they provide medical services, and even operate hospitals. And  
7 they're a very important part of the delivery of social services in  
8 Alaska. Now, the framers of the Constitution, you know, wanted to  
9 simplify this. Wanted to prevent the multiplicity of governmental  
10 institutions in rural areas, you know, they envisioned the kind of  
11 bureaucratic system we have in rural areas now, and they wanted to  
12 eliminate a lot of that, you know, with the borough system. This  
13 would allow these rural areas to deliver services with a minimum of  
14 bureaucratic overlays, and a minimum of governmental institutions.  
15 And it's certainly something to keep in mind.

16 Other commentators have come along after-the-fact, like  
17 McBeath, and Morehouse, and at least in their books, and say, well,  
18 maybe the system that exists in the rural areas might be the best  
19 thing going so far because people living there certainly have other  
20 choices. They can upgrade their systems, they can organize  
21 boroughs, I'll say something about that, but they -- but perhaps  
22 this very difuse system where people are kind of catching different  
23 services as they need them from different institutions, as they  
24 need them, you know, it's their choice and maybe that has to be  
25 respected. That if a city, for example, wants to remain at a  
second-class level, or an unincorporated level, and it's getting  
its full range of Federal services, and Federal money, and its  
services, you know, maybe it wants to stay there.

I think it's very important to provide that these options  
remain open to all of the villages and to increase these options,  
and perhaps I think the Commission could look into what John  
Havelock was talking about, namely the needs, and the discontents,  
and the complaints that we find in the villages today. Maybe they



1 can be met on an individual level, also, or they have to met on an  
2 individual level, but usually it involves finding what particular  
3 services these people need. They want more control over their  
4 land. Well, how can we give them more control over the land  
5 without overlaying another form of government on them? Or without  
6 overlaying them with another bureaucracy. I think a good medical  
7 approach is to go into each individual village and find out the  
8 problems that they face and their particular needs within their  
9 particular structures. And then apply the simplest possible  
10 remedies to start out with. And often times, as John Havelock  
11 mentioned, maybe this just means an adjustment with the delivery of  
12 services from the State, an adjustment in the Code itself, the Muni-  
13 cipal Code itself. And perhaps these things can be worked out, you  
14 know, very easily. And I'm just speaking from a standpoint of a  
15 bureaucrat that says, you know, we don't want any radical changes,  
16 because that's not my purpose here. What I'm talking about is that  
17 we really have to respect the commitments of people to the  
18 structures that they already have, and they certainly are big  
19 commitments. People -- it's not as if we were dealing with a blank  
20 tablet and we can restructure everything overnight here. That you  
21 know, people do have governments, they have big commitments to, you  
22 know, many different levels of governments, and they have,  
23 certainly, already worked out in a quite admirable form a number of  
24 their governmental problems.

19 A lot of people are complaining about the overlay of  
20 governments in what I call the arrival of big government in the  
21 villages. And if you want to describe big government, it has to do  
22 with the variety and a multiplication of programs. And everytime  
23 you have a program, you have a mobilization for that program of  
24 these resources, of law, personnel, of organization, and of  
25 revenues in that area. And certainly, they put a lot of demands on  
local people. For example, the State, with its oil money, can come  
up with a new program, let's say a sanitation program, or a medical

**Accu-Type Depositions, Inc.**

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



1 program, and go approach a village, and say, do you want this new  
2 program? And they'll say, yeah, we need safe water, we need a new  
3 service of some kind. And in the setting up of that program it has  
4 to make room, and it's going to mobilize and exploit certain  
5 resources in that village. And you do this a number of times, and  
6 things just blossom. And David mentioned this in his paper, it  
7 really is a big problem. In the city of Teller, they have 58  
8 positions that have to be filled by local people to administer  
9 these programs, and all these positions are filled by just ten  
10 people. Now, the question is we can't say that this is not what  
11 these people want in every case. You go out to the villages and  
12 you see that they are admirably taking care of a lot of these  
13 programs, and you see the City Mayor and his staff, and everybody  
14 else working so hard, and they're very proud of their work, and  
15 they're doing a fantastic job in interfacing with a very sophis-  
16 ticated number of State and Federal programs. And you have to see  
17 that with services come these obligations, and I hear a lot of  
18 people talking as if in a never-never land where they think they  
19 can get services, or more control without more responsibility, and  
20 more demands, and more levels of bureaucracy, and burdens on their  
21 own time. And there's hardly any way in which you can get that  
22 more control, and so the real issue, you know, whether you're going  
23 to go the State route and upgrade and refine your State systems, or  
24 whether you want to go the Federal route, or using Native Federal  
25 law. The whole issue is, do you want -- do you need more  
government or do you need less government? If you see, you know,  
the multi-nationals coming up your road, you're probably going to  
need a lot more government right away. You're going to have to  
assemble a whole army of writers, technicians, attorneys, doctors,  
nurses, filmmakers, planners, engineers. And the North Slope  
Borough's Coastal Management Plan was just approved. It's a  
document that took nine years to formulate.

(TAPE 9, SIDE A)



1 MR. DUBAY: Over \$5 million they  
2 put into it. Hundreds of meetings up and down the coast, in every  
3 area of Alaska, in Washington. Constant meetings with engineers  
4 from industry, from State and Federal agencies. It's a fantastic  
5 production. Mainly, they saw that if you're going to regulate  
6 people, you have to get the consent of the regulatee's. It's just  
7 like running a prison. You can't run a prison unless you gain a  
8 certain amount of consent from the prisoners, and you're setting up  
9 your regulations. So, if you're going to set up a system of  
10 regulation, you know, governing these enormous multi-national  
11 industries, these are people like British Petroleum who are the  
12 world's best colonizers in the world, and really are very slick the  
13 way they can -- I've seen them move into communities, organize rump  
14 governments in order to subvert local leadership, and things like  
15 this. You're going to have to get your best guns, and you're going  
16 to have to be able to tax those people to help you pay for what you  
17 need to deal with them, to get them to sit down and develop fora,  
18 you know, forums for negotiating resource conflicts before they  
19 arise. And, you know, you need a lot more than just, you know, the  
20 resources of villages, and this is why I say, as a lot of people  
21 have said, you know, don't overlook regional governments in taking  
22 care of resource issues. And I think it's really important to look  
23 at resource development. There's going to be so much more resource  
24 development in these next ten years, like you've never seen in  
25 Alaska. You know, I see the reports that come from industry, and  
the plans they have for Alaska. There's no area of Alaska that  
will be left untouched because of resources available. Even around  
here, you go from here to Kenai, you don't think there's much oil  
involved. Well, all over you see capped oil wells. The oil  
companies are already here, they've got their land, they've  
discovered their oil, they've capped it over, and they say there's  
nothing here, but it's just not marketable yet. It will be some  
day. They'll want to go back and exploit those industries. And

**Accu-Type Depositions, Inc.**

550 West Seventh, Suite 205  
Anchorage, Alaska 99501

(907) 276-0544



**ATD**

1 considering the tremendous resources, you're going to have  
2 tremendous amounts of mining and coal, and so many other things.  
3 And I think every Native government, whether it's a IRA or a  
4 municipal government, has to prepare for those eventualities and  
5 has to be able to organize with other municipalities and regional  
6 ways to deal with those things.

7 I would like to just conclude by saying that, I think, you  
8 know, we are at a watershed, and I think we should go back and put  
9 ourselves in the situation that the framers of the Constitution,  
10 you know, they were faced not with a blank tablet. You know, but  
11 they had to deal with institutions that had been set up over the 90  
12 years of American administration of Alaska, and they realized that  
13 they just couldn't do away with all of these institutions. There  
14 were already towns set up, and public utility districts, and school  
15 districts, mainly, and they were very concerned about getting their  
16 boroughs going, and so they had to reconcile their ideas of  
17 boroughs with these existing institutions.

18 And I think this is what we have today. We've got a new  
19 idea here. We have the idea of Native government coming along, and  
20 I think one of your biggest assets is to take a good assessment,  
21 that two things. First of all, looking at existing municipal  
22 structures and governmental structures that are being well-used by  
23 rural people, or Native people, today, looking at the lessons of  
24 those, and incorporating them into your new systems. And,  
25 secondly, to look for two things, how you can get the most possible  
return for your money, how you can get the most possible strength  
without -- with the least amount of additional government  
impositions on the people. And I think if there's one thing that  
this Commission can do, is to offer guidelines for local govern-  
ments in evaluating problems. Guidelines for local governments in  
choosing which forms of governments they want. It'll give them the  
most possible return for their effort.

And I want to just conclude with this quote from the

1 Morehouse-McBeth and Lease latest book on local government in  
2 Alaska. It says, "local and regional organizations provide  
3 services and representation that they're strongly entrenched, they  
4 take full advantage of various sources of authority and funding in  
5 the U.S. Federal system. And because State level pressures for  
6 unification at the regional level have been weak or vacillating,  
7 this situation produces the very complex system of local  
8 governments, quasi governments, and service areas one sees today in  
9 rural Alaska. In contract, the borough governments in urban  
10 Alaska, this system lacks congruity and neatness. But the rural  
11 model of defusion and service provision, and the proliferation of  
12 governments may be the most effective approach to the complex  
13 problems of rural Alaska. Certainly, this system seems preferable  
14 to any other perceived alternative, as far as rural people are  
15 concerned." And I think what he is saying is, you know, that we --  
16 that even though that there were no provisions in ANCSA for  
17 governance for Alaskans, you've got an awful lot of experience out  
18 there on which to build your future solutions. Thank you.

MR. BERGER: Thank you, Bill.

15 That's a point of view that I'm glad you brought forward. What I  
16 was going to suggest is that we ask Vic Fischer to carry on and  
17 then we might have a few questions and discussion. Senator Fischer.

18 SENATOR FISCHER: Thank you, Mr.  
19 Chairman. I will address you today not as a Senator, but as one of  
20 the framers of the Constitution that Bill keeps talking about. I  
21 was very much involved in drafting the local government article of  
22 the Constitution, and many of the things that Bill mentioned are  
23 really very pertinent to what has evolved.

24 I'm glad that you're addressing the potentials of municipi-  
25 pal government, of local government, under Alaska's Constitution  
because these potentials have hardly been scratched. Those who  
were involved in establishing the North Slope Borough, like Charlie  
Edwardsen and John Buckholt, Eben Hobson, and a few others, really

*Accu-Type Depositions, Inc.*

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



1 pioneered something that was closer to the concept that was  
2 discussed during the constitutional convention than anything else  
3 that we've seen so far. Essentially, under the Alaska provisions  
4 on local government in the Constitution, you can do almost  
5 anything. The Constitution provides for two types of municipal  
6 governments. One is the Borough which is conceived as an areawide  
7 unit. The other is a city, a city is in effect your local -- the  
8 conventional local government. The Borough, by the way, was  
9 conceived as a more flexible form of county. By county...The  
10 county system was at its lowest ebb at the time, so nobody wanted  
11 to use -- or at least the majority didn't want to use that  
12 terminology. But the important thing is that you do have the  
13 basis, in the Constitution, for going toward almost anything you  
14 want, at both the local and the regional levels. I think that it's  
15 important as you look at these concepts that are available, that  
16 you not view them in terms of the tools, specific tools, that have  
17 evolved under the Municipal Code. If you do, I think you're going  
18 to hit stonewalls before you even reach halfway to the potential.  
19 One example is something that Dave Case ran into, the problem with  
20 the second-class city. The problem of reaching Home Rule under the  
21 existing law. To get to Home Rule, a municipality has to have --  
22 has to be a first-class city. To be a first-class city, you have  
23 to meet certain criteria including a population of 400. That's a  
24 strictly artificial construct that came along because somebody  
25 wanted to put something in General Law. Under the Constitution, a  
first-class city, and a first-class borough can go to Home Rule  
without any legislative provisions necessary for them to reach  
there. It was written as a self-executing clause to make sure that  
any reluctance on the part of the Legislature did not interfere  
with the effectuation of Home Rule at the local level. At the same  
time, the Constitution says that Home Rule can be -- I forget the  
exact terminology, but the effect is that Home Rule can be granted  
to other classes of cities and boroughs. There is no reason, under



1 the Constitution, why a second-class city, or a fourteenth-class  
2 city should not be able to have ultimate Home Rules. There is no  
3 reason why an area that is now unincorporated should not be able to  
4 go directly to Home Rule. We have discussed that in terms of  
5 regional government. I heard a reference today which came as sort  
6 of -- it was very close, that Northwest Territory, is in effect,  
7 the vestiges of what was of Canada leftover after the various  
8 provinces and territories were organized. Well, that is the un-  
9 organized borough in Alaska. It is totally counter to the concept,  
10 a basic intent of the Constitution. The intent was that you do  
11 reach (INDISCERNIBLE) establish logical regions throughout Alaska,  
12 and then within each region, let the people participate in the  
13 decision of what is the most appropriate level of government, i.e.,  
14 organization, and that a region could remain unorganized provided  
15 that whatever services were performed by the State within that  
16 region, would be performed with a maximum involvement, maximum  
17 participation by the people in that particular unorganized  
18 borough. And from then on, you could have the spectrum, continuum,  
19 all the way to ultimate Home Rule. Home Rule scare some people.  
20 The Alaska provision on the Home Rule states that a Home Rule muni-  
21 cipality, that's the city or a borough, can exercise all legisla-  
22 tive powers, not prohibited by law or charter. Legislative power,  
23 of course, means anything that the Legislature can do, and the  
24 Legislature could grant to a municipality, could be performed by a  
25 Home Rule municipality, unless prohibited by State law, which  
includes the Constitution or legislation, or by the municipalities  
own charter. We have a series of specified prohibitions now.  
There are certain things that the municipality may not do. There  
are also certain areas where the courts have decided that Home Rule  
powers are in such direct conflict with existing State law, that in  
effect, State law constitutes a prohibition. There's sort of a  
fuzzy line in there. But there are relatively few prohibitions. A  
municipality, a borough, a city can go into resource development

*Accu-Type Depositions, Inc.*

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



1 and to almost any kind of activity. Conversely, a Home Rule muni-  
2 cipality could have a charter that says, it shall do nothing.  
3 Existing law, again, says that first-class cities and munici-  
4 palities perform certain functions, and it's been accepted because  
5 we're dealing mostly with municipal governments plus the -- I mean  
6 with urban governments plus the North Slope Borough, which had a  
7 special interest in it. But it generally involves education, it  
8 involves planning, it involves zoning, land-use controls, so, those  
9 automatically step in; taxation, property assessment, and so on.  
10 However, there is nothing inherent in the State Constitution that  
11 says that a municipality must exercise zoning if it is a Home Rule  
12 municipality. A Home Rule Charter could, and very properly should,  
13 provide prohibitions as to functions to be carried out by that  
14 particular government. Including -- it could provide, for  
15 instance, that no property tax should be levied. One of the prob-  
16 lems in a lot of areas that -- rural areas they have considered  
17 establishing boroughs under Home Rule Charter or otherwise one of  
18 the problems has been the fear that a borough would tax Native  
19 land. There is no reason why a charter could not provide that  
20 lands shall not be -- there shall be no property tax, where it can  
21 provide for certain exemptions. In other words, a charter can,  
22 sort of, open the door to do anything. It can also be extremely  
23 restrictive in accordance with what the people want.

18           The -- again, in terms of what we're dealing with here in  
19 the context of your particular mission, a local government, of  
20 course, functions under the State Constitution; it has to be non-  
21 discriminatory; it has to be based on one person, one vote. It can-  
22 not be an exclusively Native, it cannot be a tribal instrumentality  
23 to the exclusion of non-Natives. If the Natives constitute a  
24 majority, they could, and should, control. But there can be no  
25 disenfranchisement of the minority in the process of establishing a  
government under the Alaska Constitution, which is different from  
tribal arrangements under the Federal Government. So, that is

*Accu-Type Depositions, Inc.*

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



1 something to clearly recognize.

2 Let me stop right here, because I could go on to less  
3 diversions as to what is, what can be, what could be, what  
4 shouldn't be, but my purpose here is not to tell you what you ought  
5 to do, but simply to try and acquaint you with a possibility under  
6 the Alaska Constitution, which I think does provide a set of tools,  
7 both at the local community level, and at the regional level. Let  
8 me just say that in rural Alaska at the community level, Home Rule  
9 could be provided for communities of 15 or 50 people at the present  
10 law. It can be changed very easily. At the regional level, you  
11 have to look at another complication, and that is, of course, that  
12 not in all areas where you have Native communities do Natives  
13 necessarily predominate in terms of voting power. So, we can look  
14 at the borough as an instrumentality for Native self-government  
15 really only in areas like western Alaska, or northern Alaska where  
16 Natives have the majority. It would certainly start running into  
17 problems on the Kenai Peninsula, in the Chugach Region, Koniag  
18 Region, and some of the other areas of Alaska.

19 I hope this will have been helpful.

20 MR. BERGER: Yeah. Well, thank  
21 you, Senator Fischer. Just before we have some questions and  
22 comment, I'd like to make a suggestion about how we proceed for the  
23 rest of the day because -- perhaps we could devote the next 15  
24 minutes to a discussion about what Bill Dubay and Vic Fischer have  
25 said. And then, we'll take a break, and then I'd like to ask Byron  
Mallott to talk about the question that is next on our agenda.  
That is, the relationship between Native governments and ANCSA  
corporations, and then I'd like to ask Tim Coulter, towards the end  
of the afternoon, to offer some thoughts about how far all of this  
has gotten us, and to suggest, perhaps some new departures that  
have emerged from his head, if not from this discussion. And, so,  
I know that compresses just a little bit, but that always happens  
at these things, and what can you do?

*Accu-Type Depositions, Inc.*

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



1 Well, let's start over here with David Getches, and then  
2 Sheldon, and then Charlie.

3 MR. GETCHES: I wanted to say a  
4 few things about the borough concept. It seems to me that it's  
5 appropriate to emphasize municipal forms as a way of taking control  
6 over the destiny of people in a particular area. But I want to  
7 also point out some of the downsides.

8 I think that when the Arctic Slope Eskimos were forming  
9 the North Slope Borough, they were aiming at some very specific  
10 problems in that area. Problems that may be shared elsewhere, but  
11 the solution may not be available elsewhere. The particular  
12 problem of the time was addressing how to deal with the adverse  
13 impacts that were foreseen for a massive energy development in  
14 their homeland. And how do you protect a land-base and a way of  
15 life against destruction in the face of that type of development?

16 Secondly, how do you secure some of the benefits for the  
17 people in that area? How do you keep some of the tremendous wealth  
18 that would be developed at home? It appeared that there would be  
19 some destruction of the land-base; there would be some infringement  
20 on a subsistence way of life, and that there would be very  
21 little money kept on the North Slope because people were not going  
22 to live there who worked in the fields, and there was no local  
23 taxing entity. Meanwhile, the educational conditions were some of  
24 the worst in the State of Alaska, with children having to go to  
25 Juneau and in some cases, Oregon and Oklahoma, to go to school, and  
because of lack of funds, sometimes were away for a year at a  
time. It was a deplorable situation, yet the wealth that was going  
to be generated in that area, it turns out, be quite adequate to  
solve a lot of these problems.

The need was then for protection of resources and for  
getting a share of the benefits of this development. And the North  
Slope Borough has been successful, to a large extent, in doing  
both. But there are some problems there. One of them is that the



1 sovereignty of a municipal form is defined by others. In this  
2 case, by the State Legislature, and that was brought home to the  
3 Eskimos of the Arctic Slope shortly after the formation of the  
4 Borough when the Legislature passed what would normally be called  
5 special legislation, but in this case was through the niceties of  
6 our legal system escaped being set aside as special legislation.  
7 It was legislation limiting the taxing authority of the North Slope  
8 Borough based on a formula that applied to all boroughs saying that  
9 boroughs having less than a certain density of population, all  
10 boroughs with less than that density of population, would be  
11 limited in their taxing power. Of course, it only applied to the  
12 North Slope Borough in its actual affect.

13 Now this -- it struck me at the time, and I -- the more I  
14 think about it, it is a blatant example of a reaction that the oil  
15 companies and the legislatures, the legislators, that there be (IN-  
16 DISCERNIBLE) have not really duplicated any place else. Oil  
17 companies typically feed the coffers of local governments  
18 throughout the United States and the world. They feed those  
19 coffers generously, and according to the whims of county  
20 commissioners, and city councils, and state legislatures, and so  
21 on. But in this case, they were so afraid that they would be over  
22 taxed, that they sought a special act of the Alaska Legislature,  
23 and got it. It seems to have overtones of racism, to say the  
24 least. Now...

25 MR. BERGER: Excuse me, David.  
Were you instrumental in the development of the North Slope Borough?

MR. GETCHES: Well, I participat-  
ed to some extent in the early days doing some legal work for the  
proponents of the Borough.

Now, I point that example out about the taxation to  
indicate that there is some danger in relying too heavily on the  
municipal form. You are subject to political forces beyond your  
own control. Sovereignty is defined by others. This is not, in

1 any way, to detract from the tremendous accomplishments that can be  
2 had through the borough form, through the municipal government  
3 form, particularly in this state where you have a -- as Vic Fischer  
4 described it, a very unique and useful form of municipal govern-  
ment, a flexible form.

5 In the case of the North Slope Borough, it was primarily  
6 an economic device, and it has been proved to be primarily an  
7 economic device. A device that's allowed for planning for  
8 resources, for the establishment and operation of schools, that  
9 have turned out to be very good schools. It's a device for provid-  
10 ing social welfare to provide for the people of an area that were  
11 very much in need, and a way of providing some mitigation for  
12 damage to the land. It also, in this case, entitled the people of  
13 that area to some of the state's share of the land that it got from  
the United States Government on statehood. Now, I will have to  
14 defer to Charlie on the success, or lack thereof, in getting that  
15 land that the Borough is entitled to.

16 All this says that the Borough has been very useful, but I  
17 want to emphasize that besides it not being a traditional solution,  
18 it does leave the people of an area subject to the will of others,  
19 placing some limits on it, and it does not address one of the most  
20 fundamental problems that you, Commissioner Berger, raised at the  
21 beginning of our deliberations, and that is that an objective here  
22 is to seek a way to protect Native land from being lost to Native  
23 people. It doesn't address that problem. It can help protect the  
24 land and resource base, but it won't prevent its loss. It may, or  
25 may not, end up having Native control as populations change. In  
the North Slope, well, there's been a tremendous influx of non-  
Native population, it's far from a majority, and is not likely to  
be. So, Native control into the future is likely. The one thing  
that will, maybe, limit its use elsewhere, is that it's taken a  
tremendous tax base in order to make it work on the North Slope.  
And that tax base, I guess, is likely to be around for the next 20



1 or 30 years, anyway. Whether it'll sustain itself beyond that, I  
2 guess depends on how the (INDISCERNIBLE) pans out and that sort of  
3 thing, but I wonder whether that kind of tax base exists elsewhere  
4 in the State of Alaska. I'd like to defer to others who have been  
working with the Borough recently.

5 MR. BERGER: Yeah. Just let me  
6 say a word, Bill. How we got to municipal governments, perhaps --  
7 I'm glad you reminded us of how we got there because ANCSA is the  
8 subject of the...this Commission's review, but given that the  
9 people in the bush want to protect their land, and many of them,  
10 many, many of them say, let's turn it over to a tribal government  
11 -- and tribal governments being more than places for parking land  
12 -- but being governments, where do we go from there? And many  
13 people the first two days of this roundtable, had indicated they  
14 were really eager to develop a system where tribal government would  
15 be the only government in their villages, and I simply wanted us to  
16 take a look at the uses of municipal governments, state-chartered  
17 governments, to make sure that people didn't get the idea they  
18 should be trashed without getting some further explanation of what  
19 they can offer.

20 Bill, you started this. We'll go back to you for a minute.

21 MR. DUBAY: I'd like to ask Mr.  
22 Getches, if you think really that Natives would have any more  
23 sovereignty control over their resources, you know, in a reserva-  
24 tion system. You know, if you look at the reservations, you know,  
25 the control the Natives had, have had traditionally, and until  
quite recently was quite poor. They couldn't even sell their own  
resources. And, you know, there's always, in whatever system,  
there's tremendous political pressures involved in Native use of  
those resources, and it would be hard to find a, you know, another  
system in which Natives had so much control and received so much  
from the resources as the Borough. You have to realize that  
sovereignty is always a relative issue. You're always going to

1 have to deal with, you know, these other governments. Just like,  
2 you know, our states are sovereign, aren't they? Okay.

3 MR. GETCHES: It's true that a  
4 tribal government is subject to the will of Congress, and Congress  
5 can...

6 MR. DUBAY: Much more so than I  
7 think that the boroughs are subject to the State.

8 MR. GETCHES: Well, I don't know  
9 what that means, "much more so". The tribes are sovereigns  
10 predating the United States of America and are subject to the  
11 plenary control of Congress. The boroughs and municipalities are  
12 creations of the State of Alaska, and subject not only to  
13 preemptive authority by the State, but -- of course, consistent  
14 with the State Constitution, but also to preemption by the Federal  
15 Government within the realm of constitutional powers that Congress  
16 can exercise, so, I think that...

17 MR. DUBAY: That's fine in  
18 theory, but when it comes down to the practicality, you find in  
19 Alaska, it's the State that has consistently sided with the Natives  
20 in protection of their resources.

21 (OPPOSITION TO THAT STATEMENT)

22 MR. DUBAY: You find over and  
23 over again, let's say in the conflict regarding the bowhead whale,  
24 you find in conflict with the federal government over offshore  
25 lease sales, and so many issues, you know. The state has come to  
the aid of the Native groups and the villages in protecting  
resources. And just like Eban Hobson said. He said, you know, he  
distrusted all government, whether it was the state or the federal  
government. But his whole plan, you know, was to throw in his lot  
with the state because he could deal with the state people, and he  
felt that, you know, they knew his needs better and he'd rather  
throw in their lot with them, than with a remote government. And  
exercise more sovereignty that way.



1 MR. BERGER: Okay, Bill. You've  
2 brought this crowd to life, anyway. Sheldon, I said you were next.

3 MR. KATCHATAG: Bill, I don't  
4 know if you were here when we first got started into this  
5 particular roundtable, but one of the first premises, and I think I  
6 -- it bears repetition here, the first premise that we must realize  
7 that the State of Alaska, and the federal government, through legis-  
8 lation has been attempting genocide on Alaska's Native people by  
9 supplanting their tribal government. That government which has  
10 been here since time immemorial, by the imposition of the State of  
11 Alaska and the federal government. Now, one of the things that we  
12 must realize here is that we have certain rights and protections  
13 under federal law as far as what we as tribal governments can  
14 expect from the federal government. Now, the use -- I'm not saying  
15 that everything is wrong, I'm saying that's a premise we must start  
16 from. The federal government and the State of Alaska have been  
17 attempting, in not so many words on paper, but by their very acts,  
18 at totally supplanting tribal government. Eroding their authority  
19 to such extent that they can say, we are sovereign over Alaska. In  
20 violation of our trust of the Federal Government for not only pro-  
21 tection of our lands, our resources, but also maintenance of same  
22 at the level to which we were accustomed. Not prior to 1971, but  
23 prior to 1959, at least, if not prior to 1867.

24 Again, we must not lose sight of that fact. And that is  
25 the primary reason why the United Tribes of Alaska will be pushing,  
we will be making a concerted effort across the State for number  
one, the Restoration Act of Alaska Natives in 1985. And one of the  
things which must be realized is that the Alaska Constitution has  
adopted, and the Alaska Native Claims Settlement Act has adopted,  
have said that they will not mess with the Native people. The  
Alaska Native Claims Settlement Act says in black and white, this  
is not a jurisdictional act. And this is the key which I want my  
Native people to realize. Our jurisdiction has not been limited,

1 not by the State of Alaska, not by the federal government. The  
2 only limitations on the jurisdiction of tribal government, are  
3 those they impose on themselves. So, I take it -- I'm telling my  
4 Native people, your government is there, its jurisdiction has never  
5 been limited, and those limitations which you place on yourself,  
6 those traditional, tribal boundaries are the only boundary which  
7 limit the jurisdiction of tribal government. And the State of  
8 Alaska, as soon as they realize this, I'm sure will help us in our  
9 fight with the federal government to restore all rights and privi-  
10 leges to which we are entitled under the Federal Trust Responsibil-  
11 ity.

12 Now, as I said, and the law is written that way, ANCSA is  
13 not a jurisdictional act. There is no federal act, or state act,  
14 which limits the jurisdiction of tribal government. Okay?

15 MR. BERGER: Well, I think we  
16 should spend a few minutes about the subject that Vic Fischer  
17 mentioned. Charlie.

18 MR. EDWARDSSEN: The State of  
19 Alaska is blessed with a constitution as such as ours. It is so  
20 good that its own people have ignored its value. And the -- in the  
21 first place, the -- there must be a local desire for such a need,  
22 and such a determination, that one desires such a government. And  
23 in this evolution, that one must petition the Local Boundary  
24 Commission for such a petition with 25 signatures who have voted in  
25 the State process. And then the class, then the Local Boundary  
Commission receives the petition, then it too must engage a hearing  
dialogue. So, the need for government and the state process to get  
started -- what we did on the North Slope Borough in the creation  
of the North Slope Borough was, it was not the cities that  
petitioned for a government, it was the Arctic Slope Native Associa-  
tion and its members, that have petitioned. And because those  
memberships of which we are, were the same citizens. So, when we  
looked at the possibility, we had looked at the intrusion that was

1 coming upon us. Not just from the sake of federal intrusion, not  
2 just from the sake of oil intrusion, not just from the sake of  
3 state intrusion, but also from other Native groups. So, we from  
4 the North, are so protective of each other, maybe, that we are the  
5 most reactionary force to the alienated form that is coming upon  
6 us. So, when we appear offensive to you here, it is because that  
7 the rest of the world was offensive to us. And so these adminis-  
8 trative characteristics fall upon our conduct today, and our care  
9 to keep what we have on the North Slope because the financial  
10 desire, and the desire of the world, how it is organized, that  
11 there are more of them and less of us. So, we looked at the maxi-  
12 mization of protection of not just ourselves, but what can the  
13 state provide, and these were not without cause. And so, the State  
14 of Alaska and the oil companies -- Mr. Mallott was Director of the  
15 Local Boundary Commission who had heard our petition -- and on top  
16 of that that we had a pressure of 22 oil companies who had reasons  
17 why the Eskimos need not a government. So, here are non-persons  
18 who do not have educational problems, who do not wear clothes, eat,  
19 or sleep off the -- and who are not even residents, but they had  
20 the desire that too much government had already existed, so that  
21 the Eskimos should never have one. So, the alienated force that  
22 the corporation, that the 14th Amendment brought to bear upon the  
23 Americans here...There are two classes of Americans. There are  
24 Natives, and the landed immigrants. And, so, the State of Alaska  
25 is divided in two classes of people, Natives and non-Natives. Not  
by choice, but by design. So, our reaction, and our adversity to  
Anglo-Saxon feelings is a real one.

And so, the state, prior to 1973, I would not recommend  
the creation of more boroughs until the land entitlement question  
of the State of Alaska, Section VI is resolved equally to all  
governments. So, the State of Alaska is denying the very basis of  
local government that is enshrined from Northwest Ordinance, to  
date. So, when you talk about expansion of the United States, the

**Accu-Type Depositions, Inc.**

550 West Seventh, Suite 205  
Anchorage, Alaska 99501



1 biggest local government expansions was the Declaration of the  
2 Northwest Ordinance in securing assumption for whose government is  
3 going to exist. And in the Northwest Ordinance, when you go back  
4 to the federal side, our right to this land here is by birth  
5 right. And the mere right that the Anglo-Saxons community have  
6 here, is the one that have weaned out of the federal government.  
7 It was given to you by a grant of statehood, and that statehood is  
8 upon conditions, and one of those most violated conditions is  
9 Section IV of the Statehood Act. And so, state government, techni-  
10 cally, I think that the Supreme Court said it so beautifully in  
11 *Cosma vs United States*; it says, and I want all of the tribes and  
12 every Alaskan to be alarmed of it, that the worst enemy of tribal  
13 function is the desire of state government. Even with those that  
14 have disclaimers. And when people of Anchorage felt that North  
15 Slope Borough did not need any more money, and should not have any  
16 more, whatsoever, that they are entering a gray area, a very  
17 dangerous gray area which can be litigated under an old federal  
18 statute which the United States must enforce. It's called a  
19 seditiously liable statute where a state government or a group of  
20 antagonist White people have maligned the Natives that the Federal  
21 Government has a responsibility to go shut them up. And so, the  
22 State area -- so these land grants that came from Congress are not  
23 without price. That State of Alaska can lose some of this. So, it  
24 did not receive because it is sovereign. It receives as a mere  
25 gift. It did not have them before. It did not have anything  
before. And so, the right that the State of Alaska has -- although  
in our Constitution are really nice and there is room for  
creativity, but we live in the world of human frailty. Human  
frailty is that the Anglo-Saxon community has not seen in its best  
interest that the Native maybe a way to get even with Uncle Sam.  
He has not utilized this vessel who has sovereign immunity, and who  
can bring gifts and games to the state that it could not know  
wherever achieved. So, I think that the dumbness and the stupidity



1 of the races is another area of a peculiar study that the mental  
2 health community and the well-being covered by the Constitution  
covers.

3 (TAPE 9, SIDE B)

4 MR. EDWARDSSEN: So those that are  
5 mentally deprived of the rights of the Alaska Natives, we may need  
6 to have a Inupiat interpretor for them. And just like we need to  
7 interpret the state constitution, and so these guys -- I have spent  
8 in my lifetime in securing and maintaining these rights in the  
neighborhood of \$15 million for our own protection.

9 And I would like to make another point. Another point  
10 that the condition of statehood and its boundaries cannot be  
11 resolved by the state. Maybe that this race problem that we have  
12 in Alaska could be best handled by the esteemed Local Boundary  
13 Commission who is already charged with governmental capacity, and  
14 the boundary between the state and the local IRA could be resolved  
15 and certified, and to be taken to the Special Master of the Supreme  
16 Court for certification for the dismissal of a unified, uniform  
17 boundary dispute resolved in 208 communities unilaterally to bring  
18 to the Special Master of the Supreme Court for the resolutions of  
19 these jurisdictional, inner-jurisdictional problems. And the State  
20 of Alaska would become a party because it is a derivative of  
21 Congress, that it is not alone, and so that we bring in the party,  
22 then maybe the chance for wellbeing and good government will have a  
23 chance. And so, I think the State of Alaska loses for the simple  
24 fact that it too has digressed to the multi-national mentality who  
25 is not interested in good citizenship, who is not interested in  
whose plant is questionable. And so this low bitter engineering  
and planning that the -- that we have responsibility for, we're  
being lost in this. So, our experience from the North Slope is  
that until people -- I am not mad at the Anglo-Saxon people, I am  
mad at their attitudes about us. And so, here is -- we have given  
you enough room, enough latitude, yet, you are psychologically

*Accu-Type Depositions, Inc.*

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



1 depraved, you have to prey on somebody. And so, this prey -- and  
2 you view the Native as if he is a predator, and so when you are in  
3 the Department of Natural -- Department of Interior, just like oil  
4 and gas, like we are, we view the Anglo-Saxon community probably in  
5 the likeness of the Tasmanians of the Australian Government.

6 MR. BERGER: Well, Charlie, look,  
7 that -- I think this is a good time to stop for coffee, and I think  
8 that after that we'll carry on with the agenda, and I'd like to --  
9 before -- we still have an hour left after coffee, and I'd like to  
10 deal with the question of the relationship between Native  
11 governments and ANCSA corporations. I think that's a practical  
12 question that has to be addressed, and then I'd like to go back to  
13 some of the questions that we were struggling with yesterday about  
14 Native governments and how they'd really work. So, let's take a  
15 break for coffee.

16 (HEARING RECESSES)

17 (HEARING RESUMES)

18 MR. BERGER: Well, let's take our  
19 seats, shall we. Let's just pull ourselves together here, and...  
20 Well, let's take our seats. I guess everybody's here. Well, I  
21 would like to turn now to the question of relationships between  
22 Native governments, and ANCSA corporations and I'd like to ask  
23 Byron Mallott to say something about that, and indeed, about any of  
24 the other matters that have come up. Byron.

25 MR. MALLOTT: Thank you. Mr.  
Chairman, some months ago, or rather recently, I and others had the  
opportunity to sit down and spend a number of hours with a United  
States Senator who had a significant role in the development and  
passage of the Alaska Native Claims Settlement Act. And it was  
something of a session wherein he was patting about in slippers,  
and in his own home, and to some degree, waxing philosophical about  
the whole thing. And I thought, you know, gave a perspective par-  
ticularly as to his role and how he thought that I think is



1 important for us to hear. He said, you know, as I look at 1991,  
2 and the prospect, or the possibility, that Native land could be  
3 lost to Native people by the sale of Native corporation stock, he  
4 said, and I'm paraphrasing him, certainly not quoting him, that  
5 that is very, very disturbing to me because one of the principle  
6 tenets of ANCSA was what we were trying to forge was not a settle-  
7 ment for a single generation, but a settlement which would allow  
8 many generations of Alaska Natives to own and utilize the assets  
9 and the proceeds from the settlement.

8 Secondly, the Senator said that he had always been troubled  
9 since passage of ANCSA by the amount of litigation and legal costs  
10 that had been associated in its implementation. And felt very  
11 strongly that as those of us involved in the implementation of  
12 ANCSA felt that certainly that was a debilitating feature of ANCSA  
13 during these years. And the Senator felt so strongly about it,  
14 that he said, for example, if he had known that that would happen  
15 -- and he should have because he was a lawyer and it was a very  
16 complex act and so forth -- that he would have sought vigorously to  
17 include a clause such as was in the Alaska -- Trans-Alaska Pipeline  
18 Bill which said, you can sue us but you can sue only constitutional  
19 grounds, and you can only do it within 60 days of passage of this  
20 act. Otherwise, we will use other mechanisms to try to deal with  
21 the -- with differences.

18 And I think that this points out, in a perception, what I  
19 want to talk about in the relationship of ANCSA corporations and  
20 tribal government. And that is, it wasn't supposed to be this  
21 way. You know, Native people, I believe, felt very strongly that  
22 the land and the way it was allocated under ANCSA, would remain for  
23 the long term in Native ownership. The sense of almost everyone,  
24 at least that I spent time with during those days, and I think that  
25 the surprise and the frustration, even as evidenced by a U.S.  
Senator who was close to the process, that somehow it didn't work  
out that way, demonstrates that clearly. That there was never any

**Accu-Type Depositions, Inc.**

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



1 real sense that Native people were giving up anything with respect  
2 to the ownership of Native land beyond that which was engineered by  
3 the Claims Settlement Act, itself. And that the land would be  
4 maintained in Native ownership. Now, I think one of the things  
5 instantly that became a problem was that no one really understood,  
6 even those involved in the Congress, with the writing of the Act,  
7 was how fragile and how dangerous and how risk-laden an institution  
8 for land ownership, a business corporation is. And if as many say  
9 there were those in Congress and outside it, involved with the  
10 passage of ANCSA, who felt that they were slipping something  
11 through so that Native lands could be lost by 1991, I submit that  
12 without changes to ANCSA, they could have found no better way.  
13 Because in corporations the land is absolutely at risk. And I  
14 think it has been more seriously at risk in the corporate setting  
15 than would even be typical in a business corporation in any other  
16 setting, because the purpose of the corporation was to advance the  
17 social, economic, cultural interests of Native people in the  
18 business setting. That is -- in the corporate setting. That is,  
19 the taking of an asset, if you want to call the land that, and  
20 making it bigger and making it stronger, and using it as the basis  
21 to advance the interests of a people. Well, we found very vividly  
22 and very quickly that we were swimming in shark infested waters  
23 that at the outset looked like a placid pool, and it was not very  
24 long before all of the horror stories came about, of Native  
25 corporations losing money, and business enterprises -- and I don't  
want to go into that in any detail other than to say, the increase  
and the risks came from the -- I'm not sure it was explicit. It  
was explicit in some way, but there's no question that it was  
absolutely implicit that these corporations worked, as I said,  
advance the interests of Native people in a whole range of ways.  
And many corporate leaders took that to heart, both at the village  
and at the regional level. And many of the investments were made,  
some say imprudently, largely because the corporations wanted to do



1 exactly that. Advance the social, economic, cultural aspirations  
2 of the shareholders that they represented. And so, you have the  
3 stories of the oil refineries in Fairbanks which caused the  
4 corporations huge losses, which evolved from the simple proposition  
5 placed before that Board of Directors, and which grew therefrom the  
6 simple proposition that we have to try and get into a business  
7 wherein we can reduce fuel costs to the people up and down the  
8 Yukon and Kuskokwim Rivers by somehow getting oil and refining it,  
9 and selling it in a way that our people will benefit. Well, last  
10 year a Native corporation wrote off \$18 million based on that  
11 simple business premise.

12 And so, one of the assumptions that I use, is I look at  
13 ANCSA corporations and tribal governments. It's from a firm  
14 fixation with the overwhelming reality of what it takes to make a  
15 business corporation work. It is an all-consuming effort, it  
16 requires the kind of focus on business that virtually precludes a  
17 focus on other things that really are important. Because if for  
18 one minute you take your mind off the business, all sorts of things  
19 begin to go aride because your competitors ain't doing the same  
20 thing. You know, and I -- having lived in that circumstance, I  
21 just can't emphasize it enough, and I know that many who have never  
22 experienced say, why is he making such a big point of that? All I  
23 can say is that it is very, very real, and what it has done, of  
24 course, is in the corporate structure, to some degree, co-opted a  
25 whole generation of Native leadership, which otherwise would have  
evolved dealing with Native issues in a different way. But I  
certainly can be challenged on this, but I don't think that village  
people have the time, I don't think that the significant number of  
Native people who were involved with the development of ANCSA at  
the time, and again, to get back to the surprise and the frustra-  
tion of one of the key Senators involved, and even, I think, to  
offer, I think, some firm evidence of this, even the inclusion in  
the Act itself of a section which precluded political activity, and

1 the use of ANCSA proceeds for partisan political purposes which was  
2 included in the Act to me means that everybody looked at this  
3 positively. No one really looked at the downside risks. The  
4 politicians thought that these people were going to be off and  
5 running, they were going to be doing all sorts of incredible things  
6 for their people, and one of the things we ought to watch out for  
7 is that they don't use that power in a political way to our disad-  
8 vantage. It's something of a vignette, but I think it demonstrates  
9 that there was a strong sense that what was being created were  
10 institutions that would be very positive, powerful forces for  
11 Native people. The reality has been very different.

12 And the other thing that I think Native people felt at the  
13 time, and it's been said here several ways by some of the partici-  
14 pants, is that Native people did not believe that they were giving  
15 up rights that they had as Native people, and that if there had  
16 been any strong understanding, or sense that at 1991, Natives would  
17 not be in full and absolute control of their destiny, I think  
18 Native people would have told the Federal Government to go jump --  
19 and Congress to go jump straight in the lake. And having said all  
20 that, you know, we deal with a certain reality today that requires  
21 a whole lot of work and which is prompted, among other things, the  
22 sort of inquiry that certainly you are about, Justice Berger. And  
23 even with the importance of the issue, we're still the same people,  
24 and whether you're a corporate leader or a tribal leader, or a non-  
25 profit leader, or a village leader, we're all made of people and I  
think that that is the fundamental strength that we've got to build  
on. And as I look at the relationship between tribal government  
and ANCSA corporations, and from my experience with ANCSA  
corporations, I think that it is a resolvable issue, but that it  
will be resolved probably on several different levels. That the  
way villages deal with it will be different, to some degree, from  
the way regions deal with it. That there will be mechanisms that  
we can use without any change, legislative change to ANCSA, and



1 that there maybe a number of responses that require further action  
2 by Congress. But as we look at the land right now, and its  
3 relationship with tribal government, I think that what Native  
4 people need more than anything else is a moral imperative to deal  
5 with it. That is, if a people said as corporate shareholders, we  
6 want that land protected, then as shareholders of the corporation,  
7 voting as shareholders but thinking as Native people, they could do  
8 that, even now. The question, of course then, is what sort of  
9 institution becomes the repository, and that is one of the  
10 important issues that is being addressed.

11 The longer we wait, and even now, that simple proposition  
12 becomes, and is, very difficult because of continuing and  
13 increasing encumbrances on that land as it remains in corporate  
14 ownership, the pledging of land assets for business purposes to  
15 financial institutions and so forth. Those issues do become very  
16 real. The issues of lands that the Native corporations have leased  
17 for development purposes, but even in light of all that, I think,  
18 that the significant corpus of that 44 million acres is still  
19 freely available for Native people to do what they will with it.  
20 And I think that that's been one of the remarkable positive  
21 features of ANCSA is that for all of the negative that has evolved  
22 around the operation of Native corporations, almost to a  
23 corporation, there has been a strong underlying sense that we've  
24 got to hang onto the land. And while there have been a number of  
25 corporations that have sold land, that have divested themselves of  
certain amounts of land, and the aggregate, that is very, very  
small. And I know, for example, from my own corporative experience  
and from talking with a lot of other corporate -- a lot of other  
Native folks who are involved with these corporations, that they'd  
walk a country mile and do all sorts of things to avoid having to  
pledge ANCSA assets in the conduct of their business enterprise,  
you know, so I think that the fact that some 12, 13 years later,  
that land is in the main, in the significant main, still freely

**Accu-Type Depositions, Inc.**

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



1 unencumbered in Native hands in the amounts of tens of millions of  
2 acres is something, you know, is very positive as we look to how to  
3 deal with this question of where do we ultimately put Native lands  
4 so that it remains in Native ownership, and in some kind of status  
5 that recognizes Native ethnicity, and as we look to the kinds of  
6 structural changes and organizations that we have to have in order  
7 to accomplish that. It's been somewhat intriguing to me as I've  
8 looked at my own experience and the experience of others, and as  
9 I've sat through this meeting, certainly no others like it, but at  
10 least other kinds of meetings.

11 You know, I was just recently asked to serve on the Board  
12 of Directors of a Lower 48 tribal corporation. Tribally created  
13 corporation. The purpose of which was to try to take certain  
14 tribal assets and use them for economic purposes outside the poli-  
15 tical purview of the tribal government. And we've had some con-  
16 versation about that at this meeting. And it's somewhat ironic  
17 that to some degree we're on the other side of that. We have the  
18 economic institutions, and we're saying to ourselves, as a people  
19 on a statewide basis, how do we get those assets much more tribally  
20 oriented? And I expect that a balance is possible.

21 As you talk about government and how government fits here,  
22 you know, it seems to me that at the outset, and in its framing,  
23 that that also has got to transcend detail. That it's -- that some-  
24 how people are able to articulate very clearly, and forcefully, and  
25 responsibly that I'm sorry what we have doesn't work because it  
doesn't recognize our existence as a people. And, you know, when  
you talk about forms of government at the State level, that is a  
rub that comes instantly. Particularly when you talk about municipi-  
pal government, and while local forms of municipal government can  
serve various functions, when you spend a lot of time talking about  
those forms, in my judgement, you're really not addressing the real  
issue. And the real issue is that government, more than anything  
else, and I think it was said here earlier, is a system of values.

*Accu-Type Depositions, Inc.*

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



1 And it's how society expresses those values, and what Native people  
2 in Alaska are saying, particularly those who live at the village  
3 level and who are closest to the living culture, and are the living  
4 culture, they're saying, those values frighten us. And somehow,  
5 we've got to forge a different relationship than exists now. We  
6 hear it expressed in education, we hear it expressed in the manage-  
7 ment of Fish and Game, and ultimately, we hear it expressed in how  
8 Native people own and control their own land asset. They're saying  
9 that the institutions that exists, and which we have dealt with  
10 over some period of time, really aren't working, and so, to me, it  
11 becomes a very large public policy question. And it can be  
12 addressed several ways, you know, and I think that one of the most  
13 significant ways that it can be addressed is what -- and I'm  
14 anxious to hear his further clarification, but also to take advan-  
15 tage of the Pipestem Doctrine. But what the people of Akiachak  
16 have done, you know, in a very methodical, straight-forward, respon-  
17 sible, quiet sort of way, they said, we're going to redefine our  
18 relationship so that it makes sense to us. We'll worry about some  
19 of the niceties later, and while this may create worlds of work for  
20 lawyers, over time, you know, if a people thinks that sort -- that  
21 they've come to the point where that sort of action is necessary,  
22 and if they don't take it, they have not assumed the moral  
23 imperative, and these people have. And whether or not that is some-  
24 thing that can be engendered on a statewide basis, or is even  
25 necessary on a statewide basis, I don know, because one of the  
other things we need to recognize is that circumstances do vary  
around the State, and the hard realities, and the hard practicali-  
ties may require different responses in other circumstances. But  
as one corporate leader, and as an individual Native, I think that  
as I -- to conclude, Mr. Chairman, that as I look to what I believe  
Native people wanted and expected and thought they were getting at  
the time of ANCSA with respect to the future of their lands, and  
where I see us now, that I think that there is a real need to

*Accu-Type Depositions, Inc.*

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



1 restructure the relationship between ANCSA corporations and the  
2 tribe. In each instance, however, that is defined, so that that  
3 land really can be protected for the long-term ownership of  
4 Alaska's Native people, or it will be within not a generation, but  
5 in many instances, a matter of decades, irrevocably lost. Thank  
6 you.

7 MR. BERGER: Yes. Thank you,  
8 Byron. I'm going to take the liberty of using my position as  
9 Chairman to invite Tim Coulter to speak now. He has to leave  
10 tonight and I'd like his thoughts. I think they follow on from  
11 Byron's about -- if we're talking about the tribe, Native people,  
12 what kind of institutions will serve them best? So, Tim, you have  
13 the floor.

14 MR. COULTER: Yes. The things  
15 that I have to say follow very nicely. In fact, you said some of  
16 what I was thinking much better than I had been able to articulate  
17 it. It think the question is exactly as you put it. The question  
18 is one of adjusting, arranging, and rearranging the relationship  
19 between the Native peoples, and others. And I feel more  
20 comfortable saying Native people, some are tribes, some are not. I  
21 don't -- I'm not quite sure what terms to use, but when I say  
22 Native peoples, I mean all.

23 I am not really able to propose specific kinds of  
24 solutions or suggestions because I think really there are many,  
25 many kinds of solutions and suggestions that people can select from  
in their particular case, so that their needs are best served. But  
I have tried to write down a short list of elements which I think  
must be a part of any alternative that would be useful or proper.

Let me show you what I mean. Number one, I think that any  
kind of alternative to ANCSA, any kind of alternative to the  
relations that exists, must be an alternative that Native people  
consent to, first of all. And really consent to. Not where just  
some leaders, no matter how wonderful and well-intentioned they may



1 be, but where the people whose lands, and resources, and lives that  
2 are involved, they themselves actually consent. And that,  
3 furthermore, whatever alternative is put forward must be one that  
4 cannot later be changed without that same kind of consent. And let  
5 me add that it may not be a consent that's just a simple majority.  
6 I don't know how people here feel, but many times where something  
7 will fundamentally effect the whole community forever, people feel  
8 that it's not proper that 51% should be able to determine such a  
9 thing. Maybe it should be consensus, or maybe it should be a  
10 super-majority the way Western European democracies work. Funda-  
11 mental questions require a lot of people to agree on it.

12 Well, that's one thing and I think alternatives that don't  
13 include iron-clad provisions for consent should probably be  
14 rejected out of hand.

15 Third, I think that solutions that do not provide for  
16 local options and choices and selections, are probably inappro-  
17 priate. And countless people have said this in the two days that  
18 I've been here, that whatever alternatives are put forward, must be  
19 alternatives where each village, each region, each people, each  
20 community can decide for itself what it wants.

21 Number three, I think that any kind of alternative, any  
22 solution, or anything that we hope would be a solution, must  
23 include some kind of provision such that there are either absolute  
24 or constitutional limits on the power of the United States Govern-  
25 ment to change it, or affect it. It just is not going to be very  
useful to come up with some solution which Congress could legislate  
away a generation from now. Or, which even more likely, the  
Supreme Court could decide away at the stroke of a pen. Unfortu-  
nately, sovereign immunity is like that, and David's paper, I  
think, is nicely reasoned, but one of the things about trying to  
live within the existing body of court created law, is that those  
nine Justices up there, can and do, change it every year. Just  
like this. They write off one right after another. So that -- I

*Accu-Type Depositions, Inc.*

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



1 think solutions and alternatives have to be ones where there are  
2 real and predictable limits on the power of the Federal Government,  
3 or any other government, to change it without the consent of Native  
4 people.

5 Now, very closely related is number four. Any kind of  
6 alternative or solution must be one which can be legally and forced  
7 against the United States, or the State of Alaska, or other  
8 people. Unfortunately, there are a good many so-called Indian  
9 rights today that exist only at the sufferance of the Federal  
10 Government. They can't actually be enforced against Congress if  
11 Congress chooses to take them away. And if you come up with  
12 solutions, or so-called solutions up here to the ANCSA problem,  
13 which failed to take that into account and do something about it,  
14 well, you may have accomplished something, but you still got a  
15 problem.

16 So, number five. I think that whatever is done -- and  
17 this may be the most important, whatever is done to change ANCSA,  
18 and to change these relations, it must be done under conditions of  
19 basic fairness, conditions which are perceived to be basically fair  
20 and without any kind of real duress. Because if people in the  
21 villages, if Native people have to make choices under a threat, as  
22 has been the case uniformly, well, this is the best you're going to  
23 get if you don't accept this kind of proposition, you risk losing  
24 everything. Well, that is not a condition of basic fairness  
25 because choices made under those conditions are ones that are not  
going to last. The next generation is going to come along, and  
they're going to say, that was no good, we never agreed to it, and  
those who pretended to agree to it, were acting in a way that --  
they were conditions of fundamental unfairness, and to come up with  
some other settlement that is fundamentally unfair, is just going  
to be a waste of time. If you have to do it, okay, make the best  
of it, but your kids are going to be working on it again in another  
25 or 30 years, or whatever. Sometimes external supervision, or



1 oversight, can be a help. My original note here said, perhaps  
2 there should be international supervision of any readjustment of  
3 the relationship because in the case of, instances like -- well,  
4 let me not say Greenland because I don't know enough about it, but  
5 where other peoples readjust their relationship with colonial  
6 powers or former colonial powers, it is often and usually done  
7 under some form of international supervision, which helps to assure  
8 that the conditions are sort-of-fair. And that people are acting  
9 sort-of in good faith, and not trying to take advantage the weak  
10 against -- the strong against the weak, and so on. Maybe it need  
11 not be international supervision, but there could be other  
12 mechanisms for bringing in some other disinterested party to help  
13 oversee readjustments of this relationship so that the strong don't  
14 attempt to take advantage of the weak.

15 Number six. I think there would have to be a provision to  
16 assure, and this may be repetitive, but excuse me if it is, but  
17 there must be some kind of provision and any alternative for  
18 ongoing that is permanent, Native control over the Native  
19 communities and resources. A solution isn't going to work if  
20 somehow Native control over the resources in the communities is  
21 somehow not made permanent. Doesn't need to be discussed, I think.

22 Number seven. And I think this may be the most practical,  
23 it's that last one. Number seven, I think that what needs to be  
24 done in a practical way is to remove impediments that now exists in  
25 the legislation to the use of all proper and honest legal  
mechanisms for doing what the people at the village level want to  
do. The situation of the people at Akiachak and the Yupik nation  
is a pretty good example. Their trying to do something that they  
clearly perceive they wish to do, and they are beset with a  
thousand technicalities of State and Federal law that seem to make  
it impossible for them to do simple things for the welfare of their  
community. If the impediments continue to exist, if people are not  
free to use honest and proper legal mechanisms to adjust their

**Accu-Type Depositions, Inc.**

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



1 relationship, how can it be a consented, how can it be a fair and  
2 proper resolution? Well, I think getting out of the ANCSA problem  
3 is a matter of using many, many legal mechanisms and legal  
4 options. There isn't in any -- as far as I can see, there isn't  
5 any one solution at all. There is a shelf that's filled with  
6 dozens of kinds of perfectly useful legal mechanisms, legal things  
7 like corporations, cooperatives, non-profits, municipal  
8 governments, IRA governments, traditional governments, there are  
9 all kinds of things that people could use so that they can run  
10 their lives the way they want to. And what's needed is for people  
11 to use them as they wish to do what they want in their community.  
12 In many cases, I think it may be necessary to get Congress to pass  
13 new legislation to get what is needed. But legislation, and  
14 getting a new law passed by Congress, that's just one more legal  
15 tool to use. That's just one other thing like setting up a  
16 corporation or like creating a IRA government. It's just another  
17 legal mechanism that Native people can, and certainly may want to  
18 use. Particularly, and I think it's probably unavoidable, that  
19 legislation, new legislation by Congress is going to be needed to  
20 deal with the problem of taxation, taxation of the land and  
21 resources, and to deal with -- I think it probably should be looked  
22 at to deal with the problem of the -- of sovereign immunity. I  
23 think the immunity of Native governments from suit is very shakey  
24 right now with this present Supreme Court, and what some of the  
25 lower courts have been doing. If you're not careful with Supreme  
Court, with one stroke of the pen is going to say that Native  
governments can be sued for all their worth. And that might be  
changed with an act of Congress. Something's going to need to be  
done about the problem of adverse possession where somebody moves  
onto your land and just sits there long enough that they can claim  
it for themselves. You see, even if the Native villages acquire  
that land in their own name, they're not going to have the protec-  
tion of the Non-Intercourse Act and all these other doctrines. At

**Accu-Type Depositions, Inc.**

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



**ATD**

1 least this is the way I'm presently seeing, and I hope people will  
2 correct me. They're still going to be subject to taxation, adverse  
3 possession, if trespassers move on, they can still -- they still  
4 might lose it in other ways. Probably legislation is needed if a  
village wants to protect itself from losing the land in those ways.

5 Well, that being the case, if legislation is going to have  
6 to come about, it seems to me that people ought to consider making  
7 out a full shopping list. In other words, go ahead and ask for  
8 what you want. Don't try to just settle for the usual things that  
9 are handed out with Federal Indian Law, or Federal Trusteeship. Go  
10 ahead and ask for -- try to get legislation for exactly what you  
11 want. If you want immunity from taxation, have that legislated. I  
12 would suggest that's probably just as practical a solution as  
13 putting the land in trust. Another way of getting tax immunity.  
If you want other kinds of protection, legislate them specifically,  
rather than relying on the usual conventional concepts of Indian  
law.

14 And in that regard, I can't end without suggesting that I  
15 think the notion, and the concept of trusteeship ought to be very  
16 carefully examined because I feel that it's being used to describe  
17 many, many things. And it may mean things that are not intended.  
18 Federal trusteeship, the trust relationship means at least these  
19 things, the obligation of the Federal government to provide pro-  
20 grams. Well, unfortunately, that's not really enforceable against  
21 Congress. Sometimes people mean trusteehsip, but they say trustee-  
22 ship when they mean that they want the land held in trust so that  
23 it won't be taxed. Well, if that's what you want, you can have  
24 that done through specific legislation. In fact, the way it's done  
25 in ANCSA now, they legislate specifically that certain of the lands  
can't be taxed. Sometimes trusteehsip is used when people simply  
want to prevent the land from being alienated or lost. Well, that  
can be done specifically through legislation as well. Also,  
sometimes people mean they want trusteeship because they want the

**Accu-Type Depositions, Inc.**

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



1 Interior Department to help manage the land, or they want the  
2 Federal Government to help them, they want Justice Department  
3 lawyers to help protect the land. Well, that's okay, but you could  
4 do that directly, too, if you want to.

(TAPE 10, SIDE A)

5 MR. COULTER: Sometimes they want  
6 jurisdiction, or they want trusteeship because they want  
7 governmental jurisdiction over the land, because they want to have  
8 Native governmental control over the land to govern their affairs  
9 there. But that also can be done directly without necessarily  
10 taking the whole thing, getting the whole hog of trusteeship. The  
11 reason I say this is that trusteeship carries with it a tremendous  
12 power that one places in the hands of the Federal Government. The  
13 trust relationship, I feel, often implies disadvantages for the  
14 Native people, and Native governments, and puts power in the hands  
15 of the Federal Government that can be a problem. It isn't always a  
16 problem, and some people may feel it's their best shot, but I  
17 thought I would offer that since it's been discussed.

18 That's -- I think concludes my remarks, except that I've  
19 had a strong sense that one thing that was mentioned by -- well, a  
20 number of speakers, but I think that because Native people are able  
21 to assert and exercise inherent rights, that the whole world per-  
22 ceives to be natural and just rights, that you have the power and  
23 the ability to assert rights even though they may not be techni-  
24 cally, legally protectable. And so, those kinds of rights have a  
25 particular kind of vitality that survive legal problems, that  
survive legal losses. But the one thing that they don't survive is  
your voluntarily giving them up. And -- so, one thing I'm -- I  
guess I'd like to conclude by saying that the law ain't every-  
thing. Don't let the law bother you over much. What's more  
important is that you hang onto, and you assert the rights that are  
naturally yours, and I think you'll be all right. The law will  
catch up with you.



1 Thank you. I'm sorry I go on so long.

2 MR. BERGER: Yeah. Browning, and  
3 Sheldon, and Reid, and then I think we'll have to adjourn. Yeah.  
4 Browning Pipestem.

5 MR. PIPESTEM: I'll try to be  
6 brief because I'd like to get a more definitive statement, I guess,  
7 as to the -- you know, I get the distinct impression that a number  
8 of people equate the category of tribal government, or Native  
9 government with -- that that's some kind of konders up a notion of  
10 some kind of a primitive, offbeat, out-of-step kind of government  
11 that is unsuitable in the 20th Century. I really believe that  
12 there are people that I hear speak that think that. Now, let me  
13 tell you what I do. I'm a business lawyer. That's what I do. And  
14 it seems to me that the tribal governments in -- gosh, I can't even  
15 hardly say that word, the Lower 48 -- it's hard for my southern  
16 accent to say that word, even -- have, I think, tremendous  
17 opportunities to have a sophiscated form of government with the  
18 creativity of tribal legislatures to create the width and breadth  
19 for the room of all the broad range of kinds of Native peoples that  
20 there are. Now there are traditional people who say they don't  
21 like corporations. I don't know whether they do or not. There are  
22 people who are obviously in the business of running corporations,  
23 and occupying those corporations. I see no difficulty, for  
24 instance, let me give you some for instances. In if a tribe wanted  
25 to have a borough, why they could not create a borough under tribal  
legislation, I see no reason why a tribe who chose to create a  
municipality could not create a municipality for non-Indians, over  
properties that they own. I see no reason why a tribe who chose to  
have a corporation could not create a sophisticated set of  
corporate structures for its own people by virtue of tribal legisla-  
tion. I see no reason why a tribe who desired to have a banking  
system, could not create a banking system under the tribe's law. I  
see no reason why a tribe who chose to regulate the nature of oil



1 and gas production under its own laws, could not do so to the  
2 extent that it has subject matter jurisdiction. I see no reason  
3 why a creative application of the Alaska law would not be for the  
4 Alaska Legislature to say that the proper place if -- now I'm  
5 making some assumptions -- if the Alaska Natives desired to be  
6 recognized as a people of a governmental nature. And I don't know  
7 that you do. But if you did, that a law of the Alaska Legislature  
8 that says that the nature of the relationship between the State of  
9 Alaska, and the people who are the Native peoples, is one of a  
10 government to a government.

11 It would seem to me that this is a time for a quiet set of  
12 voices on these kinds of issues. Because in my mind, I do not see  
13 a tribal government as a primitive, offbeat, out-of-step kind of a  
14 government. I see it as having the ability to create a width and  
15 breadth for the broadest range of people. And to do so on a very  
16 creative basis. Now, let me give you a notion of that. Because  
17 somebody mentioned something about the Pipestem Doctrine. The  
18 Pipestem Doctrine simply stated, I guess, if I get to state it  
19 myself, I've never needed an interpreter for a lot of years, but  
20 maybe I need one, is that you need -- you know I don't advocate the  
21 use of illegitimate power. If you don't have power, then I guess  
22 you need to get you some from somebody. If you have power, it is  
23 irrelevant if you don't exercise it. It is, it does not make a bit  
24 of difference if you don't exercise it. And our people in the  
25 United States, the people criticize the notion of the reservation  
system, it is just beginning to blossom because people are saying  
on a broad scale of legislation, if you want to create an Indian  
corporation in Oklahoma, you can do so through three tribes that I  
know of now. If you want to set up a professional corporation, I  
know of two tribes that you can create a professional corporation  
to practice law, to be a dentist, to be an architect, to be a whole  
lot of things. If you wish to be a whole series of activities,  
that is beginning to develop because the tribe is seeing itself as

1 a sophisticated in-step moving force that is going to move its  
2 people, its abilities to function as a government into a modern  
3 context. And I do believe that you can't have a greater level of  
4 accountability than to tribal government. And I would simply say  
5 to you, now don't get the impression that when I say you need to  
6 settle the affair of the heart, that if you're just some old group  
7 of people prowling around somewhere and you're not legitimate,  
8 don't exercise any power. Because you don't have any. But if  
9 you're a people who are a government, there is a tremendous  
10 opportunity for your government to serve its people. And that's  
11 not a funny thing. To function as government is a practical,  
12 everyday, difficult undertaking, I believe. And I think that it  
13 means that, for instance, at present, is there really any Native  
14 land? It's really owned by a State Chartered corporation, is it  
15 not? And the dormant Native governments that are here, and I say  
16 dormant only because I don't know, seem to me to provide you with a  
17 great opportunity to do some significant things. And I would be a  
18 little leary of not finding out what the width and breadth of your  
19 legal parameters of what you can do prior to trying to seek out  
20 legislation. There may be many, many things that you can do. I  
21 would say to you that if 1991 is a problem, that the institution  
22 that you have here of the Native government, it does not have a  
23 fuse on it that goes out in 1991. It will continue. It goes  
24 beyond 1991. It's problem is is it doesn't have any land. The  
25 Native corporations, they're not really even Native corporations.  
You could form a Native corporation under the law of the Sacenfox  
(ph) Tribe tomorrow and create a Native corporation. Only we'd  
have to call you a Indian at that point, I guess.

But I think that there are tremendous creative  
opportunities for you as a people to take what is clearly an  
undercurrent of significant and tremendous authority and power, an  
economic -- I mean, you have people that have achieved many things,  
and I would just say to you that the relationship between tribal

*Accu-Type Depositions, Inc.*

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



1 government and the ANCSA corporations is one that's a dialogue that  
2 I think is tremendous, and that the corporation should not view --  
3 and you people who have dealings in tribal government, should not  
4 view yourself as some kind of primitive, fifth-class, offbeat,  
5 out-of-step outfit because that legislation can bring you into  
6 where you need to be at such time that you can make people to  
7 work.

8 And I really understood what Byron was saying in that in  
9 the United States, and I don't know whether -- I guess you guys are  
10 in the United States, the problem has been is that the Indian  
11 Reorganization Act had two different aspects to it. One was a  
12 Section 16 organization which was the constitutional government  
13 entity. The Section 17 entity was the tribe as a business  
14 corporation. And what was interesting about it was we ended up  
15 with a tribal council being in charge of both of them, and there  
16 were never any assignments of tribal assets to the tribal chartered  
17 corporate entity. And I think that some of the tribes are  
18 beginning to see the significance of that, of the insulation of  
19 business opportunities as they function through the tribe. And I  
20 think that that's a recent phenomena. And I think that they are  
21 tremendous opportunity, and I'll just end with that because our  
22 Chief over here may give me the gong.

(LAUGHTER)

23 MR. BERGER: Okay. Thanks,  
24 Browning. Well, Sheldon, and then Reid.

25 MR. KATCHATAG: Right. I'm  
really very, very satisfied with the way that this afternoons con-  
versation has finally turned. Everybody has been clarifying and  
reaffirming what we have been saying. And, Byron, I'm very, very  
glad that the corporate people that have been representing us have  
been taking care of business for us, are realizing that we all, do  
in fact, have the same goal at the end. That's one of the things  
that I would like to emphasize is that one of the problems that the

1 corporations have with regard to taking care of business, is the  
2 fact that they must keep their shareholders informed. That puts  
3 them a disadvantage, as you said, in dealing with other corpora-  
4 tions which have no such requirements. If, in fact, you are going  
5 to take care of business, and make a profit, then you must be able  
6 to maintain a certain level of secrecy with regard to what  
7 direction you and your for-profit corporation are going. It's a  
8 matter of business which the corporate community of the United  
9 States, not just of Alaska, that is one of their basic tenets of  
10 how they operate. Sohio doesn't tell everybody and their share-  
11 holders what they are planning on doing. They do it and then they  
12 inform their shareholders. And I think that anything that we would  
13 do as tribal governments with regard to saying to the corporate  
14 leaders, you lead us astray, therefore, we do not want you around  
15 anymore, would be wrong. You have developed a very great expertise  
16 with regard to businesses and business corporations, and we need  
17 all the help we can get.

18 I think that one of the things that we, as tribal govern-  
19 ments can do, is to say to the corporation, tribal governments will  
20 take care of social and welfare problems. Your function, and we  
21 want you to do the best that you can, is to get out there and make  
22 a profit, not just for the corporation but your shareholders. You  
23 have to concentrate on business and you have to be able to maintain  
24 a certain level of secrecy with regard to what you're planning to  
25 do to make a profit.

And I think I would like to conclude by commending Mr.  
Coulter for some of the conditions which must be met before any  
solution can be satisfactorily and constructively put in place to  
the satisfaction of my people. And I would hope that the  
Commission would make sure that these are in your recommendations.  
And I would also commend him on his mention of the fact that we do,  
in fact, have a wide variety of options available on the shelf.

But first of all, and I think it behooves us all to

**Accu-Type Depositions, Inc.**

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



**ATD**

1 realize this, that the premise that we must start with are written  
2 in the Act of 1971 under Declaration of Policy. Section 2, Part C,  
3 no provision of this Act shall relieve, replace, or diminish any  
4 obligation of the United States, or of the State of Alaska, to  
5 protect and promote the rights or welfare of Natives. If that's  
6 not reaffirming, reaffirmation of trust responsibility, I don't know  
7 what is. And as far as tribal government, this one here has been  
8 staring me in the face, and hitting me over the head just like my  
9 Eskimo name (INDISCERNIBLE), Hammer. It's hit me so hard that I  
10 don't know what in the world it's telling me. And I think this is  
11 one of the things that we, as tribal governments, have to realize  
12 is Section F. No provision of this Act shall be construed to  
13 constitute a jurisdictional act. Therefore, we as tribal govern-  
14 ments, have no limitation, as I said earlier to our jurisdiction.  
15 There is nothing in the State, there is nothing in the Federal  
16 Government that says there is a limitation. The only limitation  
17 that we, as tribal governments, have is those that we have imposed  
18 on ourselves, and these are the ones that we have abided by since  
19 time immemorial. Our traditional, tribal boundaries.

20 And as far as alternatives, tribal governments are there.  
21 There is nothing in the Act that says that the government -- and  
22 that has been one of the problems of Native government is that they  
23 have viewed ANCSA as deprecation of jurisdiction on tribal  
24 government. It's not there. And that is assumption which we have  
25 to turn around. When I was in electronics school, I had an instruc-  
tor from the Marine Corp who made it very clear to me about the  
word, assume. You take it apart, anytime you assume, you make an  
ass out of you and me. So, don't assume these things. Go by the  
letter of the law. ANCSA is not a jurisdictional act and,  
therefore, we have no limits to our jurisdiction, but those which  
we have abided by since time immemorial are traditional tribal  
boundaries. Thank you.

MR. BERGER: Reid Chambers.

Accu-Type Depositions, Inc.

550 West Seventh, Suite 205  
Anchorage, Alaska 99501



1 We'll let you carry on until they come and start folding the tables  
2 up.

3 MR. CHAMBERS: I actually just --  
4 they fold me up with them, Tom. I had just two questions for  
5 Byron, actually, if he had any reaction to this. Which would be --  
6 I know, of course, you don't speak for every corporation or every  
7 regional corporation, do you have any feeling for what the regional  
8 corporations would feel about legislation that would do either, or  
9 both, of these two things. Number one, simply extend the period in  
10 which people could not sell their stock for, let's say, 20 more  
11 years. And number two, would in some way affirmatively recognize,  
12 or confirm, what I think is the preexisting power. But in any  
13 event, would confirm a power in village governments in Alaska to  
14 regulate the use, and to regulate activities by people on lands  
15 approximate to the villages that are owned either by a village or a  
16 regional corporation.

17 MR. MALLOTT: With respect to the  
18 first question, it has been largely the regional corporation leader-  
19 ship that has advanced the notion that if we must do anything with  
20 the timing of 1991, let's turn it on its head. That is, let's  
21 leave Native stock inalienable unless the membership makes the  
22 determination that it ought to be as an option.

23 With respect to the latter, I have to speak personally,  
24 but I believe very strongly that there has to be achieved an  
25 accommodation between Native corporations and their tribe, however  
that is defined so that the land is maintained and protected for  
the longest, possible period of time in Native ownership.

MR. BERGER: Thank you, Byron.  
I'm going to give myself the last word because we've only got a  
couple of minutes. Just let me repeat that there is a reception in  
honor of the Alaska Native Review Commission at the offices of  
Ziontz, Pirtle -- that's David Case's office, 550 West 7th, Suite  
1380, and all Roundtable participants and people out there,

1 observers, are invited. That's 5:00 tonight, and the other thing I  
2 wanted to say was that we'll start again at 9:30 in the morning. I  
3 know some of you have to leave tonight, and I'm grateful to you for  
4 coming. And might I just mention a couple of thoughts that perhaps  
5 deserve to be considered, we might consider them tomorrow. One is,  
6 Charles Wilkison, who is the lawyer for the Monaminees (ph) said  
7 that what Congress did there was they passed a law that said there  
8 had to be negotiations to sort out the mess. And it took a few  
9 years but the State and the Monaminees (ph), and the tribe, and the  
10 corporation, all got together and sorted it out, and I've forgotten  
11 what happened then. I'm not even sure that any legislation was  
12 passed, but it's a kind of a interesting example of how to go about  
13 it.

14 The second approach is the one the AFN is taking, I  
15 believe, which is to have some resolutions considered statewide by  
16 Native people, and then to invite Congress to legislate, to solve  
17 the problem, so to speak, and that may be the way it's got to be  
18 done. I don't know.

19 A third possibility is the one that Peter Jull mentioned.  
20 The one that they're using in Northern Canada where they are  
21 working out new forms of political authority, working out land  
22 claims, so they've established a constitutional forum. And the  
23 Territorial Legislature nominates people to it, the Native people  
24 nominate people to it, and it goes around the Territory listening  
25 to what people have to say, and it's trying to develop a  
consensus. Now maybe this is all pie-in-the-sky but I think it's  
worth, perhaps, reflecting on.

Well, tomorrow we'll start at 9:30 and I hope you'll  
return. And those of you that didn't get a chance to speak, I do  
hope we can give you that opportunity tomorrow. And I hope that  
you will feel free, especially those of you who come from far off,  
and won't be back again, to give some parting thoughts, if indeed,  
parting shots, and to say what you think this Commission ought to

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

recommend. And I'll be here at 9:30 and I'll welcome you all at that time. So, we stand adjourned.

(HEARING ADJOURNS)

\* \* \*

*Accu-Type Depositions, Inc.*

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





