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TRANSCRIPT OF PROCEEDINGS
ROUNDTABLE DISCUSSIONS
VOLUME XXVII
ALTERNATE APPROACHES TO
NATIVE LAND AND GOVERNANCE
DECEMBER 15, 1984
ANCHORAGE, ALASKA

ALASKA NATIVE REVIEW COMMISSION
HON. THOMAS R. BERGER
COMMISSIONER

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

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ATD

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Roundtable On

Alternate Approaches to Native Land & Governance

Anchorage, December 12 - 15, 1984

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*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 15, 1984

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12
13
14
15
16
17
18
19
20
21
22
23
24
25

Tape 11, Side A.....	2696
Mr. Berger gives opening address.....	2696
Mr. David Getches speaks.....	2696
Mr. David Case speaks.....	2709
Mr. Berger speaks.....	2709
Mr. David Getches speaks.....	2710
Mr. Charlie Edwardson speaks.....	2710
Mr. David Getches speaks.....	2710
Ms. Mary Miller speaks.....	2714
Mr. Reid Chambers speaks.....	2716
Mr. Bob Blodgett speaks.....	2724
Hearing Recessed/Hearing Resumed.....	2730
Tape 12, Side A.....	2730
Ms. Rosita Worl speaks.....	2730
Ms. Mary Miller speaks.....	2732
Mr. Charles Wilkinson speaks.....	2732
Mr. Ralph Lerner speaks.....	2745
Hearing Recessed/Hearing Resumed.....	2743
Mr. Berger speaks.....	2743
Tape 12, Side B.....	2746
Mr. Charles Wilkinson speaks.....	2752
Mr. Reid Chambers speaks.....	2752
Ms. Rosita Worl speaks.....	2755
Mr. David Case speaks.....	2756
Mr. Frederick Harhoff speaks.....	2757
Mr. Ralph Lerner speaks.....	2759
Mr. Charles Wilkinson speaks.....	2760
Sheldon Katchatag speaks.....	2761
Tape 13, Side A.....	2763
Hearing Recessed/Hearing Resumed.....	2766
Ms. Evelyn Hash-Peat speaks.....	2767
Mr. Willie Kasayulie speaks.....	2768
Mr. Browning Pipestem speaks.....	2772
Mr. Berger closes meeting.....	2777

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1 (DECEMBER 15, 1984)

2 (TAPE 11, SIDE A)

3 MR. BERGER: Well, let's start.

4 Our ranks are a little thinned today, but at least your Chairman is
5 here. Well, I think this is as good a time as any to start to sum
6 up what has emerged, and maybe I could ask David Getches to lead
7 off this morning, and then Mary Miller has some remarks as well.
8 And I'm not quite sure, David, how many we can expect this morning,
9 but I think we might as well start now and as they trickle in, it
10 will just be their hard luck that they missed part of what you had
11 to say.

12 MR. GETCHES: It may be something
13 they'll be thankful for, too. I will start with a summary of where
14 we're coming from and then take the advantage of being the first to
15 be asked the question, well, what do you think ought to be done?
16 What should be included in the report? And exercise that arrogant
17 prerogative of a so-called expert, and I'll tell you what I think
18 and maybe that'll be a fodder for other people to chew on, or
19 attack, as the case may be.

20 First of all, let me start as I start my own thinking
21 about this and summarize where we have come from. And I realize
22 that you all, who have been with this process for several months
23 now, in excess of a year, have been about this and probably have
24 more to say by way of summary, but let me summarize what I have
25 assimilated during the last few days.

26 I think that we're really talking about a number of
27 problems, most of which you, Commissioner Berger, identified in the
28 first day of our meeting. First, we're concerned about the loss of
29 Native lands, and that loss comes about through alienability of
30 stock in 1991. For the financially successful corporations, that
31 is the primary threat, but the financially unsuccessful tribes are
32 also threatened with the loss of their land through failure of
33 their businesses, through taxability of the land, and through

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1 judgments against their land for debt. Now, this group of
2 unsuccessful corporations, I should add, includes those corpora-
3 tions who have taken the bold step of trying to provide services or
4 what's known in the foundation world, as a program-related invest-
5 ment. In other words, they've tried to do something good for their
6 people in the way they've invested their money, and they are not
7 successful in terms of returning a profit. Hence, their land
8 become exposed to the judgments and irony of ANCSA.

9 Second concern is that lands of Natives are becoming
10 subject to uses that are inconsistent with subsistence -- the most
11 important, the primary use, historically, of Native land. This is
12 not just a problem of outsiders coming in and developing the land,
13 but Native corporations, themselves, having an incentive, indeed
14 some would say a mission, to use the land in the most economically
15 productive manner which often is contrary to subsistence. Talking
16 about development at the hands of Native corporations that can be
17 counter to subsistence interests.

18 Third, there's a threat to the continuity of Native
19 culture that is traceable to ANCSA. The corporate form, itself,
20 through its alien nature has raised some problems. One problem is
21 that Natives born since 1971, of course, don't participate in owner-
22 ship unless at some point in their later life they inherit stock,
23 and that inheritance, itself, results in an uneven ownership. This
24 means that you will have villages, you already are beginning to
25 have villages where there are residents of the village with no
interest in the land held under ANCSA at all. The land maybe held
through stock unevenly by members of that community, with some
members, eventually, holding only a few shares of stock, others
holding several hundred by accident of inheritance, or perhaps by
purchase of the shares of stock. You also may have owners of that
land living in villages elsewhere who have no psychological attach-
ment to the land in the village whose stock they hold. They may
live in Fairbanks, they may live in Los Angeles. And I think

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1 through attenuating the control, the equitable ownership of land,
2 there is a real danger of losing continuity of culture. And I
3 think that we're only beginning to come to grips with that. I met
4 with a man last...who I've known for several years, and he
5 indicated that his son, who I knew as a babe in arms in the early
6 '70s, is now 13. He owns no shares of stock in the corporation,
7 he's going out whaling, did last year for the first time, but he
8 really doesn't have the same ownership interest in the land that
9 his parents do, and it will only be on their death that he really
10 will get that.

11
12 MR. BERGER: And then it might be
13 divided among several people.

14 MR. GETCHES: And then if there
15 are ten children, they each get ten shares and never mind that one
16 of them lives in Phoenix.

17 A fourth problem is that Native governments, themselves,
18 that is the traditional governments, and this is one that was not
19 listed the first day, but I've put together over the last couple of
20 days, those Native governments are actually being gutted by ANCSA.
21 There's been a raid on the leadership potential of many
22 communities. How many leaders, or business executives, can you
23 expect from a community of 200 or 300 people? Worse yet, community
24 of 50 people? There are, as a number of people said, too many
25 entities out there in villages requiring leadership. The corpora-
tions can afford to hire away the best and the brightest of the
communities leaving a tribal government to go begging for the
leadership, in some instances, although they sometimes end up
getting the most committed people that way.

The second way in which the Native governments have
gutted, been gutted by ANCSA, is that profit-orientation has really
eclipsed other concerns. We heard Byron Mallott yesterday say that
the focus on business is all consuming. And that's, perhaps, neces-
sary for the corporate executives to do their jobs. The problem

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1 is with all the leadership in the corporations, with all the assets
2 in the corporation, it is all business, and some of these
3 traditional concerns necessarily go begging. I recall an AFN
4 Convention several years ago when I was asked to help draft a reso-
5 lution concerning subsistence. And I did that. And then the pro-
6 ponents of the resolution had a very difficult time getting anyone
7 to sponsor it. The concerns that were being talked about at that
8 convention were, what about revenue sharing under 7(i). What about
9 mergers? How do you read a balance sheet? And things like that.
10 Subsistence was not a concern of the conferees that year.

11 Social services are not, apparently, functions of ANCSA
12 corporations. I once was told by an ANCSA corporate executive
13 that, we are not a charity, we're a business, and so we can't
14 engage in handing out scholarships, or helping out poor people, or
15 helping with burial expenses, or what have you. And in another
16 example, I was present at a meeting in a village once when there
17 was a discussion of whether certain lands should be developed, and
18 some people were saying, this is land that's valuable for our sub-
19 sistence in the long run, and we should go slowly on development.
20 A lawyer was there and advised them, if you don't make a decision,
21 you corporate board of directors, to pursue the most profitable
22 route, you'll be subject to a shareholder's derivative suit. You
23 must pursue profit above all. Now, I don't particularly agree with
24 that, but I think that's maybe an extreme example of what happens
25 with this profitmaking corporate form.

26 The corporate form not only ignores culture and the
27 sovereign status of Native people, it turns out to be a fairly
28 cumbersome form, we were told. And I think that's another problem
29 that was pointed out, even as a way of doing business, the particu-
30 lar corporate form under the state charter, is awfully cumbersome
31 for people to work with.

32 Now, we identified a number of possible solutions and I've
33 grouped them in a way that we didn't really identify them. We

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1 talked about solutions within ANCSA, and ANILCA, such as land bank,
2 and restrictions on alienation. We've only identified these. I
3 know you've talked about them in other sessions. We talked about
4 revision of ANCSA. One radical type of revision would be a restora-
5 tion act that would restore rights and lands to Native people.
6 Less radical examples would include extension of the 1991 date.
7 We've talked about Indian law solutions; tribal governments,
8 whether traditional or IRA; the idea of tribal governments solving
9 some or all of these problems, has been discussed extensively. And
10 I'd like to say more about that in a minute. The idea of regional
11 IRA's was also mentioned, although we have not discussed that ex-
12 tensively. We discussed state law solutions, such as municipal-
13 ties; we talked about the North Slope Borough; example, Mr. DuBay
14 talked about the advantages of municipalities; David Case intro-
15 duced the very innovative concept of an expanded home rule type
16 municipality that could address many of the problems identified.
17 Other state law solutions include conservation easements, coopera-
18 tives, non-profit corporations, the use of trusts, which we did not
19 discuss and I understand was raised at earlier meetings. And
20 finally, perhaps the most ambitious suggestion, one made in Ralph
21 Johnson's paper was that of a federal constitutional amendment to
22 address a number of these concerns.

23 We ended up yesterday with some very helpful criteria from
24 Tim Coulter. He suggested to us seven points that should demark,
25 or characterize any kind of solution to these ANCSA problems.
Those seven were that the solution must be with the consent of
Natives; two, that it can't be changed without Native consent;
three, that there need to be local options built into whatever
solution -- in other words, it has to be flexible; fourth, it has
to be legally enforceable against the United States, the State, and
others; fifth, it has to be negotiated under conditions of basic
fairness, that is, free of duress; sixth, it has -- he raised the
possibility of having some kind of external supervision, some

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1 outsiders who would insist on fairness, characterizing whatever
2 negotiation process resulted in a solution. And then finally, it
3 should remove the impediments to any kind of legal mechanisms at
4 the local level for people to do what they want. Maybe that's the
5 most important thing of all -- that the ultimate target is to find
6 a solution that lets local people seek their own solutions to their
7 own problems.

8 I'd like to say that I think the most important of those
9 are that the solution has to be suited to unique village
10 situations. That there is no blanket solution. This is an idea
11 that has permeated these discussions. I think Ralph Johnson men-
12 tioned it first, Tim Coulter mentioned it, Sheldon has mentioned
13 it. It's been widely insisted upon, and I think that if there's a
14 consensus on anything, that certainly is it.

15 The other point is that raised by Tim, and others, is that
16 whatever solution is arrived at, has to be of Native peoples' own
17 making. I think that some people characterize it as, go for
18 exactly what you want, don't settle for some solution that looks
19 pretty good that somebody else did, but carve your own solution
20 out. This was emphasized by Browning, by Charles Wilkinson, and a
21 number of people here throughout the last four days.

22 I might add to that, "follow your dream" kind of advice,
23 that your dream can be followed by an easy path, or a difficult
24 path, and I'd like to get into what I think is my recommendation.
25 And one reason for it is that I think that it is the kind of
recommendation that doesn't follow the hardest possible path. I'd
like to see us try to find ways to minimize the amount of legisla-
tion or constitutional change, or judicial battles that have to be
fought in order to get to a solution. So, I'd buy the, "follow
your dream" advice, but I'd temper it by saying, don't take on the
impossible, look at the easiest way to get to that result. But,
yes, identify the result based on a dream.

My recommendation is not a startling one, and I guess, I

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1 started by saying that it's a little bit arrogant because as an
2 alleged expert, I don't have to live with the consequences of the
3 recommendation. And secondly, I'm not going to flesh out all the
4 details, but I'll tell you what I think is the right solution based
5 on these assumptions and this advice that we've gotten over the
6 last several days.

7 I think that the solutions to the problems raised under
8 ANCSA, can most aggressively and effectively be addressed through a
9 revitalization of the concept of Native sovereignty. Now, one of
10 the most important pieces of advice we've gotten is, don't go for a
11 blanket solution. Sheldon characterized ANCSA, itself, as a
12 blanket solution. I don't think pursuing Native sovereignty
13 solutions, which boils down, primarily, to the tribal form, as it's
14 been referred to, is a blanket solution. I would like to insist
15 that it is a varietal form that could look very different in
16 different communities' hands. There is no single model. You have
17 this IRA constitution that has been waved around here a number of
18 times. If it was sitting out here, I would like to figuretively
19 throw it on the floor and say, let's start over. That is not
20 necessarily what we mean by tribal government. You know, the
21 problem is that we're burdened with what happened in the Lower 48.
22 We're burdened with these boiler-plate IRA constitutions and
23 examples of tribes that have worked, in some cases, very, very
24 well, and in some cases, not terribly well, and I don't mean worked
25 by my judgment, or not worked, I mean by the judgment of the people
who are subject to those governments. The fact that they haven't
worked means that they should be reshaped. It doesn't mean that
they should be rejected or rejected by you. Nor does it mean that
they -- the ones that have worked should be accepted. There...If I
were to lay a bundle of reeds down in front of Indians from a
number of tribes throughout the country and say, well, make a
basket, you'd end up with things that looked very different,
different designs, different shapes, different functions, and

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1 they'd all be baskets. But...And nobody would be terribly
2 surprised by that. But if you say, make a tribal government, they
3 would look very, very much the same because people have a pre-
4 conceived notion of where you have to end up. And I think that
5 rather than get hung up on a minf set that is derived from the
6 Lower 48, or indeed, from the pre-ANCSA experience in Alaska with
7 tribal governments, we ought to start anew. Learn from the
8 mistakes of others, learn from the successes of others, but test it
9 against the (INDISCERNIBLE) of the Alaska Native or the particular
10 village set of needs.

11 I think there are a lot of advantages to this. And I'd
12 just like to run through some of the advantages of pursuing the
13 tribal form, and then I'll tell you what I see as some of the
14 problems. First of all, as far as land goes, if land is held by a
15 tribe, it is free of judgments, it can't be transferred without
16 Federal consent. Some would say that's a disadvantage, and I think
17 it was seen as a disadvantage by a number of people who lobbied for
18 ANCSA. That we're going to free the land up and have it
19 transferable at the will of the people. It turns out that may not
20 be such a good idea. That's for you to decide though. If it is
21 held in trust, if land is held in trust, it's free of property
22 taxation. There is a problem getting land into trusts since now it
23 is subject to the will of the Secretary. If you're not an IRA, you
24 may not even be able to get it in if the Secretary wants to put it
25 into trust. If you are an IRA, the Secretary's will controls,
absent some kind of legislative change. How important is it to
have in trust? Well, if you want to avoid property taxes, it's
very important. Right now you don't have a very significant burden
of property tax any place in the State of Alaska, but that may
change.

The area of membership is extremely important. I think,
and I tried to emphasize it in the list of problems, is that non-
Natives will be able to own interests in Native lands and

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1 businesses in the future. Non-Natives can be kept out under the
2 exercise of sovereignty solution, the revitalization of the tribal
form.

3 Secondly, it's hereditary. You solve the problem of the
4 people born after 1971 being effectively a second-class of Alaska
5 Natives, or maybe no Alaska Natives at all within the ANCSA context.

6 And finally, the qualifications for membership are set by
7 the group, the community that wants to maintain its cultural
8 continuity, not by others, not by a legislature, not by Congress.
9 And as far as business goes, one of the criticisms of the
10 suggestion I am making is perhaps that tribes' governments
11 generally are not in the best position to do business. My answer
12 to that is that they don't have to do business directly. They
13 should be in ownership of all the land. They should be the source
14 of corporate authority. That means that the corporations that do
15 business under Native ownership shouldn't be state chartered
16 corporations. If there is an allegiance, if there is a public
17 interest expressed through the organic document of a business, it
18 should be a public interest, or a derivation of authority that
19 comes from the people and the land, in particular, ought to be
20 ultimately owned by the government. And so I say, yes, include the
21 business under the umbrella of the government, and then turn around
22 and separate it, functionally, as far as possible from the politics
23 of the community. The community through its political leaders sets
24 some basic goals, limits transactions in land, and places other
25 limits on the public interest and then turns the business over to a
board and managers and so forth, in a corporate form. These
corporations very significantly will not be subject to federal
income tax. They are not taxable entities under the Internal
Revenue Code. Now, this doesn't matter so much to the unsuccessful
corporations; the protection from attachment and judgment and so on
does. Protection of the land does to both. But to a successful
corporation, not being subject to income tax, is a tremendous

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1 advantage. Ask yourself, what Fortune 500 corporation would not
2 take advantage of doing its business under a non-taxable entity if
3 it were able to do so. For the successful corporations, and I
4 include in this regional corporations, I can't conceive why they
5 wouldn't consider putting their assets and doing their business
6 under the tribal form.

7 The funds are not necessarily...Funds in these businesses,
8 it was suggested, may be subject to Secretarial control. I don't
9 think they are, unless they come from trust assets, and that may be
10 a reason not to insist that assets are put in a trust status.

11 I think that the structure of all this could be simpler.

12 MR. BERGER: Could you repeat
13 that last statement? You threw me off at the last minute.

14 MR. GETCHES: Possible disad-
15 vantage of putting resources in trust may be that the income
16 derived from those resources would be held in trust and subject to
17 Secretarial control, Secretary of Interior's control. And those
18 resources are not, if they come from assets that are free of the
19 trust. The structure that I'm suggesting, I submit, can be much
20 simpler than the structures now. You can have a traditional govern-
21 ment with or without a governing document, with a very simple
22 governing document. Written or unwritten, IRA, or traditional, and
23 even the unwritten constitution of the Navajo tribe, we heard from
24 Larry Aschenbrenner, is enough for that tribe to charter corpora-
25 tions that do millions of dollars of business a year. Yet the
tribe, itself, doesn't even have a constitution fully recognized by
the United States Government as a sovereign nation.

Now, the advantage, I think, to this form is that the
ultimate control of both land and governance...We're here to talk
about alternatives to land and governance. I like that title, and
like some people who commented on it the first day, is that land
and governance are under the same umbrella. They're under the
control of the same body, the same entity, the people, the

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1 community is the ultimate control.

2 Finally, there's an advantage to the tribal form in that
3 it also can exercise a certain amount of local government power.
4 There's an issue whether it can contract with the State for
5 services like jails, fire protection, social welfare, and the like,
6 and David Case and I were looking at this report of the Alaska
7 Statehood Commission. There is a statement in there indicating
8 that a racially defined institution, like a tribe, is not eligible
9 for contract. I, frankly, challenge that. It may take a lawsuit,
10 it may take a change in state law, but I think that's something
11 that I ought to indicate as a problem to what I'm suggesting.

12 You can have courts under this tribal form, and I put
13 courts in quotes because I don't think you need to have a guy in a
14 black dress to decide these disputes. Your court can be a very
15 traditional affair with elders, and so forth, exercising customary
16 forms and perpetuating an old, and effective way, of resolving
17 disputes. At the same time, this body can do some very moderate
18 governmental things like taxation of development of property in the
19 area, and raise revenues itself, be a party to, or beneficiary of
20 development that is taking place in its midst. The biggest problem
21 of all about local government, and we can't offer a ready-made
22 solution to it, is the scope of jurisdiction. Where is Indian
23 country? Where lies the governmental power of an Alaskan Native
24 tribal organization? It's a problem that hasn't been answered
25 yet. Once it's answered, we still have the problem that Alaska is
a Public Law 280 State. There are very serious problems with
exercising governmental control, and I don't mean to minimize
them.

26 I think there are great advantages in terms of resource
27 protection to tribes exercising their governmental power, regula-
28 tion of members conduct, and control of resource use and of land
29 use is essential if subsistence and other values are going to be
30 preserved.

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1 I guess I would like to end by saying, I don't -- I would
2 like to hear a discussion of why we should keep ANCSA corporations
3 around at all. I know there are some answers why some of them
4 should be kept, but I think it's a legitimate topic of discussion.
5 If we went through the tribal form, you've got ways you can do
6 business through tribally chartered corporations, the IRA itself
7 allows for two types of tribal organization, a tribal government,
8 and Section 16 business corporations. I think that there are
9 benefits available to regions, too, that can be derived from the
10 tribal form, land holding and non-taxability have indicated or
11 through prime ones. You might consider a form where you have a
12 regional IRA with all of the control and a board of directors, but
13 the ownership proportionately held by the tribal organizations
14 within that region.

15 The tremendous advantage of all of this is that you don't
16 need much legislation. In fact, you can do almost everything I've
17 indicated with no state legislation, no federal legislation. It
18 will take some tribal legislation, it will take some exercise of
19 Secretarial discretion. It may take a lawsuit here and there to
20 get people off dead-center who ought to be exercising their judg-
21 ment correctly. Now, if you are going to have law changes, the
22 most desirable ones would be a change in Public Law 280; a better
23 definition of Indian country in Alaska; provision for being able to
24 take land in trust in Alaska, not only in the IRA's but in
25 traditional governments; limitation on the Secretarial discretion
to refuse taking land in trust, would be desirable. Perhaps a
removal of the requirement that the Secretary approves attorneys'
contracts, the issue raised by Browning the other day, would be
desirable. Perhaps state legislation specifically authorizing the
state to enter into contracts with tribes as municipalities, would
be desirable. All of these are desirable pieces of legislation.
None of them are essential to taking action before 1991 to use the
sovereignty that is lying there in (INDISCERNIBLE), dormant, right

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1 now, ready to have life breathed into it to protect Alaska Natives
2 and their resources from the threat of 1991. I don't offer this as
3 a panacea, and I don't offer it as an easy solution. It'll only
4 return what you put into it, but I'd like to return to what has now
5 been characterized as the Pipestem Doctrine, and say that I think
6 Browning is right, that you have the sovereignty lying there and
7 you do need to pick it up and breathe life into it according to the
8 values of Alaska Natives. I think that there's a great risk, like
9 that ice out there, of it breaking up and flowing away and melting,
10 come the spring of 1991. But it doesn't have to happen if action's
11 taken now, and all the tools are here.

12 MR. BERGER: Can I ask you a
13 couple of questions, David? The -- when you say putting the land,
14 ANCSA corporation lands in trust, you mean in trusts so that the
15 legal title is held by the Secretary of Interior?

16 MR. GETCHES: That's right. When
17 I referred to trust, that's what I meant.

18 MR. BERGER: Yeah. Well, the
19 advantage of that is that secures immunity from taxation, but if
20 the tribes are sovereign and cannot sue, or be sued, could not they
21 hold the land in fee? Would there be any advantage to that, or
22 would the Non-Intercourse Act still require Secretarial approval
23 for any dealing in the land anyway?

24 MR. GETCHES: It's my opinion --
25 I'll bounce it off some of my colleagues here -- I believe that the
26 Non-Intercourse Act protects the land whether it's in trust or not.

27 MR. BERGER: So, that if the land
28 is held in fee, the Non-Intercourse Act still applies, so you might
29 as well put it in trust. Is that the point?

30 MR. GETCHES: The advantage of
31 the trust is the additional protections you would have from
32 taxation. Ralph or Charles, maybe you want to comment further. Do
33 you think it's correct that there is this protection?



1 MR. BERGER: Well, let me ask you
2 this? If the...And I...The one thing I've learned chairing this
3 Commission is you shouldn't be afraid to ask the stupid questions.
4 And maybe this is a stupid question, but if the tribe is sovereign
5 and cannot, because it is sovereign, be sue or be sued, then if it
6 holds the land in fee, wouldn't that immunity from sue to tach
7 (ph). Perhaps I'm just slow on the uptake this morning, but...

8 MR. GETCHES: Yes. I think that
9 that may well be an adequate protection from attachment, if the
10 tribe is the owner of the lands. David do you...

11 MR. CASE: (INDISCERNIBLE, OFF
12 MIKE) is you may have to have a lawsuit to exercise that
13 protection, and that's expense, uncertainty, and all the rest, and
14 if it is in trust, there's never a question. And so it's, it seems
15 to me, it's largely impractical question. And there is some -- I
16 don't have -- I share your view of the Non-Intercourse Act, but,
17 you know, the department that might very well be charged with inter-
18 preting that thing said it doesn't apply after -- to ANCSA lands.
19 And that's, I think, a legal consideration, a tactical one to take
20 into account.

21 MR. BERGER: Let me try something
22 else on David, David Getches, and then Case. The -- in Australia,
23 the setup in the Northern Territory -- and they, of course, are at
24 the very early stages of this thing. I mean they only got into the
25 Land Claims business in the 1970's, and they're still trying to
figure out, in a sense, what it's all about. But in the Northern
Territory, they have land trusts, and the elders are the trustees.
Now, they're appointed by the Minister of Aboriginal Affairs and
they can be removed by him, so it is a bit of a showcase
but...perhaps, very little substance. But suppose ANCSA
corporations were to transfer the land to groups of elders, in each
village, who would hold it in trust for the whole of the village.
Is that possible, or is that -- does that mean that you have just

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1 managed to get rid of your sovereign immunity without even having a
2 lawsuit over it?

3 MR. GETCHES: I think that's a
4 very interesting concept. The question is, whose trust is it? Is
5 it a trust under state law, or are you anticipating that it would
6 be something created under the (INDISCERNIBLE) sovereignty of the
7 tribal community.

8 MR. BERGER: Well, I'm -- I think
9 either is possible, and I'm just curious to see what your reaction
10 might be. The idea, I suppose, really is to get away from
11 Secretarial supervision, and perhaps that cannot be achieved
12 without legislative amendment anyway.

13 MR. EDWARDSON: Under ANILCA that
14 is possible. Under ANILCA, that you can do these types of -- what
15 ANILCA calls for is covenants, but these covenants have to be
16 written by the village. So, whatever is in your covenant that you
17 develop under ANILCA, than that type of a trusted condition could
18 then be passed on from a Federal covenant authorizing Federal
19 covenants.

20 MR. BERGER: Okay. We'll look
21 into that. Do you know anything about that, David?

22 MR. GETCHES: I've read that, but
23 I don't know anything about it, more than what Charlie said.

24 MR. BERGER: Okay. Well, we'll
25 look into that. I have one or two more questions. The -- oh,
yes. You're Deputy Commissioner of lands in Colorado, I believe,
or something like that.

MR. GETCHES: Executive Director,
we call it. But it's a similar thing, yeah.

MR. BERGER: Okay. Executive
Director. Well, I'm sorry. Could you just tell me about the
relations of the State government of Colorado with Indian tribes in
Colorado. Do they receive revenue sharing? Does your government

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1 make contracts with them? Can you tell me anything about that?
2 MR. GETCHES: Yes. I --
3 Colorado, fortunately for many, has extraordinarily good relations
4 with the tribes, and has historically; and I guess I have to say in
5 recent history, if you look back very far, it's a terrible history
6 of mistreatment. But in the recent few generations, the state has
7 gotten along very well, partly, I guess, because of a history of
8 repression that has given rise to some guilt, partly because there
9 is no present threat to the non-Indian community economically.
10 That is, there are no resources that the tribe has that they want.
11 There is no threat that the tribe is going to impose serious taxes
12 that would come into conflict with the State. The numbers of the
13 Indians are low. There is possibly a water problem, but currently
14 the Indians and the State are working together to solve that water
15 problem through a structural solution, the building of a dam.
16 There are a number of cooperative agreements. One of the first
17 ones was negotiated by NARF several years ago, that resulted in a
18 recognition of the tribes ability to manage fish and wildlife
19 within their reservation. And it's a very simple agreement. It
20 could have led to the decades of litigation that has plagued the
21 State of Washington, but the attitudes were different. The
22 attitudes, primarily on the side of the State. The tribe got what
23 it wanted in the agreement, and it's a very fair agreement, from
24 both sides. The contrast, that I see, is with other states where I
25 have worked, not within the state but from without, on behalf of
Indian tribes. There you see relations marked by a much greater
hostility and I think the difference is primarily that there is an
economic threat. A threat that the Indian tribe will change some-
thing in the status quo, and that somehow threatens the people. In
Washington, I think that fishing is so important commercially that
people feel economically threatened by the Indians' attempt to
fish. And that is changing something. The status quo ante in the
mid '60's was that Indians weren't fishing, they had been

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1 effectively repressed in their traditional treaty guaranty right to
2 fish. But then when they started asserting that right, it was a
3 change, and it was threatening, and it's been resisted ever since
4 at the cost of millions of dollars on both sides, and tremendous
5 loss of mutual respect and human understanding. Good state
6 relations, I think, are essential. They have to be built, though,
7 on a continuous history to deal. And I think that you have a real
8 advantage here in Alaska because the State is used to dealing with
9 Native people, Native rights, and the status quo is one of at least
10 a grudging recognition that those rights are there. It's not
11 anything new that's being sprung on the State. So, I think you can
12 look forward to good relations so long as the lines of
13 communication are open, and Native people keep communicating that
14 they are in possession of rights of sovereignty, and resources, and
15 the like.

12 MR. BERGER: I know some of you
13 have had your hands up and I'll come to you in a minute, but
14 forgive me if I just ask David another couple of questions. In the
15 hearings that I've had in the villages, again and again, people
16 have said, why do the regional corporations hold the subsurface
17 estate to our village lands? And, again and again, they say, why
18 can't we have the subsurface estate as well as the surface estate.
19 If there were to be a transfer of Native corporate lands to the
20 villages, the village corporations can transfer the surface, the
21 regional corporations would have to transfer the subsurface. And
22 the regional corporations, more than the village corporations, have
23 shareholders who are all over the place. In Oklahoma, in New York
24 City, and somebody told me there was one in Finland or some place,
25 and that brings us the problem, and maybe you would comment on
this; is this something that should be done by congressional enact-
ment if this is deemed to be in the interest of Native people, if
this is what they want? That would mean that shareholders rights
might be disregarded. Now, people didn't pay for the shares in the

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1 first place, so there is an argument that legislation can override
2 their rights. Leaving the legalities aside, we've been into that,
3 and I... Or is something that should be left to each village
4 corporation by vote of their shareholders to say, well, we want to
5 transfer our lands, or we don't, and if the regional corporation
6 was prepared to transfer the lands by vote of its shareholders, it
7 would mean -- you see you've got this category of at-large share-
8 holders who don't have any shares in a village, who have no
9 connection with a village. I mean this is an omelete that to
10 unscramble is...

11 MR. GETCHES: Well, I think
12 that's right. It is an omelete, and as you work through the
13 question, I think we all realize it goes well beyond the surface,
14 subsurface dichotomy, or the at-large or enrolled village share-
15 holder problem. It is a problem of this complex web of corporate
16 elegance that was created by Congress that is very hard to
17 unravel. Seems to me that there is a solution to that, and I'm not
18 going to tell you what it is, by the way, because I don't know,
19 but, you know, you have the wrong experts here to ask the corporate
20 question. But if corporations can be taken over by the sharks of
21 other corporations is regularly done, it's very popular now, surely
22 there are corporate lawyers who could find a way to protect the
23 interests or effectively disregard them, as the case may be, of
24 minority shareholders in a transaction that would transfer control
25 ownership of assets of ANCSA corporations to tribal entities. It
ain't easy, but I think it can be done. It may mean some money has
to change hands, that some people have to be paid off in the
process, in order for their rights to be recognized and protected.

I just wanted to say my answer is, if there's a will,
there, there must be a way under corporate law.

MR. BERGER: Yeah. Well, we went
into that last month at great length with a number of corporate
lawyers who were very, very helpful, and we at least understand the

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1 problems, and conceivably we may come up with some solution.

2 Well, Mary Miller, I said you would be next. You might
3 get that microphone from Ralph Johnson.

4 UNIDENTIFIED: (INDISCERNIBLE,
5 OFF MIKE COMMENT)

6 MR. BERGER: Why don't you come
7 and sit at the table, sir? You're welcome, if you want to come and
8 sit by Willie.

9 UNIDENTIFIED: (INDISCERNIBLE,
10 OFF MIKE COMMENTS)

11 (TAPE 11, SIDE B)
12 UNIDENTIFIED: (INDISCERNIBLE,
13 OFF MIKE COMMENTS) in World War II, he called that the Alaska
14 Territory (INDISCERNIBLE). I worked with, together William Egan.
15 That's a good point. Right now on that -- I got to tell you truth,
16 everybody on that, young ones, will not work together. (INDISCERN-
17 IBLE) well, let's work together. I'm not going to. Not any more.
18 I won't lie like this all the time. I like to work with the
19 (INDISCERNIBLE) Sam, George. I like to work with together. (IN-
20 DISCERNIBLE)

21 MR. BERGER: Well, thank you,
22 sir. And I remember the hospitality you extended to us when Mr.
23 Case and I were in Akiachak, and I want to thank you again for
24 that. Where was I? Mary Miller, you're...

25 MS. MILLER: What I was going to
say would have been a very good way to begin this day, because some
of the frustrations I was feeling are starting to be addressed, and
set aside.

What I was going to say was that the last hour of
discussion yesterday left me very, very frustrated because I feel
like, the last hour of yesterday, we really weren't doing justice
to the real potential of tribal governments in Alaska. The closest
thing we came to yesterday was the brief comments that -- about



1 what we can accomplish through tribal legislation that Mr. Pipestem
2 eluded to very briefly. The rest of the time we tap danced around
3 this entire topic, and I don't like to dance, much less tap dance.

4 One thing that I was wishing, and again, some of my, the
5 frustrations and concerns I was feeling very deeply yesterday at
6 the end of the day, are being addressed now. But one thing I was
7 wishing was that all of the Alaska Native population could be
8 sitting in this room with us. Completely surrounding us because I
9 felt like there were a lot of words thrown back and forth.
10 Sometimes, and most often times, I think with good intentions, but
11 often without any conscious realization that you're talking about
12 very real people here.

13 I believe that we are finally speaking with some vision
14 today. Where we lacked it yesterday, hopefully that we are going
15 to continue to have vision in the words that we talk about today.
16 Because I believe that the range of options available to us through
17 the tribal governments addresses the matter of our hearts, which is
18 a very strong desire to realize a maximum, maximum permanent pro-
19 tection of our land base, maximum political control in our
20 communities, and the protection of our subsistence lifestyle, and
21 overall the preservation of our very identity. One option that we
22 have not addressed in any great length, which I hope we will today,
23 is the prospect of placing our ANCSA lands in trust for our member-
24 ship through our tribal governments, creating our own trust. This
25 is forging new ground in Alaska, but I believe that the whole
intent of this very Roundtable, these four days, is to allow
ourselves to dream about new possibilities.

I listened to every testimony that was given in our
region. The elders spoke about traditional governments and how
they want to see the IRA protect their lands. Through the
expression of their hearts, they are providing direction to us,
those of us who are involved in planning for our future through
discussions such as this. Our people are depending on this

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1 Commission. They will watch it closely, and have faith that the
2 findings and recommendations of the Commission will help them
realize their dream of survival.

3 Finally, I would like to state for the record, Judge
4 Berger, that our people collectively, and I personally, have a
5 great deal of respect for you. You have a great capacity to hear
6 and understand us, and at this moment, and throughout the life of
7 this Commission, I believe that the recommendations and findings
8 will be stated in terms of what is in the best interest of the
Alaska Native people. Thank you.

9 MR. BERGER: Thank you, Mary.
(APPLAUSE)

10 MR. BERGER: Well, Reid, you're
11 next. I thought you had your hand up.

12 MR. CHAMBERS: (INDISCERNIBLE,
13 OFF MIKE COMMENT) had in mind really. David and I had been
14 conversing for this for some hours this morning before he spoke,
15 and I guess what I'm not convinced of is that you have to
16 completely unscramble the ANCSA corporations. I think that there
17 are two issues that are involved here, and I guess -- I don't know
18 whether this is the group that should discuss them, because I, you
19 know, we don't really, any of the lawyers here, I don't believe,
20 have the expertise to figure out how to take over corporations or
21 devise complicated merger and acquisition strategies, or that kind
22 of thing. That's not what we do. But I think there is, there
23 really is no question in my mind, after hearing these four days of
24 testimony that you've had, and you summarized the concerns that
25 you've heard as you've gone to 52 villages, that you've simply got
to devise a way. You, the Commission, the Native people of Alaska,
and together, with them, the State of Alaska, the non-Native
citizens here, and the Congress of the United States -- because I
think that is where it's ultimately going to go -- simply have to
devise a way to revitalize the tribal governmental structures, or

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1 to -- maybe not to revitalize them, just make people aware of the
2 structures that are there. That it's going to be impossible, in my
3 judgment, for the Native people of Alaska to control subsistence,
4 to control their land, and to control their destiny without strong
5 tribal governmental structures. There just can't be any question
6 about that. The question gets raised as to whether those
7 structures work in other places. The answer is, I think, that in
8 the fifteen years that I've been practicing law, representing
9 tribes in the Lower 48, and working with them -- first with the
10 Native American Rights Fund when David was Director of it;
11 secondly, when I was the chief Indian lawyer at the Interior Depart-
12 ment, and for the last eight years, in private practice. I think
13 there's been tremendous strides made by Native governments in the
14 Lower 48. The kind of strides that Browning has talked about with
15 the Sac and Fox. The kind of strides that Larry Aschenbrenner
16 talked about with the Navajo, or that I mentioned with Fort Peck .
17 I mean that these governments are much stronger and more vital and
18 successful today, and to the extent that they're not, they're
19 trying. And that there is simply no alternative, I suggest, for
20 the Native people of Alaska, or for the people anywhere in the
21 world, but to try to govern themselves. That's a moral imperative,
22 that's a social imperative. The fact, for example, that it's not
23 working very well, as far as we can see, in Iran right now, doesn't
24 mean that the government of Iran should be toppled and, you know,
25 some other power should come in there and govern Iran. That's
simply not an option in the 20th Century. And similarly, it's not
an option here in Alaska, or any place else. The structures have
to be set up so that people can do that. And I think that that --
I happen to believe that the structures are there. I think that
the jurisdiction, in my mind, does extend, as a matter of law, to
any land that's now owned by a regional or a village corporation.
By a corporation of Native people that's within the area of a
village government. I mean, I think ANCSA did nothing to abolish

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1 village governments. Village governments are, as Dave Case has so
2 ably pointed out in his book, in his articles, village governments
3 are the traditional governing structure in Alaska. They are the
4 Alaska equivalent of the Navajo tribe and the Sac and Fox tribe,
5 and the (INDISCERNIBLE) and Sioux tribes at Fort Peck, and they are
6 the entities that hold that sovereignty. It's never been
7 extinguished, and you have it. You've got to exercise it, and I
8 think, just like you don't need a reservation to do that. I think
9 an Indian tribe in the Lower 48 has jurisdiction over a lot of land
10 on its reservation, or land owned by fee by an Indian housing
11 authority on its reservation. Or even if there's not a
12 reservation, and there isn't one at Lake Travers in South Dakota,
13 the courts have still held that an Indian tribe has juris-

14 diction as a government over Indian owned land that's used for
15 Indian purposes. That's a dependent Indian community. I don't
16 think you necessarily need to retransfer ANCSA lands to village
17 corporations to have that, or to village governments to have that.
18 Now, the thing I do have some doubt about, and I guess
19 here I'm truthfully not -- I'm much more uncertain about it than I
20 was four days ago. I've really listened to, particularly listened
21 to all of you as you've talked to Charlie, to Spud, to Willie, and
22 Sam, when he was here yesterday, to Sheldon, a great deal. He's
23 been talking for four days. To Byron, who unfortunately isn't here
24 today. I'm much less certain whether you need to take upon
25 yourselves, as tribal governments, the necessity to own this land
as tribal lands. That on the Fort Peck Reservation, which I
represent in the Lower 48...

MR. BERGER: What state is that?

MR. CHAMBERS: That's in Montana,
Tom. It's up in the northern border of Montana. I'm sure it's
colder there this morning than it has been here this week. That
it's right up there on the Missouri River, between the Missouri
River and the Canadian border. Near Poplar, Montana is the capital

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1 of that Reservation.
2 Most of the land on that reservation is not owned by the
3 Fort Peck tribe. Some is, and increasingly over the years, the
4 tribe has been acquiring land on the reservation, but most of the
5 land is owned either by non-Indians who come on there to live, or
6 is owned by Indians in individual trust status as allotments. But
7 there's no question as you've got a construction company, or a
8 store that's owned by Indians on the reservation, or an Indian
9 allottee who wants to do some oil and gas drilling on the
10 reservation, but the tribe, as a government, has authority over
11 him, or her. And, so, that there's really, in my mind I have an
12 uneasy suspicion that by also putting on yourselves the burden of
13 unscrambling this omelete that Tom was talking about, or this ANCSA
14 omelete of corporations, regional corporations, village corpora-
15 tions, and trying to get that unscrambled is not going to be a
16 simple process, it's not one -- I'm not confident that you can do
17 it, although I'm not a -- I haven't messed much with corporate law
18 in my practice. I studied it a little bit in law school, but I
19 really, but I have some sense that there are some dissenters'
20 rights that I think Congress could overrule them. I think Congress
21 and the exercise of its plenary power could overrule the
22 dissenters' right, or could pay people off if they didn't want to
23 sell. I think there's no problem if all the stockholders in the
24 village got together, and said, look, we want to transfer this now
25 to the village government. There's no question -- I don't think
there's much question they could do that. I guess there's a little
bit of question as to whether that would be a corporate waste or
something. But I think -- that's not the problem. Where you have
a voluntary, unanimous concensus decision, I think you can almost
surely implement that in your villages. But I have real doubt that
you can implement...As again, stockholders living in distant
places, in Phoenix, Los Angeles, God save us if there's some in
Finland. I mean, you know, you'll be tied up in the courts with

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1 shareholders, derivative suits for a long time. And you've got to
2 ask yourselves, I think, whether it's worth doing that. I feel,
3 like David said, and I guess David was reflecting some discussions
4 we had this morning on this, I don't think in my experience with
5 tribal government in the Lower 48, that governments are very good
6 at running businesses. I think that there are a few exceptions,
7 but I think -- and I told you that the tribe I represent owns the
8 largest corporate employer in Montana in the private sphere. But
9 the way they manage it is that they have a long term irrevocable
10 management contract with an outside firm that comes in and does
11 it. And the tribal governing body can't get in the middle of
12 employment decisions, can't get in the middle of business
13 decisions. The manager does that and it does employ Indians.
14 There's an Indian preference clause in the agreement, so there's no
15 question about Indians being employed. But the question about
16 which Indian gets employed, or who gets layed off, or that kind of
17 thing, that's a business decision. I just don't, I mean I think
18 governing bodies are simply too political to make those kinds of
19 decisions effectively. I would not, if it were 1970 and I were
20 advising you, I wouldn't dream of advising anyone to set up ANCSA
21 the way it was set up. I mean, it was set up to create the
22 problems that we see today. I mean it was set up -- there's a
23 tremendous fragmentation of power in ANCSA. I mean you don't have
24 -- you have 12 regional corporations, not three, or seven. You
25 have 208 village corporations, you have stockholders all over the
place. I mean it was -- I don't mean to attribute to Congress
malice, I don't have any evidence to say that it was malicious, but
it certainly worked out as a divide and conquer strategy. And what
you've got now is you've got people who will resist with a knife
between their teeth, you're doing anything to mess with their
shares. And -- because they don't live in your village, and you've
got the whole non-resident problem that the Allotment Act set out
to pulverize Indian tribes in the Lower 48. But the thing to

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1 remember is that Lower 48 Indian tribes survived the Allotment
2 Act. It was almost a hundred years ago, and they're still there,
3 those tribes. And you will still be here a hundred years from now
4 whether you have ANCSA corporations or not, because you're strong
5 and you're vital, if you exercise your governmental powers over
6 these corporations, you will be here. And you can do that without
7 taking upon yourself the massive, complicated mess -- I mean it'll
8 cost \$50 million in legal fees if you can find lawyers to
9 unscramble the ANCSA mess.

10 MR. BERGER: If we can find the
11 lawyers.

12 MR. CHAMBERS: Huh?

13 MR. BERGER: I'm sure they can
14 find the lawyers.

15 MR. CHAMBERS: Yeah. They'll be
16 lining up for you. They won't be us, we don't know how to do
17 that. But there will be others. That's right. But I mean, I
18 think that just like the Fort Peck tribe, and the Sac...I mean, I
19 don't know what you're -- I mean, I know that you have Allotments
20 out there at Sac and Fox, I mean there's a strong thriving tribe in
21 Oklahoma that's overcome that problem. It's not such a problem
22 that you can't overcome it, and I think you might be better off,
23 I'm not sure about this, but I think you might be better off not
24 trying to take on all of the hocus pocus of corporate law and
25 jargon, and the better way to take it on is to organize your govern-
ment and start exercising this authority. If you got to go to
Congress, go to Congress to get it confirmed, but I think you've
got it. And do some fairly simple things with ANCSA. I think
there are two very simple things you could do with ANCSA that would
work, that wouldn't get all the people with the knives between
their teeth taking you on, that wouldn't get the divisiveness in
your communities between stockholders and subsistence village
people that you may otherwise have. One thing is to extend

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1 forever, the restriction on alienation of the ANCSA shares. I
2 mean, there's precedent for doing that in the Allotment Acts; there
3 are, you know, 28 -- well, maybe there's six Supreme Court cases,
4 right? I mean six Supreme Court cases saying Congress can do that,
5 no Constitutional problem with doing that. And you just extend
6 that forever, and the second thing you should be giving some
7 thought to doing is refunding ANCSA. I don't mean with your own
8 pockets. I mean you should go to Congress and you should go to the
9 State and you should say that ANCSA was too little, it did create
10 this Afterborn shareholder problem. There should be a permanent
11 funding mechanism to make sure that you don't get into the
12 situation where your children and your grandchildren don't own
13 stock until, heaven forbid, you die. Nobody wants that kind of
14 system. And I think you can make a case for that. I think you can
15 make a pretty strong case for it. I think you can go to Congress,
16 and to the State, and you can say, look, there are enormous mineral
17 leasing revenues up here in this State. Right now, the State gets
18 what? David and Charles would know more than I, being the experts
19 in public land law; that's something like 90%? Ninety percent of
20 the revenues from leasing of the public land in Alaska. They're
21 enormous. I mean what if the State got 88%? Instead of getting
22 10%, the Federal Government got 8% and each ponied up 2% for a
23 permanent sinking fund for ANCSA that could be used if village
24 corporations wanted to use it to retire their stock. I think they
25 could devise that. If you wanted to use it to set up that fund so
that more money got put into the corporations, or that each Native,
when he or she became 18, got a comparable piece of stock as he
became 18, or something like that. But it could be done. That's
where I put the imagination. And I'd make a powerful case to
Congress that they thought they gave you a lot of money, huh? A
billion dollars for 80,000 Natives. Well, that's not much money.
That's not much money. I mean forget what you gave up for it. It
probably isn't enough money for what you gave up, but it's

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1 certainly not much money if the objective of ANCSA was economic
2 self-sufficiency for the Native community in Alaska. Because, I
3 mean, quite clearly, by all the measurement -- I've read the 1985
4 draft study that the Interior Department commissioned -- by all the
5 social and economic measurements, you've done better over the last
6 12 years, but there are still substantial disparities between
7 Native groups, and non-Native groups in this State. And that if
8 the objective is to bring Native people over a generation, or some
9 period like that, up to the standard, health-wise, and job-wise,
10 that non-Natives in this State have -- more has to be done.
11 Inflation came with ANCSA; terrible legal costs came with ANCSA,
12 and it was Congress' fault, 'cause Congress drove up, drew up a
13 settlement that didn't have precision to it, that was ambiguous.
14 Mostly Congress set up a settlement where you fought among your-
15 selves. I bet if you took those \$50 million someone's talking
16 about on legal costs, why, most of them were spent by such and such
17 regional corporations suing another regional corporation. An awful
18 lot of it was spent that way. And that's inevitable. I mean
19 that's quite proper corporate activity if you're dealing in a
20 situation where Congress has set up different entities to go at
21 each other. It disrupts the kind of unity that this gentleman in
22 the back spoke of so eloquently. You got to get that unity back,
23 and you've got to stop letting Congress fund something that's going
24 to put you at each others throats. And I think, again, some kind
25 of permanent sinking fund, a case can be made for that. It ought
to be taken to Congress, it ought to be taken soon, you ought to
get to the State and try to get them to pony some of it up. And
that's the way to go after ANCSA, I think, rather than trying to
devise complicated situations that will enmesh you, I promise you,
will enmesh you in fruitless, and hopeless, and protracted, and
complicated legal battles until, what Spud was saying -- the lady
coming up to him and saying, Spud, what's an IRA? And he says,
well, it's just your Traditional Village Government. And she says,

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1 "oh, I understand." God, save us if somebody's got to come up and
2 say, "Spud, you know, what's a Section 23 class action derivative
3 suit?" And so on, yakatiyak. I mean, I don't know what that is,
4 and I went to law school. So I think it's, I think there's a whole
5 other route to take here, but I think the most important route to
6 take is the route that some of you are now taking of organizing
7 your village structures. I think that deserves every possible
8 support. Thank you, Tom.

9 MR. BERGER: Thank you, Reid.
10 We're going to stop for coffee in a minute, but Bob Blodgett who's
11 a long time resident of Alaska asked if he could say a few words,
12 so we'll give you the last word before coffee, Mr. Blodgett, if
13 you'd like to move up and take Charlie's microphone and -- in fact,
14 keep it so the rest of the...

15 UNIDENTIFIED: (INDISCERNIBLE,
16 OFF MIKE COMMENT)

17 MR. BERGER: Go ahead.

18 MR. BLODGETT: Thank you, Judge
19 Berger, members of the Board, and guests. My thoughts are as
20 scattered as a bunch of clay pigeons in a shooting gallery. As I
21 hear you people air your concerns and your philosophies in dealing
22 with the many faceted problems that confront us as a people. We,
23 all of the people that are encumbant in this real estate. It's
24 many faceted figure, like a (INDISCERNIBLE) the problems. They
25 shine as the problem comes to light, and then moves around and out
of sight, out of mind.

The -- with the advent of Statehood, the Northwest Senate
District, Senate District J, were yielding less than \$1 million per
year in revenues into the State treasury of Alaska. Today, Senate
District J is yielding between 85 and 90% of the revenues as a
State, and I strongly suspect that with the development of small
oil fields that exists on the North Slope that were discovered by
Arctic contractors in the exploration of Navy Patrol and Reserve

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1 for the -- substantial network of gathering lines from those
2 marginal fields, that oil be fed on into the Trans Alaska Pipe-
3 line; so we can expect revenues to continue. Not at the level they
4 do now as a result of State lands, 'cause those are Federal lands
5 and many of those lands are Native lands.

6 Now the -- in 1979, I was caught up in the struggle as a
7 member of the Legislature, and therefore, my constituents, in the
8 unorganized Borough, I was there, in essence, their Borough
9 Assemblyman. 'Cause their legislature is to function as a Borough
10 Assembly for the unorganized Borough. One of my constituents, Lucy
11 Avacana owned a trading post at Beechy Point, just east of the
12 mouth of the River. And it was overrun by Atlantic Richfield
13 Company's tractors and sleds and heavy equipment. And that site
14 was virtually destroyed, including the graveyard of the family that
15 had been there for generations. And an Anchorage attorney, Cliff
16 Groh, was representing Atlantic Richfield, and I was seeking to get
17 justice done for Lucy Avacana, and it was very frustrating because
18 the State Department at Kaminia (ph) and Regional Affairs is a
19 local government committee in the Legisla-
20 ture and the State was poorly funded, budget-wise, to deal with
21 matters of this nature. And when they -- September 9, 1979,
22 Prudhoe Bay North Slope Borough lease sale was conducted, I read
23 the writing on the wall and I realized that there must be Borough
24 Government on the North Slope, and it must come to pass
25 immediately. So, I met with Lloyd and Lucy Avacana here in
Anchorage in their home, and we spent several hours going over it,
and we called Eban Hobson. And we talked for a couple more hours
all on my nickel, on my legislative pay. And Eban realized what
was coming down the pike and how this tremendous development would
be overrunning the land and the people. And the North Slope
Borough came to pass. I'm very thankful for that.

Now, then, I feel that I'm somewhat frustrated and all
that rhetoric about tribal government, and I can understand why

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1 people would now be embracing this philosophy because the State
2 Department of Community and Regional Affairs in the State of Alaska
3 has failed, miserably, to aid and abet the people in the
4 communities in our State that are not as sophisticated as yet, but
5 are becoming more sophisticated in administering local Home Rule
6 government.

7 One of the problems we experience, in the local Home Rule
8 government area, and the second-class cities don't have any patent
9 on that, there -- people run, and the elect to serve on the city
10 councils. They want the title, but they don't want to go to the
11 meeting, or they go to the meeting to draw \$50 per diem, and then
12 leave early, or they just sit there and don't contribute. And
13 then, when other council members are aggressive and push for
14 dealing with matters of local Home Rule government, those people
15 that are aggressive then are criticized.

16 We have, yesterday, a gentleman eluded to the fact that
17 there were 28 positions available in the community of Teller, and
18 only ten people to fill those positions. Well, the fact of the
19 matter is, and I think most of us in this room that live in the
20 bush realize that there are people that are doers, and there are
21 people that are not doers. And there are people that like to
22 have...

23 MR. BERGER: You're from Teller,
24 I believe?

25 MR. BLODGETT: Yes, sir. But
only for 29 years.

MR. BERGER: Oh, well, then, well.

MR. BLODGETT: It was Benjamin
Franklin that said, guests are like fish. After three days, they
begin to smell. I am a guest of the people of Native origin of
Alaska 'cause of my interpretation as an act of cession in the
purchase or trading rights by the United States from Russia.

United States really didn't purchase the land, not at



1 all. And too few people that deal with decisions affecting us, and
2 our people, are not familiar with the treaty of cession of the
3 Alaska Purchase. It needs to be studied in depth, and the Native
4 leaders of this State have a very real responsibility to their
5 people that they serve and represent, to read that and study it,
6 become scholars of it in depth.

7 But what I was about to say, is I've been a guest for 29
8 years. I have not always been a good guest, and I apologize. I
9 tried. I mean to be a good guest. Now the -- what has prompted me
10 to come before you people now, is the fact that they -- I didn't
11 support the Native Land Claims Settlement Act, personally. I
12 supported it because that's what my constituency wanted, and I
13 stated that the Native Land Claims Settlement Act would come home
14 to haunt our people, and our leaders that were beating the drums
15 for the passage of it. I didn't have a crystal ball, but I read as
16 much of material as I get my hands on, to try and develop a
17 workable understanding of it as best as I could. And it created a
18 caste system. And now my grandchildren are of Native origin,
19 spelled with a small "n". They're low-cast Natives, in every sense
20 of the word. I'm not proud of that, and I'm not proud that the
21 Native leadership would permit a caste system to be foisted on
22 them, or any other Native, person of Native origin since December,
23 '71. This must be dealt with very decisively, very fairly. I'm
24 hopeful that my grandchildren will become the students, scholars of
25 the Native Land Claims Settlement Act, and they will some day be
vociferous, hard-working leaders for justice, because the Native
Land Claims Settlement Act is treated as caste system to very real
injustice. My daughter-in-law was an orphan, she was raised by her
grandparents who had 12 children, and those 12 children have
brought 144 children into, onto this earth and this distribution of
the stock in the corporations nebulous.

So, I have to go back to the drawing board, like engineers
do when they do it wrong, go back and do it over. Whatever it

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1 takes. Now, the -- one of our big stumbling blocks with our city
2 council, with our village corporations, our regional corporations,
3 our coastal zone boards, our school boards. One of the biggest
4 problems that haunt us is liquor and drugs. People serve and wear
5 these hats and have these titles, and they're suppose to represent
6 our people, in these different capacities, and they can't make it
7 past the bars. They get their per diem and cop out, and they're
8 not at the meeting. Now, this is a very rampant and very serious
9 thing. We must not bury our heads in the sand and overlook it. We
10 have a responsibility, the people have a responsibility to guaranty
11 that the people that they delegate to represent them will be respon-
12 sible people that will tend to business. Now the, one of the other
13 problems that we're confronted with is when we get good people that
14 produce and tend to business, they get overloaded. Well, let Joe
15 do it. Joe can do it, and pretty soon Joe's doing so many things
16 that his spirit's broken. He's overloaded. It's like overloading
17 a truck, or putting too much load on a dogsled. And the team just
18 worn out, lie down, give up.

19 Responsibility. Now, in the early culture, the true sub-
20 sistence culture, the aboriginal people of Alaska were workaho-
21 lics. They had to work to survive. In Southeastern Alaska, in
22 Prince William Sound region when the tide was out, the table was
23 set. In the Arctic, there is an ice cap over the land five months
24 of the year. And it takes tremendous discipline to get out there
25 and do your thing for survival. They did it. In our community,
now, we had -- we used to have families that were subsistence life-
style families. And as soon as the youngsters got out of the
mandatory school, attendants off to fish camp, all summer. All
summer long you'll see the youngsters, or the family. Maybe they
come in for coffee, or tea, or salt, or some fish hooks. Now, we
might have three families in our community, of 65 families, that
pursue the subsistence lifestyle. Our people are not workaholics.
There's the fireside industry of the Native art and craft has

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1 dwindled. I was the author of the Native Art and Craft Labeling
2 Act, and very proud of that, but it's been infringed upon through
3 the Alaska Council of the Arts by another label that watered it
4 down somewhat, and it's been abused.

4 The advent of the Marine Mammal Protection Act made a
5 substantial contribution in destroying the local fireside art and
6 craft industry in our communities. I could spend -- take up your
7 time and put a whole day into that one.

7 Now, the subsurface rights on these lands, I believe,
8 rightfully belong to the village corporation. I take issue with
9 the fact that the regional corporation owns the subsurface rights.
10 Now, we've had our good people milked off by the regional corpora-
11 tions in different State and Federal agencies, and now there are
12 more coming in, the National Park Service, and all those people.
13 (INDISCERNIBLE) our better qualified, more productive people out of
14 our communities were stripped. It's kind of like a bones out of a
15 Thanksgiving turkey. We're just polished clean.

14 Now the State of Alaska has a very real responsibility to
15 all of the communities in Alaska to strengthen the Department of
16 Community and Regional Affairs, and get with it. Get down to
17 business; get to work; declare work on weak, local Home Rule govern-
18 ment. I feel that the Stan Katchatag, or Sheldon, Stanton's son,
19 are on the right track. I believe that came about because of the
20 fact that the State Department of Community and Regional Affairs
21 hasn't really gotten with it, in local Home Rule government. I
22 believe that's the fundamental reason why the tribal government's
23 been born. It's another way of our government. And I submit that
24 the best government is the least government. There'll be conflicts
25 between municipalities, and the tribal governments. The problem
has to be solved. It must be done at the Roundtable. It can't be
done in street by yelling at each other. It has to be done at the
Roundtable. Negotiation.

25 My remarks are somewhat scattered. I hope that what I

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1 have had to say will help, will contribute somewhat to you people,
2 in your deliberations. Thank you.

3 MR. BERGER: Thank you, Mr.
4 Blodgett. We'll take a break for coffee now.

5 (APPLAUSE)
6 (HEARING RECESSES)
7 (TAPE 12, SIDE A)
8 (HEARING RESUMES)

9 MR. BERGER: Well, let's start
10 again and carry on for a while, and then we'll break for lunch and
11 then carry on this afternoon for a while as well. I had said that
12 I hoped you would treat this as an opportunity to suggest to the
13 Commission what it ought to do. But don't feel that you must do
14 that. And if simply wish to make some observations on what has
15 gone on thus far, that's certainly acceptable as well. But this is
16 a time, in a sense, for final statements. Because we really do
17 have to wrap it up today. But when I say final statements, I don't
18 mean to imply that this is some great big conference with resolu-
19 tions being passed or anything of that sort, but we would like a
20 chance to hear from some of the folks that haven't said an awful
21 lot thus far. And, so, what I was going to suggest was that we
22 might hear from Charles Wilkinson, and then from Sheldon, and
23 before we do that, however, Rosita, you have a question or two?

24 MS. WORL: Right, right. I said
25 -- that leaves Mary and I, if you wanted to hear from people who
26 haven't been really active in this discussion.

27 During the last Roundtable discussion, we had a paper pre-
28 sented by Bart Garber. And in that paper, he really outlined some
29 -- a basic fundamental question that should be addressed in terms
30 of looking at corporations and either altering or changing corpora-
31 tions to take into consideration the basic differences between
32 Natives and non-Natives. And I think he talked about it in terms
33 of conflicts between individualism and group values of Native



1 people. And I think in our discussion of governments, of tribal
2 governments, city governments, and also, of laws, we should also be
3 addressing the same questions. What are the basic, inherent, or if
4 they are inherent, conflicts between the two types of systems? And
5 in my thinking, we go right back into a discussion of looking at
6 individualism and, also, communalism. And when we look at govern-
7 ments, what are we looking at? We're looking at legitimacy of
8 power, legitimacy of authority. And that legitimacy comes from
9 basic values. And as a student, and as a member of Native culture,
10 over and over again, we come back into, you know, very basic
11 differences. And when we talk about tribes, we talk about members
12 of a communal group. And, you know, from the thousand people that
13 have testified before Commissioner Berger, we always hear about
14 survival, control, control to protect that tribal group. And,
15 also, control, or protection of land. And so, you know, in
16 thinking about it and trying to analyze, you know, what are we
17 talking about? We're talking about, you know, some very basic
18 differences. When we talk about land, you know, under the Western
19 system, we're talking about land as a commodity, a product,
20 something that is to be sold and is to be utilized. And in the
21 more recent time, I think we had the Canadian -- Cindy talk about
22 the new kinds of changes that she sees developing with Western
23 utilization. And we are, I think, we are trying grapple with that
24 right now. This new type of utilization of land and wildlife re-
25 sources. And that's the non-consumptive use, or the environmental-
ists, or a conservationist. And we see that now coming into
conflict with Native conception, or Native utilization of land.
And land, and in that respect, I'm talking about a relationship. A
relationship that Native people have to their land, both in terms
of their, you know, their consumptive -- their use of it, their
need for wildlife resources, for nutritional, and other kinds of
economic uses. But, also, a very spiritual relationship to land.
When we come, you know, when we transform those into

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1 governments, and into laws, you know, I'm not, you know, I don't
2 know how we reconcile the differences.

3 The question that I have for the attorneys, and I
4 appreciate, you know, all of the recommendations that they have
5 given and all of the things that they're telling the Commission to
6 address, and also the things that they're telling Native people
7 that they should be doing. But, maybe I'd like to ask a question
8 of -- and some of the legal (INDISCERNIBLE) here, is, what do they
9 see -- I mean, do they see this basic contradiction or basic
10 conflict between tribal, tribalism, tribal law, and Western law?

11 MR. BERGER: Well, that -- maybe
12 I could ask Charles Wilkinson, who is writing away there, to take a
13 shot at that, and then, as well, to offer any other observations.
14 And, Mary, did you want to follow up on Rosita's question before we
15 tackle it?

16 MS. MILLER: May I?

17 MR. BERGER: Yes, please. Go
18 ahead.

19 MS. MILLER: I would like to just
20 very briefly state something that, our people use words very care-
21 fully. And as we deliberate today, I would like to caution the
22 members of this panel to be careful about the words you use when
23 you're talking about us. Such terms as rhetoric and hocus pocus
24 have no place in our world. Because we Native people are
25 critically serious about this discussion. Thank you.

(APPLAUSE)

26 MR. BERGER: Okay. Charles.

27 MR. WILKINSON: I am interested
28 in that question, and I was writing busily, and let me get to that
29 in the framework of what I have to say. I will not take long. My
30 idea here is to throw out to you some general recommendations sub-
31 stantively (ph). But also to talk a bit about the tone, and the
32 level of the Commission's report.

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1 The first thing that I urge you to do -- and when I say,
2 you, of course, I'm not really referring just to Judge Berger, but
3 the many people he's drawing upon his staff, Native leaders, and
4 Native people, generally -- the first thing I urge you to do is to
5 put this report in historical context. Both in terms of looking
6 back and, also in terms of looking forward. And by that, I mean
7 this. You must communicate to the people of Alaska, and to people
8 in Congress, an understanding of what ANCSA was. You cannot change
9 ANCSA until ANCSA, itself, is understood, and the reasons for it
10 are understood. You are still at a point where there is too much
11 blaming going on, and arguing over who's fault ANCSA was. It seems
12 to me, you need to put that behind you. Now, my personal
13 explanation is roughly this. That ANCSA is best understood as the
14 last act of the termination era. I am one. I have written now for
15 almost 15 years on Indian policy, and often I will ascribe eras, or
16 years to different eras and it always seems they come out
17 different. You pick one year now, and a few years later you
18 decide, well, there's a better way to identify it. Many historians
19 around the table appreciate that.

20 It's now increasingly clear to me that termination began
21 in 1945, when John Collier was forced out of office. And it ended
22 in December, 1971, when ANCSA was passed. ANCSA was a termination
23 act. In one book I wrote in 1979, I asked, is ANCSA termination in
24 disguise? I realize that now the answer is, no. It's not in dis-
25 guise. It is termination, pure and simple, and you can learn about
termination by looking at ANCSA, and you can understand ANCSA only
by looking at termination. Now, what that means is that ANCSA was
determined by the values of that time by Senator Jackson having, at
that time, the ability in the time that existed, to say to you,
there's not going to be any tribalism there. And the inability to
say to Ada Deer just six months later, "there won't be any
tribalism there", because he said that to her. And in a different
era, literally a different time, she was able to say, "yes there

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1 is", Senator Jackson, "there's going to be tribalism there." And
2 things had changed just enough so that those balances had tipped.

3 As I suggested to you the other day, it also helps to
4 understand why Alaska Natives, and Congress, didn't appreciate the
5 options. The options really weren't there. The reasonably
6 sparkling tribal governments in the Lower 48 that are doing pretty
7 well, didn't exist as models then. And I just think it's wrong for
8 those of you -- and I was talking to Charlie Edwardson last night,
9 and I said, maybe we ought to call ANCSA, the Edwardson Act. What
10 we ought to do is recognize the good things that came out of ANCSA,
11 that Charlie Edwardson and hundreds of others worked for. The 40
12 million acres. That's undeniably a good thing. But to recognize
13 that the negative aspects of ANCSA couldn't be fairly predicted
14 then. And it's wrong to ascribe it to malice, to Congress; that
15 was just Senator Jackson's view at that time -- that tribalism was
16 bad. He hadn't seen much else. He hadn't been forced to see much
17 else, and the Natives didn't either.

18 So, it seems to me that because ANCSA arose from a policy
19 that is now roundly discredited, and it is, termination, that it is
20 unacceptable. Now, that we understand where it came from, and now
21 that we have had experience under ANCSA, to come in and ask for a
22 change. And it's not Alaska Natives, somehow going back on a
23 deal. There are not any elements of that if we really work hard on
24 seeing why ANCSA occurred, and it's now a chance for reform legisla-
25 tion, not changing the terms of some kind of an agreement. And
what, of course, came out of ANCSA, most basically, is that Alaska
Natives, now, it seems to me, have two basic kinds of protections
against encroachment on their land, on their culture, and their re-
sources.

And the two basic protections are, first, your geographic
remoteness, and secondly, local law. And we have learned in this
country, and in the other nations that have -- whose experiences
have been brought here, that those two kinds of protections are not

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1 enough. And, so, I think then, that there is an immensity here
2 that hasn't been talked about as often as it might have been. And
3 the immensity is that this Commission needs to make recommendations
4 that will work in 25, 50 and a hundred years. And maybe 50 years
5 is the best time span for you to think in terms of. Please work
6 hard at thinking about what the State of Alaska is going to be like
7 in 50 years. And if you look back 50 years, or back to the time of
8 Statehood, and you start looking at areas like the Bay Area in San
9 Francisco, and Los Angeles, or the Anchorage area, and even
10 outlying areas, the pressure, the inexorable pressure on land, and
11 culture, and resources, is just obvious. And I won't go further
12 than that.

13 It seems to me, then, that there are three premises here
14 that you need to work off of in building a policy that will work 50
15 years from now. You need to assume that statewide you're going to
16 have a 95%, or 98% non-Native population. You need to assume con-
17 sistently with that, that many villages are going to have signifi-
18 cant segments of non-Natives, maybe being the majority. You have
19 to further assume that subsistence rights are going to be under the
20 worst kind of resource pressure from sports fishers and hunters,
21 and from commercial takers of salmon, with results that I think are
22 predictable when we look at in that kind of time span.

23 Now -- and then my third premise is that this time, now,
24 in the mid-1980's is likely to be your best chance for reform.
25 That my sense is, as one from the Lower 48 who does not live up
here on a day-to-day basis, although I think I follow Alaska
affairs as well as most people in the Lower 48...I don't pretend to
be a local person. But I believe there are deep and profound
movements on Native issues occurring. I think they are changing
week by week, and month by month, and I think this Commission is
the most important force -- not in the sense that it's creating the
pressures, but it's reacting to demands from the villages. But I
think this is your chance. And I think you should look at it as

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1 your one bite at the apple, and recognize that you have to go for
2 true reform now because you may not get a chance after the 1990
3 census when the demographics of this State begin -- the changes
4 begin to feed into the State Legislature. So, I urge you to aim at
5 50 years away, to aim at that population, to aim at those
6 subsistence pressures, and to build your recommendations on the
7 premise that now is the time to go after it.

8 I am hardly optimistic that you can achieve substantial
9 changes. I'm not as optimistic as Reid Chambers, that the
10 situation will be acceptable to you in 50 years if changes aren't
11 made. Indeed, my guess is -- and again, I'm predicting changes
12 will happen, but I believe if the present system of protection is
13 based on remoteness, and local law continue, you will have little
14 Native owned land. Your subsistence resources will be cut to the
15 bone, and most importantly, your culture will be threatened from
16 all sides because you will not have the means to govern in the
17 villages. And that, at least, is my judgment. Again, I think that
18 can be changed. I'm absolutely convinced it can be changed, but if
19 something isn't done, that's my sense of the outlook we have.

20 Now, substantively, it seems to me that the centerpiece of
21 your report, which most people here agree on, must be a return to
22 tribalism. I use that phrase tribalism broadly, because I don't
23 want for the moment to tie us into the kind of reservation system
24 that is in the Lower 48. I believe that this document, the
25 Commission's Report, just as it must explain ANCSA, even more funda-
mentally, must be a burning testimonial to the value of tribalism.
It should lay out, in no uncertain terms, the dignity and beauty of
this concept. Its ancient origins, its pervasive influence in
contemporary, international affairs. And it's pervasive influence
in Alaska until 1971, and the fact that it continues to smolder in
the villages.

I believe, now to turn to Rosita's question, and I will
put it differently, is there a conflict between tribal law and

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1 Western law? Tribal law is Western law. That was the first
2 Western law. The question is, is there a conflict between
3 tribalism and Anglo-American law? On one level, yes. But at the
4 same time, Anglo-American law, which did not include tribalism at
5 the beginning, through the will of Native people in cases like
6 against Georgia in the Cherokee conflict, right up through 1982 in
7 the Supreme Court of the United States, in the Marion Decision, and
8 in your movement here, you have forced tribalism into
9 Anglo-American law so that it is now a constituent component of
10 it. It's in our Constitution, it is in the Supreme Court
11 Decisions; and so, you not only have to, in your report, dignify
12 tribalism, you need to legitimize it in the way that Rosita
13 suggests. And the most basic fact is that tribalism is not an
14 aberration in Alaska, as someone suggests. It's exactly the other
15 way around. Alaska is the aberration because it doesn't have
16 enough recognition of tribalism, and I think you need to make that
17 a banner of your final report. And you need to explain how tribal-
18 ism, as a concept, protects against the very things that you
19 consider most devastating. The idea that the tribal lands can be
20 sold by individuals; the idea that tribal rights can be inherited.
21 A person passes out of a tribe when they pass out of this life, and
22 new people automatically pass into it. And the idea of tribalism,
23 there shouldn't be outside control of internal tribal relations.

18 Now, with tribalism, which can determine the three issues
19 that seem to me most important, land, subsistence, and culture, and
20 that apparently has been the reflection from the hearings in the
21 field, in a sense, the means that you use to achieve tribalism, and
22 my judgment becomes somewhat less important because your essential
23 job is, again, to dignify, and legitimize sovereignty, and
24 tribalism in the report. But I would throw this out to you on the
25 means of structuring sovereignty. First, the Constitutional Amend-
ment is a good idea. Not because it will be passed, but because it
symbolizes your search. You can draw up a 15 word constitutional

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1 amendment that would legitimize and dignify tribalism, and that can
2 be for you what the aboriginal flag is in Australia. It can be
3 your banner, even though it is a set of words. And if it is set
4 out plainly and evocatively, it can be done.

5 The other thing I would say to you about constitutional
6 amendments is we do need to take a broader view of it. Right now,
7 the constitutional amendment we think of is the ERA, and with all
8 the churning it caused, and the fact that it didn't go through.
9 The fact is, there's a whole other set of constitutional
10 amendments, relatively technical ones. Changing the age to 18,
11 allowing the in District Columbia, that went through very quickly.
12 And so, maybe, just maybe, a constitutional amendment could not
13 only be a symbol but it could fall into that class of technical
14 non-controversial amendments. I don't mean to suggest that, I just
15 mean to say that the ERA isn't the only kind of constitutional
16 amendment.

17 The idea of state law, which as a protection...and by the
18 way, no one needs to denigrate the North Slope Borough to argue for
19 tribalism. You're going to have both. They aren't mutually exclu-
20 sive, so we're not in a debate here over which is better or which
21 one we should have, the North Slope Borough idea or the tribalism
22 idea. You can have both if you choose. But the idea of the Home
23 Rule community, under state law, meets my test as being initially
24 acceptable because it is a tribalism concept. Really what David
25 and others would suggest is that you take the concept of tribalism,
you move it into a Home Rule municipality under State law; it has
the advantage that if you can build consensus in this State, which
I know is a long way away, but if you can build it, it goes through
easier than it does through Congress. And so, sure, that's a
model, and it ought to be talked about.

But the third approach seems to me the one you were most
likely to adopt. And that is federalizing tribalism in some sort
of Federal protections. The Federal protections are harder to come

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1 by because Congress is larger, it's more complex, but that also
2 provides you with greater protection. And the fact is, that the
3 new people in this State, the subsistence hunters and fishers who
4 are your competitors out there, simply have far more attenuated
5 influence in Washington, D.C. than they do in Juneau. And so you
6 get better protection from a Federal law, and my guess is you will
7 want to go that way.

8 Now, some brief comments on what the Federal protections
9 might look like. And I think I'm really going to suggest an
10 approach toward it, rather than a menu of protections. The first
11 thing that I would say to you, I would just throw out one bit of my
12 own experience. The Menominee restoration, again, is so parallel
13 to your situation, legally and policy-wise, that it's painful.
14 It's not as complicated. There is less land, just one tribe. But
15 legally, they did the same thing, I mean, they terminated the
16 Menominee's in about the same way they terminated you. And we have
17 the problem of getting land from a state corporation back into
18 trust. And I...it was my job to draw up that document which was a
19 long and technical document. And what I did, working out of the
20 Native American Rights Fund in Boulder, Colorado, was to become a
21 Wisconsin corporate lawyer. And I spent more time in Wisconsin
22 that year than I did home. And I took on some corporate lawyers as
23 consultants, I learned the Wisconsin corporate code inside out, and
24 about four months into that I concluded that it's nice to know some
25 Wisconsin corporate law, but this is an Indian law problem, not a
Wisconsin corporate law problem. And you're going to find the same
thing with ANCSA.

26 I'm delighted you bring in the corporate lawyers. I think
27 it's terrific. I think they can provide needed depth and expertise
28 of this, but the truth is, this is an Indian law problem, and don't
29 let anyone tell you that Congress can't work on this with almost
30 complete flexibility. It can. You may have trouble deciding what
31 you want, but once you decide, Congress has the power to do it

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1 without taking vested rights. It may not be exactly that simple,
2 but it's close to it, and it's better to state that as the law then
3 it is to pretend that there's a set of complexities out there that
4 bar you. And as soon as we realize that and Menominee...I started
5 turning to Reid Chambers, who is a social solicitor there, and
6 started making deals with him instead of making deals with the
7 Wisconsin corporate commissioners, and things started to move real
8 fast. Didn't they, Reid? Yeah, that's true too. We won't comment
9 on the current solicitor's office.

10 In federalizing tribalism, please go about it this way.
11 Forget the idea that there's a unitary body of federal law of
12 tribalism. For most of the Lower 48 tribes, it is unitary, just
13 because that's the way it has been done. Most of the trust at Fort
14 Birthold (ph) tends to be the same as the trust at Le Cudare (ph)
15 in Wisconsin. But...

16 UNIDENTIFIED: Except in Barrow.

17 MR. WILKINSON: Except in
18 Barrow? It's different in Barrow. Okay. It is different in
19 Barrow, I agree with that. Let me, for example, and someone else
20 could make maybe a better list, but it's helpful, I think, to show
21 that there is a list. It seems to me, we're talking about the
22 trust earlier, there is a the trust.

23 There are elements to the trust and I will lay out eight
24 of them here. And my idea is that what you can do is pick and
25 choose among these elements. And maybe some others. And pick the
ones you like, for recommendations, and have your own kind of trust
relationship, and reject the ones you don't like. But some
elements are these. Trust land is non-taxable; trust land is
non-transferrable; trust land can't be mortgaged; the United States
has an obligation to permit mismanagement. You can't sue a tribe
over trust assets because of sovereign immunity. The United States
must provide services to implement the trust; trust assets are
exempt from state jurisdiction; trust assets are managed by the



1 tribes. Now, what you can do is have a trust relationship that
2 allows your tribes to waive sovereign immunity for suits. You can
3 do that. And you can have any kind of waiver you want. As long as
4 it's done through Congress, where I think you're going to have to
5 go.

6 Similarly, you can...and again, I think that the single
7 best thing that has come out of ANCSA, potentially, that the tribes
8 in the Lower 48 are most interested about, is your liquidity of
9 assets. You can provide for a degree of liquidity to allow a tribe
10 to mortgage a percentage of its assets, or certain assets. You can
11 do that and...because Congress can define the trust. The trust is
12 not an all or nothing thing, it's a series of building blocks.
13 Pick the ones you want, dispense with the ones you don't want.

14 Same thing with hunting and fishing rights. You have some
15 elements now of Federal hunting and fishing rights, mainly through
16 ANILCA. You have some protections. But hunting and fishing rights
17 have other elements to them. One of them is freedom from state
18 regulation. You don't have that. That's one of the basic things
19 the hunting and fishing right is in the Lower 48; you don't have
20 that. Second, tribes can regulate hunting and fishing on their
21 lands; you don't have that. Third, and this is most important, and
22 you must press for this, tribes in the Lower 48 can hunt and fish
23 commercially. And for those of you who have been stuffed into a
24 state system on commercial harvesting of salmon, to me, that's a
25 tragedy. Maybe that's never going to get changed, but recognize
that's an element of the classic hunting and fishing right under
federal law that is lacking for you. So, I urge you to go about it
that way. To look at there being a whole menu of attributes of
federalized tribalism. You can take some, and not take others.
You can create your own kind of tribalism with federal protection
if you choose to go that way.

26 One last comment. Tom asked, very appropriately, how
27 should we, how should the Commission recommend that changes to...

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1 what group of people should be able to recommend changes to the
2 ANCSA regional corporations? Should it be the shareholders? I
3 say, no. I say that you should start again looking at tribal
4 members. Don't look at Alaska Natives for the source of your...I
5 mean, at shareholders for the source of your reform, look to Alaska
6 Natives and recognize the fact that people born after '71 are
7 Alaska Natives, also. So, to the extent possible, and I think it's
8 not a legal issue, you should look at that as the basic consensus
9 group.

10 Ultimately, what I'm suggesting to you is that too many
11 legal and governmental commission reports are clinical and
12 technical and tedious. This report, because of its subject matter,
13 and the time and place in which it is being handed down, must be
14 first and foremost, a moral document. It should not be overdrawn
15 or exaggerated, but it must set out a moral imperative. We must
16 recognize that much of what this Commission will do, will be to
17 recommend laws, or part of it anyway will be to recommend laws.
18 Law is derivative. Law comes from other things. It comes from
19 history, it comes from anthropology, science, economics, and it
20 comes from morality. It comes from the perceived values of the
21 society. This report, as much as any report I have dealt with in
22 my professional career, should be a call to everything that is good
23 and progressive in this society. It should summon out the best in
24 us as a people. That is idealistic, but there are times when it is
25 not pragmatic to ignore idealism. And that is because ideals are
real things. And pragmatists deal with real things. Ideals exist,
and sometimes we ignore them, but other times they control law and
policy when movements build, and this maybe a time in which that is
happening, and if you ignore that moral imperative, you may lose
your chance for the kind of fundamental reform you deserve. This
subject deserves a daring report. To be sure, it needs data, and
statistics, and economic and social proof. But it also must soar.
This Commission has developed a kind of integrity that few bodies

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1 that I have seen in my professional experience have achieved. I
2 believe there is an honest chance that it can collect together
3 scattered ideas. That is can build a moral and political
4 consensus, and it can construct a kind of change that is so
5 progressive and so fundamental, that most of us in this room would
6 not even dare to cross over into believing right now, that that
7 kind of change can happen. But I believe it can happen, and I
8 think that this Commission report can be the engine for that kind
9 of change.

10 MR. BERGER: Well, thank you,
11 Charles.

12 (APPLAUSE)

13 MR. BERGER: I think that, if you
14 don't mind, Sheldon, I think we might break now for lunch, and come
15 back at 2:00, and carry on then for a couple of hours, and after
16 lunch, we'll call on Sheldon. And then I'd like to give Ralph
17 Lerner a chance to talk about the issue that Rosita raised, and
18 other things that may be on his mind, and then turn to some
19 others. So, we'll come back at 2:00. Let's make it 2:00 sharp.

20 (HEARING RECESSES)

21 (HEARING RESUMES)

22 MR. BERGER: They've turned the
23 fan off, so I think that means we can begin. Let me make a
24 suggestion for this afternoon. We're going to be holding a...maybe
25 I could just tell you what the Commission plans for the new year.
26 We're going to hold a hearing in Bethel in -- sometime in February,
27 I believe. And we'll be going down to Dillingham, as well. And
28 we're going to have a hearing in Anchorage, here, for the Alaska
29 Native people and others living here in the Anchorage area. And
30 that will be, I think, in February. I'm not sure of the dates.
31 But some of you who are eager to speak at this gathering, we hope
32 that you will speak at the hearing in Anchorage. I believe not
33 only Alaska Natives want to speak at the hearing in Anchorage, but

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1 some folks from some of the local churches, and so on. So, that,
2 don't get the idea that when we adjourn at 4:00 today, or 4:15,
3 don't get the idea that that's the end of the Commission's
4 activities in Anchorage.

5 And then there is another Roundtable in mid-March of 1985,
6 and that'll be the last Roundtable. And at that time, we hope to
7 look at the, in a very broad way, the question of the place of
8 Native people in the Western world, and, well, watch for bulletins
9 about that one. We're still working on it. And that will conclude
10 the work of the Commission, and the report will, I believe...and we
11 have stayed on schedule throughout. And I believe that the report
12 will be ready by September 1, 1985, and will be in your hands.

13 So, what I was about to say was that I hope this after-
14 noon, if you will allow me to say so, I would like to make sure
15 that our guests from the Lower 48, and other countries, have a
16 crack at the microphones so that we get the most out of them that
17 we can before they leave. And I want to say now, if I may, and I
18 know some of them have left already, but certainly I appreciate
19 what all the guests from the Lower 48 and the other countries have
20 contributed to this Roundtable. I appreciate, of course, what
21 Alaskans have contributed as well. But I just thought I should
22 thank our guests on your behalf.

23 So, what I was going to say was that this afternoon, you
24 might, perhaps we might allow Ralph Lerner to open up. And I asked
25 Ralph to come because he came to our Roundtable in March, this
year, and he acted as devil's advocate in the argument that we had
then, and he did it very well. That is, he wanted us all to make
sure we didn't get carried away in a wave of enthusiasm without
understanding that there are some very real questions that other
folks are going to ask in the years to come. And Ralph's pretty
good at putting those questions. So, I thought we might ask him to
lead off this afternoon. Throw the cat among the pigeons, so to
speak, and then I'll ask Sheldon, and others, to respond, and if

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1 Browning Pipestem would, and Ralph Johnson, and others, please feel
2 free.

3 Larry, you're from Anchorage now, so we don't need to
4 treat you as a guest, I suppose.

5 UNIDENTIFIED: (INDISCERNIBLE,
6 OFF MIKE COMMENT)

7 MR. BERGER: Well, Sir Ralph, you
8 lead off, would you please?

9 MR. LERNER: I've just discovered
10 that I've been typecast, and I should go with an active -- in a
11 kind manner since I was presented as a devils advocate, as this
12 thing's from the devil.

13 I'm going to say some things that, you know, may not be
14 welcome to everyone, or maybe not to anyone for different reasons.
15 But I'm not going to present my observations, and they're only ob-
16 servations, in that kind of lean and linear way that Mr. Williams
17 did. That was very impressive. This is going to be rather more
18 episodic and subjective.

19 First of all, I should say that if you don't like what I
20 say it's not because I'm giving advice. I'm the one truly
21 non-expert here among all the people on the panel. So, I have no
22 advice to give that you have to dislike. On the other hand, I am
23 an invited guest, and I suppose that Mr. Berger didn't invite me to
24 be flattering. For that, I don't have to travel 2,000 miles.

25 Looking around the room, and I try to be attentive in not
only listening to people, but especially the Native peoples, but
looking at their faces, and, you know, seeing if you can look into
somebody's eyes and try to see what kind of a human soul is behind
it. I'm just flabbergasted by the variety of human types. When I
was here in March, I raised as, I mean, one of my nasty questions
was a question I thought that no expert could answer for any of the
Native peoples, you know. What is Inuit? What is Aleut? What is
Indian? But these were questions they could only answer for

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1 themselves, and that everything had to begin with that. That
2 lawyers, and investment counselors were only a late resource. But
3 I think that the way I put the question then was probably too
4 simple. It seems that the variety of types here is just greater
5 than anything we -- that is familiar to me from the U.S. The
6 differences, say,. between a black farmer near Tuscaloosa, Alabama
7 and a Cambodian boat person living in Chicago, or a Jew in New
8 York, or a pleasure seeker in Malibu, California, that those
9 differences aren't nearly as great, as the kinds of differences
10 that exists among the Native peoples here. I'm not talking about
11 different tribes, I'm talking about individuals and their
12 differences. That there's such a variety of human needs here, and
13 that there has to be a corresponding variety of modes of trying to
14 satisfy those needs. But that means it's very messy and very
15 complicated, and generally speaking, the temptation is to try to
16 simplify, to unify, and to homogenize to try to find the best
17 solution. Simply because it's so hard to keep so many variations
18 in mind, and to deal with them in any effective way. But although
19 there is this kind of necessity because we're so incapable of
20 keeping a million different things in hand and dealing with them
21 all.

22 There's a possibility, and indeed a likelihood, that the
23 categories, the cubbyholes in which we stuff people and problems,
24 try to reduce, you know, a vast number to a smaller number, a more
25 manageable number. That those categories, themselves, become
26 tyrannical. That they manage us. And accordingly, that the means
27 that we adopt, the instruments, the tools that we adopt as a result
28 of those categories, in turn, begin dictating how we think, and
29 what we think, how we analyze.

(TAPE 12, SIDE B)

MR. LERNER: Now, let me give an
example, which isn't meant to be personal, that's addressed to any
particular individual but one sees it again and again. There's a

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1 real risk that the better you become in manipulating certain kinds
2 of languages, and certain kinds of tools, especially -- I'm talking
3 alien modes of thought. Alien institutions -- that the more
4 entangled one becomes in them. the thing that becomes useful to
5 you, I'm speaking you now as though I'm addressing a Native person,
6 can carry you away. And what might begin as a game, so to speak,
7 you know, I can use this to beat the other guy at his thing, that
8 that game can itself become, can become an end in itself without
9 one's being half aware of it. So, if the end in view is how to
10 best serve the interests of the people involved, and that has been
11 said again and again, and if the end in view is securing the
12 consent of those people, I think that carries certain implications
13 for what one tries to do and how one goes about trying to do it.
14 It soulds to me as though one would wish to have, wherever
15 possible, modest means, and gentle procedures that fit better with
16 the variety of human types, and that has more respect for their
17 vulnerability. At any rate, that one shouldn't act in such a way
18 that closes off the future of a very old and diverse people. The
19 things that seem so important today, may not seem so important
20 later on. If you're talking about people who have been around for
21 thousands of years, you know...Granted, to see 50 years into the
22 future this takes an immense act, and who knows what it'll be? But
23 I'm more concerned about acting in ways that don't leave sufficient
24 flexibility for that very old and diverse people to change its
25 sense of what's important to us now, a hundred years from now, a
thousand years from now.

So, I'm really talking about governance, and I'm going to
be more specific in a minute. In thinking about what governances
to use, surely, use all the means that are appropriate, but because
they meet the needs of the people, first and foremost, rather than
because they establish a doctrine, they establish a principle. And
when I say that, I add immediately, without at any point,
disregarding the implications for the principles, of following one

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1 way or the other those implicit principles.

2 Now, let me speak more particularly about considerations
3 on choosing governmental forms. Mr. Pipestem said, government
4 isn't fun. Self-governance isn't fun. In Chicago they would say,
5 politics ain't push-pen. And what wasn't said, but which is, I
6 suppose, more or less a fact of life here as anywhere else, the
7 lawless among us hate government.

8 But in listening to the accounts of village political
9 life, the multiplicity of layers of government, and those poor
10 retched ten people with their 28 offices, and so on, being driven
11 from pillar to post, I must say, I found that exhilarating. I
12 thought, for God's sakes, if you're looking around to find what
13 that original American looks like, I'm not talking about a Native
14 person, I mean as a political sense the original American. Your
15 (INDISCERNIBLE) of revolutionary American, he's sitting right here
16 in Alaska. That's the old ideal that Jefferson was talking about.
17 The people legislating for itself in a way that was visible to the
18 governed, where there was publicity, where there was accountability
19 on matters that came closest to those that were concerned. That's
20 the purest form of self-government that there is, in contrast to
21 the kind of governance that everyone is familiar with, and the
22 people in Alaska not least of all, a governance by clerks,
23 governance by lawyers. It doesn't matter whether you're talking
24 about Natives or non-Natives. It's not sweeter because it's one of
25 your own. This multiplicity of tasks and bodies, it's not just a
case of needless bureaucratization, though doubtless, that's
there. You know, if you looked at a history of the New England
township in the 17th Century, and the 18th Century, the smallest
township had 17 different offices. It was an office of the
(INDISCERNIBLE), the guy who was responsible for keeping kids from
running wild and rooting up other guys' gardens. And when...and
someone said, I think very truly, with the demand of services, come
demands on time and energy. You want less, you'll have less

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1 government. You want more, you got to pay for it.

2 Moreover, this was another point that was raised. There
3 are kinds of problems that have to be dealt with at different
4 layers of government. I'm not even talking now about the State of
5 Alaska, or the government of the United States. In Chicago, let's
6 say you have, in the region, you've got eight million people just
7 sitting around cheek by jowl. I'm speaking of the region. Maybe
8 120 or 200 different municipalities. You can't have a situation
9 where one fellow flushes his waste down the other guys well.
10 Okay? And to deal with it is beyond the capacity of any one muni-
11 cipality. They have a metropolitan sanitary district, an immense
12 engineering project, just trying to deal with sewage, for eight
13 million people. And that simply overrides all these different
14 little political jurisdictions. In New York, you have a Port of
15 New York Authority. You've got 10, 12, 15 million people moving in
16 and out. There's got to be some way of moving those bodies without
17 regard to whether it's New Jersey, or New York, or Connecticut, or
18 whatever. So, fisheries have something of that character, and
19 caribou may have. And that suggests that whether you're dealing
20 with these kinds of problems, that simply are spread over an area
21 larger than any jurisdiction, or whether you're dealing with
22 opposite numbers that are larger than any jurisdiction can deal
23 with -- let's say a multi-national conglomerate -- you've got to
24 have a different scale. It's another layer of government. There's
25 no getting around it. But if you're choosing among forms, upon the
appropriate governmental forms and modes of governance, then, it
seems to me, it's got to be more than a question of costs and
benefits. (INDISCERNIBLE) it's an economic consideration.

22 People were talking about some of the problems involved in
23 the union of political and economic powers. And it was mainly
24 treated as a problem of bad economics. I look at it another way.
25 When I hear of that kind of union where the same heads and the same
hands are exercising political power and economic power, I think of

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1 company towns, like in Appalachia, coal mining towns where there's
2 only one mill. And that's a description for tyranny. And there's
3 no reason -- I don't have any reason to assume that Native people
4 are nicer than people anywhere else. Now, the choice that you have
5 to make among governmental forms (INDISCERNIBLE) is complicated by
6 conflicting desires, obviously. Not only among the Native people,
7 but I think within individual Natives. I don't know how to say
8 this without sounding nasty, and, I mean, there is no animus in
9 this. The thing I hear that comes -- the thing I see that comes
10 through as people speak, is an immense sense of pride, and who one
11 is, and who one's people is, and has been, and so on. An immense
12 sense of pride on the one hand, and a great sense of dependency on
13 the other. When once it's one of the same time, the support of the
14 Bureau of Indian Affairs, the trust relationship, and all that.
15 And it's obviously more, more is involved in this than simply
16 having the BIA as a conduit, a funnel through which you can get
17 money. The trouble is, even if one thinks of it only as a
18 convenient way of getting money, there's a real problem in being
19 beholden. And all the anger in the world, and the all great
20 speeches, doesn't do away with that inner servitude. That sense
21 that, I'm not my own man. And this goes in any number of
22 situations. I mean, universities now are, you know, they're over-
23 whelmingly finan...even private universities, they're overwhelming
24 financed by Uncle Sugar. I mean if someone is playing the tune,
25 how can you not pay the piper? I don't have any simple resolutions
for this. I only raised some suggestions, or questions. Can one
take pride -- and again, recognizing the tremendous difference in
vulnerability, and sophistication, and all the rest among the
different Native peoples -- can one take pride in caring for the
dependency of others? Can those Native people who are in a
position to care for their brothers do so, and in the same way, be
rejecting dependency for themselves? I don't know if that's
clear. You know, if you look at that history that Mr. Johnson

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1 summarized in his report, give me a one word characterization for
2 the history of White-Indian governmental relations. Everyone will
3 have his own word. One that comes to my mind is simpleness. And
4 what's been given, can be taken. And what was taken -- how many
5 times have you had termination? These things are not forever. And
6 that was one of the points I tried to make last March, though it
7 wasn't altogether clear to me. The vulnerability of these excep-
8 tional arrangements. I know that the Native peoples are an
9 exceptional case, but one of the large facts of life is the change-
10 ableness, the volatility of these legislative, administrative, and
11 judicial policies. How can one risk a people's very existence,
12 their very survival on that? You know, the old Thomas Jefferson
13 answer is that eternal vigilance is the price of liberty. You can
14 never rest. You can never secure it. You can do your best, but
15 there are no easy nights.

16 And the thought that I raised last time, and I'll conclude
17 with it, is this. I know it runs counter to, you know, to things
18 that many lawyers have suggested. If someone said, "use whatever
19 comes to hand"...and there's a lot to be said for that. But I
20 would urge this consideration. Most of all, I would think about
21 seeking the protection that others cannot deny you without denying
22 themselves. It's the world of White man's law. Now, if the pro-
23 tections that you make use of are such that the only way to
24 separate you and your protection is in effect to require that the
25 majority be separated from its protection, that's no small hold on
other peoples' care. And if there's something to it, then that
suggests a greater regard for the value of the laws' protection.
If it's the law now, it's something more than a mere tool, a mere
device which I can cunningly manipulate in order to get something
out of it, but a real respect for the kind of protection that it
can afford, and anyone else living under the laws of the United
States.

I think that's about all I have to say.

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1 MR. BERGER: Thanks, Ralph. Did
2 you want to follow, Sheldon? Or do you want to wait till later? I
3 was just wondering, Charles, if you wanted to comment on what Ralph
4 said?

4 MR. WILKINSON: No. I felt those
5 were fair comments, but I have no specific response to it.

6 MR. BERGER: Okay. Reid, what
7 about you?

7 MR. CHAMBERS: I guess I spent
8 most of my professional career just agreeing with the premises,
9 that Ralph is, I think, articulating. See, I think that -- but I
10 don't know that -- I have a few thoughts about it, Tom. I guess
11 that, I guess, first off, I do think that Jefferson was living in a
12 very different kind of society. I think that, I think, in a sense,
13 tribal institutions have to be given the opportunities to develop
14 differently, than let's say, 18th Century Virginia did. I think
15 that the -- I don't think it's particularly attractive the kind of
16 thing that Dave Case describes of 29 villagers running around on
17 ten different committees, and one of them's a state committee, and
18 one's a federal committee, and one's a state municipality, and so
19 on. I think it's too complicated. It would be too complicated for
20 me. I think government has gotten much more complicated than it
21 was in 18th Century Virginia. And I think if the task is to build
22 a governmental institution that works, then I think that one has to
23 craft one that at least to start with is simple, and is tied in
24 with the traditional values of these people, which is obviously
25 very different in their communities than the 18th Century squires
in Virginia. I -- you know, there is a danger in any kind of
system with a general trust relationship that it breeds, or that it
reinforces dependency. But there is an almost certain prospect, in
my judgment, that without that kind of a system, in some ways, and
I think you can do exactly what Charlie Wilkinson, and others have
been saying, you can pick and choose your -- the menu. You don't



1 have to take everything on the menu. You can have meat, and not
2 potatoes, but I think that the -- I think without some kind of pro-
3 tection like this, the prospects for having a culture overwhelmed
4 by the incursions of essentially resource gathering society, and
5 resource using society...I mean there's never been a society in the
6 history of the world that is as resource exploitative as the
7 Western industrial society. And we seem to be transmitting it to
8 other parts of the world, and they seem to be acting that way, and
9 that's -- I think that's just a given, but I think without that
10 kind of protection, I don't think that there's much chance for
11 Native culture to be able to resist and thrive. I think it may be
12 able to -- I think it's been immensely survivable. I mean, I'm
13 much more likely to bet that it's here ten thousand years from now,
14 then that anything like Western industrial cultures are here ten
15 thousand years from now. I would bet on the Native culture to be
16 here, but I think that to survive in the kind of honest laws that
17 it's going to face in the immediate future, I think it needs to
18 take the chance on that. And I think that it's just very
19 different...we're dealing with a very different kind of Federal
20 establishment now, then we were dealing with even 20 years ago. I
21 mean, I think again and again, those of us who dealt with it spent
22 our professional lives dealing with it, have seen the changes year
23 by year. The kind of thing Charles Wilkinson was able to persuade
24 Senator Jackson's staff of things just a few years later that the
25 ANCSA leaders were not able to persuade them of.

So, I think that the Federal government is not an
oppressive bureaucracy just now. I think it's possible it might be
20 years from now. I think it certainly was 20 years ago. And I
think you do have to be vigilant on that if you're a Native group,
or anyone else. But in terms of Native affairs, what you really
have now with Indian preference in the Bureau of Indian Affairs, is
you have an institution that is increasingly, increasingly employs
people from the group that it has some governmental authority over,

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1 and employs people who are increasingly sensitive to the needs and
2 aspirations of Native people, and Indian people, to govern them-
3 selves. So, it's a chance I would be prepared to take. I
4 recognize it's a chance, but it's a chance I would be prepared to
5 take, and I counsel clients everyday to take, rather than run the
6 risks of, essentially, being pulverized by an enormous market
7 system that's being brought to bear on their resources and their
8 subsistence. So, I mean, I think Ralph's position is a welcome
9 counsel. I mean, everyone should listen to it very carefully.
10 It's one on balance that I differ with.

11 MR. BERGER: Yeah. Rosita has
12 something to say, and then David Case. Maybe I could offer a
13 comment as a Canadian on what Ralph said.

14 Ralph said that the political arrangements relating to
15 Native people, certainly those championed here today, are
16 exceptional arrangements. And he went on to indicate that he
17 thought they were therefore vulnerable. Well, that's the -- that's
18 at the root of all this, I suppose. The cast of mind that regards
19 tribal government is exceptional. Something, as Browning Pipestem
20 said yesterday that doesn't altogether square with the ideas of
21 liberal democracy, and so on. And, in Canada, and there are
22 Canadians here so I must be guarded in what I say, but the
23 Committee, which was an all party committee of the House of Commons
24 representing all three of Canada's national political parties,
25 brought in a report last year urging that Native governments be
accepted as a third order of government. That is, Federal, Provin-
cial, and Native governments, and those would be the governments
recognized under the Constitution. It would not be exceptional, it
would be part of the accepted arrangements on which political
structures are built.

At any rate, that may be that something that indicates how
public attitudes can evolve and change. But I'm -- I certainly
think that if you stop people on the streets of the United States,

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1 and ask them about what Ralph Lerner had said, you would find an
2 awful lot of them would buy it, and it's a question, I think, of
3 acceptance of what -- of the legitimacy of indigenous ideas of
4 political authority.

4 Well, that's all pretty difficult stuff. Rosita, and
5 David, you want to -- and then Sheldon.

6 MS. WORL: Well, I just wanted to
7 thank Ralph for answering my question. Not directly, but perhaps,
8 I think in his discussion, really, I guess, responding to the
9 question that I had raised in, what is the basic difference, or
10 what is the conflict between tribal law -- and when I say tribal
11 law, I don't mean the things that have been codified in statutes,
12 but actually the customary laws, the traditional norms, and the
13 values of Native people. What is the difference between Native
14 laws and Western laws?

15 And as Ralph was talking, it reminded me of an incident
16 that happened between the U.S. Navy, or a U.S. Naval officer, and
17 one of my grandfathers, whose name was Schwatgee, and my...One of
18 my grandfathers took Lieutenant Schuatka, and for those of you who
19 know anything about Alaska history, Lieutenant Schuatka was a Naval
20 officer who came from -- came from the coast and traveled inland
21 into Canada. And he hired some Tlingit people to work for him, and
22 to carry things over to Chilkoot Pass. And they were both
23 operating within their own cultural framework, their own cultural
24 values, and their own economics. And Lieutenant Schuatka paid my
25 grandfather X amount of dollars, and my grandfather thought, well,
this wasn't enough. And, so, he took Lieutenant Schuatka's name,
and thereafter, he became known as Schwatgee, which in Tlingit is
the -- the ee is possessive, my schuatka. And among the Tlingits,
that's, you know, that's the worst thing that you could do to
someone is take a name away because name is property. But on the
other hand, Lieutenant Schuatka, and others, assumed that Schwatgee
was honoring this great explorer. And, so each went along happily

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1 in their own merry way. But, unfortunately, we more often we see
2 that the conflicts between the two systems are very real, and
3 probably have greater ramifications in terms of really, you know,
4 concrete things happening to people. And I think what you said,
5 what can be given, can be taken away, really speaks to the
6 differences between the two cultural systems as I see them, or one
7 of the major significant differences. And that is, in Native
8 societies, the values are always taught that you should share, that
9 you should give away, and in the end, you have reciprocity. In the
10 end, those who have more, get something in return, and so it's a
11 direct conflict with the other values of accumulating surplus. So,
12 I think it just -- thank you for alluminating in that difference.

13 MR. BERGER: Well, thank you,
14 Rosita. That was well -- put very well, I think. I -- oh, David
15 Case. Sorry.

16 MR. CASE: I have a few questions
17 I want to ask Fred Harhoff. And, unfortunately, this is not the
18 right way to do it because as a lawyer supposed to ask the
19 questions when you know the answer. I don't know the answers to
20 these questions.

21 We heard a good deal, and Ralph was really alluding to it
22 just now, of the complexity, and I would say, as described, the
23 necessary complexity of government, and I'm not sure if complexity
24 is the right word, but levels of government. And Bill DuBay
25 alluded to this, if not here, at least in private to...If you're
going to have all of these services, if you're going to have
services in villages, you've got to have numbers of government
representatives, agencies, ways to interact and so forth. My
question is about Greenland. How complex is government in
Greenland? And you do have villages, there are villages, I think,
in Greenland? Is that correct? And there's a central kind of
government, also, in the Home Rule government? Is that correct?
For the record, he nodded, yes. No. I just wanted, I wanted to

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1 know. What is government like in Greenland villages? Is it -- as
2 you heard it described here? Or is it, you know, do you have that
3 multiplicity of people, offices, institutions, in order to deliver
4 services, or don't you?

4 MR. HARHOFF: Well, if you go to
5 the very local level, then I guess it is limited, but of what you
6 would find of government at all. I mean, I've been to a lot of
7 settlements where you won't see anything at all. And...

7 MR. CASE: Go ahead. How do
8 people live there? I mean, what sort of services do they have? Do
9 they have electricity? Do they have homes? What is it?

9 MR. HARHOFF: Yeah. Well, a
10 normal small settlement, along Greenland's coast, would be one of,
11 let's say between 50 and a hundred persons living in houses. There
12 would be a small power plant providing for electricity. There
13 would be local fishing from either small trollers, or more likely,
14 small boats with, you know, an outboard motor. And there would be,
15 to a certain extent, maybe, a freezing plant to collect the catch
16 that is taken in the surrounding waters. And there might be a
17 nurse living there, you know, doing whatever she could do providing
18 for health and medical care. And then, that's about it.

17 MR. CASE: Is there a...

18 MR. HARHOFF: A local school
19 teacher would be living in one of the houses, and having, probably,
20 educating the kids in his own house.

20 MR. CASE: Who regulates, directs
21 the nurse, the school teacher, the power plant operator, the
22 fishing enterprise? Is there a council? Is there, what?

22 MR. HARHOFF: There are local
23 village councils, I should say. Well, it's not very formally done,
24 you know. People, they just go together and they cooperate as to
25 the tasks that are to be undertaken in, I mean -- and, well, if you
look at the power plant, for instance, there would be a mechanic

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1 skilled guy who would be able to repair it when it goes to pieces.
2 And this man, of course, he will be paid by the Home Rule
3 government. So, he's an employee.

4 MR. CASE: He's paid by the Home
5 Rule government?

6 MR. HARHOFF: Yeah.

7 MR. CASE: How does the money get
8 to him? I mean does it come from an agency of the Home Rule govern-
9 ment, or does it come through the council of the community?

10 MR. HARHOFF: That would be paid
11 by the municipal authority.

12 MR. CASE: Council.

13 MR. HARHOFF: Right. Regional
14 municipal authority.

15 MR. CASE: Oh. There's a
16 regional municipal authority, then, too.

17 MR. HARHOFF: Yes. Am I
18 satisfying your...

19 MR. CASE: Well, I guess -- I
20 don't want to take up too much time with all of this, but I'm
21 interested to know if it is possible, some place, to have govern-
22 ment that, as I naively assumed, can be simpler than it appears to
23 be in villages in Alaska.

24 MR. HARHOFF: But I think the
25 main picture that is to be seen in Greenland, is that there are, of
course, tasks that are most adequately dealt with on a very, very
local level. Right? And these are being dealt with in the local
-- in these village councils. They have no decisive influence.
They are just advisory bodies, so to say. And then each region,
you know, consisting of -- there would be one city, for instance,
which would be the center of the region, and then a number of
villages around, settlements around. And at this level, you would
find, so to say, the regional planning level. And this is obvious

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1 that a task of this character is most adequately dealt on the
2 regional basis. And then on top of it, you have the Home Rule
3 government, which sets out all the laws, and the acts providing for
4 this business. So, I mean, if you take it, there is a need for a
5 general, overall, planning of the fishery, well, that is being
6 dealt with on the main level. And this may provide for regional
7 arrangements, okay, this will be dealt with on the municipal
8 regional level, and then carried out in the village level. And as
9 far as the main conflicts between Greenland and Denmark are con-
cerned, then you will find that the Home Rule Government, as such,
is the body which takes the fights, so to say, with the Danes, with
the Danish governments.

10 MR. CASE: Okay.

11 MR. HARHOFF: But I would return
to this...

12 MR. CASE: Well, may I -- Ralph
13 wants to say something, but I guess I can understand how government
14 in Chicago, with millions of people, and in New York, and a large
15 municipality, can require many, many layers, and boards, and
16 agencies, and so forth, in order to operate it. And I can under-
17 stand in the North Slope Borough how with large assets, and huge
18 construction projects, and many construction projects, and that you
19 have to have many layers of government. I don't understand, and I
still...why in a community of 50 to 200 people, government has to
be so damned complex. That's all.

20 MR. BERGER: Well, that's
rhetorical, I think. Ralph.

21 MR. LERNER: I don't know that it
22 has to be that complex at all. All I'm saying is that we've heard,
23 again and again, of situations where something happens 500, or
24 1,000 miles away, and it has all sorts of important repercussions
25 for a village. It's not something that they see on the horizon,
it's way over there somewhere, which affects caribou, or which

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1 affects the fish, that, the fish that they fish for food on, or
2 whatever. So, there are problems that simply are beyond the
3 capacity of a given locality that...which means that you have to
multiply.

4 I don't want to be understood as urging, you know, a
5 single mode for anyone. I'm not urging any mode. I'm only
6 suggesting that nobody can care as much about the interests of a
7 particular Native people, as those people can. And that means to
8 the extent that they are able to keep things in their hands, in
9 their care, they stand a better chance of caring for them. It's
10 not just the Native governance issue. We live in a time of
11 immense, overwhelming pressure for homogenization, for uniformity,
12 and for centralization. It's not just that you go ask your average
13 fellow on the street in Chicago about tribal government, you know,
14 and he wants to throw up on you, it's not just that. We have
15 political units of much greater, popular acceptance in American
16 history than tribal government, that have been reduced to nothing-
17 ness. When I was a kid, people use to talk about states' rights.
18 You know, I'm not talking about the 18th Century. And for all
19 practical purposes, the states are, you know...I mean, what passes
20 for federalism in the United States is the simple client relation-
21 ship. They pass money on. But they, and you know, and they're out
22 there with their little tin cup in Washington, just like any other
bunch of petitioners. It's not -- I mean, you know, leaving aside
the special wrinkle that, you know, quote, Indian, in engenders in
the, you know, in the average minds. These are forces that are
much larger, and not limited, to Native governance. There's a real
problem on how you speak to people, you know, given that kind of
situation.

23 MR. BERGER: Charles, did you
24 want to add something?

25 MR. WILKINSON: If there are
other people who are anxious, I'll pass for the moment.

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ATD

1 MR. BERGER: Sheldon.
2 MR. KATCHATAG: Thank you. As
3 everybody said here earlier, I would like to thank everybody that
4 has taken the time and effort and the sacrifice to help us grapple
5 with this very real problem, which primarily, as I'm -- I have to
6 keep bringing this up, is that primarily, who are we talking
7 about? Are we talking about Alaska's non-Natives? Are we talking
8 about America's people? You got to keep your perspective, and I
9 think that the perspective that is most important, is you have to
10 put yourself in the mukluks of our Native people here in Alaska.
11 We are on the verge, if nothing is done, we are on the verge of
12 extinction, in every sense of the word. If, in fact, we become a
13 part of the Western society and the cash economy, are we not, then,
14 Western and cash economized?

15 Yesterday, and over these last four days, I've been trying
16 to make the point that what we are faced with, as Native people, is
17 legislative genocide, and there has been not a rebuttal from anyone
18 that that is, in fact, the case. Why? That scares the hell out of
19 me. Not a person here, and you all profess to know the law, nary a
20 person here stood up and said that this is not true. The American
21 people are not like this. You accept it like it -- as if it's an
22 everyday occurrence in America, that your government has the power,
23 and the acceptance of its people, to go around and extinguishing,
24 not just a government, not just their land base, but a people. And
25 not just any people, but the people that originally were here.
What kind of moral right is that, that a people can accept, and not
only accept, but in the name of such things as, quote,
constitutional rights, individual constitutional rights, we can
wipe out this traditional tribal government that's been here since
time immemorial? I think what we are face with is jealousy. I
have said it before, and I'll say it again, Alaska's Native people
are the freest people on this earth. And I'll tell you why. We
are not dependent on the cash economy. If I was dependent on the



1 cash economy, like the rest of the United States, and I knew that
2 my government owed \$2 trillion, I'd be awful worried.

3 We can live in harmony with our land. Our land, as long
4 as we respect it, will respect us. Is that too hard to accept?
5 Why do you have to destroy not just our government, but our land
6 base, and the food on which we rely? Why must you regulate our
7 living, and that is what we do? As I said, I mentioned earlier,
8 fish and game are not fish and game to us. There is no sport
9 involved, it's survival. We do not ask to regulate your food, why
10 must you impose your regulations of our food?

11 Genocide. Serious term. What does that mean? That means
12 the killing off of an entire race. We thought that went out with
13 World War II. I never ever thought that I would ever feel so
14 threatened, that I must ask for protection from genocide. America,
15 land of the free, home of the brave.

16 A lot of talk has been made about the highest moral impera-
17 tive. But then you feel that if you pay lip service to the highest
18 moral imperative, without even recommending something, to do some-
19 thing about it, you're forgetting my point. We are asking for
20 restoration to all the rights, privileges, and responsibilities
21 which we as tribes have. Not just to you and your government, but
22 to our people, and our government. Our tribal governments have
23 been sorely damaged. I've been making this point. Why must you
24 insist that there has to be State of Alaska jurisdiction over
25 Alaska's Natives? People conquest. I think our Native people
would feel a lot better if you would just go about it and declare
war. Eventually, there'd be a war settlement, would there not?
Maybe we'll end up another Japan. An economic giant as a result of
the American guilt trip. The non-Native can afford tunnel vision
with regard to his life. He can afford to specialize: "I am a
lawyer." Forget the rest. Everything else is in place. My govern-
ment is secure, my services are provided, it's a government of the
people, by the lawyers, for the multi-national corporations. And

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1 the sooner that you realize that, the sooner that you're going to
2 be able to save yourself, much less save us.

(TAPE 13, SIDE A)

3 MR. KATCHATAG: As I said, the
4 survival of our Native people is in the balance. Everybody's
5 wondering why United States is on the defensive. Not just up
6 here. What about Nicaragua? What about Iran? Why are they saying
7 that they do not want the champions of freedom in their midst? If
8 they're doing to them what they're doing to us, I wouldn't want
9 them either. But they are blessed with one thing, they are not set
10 up into the federal system against their will. They are, at least,
11 viewed as being foreign country. And in that, they have an
12 advantage. We have come that close to being smothered out of
13 existence. And I say that the Native government is one of the last
14 examples of what the Federal government, and its people, have said
15 that they're all about for the last 200 years. Government of the
16 people, by the people, and most importantly, for the people.

17 Genocide, conquest, how do you do that? You beat a
18 government into submission, or you legislate them out of
19 existence. It just so happens that the federal government thought
20 they could do it with one lot. ANCSA. You displace the
21 government, you make the settlement terms to a state chartered
22 business corporation. Actually, you're doing it three, because
23 then you have your people that are suppose to be doing this great
24 good for us on the economic scene. ANCSA said that by going the
25 corporation route, we'll help these poor, indigent, uneducated
Native people. We'll pull them out of their tribal government, and
put them in a foreign body, and say, hey, you got an economic advan-
tage. And they make great bones about nine hundred and sixty-two
and a half million dollars. They say, that's a lot. But what do
they do in the succeeding ten years? How many billion dollars
worth of paper have they printed in the last ten years? What does
that do to nine hundred and sixty-two and a half million dollars

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1 over a ten year period of time. If you have a third left, you're
lucky.

2 The Western government is designed to benefit a very small
3 few. The oligarchy. Government of the people, for a people.
4 We're not asking that we maintain this trust relationship. We
5 don't trust the Federal Government any more. Why are we in this
6 mess? Because we trusted the federal government to begin with.
7 They said, oh, you don't have to worry about this no more. All
8 your lands are yours forever, and we'll make sure of that. And
9 1971 won't come. We'll take care of your health, your education,
10 your land, your subsistence. We'll take care of it all, trust us.
11 In the process, they have taken control of our government, they
12 have reduced our land base, and they have nearly disrupted our
13 economy through regulations.

14 One of the things that we forget, as Natives, and as
15 tribal members, is that we have an obligation to uphold our
16 government. We cannot let it go that quickly, and that easily. We
17 have an obligation to fight for our tribal government. And it's
18 not right to be overrun by numbers, by superior fire power.
19 Especially when there is no declared war. We have a right, as
20 tribal members, and as members of our government, to seek the
21 maximum protection of our tribal lands. Which supposedly the
22 federal government said that they will protect for us, for all
23 time.

24 We have an interest in lands. And that interest in land
25 is what feeds us, clothes us, and provides a shelter. And yet, by
regulation, the state and the federal government, are saying, you
have to get permission from us to harvest those resources. Is that
not another way of saying, you have to get permission to live, from
us?

I don't know how strongly, or how often, I have to repeat
myself. You have an obligation, as a Commission, as people, as
citizens of the United States, to seek that the wrongs that were

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1 done against Alaskas people, have got to be rectified. I would not
2 trust the government, which can freely trample on a people in the
3 name of a piece of paper. People are more important than paper.
4 Remember that. Life is more important than paper. And one of the
5 things that I think that the Western society has got to learn from
6 the Alaska Native people, is how to live in harmony with your en-
7 vironment. Once you learn that, you are well on your way to
8 ensuring that you and your government will have a place in this
9 world. You can't afford it, we can't afford it. We have to live
10 in this thing together.

11 As I said earlier, yesterday, there is no law, either
12 state or federal, that says there is a jurisdictional limit to
13 tribal government. And until such time as one is negotiated, the
14 tribal governments of Alaska must do their best to ensure that the
15 rights of their members, and the rights of their government, are
16 not trampled upon. And I think that this Commission has an obliga-
17 tion to take its findings, to take these hearings that they have
18 held across the state, and incorporate them into the strongest plea
19 for an act of restoration for those rights, privileges, and respon-
20 sibilities of tribal governments to govern their people. And I
21 think that anything less, is an acquiescence on the part of this
22 Commission to the practice not only of the State, but of the
23 federal government to irradicate Native people on the face of this
24 earth. We're not asking that you put us back in a trust relation-
25 ship. As I said, we don't trust the Federal Government anymore.
We want to hold our land in trust, as tribal governments. It's our
land.

There have been mentions made of other forms of local
governments. As I said, until you realize that this conquest by
paper is in progress, and unless you do something about it, any
other form of government that you try to impose on Alaska's Native
people will not work. And until you realize that our desire, our
need for our subsistence resources transcend any desire on those

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1 that are foreign to this country, for a sporting desire to kill
2 something, we're all in trouble. One of the things that has been
3 said about Western society is the fact that you and your government
4 are three meals away from anarchy. If, in fact, the Teamsters of
5 the United States were to say, okay, we are stopping all trucks as
6 of such and such an hour, within three meals, you will have
7 anarchy.

8 The Western society has developed tunnel vision to an art
9 form: I do not have to worry about my food because there are
10 farmers out there. I do not have to worry about my meat because
11 there's a rancher growing cattle somewhere. He may not even be in
12 my state, but I'm going to rely on him.

13 If you want to conquer the Natives, declare it. Sixty-six
14 percent of all the lawyers in the world, service 6% of the
15 population of the United States. If that's not an imbalance, I
16 don't know what is. I think therein lies the crux of the problem.
17 The laws are written by lawyers, they're interpreted by lawyers.
18 The only thing that is not left in their hands, is execution. And
19 even they have a great say on how that's done. And that's why I
20 think I have reservations about all of these requirements that we
21 see come down the road when they want to know, "show it to me on
22 paper, show it to me on paper. Don't leave it intangible. Don't
23 leave it in the heads of a council, don't leave it in the heads of
24 people, show it to me on paper so I can tear it down." Maybe
25 that's why Alaska's Native people never had a written language.

(APPLAUSE)

MR. BERGER: I think we'll have a
coffee break, and then I'll call on one or two others before we
close. Willie, could I call on you after coffee? And -- we'll
take a break now for five minutes, and then...

(HEARING RECESSES)

(HEARING RESUMES)

MR. BERGER: Well, let's



1 reconvene, and -- well, folks, what I was going to do -- I think
2 that we've had a good four days of discussion, and I think we're
3 about ready to wrap it up. And I just want to say again, that I
4 appreciate all of you coming, and I think it's been worthwhile.
5 This isn't intended to produce a solution. My view is that if
6 people keep talking, they'll discover they have -- they'll have a
7 fair amount of common ground, and that ideas that may have seemed
8 daunting, may seem a good deal easier to handle once they become
9 familiar. At any rate, the discussion has been useful for me, and
10 I appreciate it. I -- we only have a few more minutes, and I
11 thought I would ask Willie Kasayulie to speak, and then Browning
12 Pipestem, and then I thought we would close. I think everybody's
13 had a crack at this thing. But just before Willie starts, Evelyn
14 Hash-Peat, you wanted a minute to say something?

MS. HASH-PEAT: Yes, I did.

12 Thank you. I'm speaking in my role as a Ahtna woman, and a Inupiat
13 woman. And my role is to teach my children, and my grand-
14 children, and my great-grandchildren. And the things I teach my
15 grandchildren and great-grandchildren and children, are the law,
16 the law of the land. At the risk of losing our loved ones, and I
17 want to commend Etuk, and Sheldon, and Etuk, especially, for all
18 these years. We risk losing our loved ones. And taking the steps
19 that many of us are taking, have been completely necessary, or
20 rather imperative to not talk about what we are going to do with
21 tribal and aboriginal governments, but in this way, speaking
22 English, let the United States and the State of Alaska, and the
23 Caucasians know that these are the last, and absolute words. The
24 law is the law. And the law of this land, Alaska, is that we,
25 indigenous, aboriginal people of Alaska, of all parts of Alaska,
are together. The owners and the caretakers of this land, Alaska.
We have local laws in place previous to any history in the world,
and our language predates any other language in the world. We are
going to continue to uphold this -- the law of this land. We

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1 continue to feed our people from our strategic hunting and fishing
2 village locations, village sites. And this Commission must
3 recommend that we are undisputably the governments of Alaska, and
4 any other is alien and not tried and proven, or is in need of being
5 tested.

6 I say, forget trying to get a consensus of your aboriginal
7 people of Alaska. Rather, you shall come to each village, and obey
8 the laws of that village. Otherwise, you do not have our
9 permission to enter. Our immigrations laws are the laws of the
10 land. You must have permission, just as I must have permission to
11 enter wherever I travel. And obtain permission for every activity
12 that you pursue on that land, otherwise, you are in violation of
13 laws set by the creator that we carry out. Laws for every
14 activity, every ceremony, every behavior. We are the enforcers of
15 our laws, and if you do not, do or do not belong, you shall obey
16 the laws of the land.

17 And in my role as a woman, I teach you who do not know, as
18 I continue to teach my children. Thank you.

19 MR. BERGER: Thank you. Willie
20 Kasayulie.

(APPLAUSE)

21 MR. KASAYULIE: I would like to
22 extend my appreciation for me being involved in these discussions
23 and to hear what Indian law experts are saying about the Native
24 people. I think as far as my village is concerned, we've set down
25 our priorities, and our priority was to bring back the government
that had existed in our village by dissolving the municipality
which had existed in our community. I've heard a lot of our Native
brothers and sisters, especially in Alaska, talk about sovereignty,
and as long as there's a municipality existing, in my view, in
those Native communities, I don't think sovereignty's going to
exist effectively, within that tribal government.

During the 1985 hearings held in Bethel, we came out and



1 said that ANCSA was a termination act and we wanted to have it
2 repealed and do a restoration act of the Alaska Native tribal
3 governments.

4 There's a lot of issues that needs to be addressed in the
5 area of self-government for the Native communities. Among other
6 things, water rights. Right now, the Native people in the
7 communities, in the State of Alaska, don't have water rights. And
8 this water rights issue, somehow connects with the subsistence
9 rights.

10 The ANCSA's corporations selected certain acreages for its
11 Native community. A lot of our traditional lands, where our fore-
12 fathers, even us today where we go and hunt, gather, subsist, those
13 lands aren't even included. Those lands are considered to be state
14 lands. And those lands are being sold off by State of Alaska,
15 today.

16 Like I mentioned earlier, we can talk sovereignty and self-
17 government, but in my view, as long as that municipality exists in
18 that Native community, I don't think you're going to get anywhere.

19 Sheldon mentioned an obligation during his speech. I
20 think the Native communities are obligated to go ahead and dissolve
21 the municipalities, and bring up their tribal governments. In many
22 of our discussions at our village, we used the example of the
23 Israelites, the nations, their governments, their cultures, their
24 history. Well, we have history, too. We're no different from the
25 foreign nations that exist in this world, we're a nation
ourselves. Still, the State of Alaska's government does not want
to deal with us because they say we're an ethnic group. We need to
establish a government-to-government relationship with the state
government, the federal Government, and the international govern-
ments. That relationship needs to exist.

The discussions that are going on right here, I wish these
kind of discussions were happening in the regional centers
throughout Alaska, because there's a lot of people out there that

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1 are missing out on these informations here. And there's a lot of
2 good information that I'm hearing, that we can utilize ourselves,
3 also.

4 Alaska, as we know, is broken up into 12 regional
5 corporations. The example that we use in our discussions in our
6 village is, you know, in the Bible, there are 12 tribes, too. We
7 can be 12 tribes up here, too, through the United Tribes of
8 Alaska. We can be one powerful force if we want to be. But still,
9 like Mr. Pipestem mentioned, the Native people out here are still
10 crying about it, and they're not doing anything about it. All
11 they're doing is talking about it.

12 I think, again, the municipality -- I keep going back to
13 that municipality. It's still there. It's a force that the Native
14 communities have to deal with. And there was a mention in some of
15 our discussions about establishing municipalities under the Native
16 government. I don't quite understand that route.

17 You know, the communities, themselves, the Alaskan
18 communities, they need to sit down and talk about self-government.
19 Ultimately, the choice has to come from those communities, the
20 members themselves. We can talk about sovereignty, and self-
21 government here, but the ultimate grassroots, where the decision is
22 made, is in those communities.

23 We've been considered to be radicals when we dissolved our
24 city to the tribal laws. I think the people that came over here,
25 supposedly to discover America, back in the 1700's or whatever,
1400's, they were also radicals. But the governments, the tribal
governments have -- were there, we were there, we were here, and
one thing that I can't understand as far as Alaska is concerned,
why our communities were incorporated into municipalities. Some
say it's because of the money. And that's the main fare I'm
hearing from the Alaska Native communities, where the communities
are talking about dissolving their municipalities in favor of the
tribal governments. Money.

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1 The State of Alaska deals with other foreign nations.
2 Like, for example, Japan. Well, they have their own government.
3 Well, we have our own government, too. Why can't the State of
4 Alaska deal with us as a government? And I think that's the route
5 that the State of Alaska needs to do, to deal and recognize us as
6 legitimate governments that we have always been.

7 There's very little understanding from the Native
8 community about these federal law cases relating to the Native
9 communities, or the Native people. We need to go out there to the
10 communities and talk to those people out there. And make them
11 aware of what's happening. I kind of wish that this same group of
12 people would travel out to the regional centers to talk to the
13 Native communities out there -- answer -- there would be a lot of
14 questions asked, and I'm sure there'd be a lot of people reevaluat-
15 ing their priorities as far as self-government is concerned.

16 There's been some recommendations where some people saying
17 to us that we need to revitalize the municipality in order to get
18 funding so we can operate as a effective government to serve our
19 members. I don't think my community will ever establish a muni-
20 cipality again. We still have this state chartered organization
21 still existing in our village. And that's the village
22 corporation. Next month, we're going to sit down with our people
23 and talk about that organization. I can't say what course of
24 action the community will take, but I know, in my mind, what my
25 recommendations are going to be to my people. And they will
decide. And I'm kind of hoping that all of the 200 some odd
villages also sit down, and not just talk about the 1991 issues,
but also to talk about their self-determination.

 A couple of days ago, I mentioned that the tribal govern-
ments in Alaska needs to reevaluate themselves, and organize as
governments. Not in the sense of becoming an IRA government, but
effective tribal government. IRA government isn't the only type of
government that people can look upon.

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1 I guess with that I'll close.

2 MR. BERGER: Thank you, Willie.
3 Thank you very much.

4 (APPLAUSE)

5 MR. BERGER: The -- we have here
6 advocates of tribal government, and that is appropriate since there
7 is a tribal government movement in Alaska that has become an impor-
8 tant force, obviously, in the life of the State. But I did wish to
9 have here, advocates of municipal government so that those of you
10 who support tribal government could hear the case for municipal
11 government, and so that those who believe in municipal government
12 could hear the case for tribal government. And I think we've had a
13 good exchange of ideas. Well, Browning Pipestem, I'll call on you,
14 and I think we'll give you the last word because you always make us
15 feel good, and we could use a little bit of that right now.

16 MR. PIPESTEM: Your Honor, it's
17 about seven something my time, so I'm about to give out, so it
18 won't take too long for me to say just a word.

19 I've heard people, I think I've probably learned, and I
20 don't pretend to know, I heard somebody say about being in
21 somebody's mukluk's. I don't even have a mukluk, and I can't get
22 in them, so I think what I understood Willie to say is that this is
23 your problem. That people who are Native people here. And it's
24 one you're going to have to address. And people, like me, all we
25 can do is help you, and share things with you, to how you address
things. I don't pretend to have the nerve to tell you how it ought
to be. I'm only here to share some things. I came to your country
to share some things with you. And I would say this, there's been
a great deal said about legislation, and let me review some kinds
of legislation. There's obviously federal legislation. There is
state legislation. But in my view, one of the areas over which we
have, as Indian tribes, regardless of where we are, have left off,
is the tribal legislation. There's a certain magic to that that

1 has to it the many things, and Rosita asked the question. And if I
2 understood anything that was said here, it was said that the law is
3 a means whereby there are values that are reflected. And I can
4 only say to you that if there is to be the values and the cultural
5 life of a people to be expressed in the law, the place that it's
6 likely to happen the most is not in the federal legislation or in
7 the state legislation, but in the tribal and Native legislation.
8 Now, that has been a function of many things, and if that comes --
9 let me give you some more interesting ideas about that. If I
10 understood what Ralph Lerner said, is that there is no homogenous
11 solution here to one way to do these things, because there are many
12 kinds of people in Alaska. I'm talking about the tribes or the
13 Native people. Two hundred and some odd villages, things of that
14 nature. There can't be one solution. But I would submit to you
15 that the Federal legislation is going to seek one, or a category of
16 different kinds of solutions, as will other people. Because they
17 will not have the time, nor the sensitivity, to deal with the
18 smaller places. And it seems to me that that is clearly the
19 diversity of that kind can only be served in the flexibility of
20 tribal self-government. And it is a function of tribal legislation
21 to live in a moving, changing, sensitive way for that law to meet
22 the purposes of its people. To serve as a government. And in
23 those circumstances, then these other kinds of legislation, as
24 important as they may be, become adjuncts to the tribal legisla-
25 tion. Where the tribes defines who it is, is the people, the
nature of processes of government that are to take place there,
especially when you're far away from the governmental centers.

And it strikes me that that's the flexibility and the
beauty of this thing. And government really serves two functions.
One is to provide a form of governance. And the other is to
provide services. And there is a balance sheet to that. And I
would just make a suggestion to you, that in the United States, and
that's only because I can't say Lower 48, Indian people are often

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1 served in the services area by more than one government. Because I
2 heard some pointless discussion at one point about the nature of
3 that kind of services. Your people are federal citizens, there's a
4 set of rules and responsibilities as federal citizens that attach
5 to that. Your people are state citizens of the State of Alaska,
6 and there are certain set of rules and responsibilities that attach
7 with that. And they are also citizens or members of your own
8 people, and there are certain responsibilities and services that
9 attach to that. And I would say to you, that many of the tribes in
10 the United States, are seeking out, now, inner-governmental agree-
11 ments to provide a better form of services to their people to
12 perform the nature of governmental services of that government.
13 That is not a denegration of your sovereignty. It is a sovereign
14 act to delegate authority. It is a sovereign act to recognize
15 other governments. It is a sovereign act to provide the best
16 possible set of services that you can provide to your people.

17 And I would say to you that on that line, that there is an
18 immenseness of the tribal government potential. And I don't
19 believe that I could disagree more with people who say there is
20 something wrong with the system that functions in the Lower 48 in
21 the terms that it does. Maybe it could have been better. But that
22 potential that is there for Indian tribes in the United States, I'm
23 talking about the Lower 48 now, ranges from the potential to do
24 nothing, to the potential to fill in the blank. We don't know the
25 limits of that governmental authority because our people have not
exercised much of it. They have not sought to exercise their juris-
diction in a more sophisticated and modern way.

Now let me say this to you as a thing that you may
consider. When I mentioned the creation of a municipality for non-
Indians, do you know that there's a Indian tribe that has already
created a municipality for non-Indians under tribal law? Do you
see that we're limited by where our mind thinks about what a Indian
tribal government is? And what I heard some of the Native people

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1 saying, and maybe was wrong, what I heard some people saying is,
2 this situation is so desperate, that we might even think about
3 being a tribal government. It is so bad, that we might even think
4 about being a tribal government. And I would just say to you that
5 it is a function of government to provide the room for all kinds of
6 its people to function in there. Because there are people who are
7 going to want to be business people; there are people who are going
8 to want to be intellectuals of various kinds; there are people who
9 are going to want to be traditional services type people; people
10 who hunt, people who fish, and it seems to me that your government
11 ought to be able to hold that difference of kinds of people. And I
12 really believe that the limitations on tribal government, have come
13 from our own mind. And that's a form of being unable to respond.

14 And I would just say to you that in those terms...let me
15 give you some examples, but let me give you another of what I
16 perceive to be some advice from your old Oklahoma uncle. As it
17 seems to me, that what you need to do is to relax a little bit.
18 You need to relax. Deal with ANCSA as ANCSA. As best I can tell,
19 ANCSA is not the end-all, or the be-all of anything. And you need
20 to look beyond 1991 because your tribal government will still be
21 here. Now, the issue of the land and all those things, I don't
22 want to minimize their importance. Those are of extreme importance
23 to you, but I do believe that you can blow this doomed idea totally
24 out of proportion to the point where you become paralyzed. And to
25 overblow it into more than what it is. Now, it's important, there
are many things to respond to, but I would just say to you as your
good old Oklahoma uncle, look beyond that time. To a time in which
there...and do now. You need to determine what the width and
breadth of your legal authorities are as a government now. Don't
try to exercise illegitimate authority. Exercise legitimate
authority. And I would agree with you, if I understood what
Sheldon was saying, that there are some people who believe that any
exercise of any authority by a tribal government is illegitimate.

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1 Well, I'll tell you now, those people are wrong. They're just as
2 wrong as they can possibly be. But the point being, is that
3 government is a responsible exercise. It is not a credentialing
4 process for radicals. It is a governing process of being a govern-
5 ment. It is not some kind of a credentialing exercise, because
6 you're speaking about the law that will carry your people into the
7 future. You are talking about the law that will guaranty services
8 to your people, of major importance.

9 Let me give you some examples. And I don't want to use
10 any other terms in just a few of the things that I've heard here.
11 Why does everybody worry about the Afterborn issue? You have the
12 present authority, in the document that I saw, for Unalakleet to
13 have a tribal membership role. Do any of you have tribal member-
14 ship roles? I don't know. If the tribal membership role is the
15 same as the role of people who are enrolled in the village, and who
16 are enrolled in a region, then why aren't they? Seems to me that
17 there's a place to begin. On the land issue, how come you can't
18 get some more? I mean I don't understand why you aren't trying to
19 get some more. That is untainted by this other process. Or maybe
20 there isn't any that isn't untainted, but if that provides cate-
21 gorical and legal problems, find some and obtain some more. And I
22 hear people continue to restate the problem. And I don't want to
23 be misunderstood on that because I want you to know, and I'm going
24 to express that to you, that I love you. That's why I sat on a
25 airplane for, I don't know how long, to get to this place. And I'm
going to sit on another one to get back. But I would say to you,
that one of the functions of government, is to begin to translate
rhetoric into specificity that comes out in the form of laws and
services for your people. And a means to activate the moral
imperative.

And I'm going to tell you what I told my son one time,
that there may be discrimination in the world. There may be people
who do not appreciate Indian people. There may be people who

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1 actively do not appreciate Indian people. But rather than to make
2 a way of life out of that, and develop a reactionary and negative
3 identity of do-nothingness, but wallow in it, and be crippled by
4 it, it's something that we need not do. You need to be aware of
5 that, but you need to move on. Move on. There are future issues
6 to be addressed here that only the Native people are going to be
7 able to address. Your advisors are going to be important to you.
8 But I would just say to you, that some of these things that I
9 hear...and the question was asked, how do we dignify and legitimize
10 tribal government? And the answer to that is simple. Know what it
11 is, and exercise its authorities. That is the beauty of what was
12 left here for you as a people. That is something that is uniquely
13 a part of you. That has uniquely been a part of the law of the
14 United States, that Indian tribes are people who have the power to
15 make laws and to be governed by them. Thank you.

16 (APPLAUSE)

17 MR. BERGER: Thank you,
18 Browning. Well, thank you, Browning, and thank you all. This has
19 been a good four days. I've learned a great deal. Albert Einstein
20 once said that man can only flourish in the community, and I
21 suppose what we've been talking about is, how is that community to
22 be defined, and once defined, how is that community to govern
23 itself? Well, thank you all again, and I wish you a merry
24 Christmas, and a happy new year, and I'll see you in 1985.

25 (HEARING ADJOURNED)

* * *

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