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PARTICIPANTS

Alaska Native Review Commission Overview Hearing
Anchorage, March 1 and 2, 1984
ANCSA Institutions and Legal Regimes: Week 1, Session 2

Walter Parker (Anchorage)
Member, Federal Field Committee for Development Planning
in Alaska; Commissioner of Transportation and later
Co-Chairman, Federal-State Land-Use Planning Commission
(under Gov. Hammond). Presently a private consultant.
Preparer of session paper, A Commentary on Institutional
and Legal Regimes Arising From the Alaska Native Claims
Settlement Act and the Alaska National Interest Land and
Conservation Act.

John Borbridge (Juneau)
President of Tlingit/Haida Central Council during the passage
of ANCSA participating in lobbying and negotiation; early
president of Sealaska.

David Case (Fairbanks)
Law Professor, Native Studies Program, University of
Alaska in Fairbanks; also special counsel to the Alaska
Native Review Commission.

Roy Ewan (Gulkana)
Executive Director of Ahtna, Inc. in the early seventies; and
presently serving on the Board of Directors.

John Havelock (Anchorage)
Attorney General under Governor Egan during ANCSA era; and
now a University of Alaska law professor.

David Hickok (Anchorage)
Member, Federal Field Committee for Development Planning
in Alaska. Participated in federal negotiations on ANCSA.
Now with University of Alaska as Director of the Alaska
Environmental and Information Data Center.

John Hope (Juneau)
Member of Tlingit-Haida Central Council in pre-ANCSA days
and tribal leader; now President of that organization.

Douglas Jones (Columbus, Ohio)
Was member of Federal Field Committee Staff (Chief
economist), later on Senator Gravel's staff in Washington,
D.C.; research director, Library of Congress; presently
Professor of Public Administration, Ohio State University.
PARTICIPANTS CONTINUED

Al Ketzler, Sr. (Fairbanks)
An early organizer of Natives from Nenana and proponent of Congressional action to preserve land rights. Has served Tanana Chiefs Conference, Alaska Federation of Natives, and the Nenana Village Corporation.

Flore Lekanoff (Anchorage)
Served as a Director of Cook Inlet Native Association in the early sixties and on the board of Alaska Federation of Natives prior to ANCSA. Was later a senior BIA official, and is currently serving the village corporation of St. George.

Lillie McGarvey (Anchorage)
An Aleut long active in Native affairs, particularly in health and social services. Currently president of Alaska Native Women's Statewide Organization.

Fred Paul (Seattle)
A Tlingit attorney who worked actively in support of Native interests during and following passage of ANCSA, particularly as representative of the Arctic Slope Native Association.

Ralph Purdue (Fairbanks)
An early advocate of organizing Native for a settlement in the early 1960's and a president of the Fairbanks Native Association; presently in private business.

Alfred Starr (Nenana)
An Athabaskan elder who was involved as an early proponent (decades before ANCSA) of a land settlement to preserve Native rights.

Don Wright (Fairbanks)
President of the Alaska Federation of Natives during final period of ANCSA negotiations and now working with the village of Venetie.
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MR. BERGER: Well, why don't we take our seats and begin to struggle with this again.

(MARCH 2, 1984)
(TAPE 17, SIDE A)

MR. BERGER: Well, I think everyone's here. Let me remind you of the procedure I think we agreed we should follow this morning. There were opening statements by all of those members of the roundtable who joined us yesterday for the first time and they were, indeed, fascinating. And we had begun to canvass the table opposite me for some observations and questions and I promised we would continue along those lines this morning. And perhaps this morning we could hear from Mr. John Hope, Mr. Alfred Starr, Mr. Fred Paul, and then Mr. Peterson, if he has further questions, and Mr. Mallott and Mr. Johnson. And then, perhaps, ask our guests who joined us yesterday to take a full opportunity to respond to what has been said already and what is going to be said this morning.

One other thing, we have invited the public to participate. It's difficult to work them in but I hope we will be able to give the public an opportunity late this afternoon, members of the public, to say something. We allowed that to be done late in the afternoon on Monday, Tuesday and Wednesday and perhaps we can work that in this afternoon, later on.

Mr. Hope, perhaps you would begin this morning then, sir?

MR. HOPE: Thank you, Mr. Chairman.

Mr. Chairman, I was fascinated by some of the remarks made yesterday. My remarks will be more comment than questions. I was, I guess, shocked probably is the term when I heard there was a proliferation of IRAs since 1966. And I think in the eyes of the state of Alaska and perhaps Senator Stevens, two new IRAs
constitute a proliferation. In 1966 there have been only two IRAs who had elections called by the Secretary. One was the Inupiat and one was the Kenaitze people. There were more than nine IRAs in 1966. The job I had when I was with the Bureau was to help the tribes form IRAs. There have been only two. There have been at least... Well, during my tenure, there were at least 12 applications that are still sitting in Washington.

The other comment that... And Mr. Hickok comes with real force and authority and if I didn't know better, I probably would have believed that. The one sovereign concept I found I was really pleased, the Supreme Court doesn't agree with Mr. Hickok that there is but one sovereign. Some of the things the court has said with respect to sovereignty, "The sovereignty which a tribe has is of a unique and limited character but retains all the attributes it had which has not been expressly limited by Congress." In 1978, the Supreme Court said, in part, "The power of Indian tribes are, in general, inherent powers of a limited sovereignty which has never been extinguished." It's inherent.

I heard Senator Stevens the other day say the federal government is about to give a lot of sovereignty in Alaska. The Supreme Court thinks it's inherent, that nobody gives it to you and they can recognize it.

I guess the part that I would probably take issue with because I believe that tribes do have sovereignty, not with Mr. Hickok's statement but with the rule of international law that states the rule of discovery and conquest gives the conqueror sovereignty and ownership over the lands thus attained and so, because that's a rule we live under, we are burdened with the limitations it imposes. And true justice, I believe, would fault that statement.

Mr. van Ness said the IRAs would be a mistake, it has a bad record. It's an instrument of the '30s. I think the IRA
has application in current time because the problems the IRA was intended to address are the problems that we still have today. And I think there are some general statements and I don't think ... At least, I had some dealings with IRAs and I think that probably, if I were you, Mr. Chairman, I would make a visitation to Metlakatla. There's an IRA and there's a reservation, and I think you might get a different perspective than what we've been hearing about bad IRAs.

The other IRA community that's strictly IRA in Southeast Alaska is Klukwan. They used to have a reservation. They have refused to incorporate under state statutes. They still operate an IRA entity and I think they're satisfied with it. Those are two communities, but if you were to just listen to testimony and say these vehicles are poor vehicles and should not be foisted upon us, I think it would pay you well to visit. And as I said the other day, I think if you talk to the people down there in Metlakatla and say, "We have a great act here intended to do wonders for the people of Alaska. We'd like for you to have the opportunity to avail yourselves," I think probably you would not get an affirmative response. I think they're pleased with the instrument they have and it's also a reservation. A lot of people condemn reservations. I think you would be impressed with the physical appearance of that community. You've heard a lot of negatives about reservations and I think, unless you visit one, I don't think could have a fair judgment about what those things are.

I was... I was... It was interesting to me to hear Mr. Jones say that it was an express intent for the shares to go out of non-Native hands. He said, "That's what we wanted." The first few days, I think we were blaming the Native leadership for that. But now I think I'm beginning to place it in the right perspective. And he said, "When you lose land, that's what we wanted. You'll get money in return," you know. I guess,
from a Native perspective, that's not a plus. That probably is a minus. If I had a choice of money or land, probably I wouldn't think that was a fair exchange. I was really... fascinated by that concept.

I think, Mr. Chairman, those are the things that I wanted to jump up and respond to yesterday, but keeping with the decorum that you've established here, I had probably one more ulcer develop overnight.

Thank you, Mr. Chairman.

MR. BERGER: Thank you, Mr. Hope.

Mr. Starr?

MR. STARR: Thank you, Mr. Chairman.

At the roundtable, a roundtable, people that sit around a roundtable, you trying to tell there are... not only the Alaskan Natives, but the population of Alaska as a whole... And before the white man came, the Indians done things in the leaders and I, from way back, have great-grandfathers was chiefs of the Natives. And they didn't have no Washington, D.C. They didn't have Juneau, and they didn't have the white man, but they ran their country.

The economic problem in this country, in Alaska, there was nothing that was done about it and I'm glad that you mention some... should be some economic problem started here. The other parts of the world, there's some parts of the world where they're over populated and they haven't got the timber or anything else that we've got up here. And it's funny that Alaska never exported anything to any other part of Asian countries where those are needed.

I'm going to tell you a little story about the old Indian rules and laws. Rapids Alaska Blue Rampart was a fishing ground and they had dip nets made out of willows. It was made
out of willows. And they... fished there during July, the king salmon run and they had a rock there. It's still there, the rock is still there where they dip net from. Every person that was over there, and they came from the Tanana River, up Yukon River and downriver, not only from the... for the people there at the Tanana District, that part of... They came from all over, those that could travel, and worked to put in a month or so of fishing. They were allowed two fish... and it don't... Some say in less than ten minutes that they caught two fish there, two king salmon, and they get in a canoe and they catch that two fish and somebody... The village was on the other side of camps, it was on the other side. Somebody got in a canoe and came over and take his place, 24 hours a day, and when you...

Mr. Parker, here, I know him in 1930s, before this I think and when they have game laws, it seems like the Copper River Center where they dip net, it was too much, too many people getting into the places like that. They're going to over fish. They should be allowed so many people at all to get in there because they're going to be over.

And about the Indian lands, the Natives is worried that they going to lose their land in 1991 because they can't pay tax. And in 1961, before the 1962 meeting in Canada, the first Indian meeting in the interior of Alaska, our record with the university people, when they ask me what Indian land should be a reservation, I think the reservation, if it's got to go back to a reservation, I'd like to see them keep their land because they can't... they can't live without land.

And I'll tell you about... I'm here to tell you little stories, but they're true. Not too many people back here to listen to, to talk to either, you know. I like to talk to big crowd of people.

(LAUGHTER)

MR. STARR: That's what the
Indian chiefs is for. I don't know what...

The first white man that came up the river was a Russian and they said they had... They came far as Nulato where they started a trading post. They didn't have nothing but tea, I guess. I don't know what else, maybe the old muzzle loader gun shells. I wouldn't be surprised if I... I wouldn't be sure if they even had a pilot bring them. They had (INDISCERNIBLE), those Russian traders had. He was some big shot, this Russian, you know, was going to go up and look at the other parts of Alaska, and... he got a Native what was a slave, you know. He didn't pay him, and he came below Tanana where there's a...

They got a bar down there called Tosies (ph). It's good fishing there, too. You can fish there in the fall under the ice. You get... But there was an Indian girl from upriver. She lost a son, drowned. So he went downriver looking for his son and this Russian big shot, he was... I don't know what you'd call him... He had a fire on the beach there at north of Tosie (ph) and this Indian with him told this man coming down in a birch bark canoe... There was nothing but birch bark canoes then... to go... He talk in the Nulato language, Athabascan language, and told him to go back because this man told him to go back. The Russian told him to go back, he got no businss down there, turn around, go back upriver. And he kept going. And, again, there's not too many young Natives. I (INDISCERNIBLE) talk to young Natives, because I like them to know the old time stories and what happened, what happened before the white man came. And there's not too many here this morning. I should talk when they all come in this afternoon before the...

In those days they had two knives. What the knives was made of, I don't know, maybe Mr. Hope or there's some other Natives, Mr. Paul there, maybe they know. They're not made out of stone. They sharpen them so they could eat with it. They had two knives. One was to eat with and one was to... knife they
could defend themselves with in case they get in trouble.

He landed there, he didn't go back. He landed. He didn't pull his canoe up very far, but he did come to the fire. The big Russian got up. He's a white man, you know, Russia; you know. He's a white man. "Why, you broke the law. When you was told to go back, you should have went back." He was going to kick him and he got with his knife so quick, you know, and went down to his feet. Well, he pulled his feet back. He was going to kick him in the other foot. He done the same and (INDISCERNIBLE) the knife and then he was going to hit him. He done the same thing with the knife, you know. So he sat back on this box and he asked this Nulato Native, I guess, what he was doing around there. And we can talk the same dialect from Tanana as Nulato in case (INDISCERNIBLE) people (INDISCERNIBLE) Yukon River, you know. "I lost my son," he told this Native. "I lost my son and was looking to see if I can find a body." Well, the Russian got sorry for him and the Russian told him that, "You go on one side..." They give him cup of tea. And he never had tea in his life and he was sitting on a box... He never seen a box in his life. So the Russian boss told him, "You go on one side and we'll go another side. Then if you find your son, make sign to us and if we find him on this side of the river, we'll make sign to you." I guess he went on other side then and he turned back but the Russian...

The Russian sent word back to Russia and told the Russian government that, "I was going to go upriver and look at the rest of the Yukon River, see what the Natives up there... who lives up there. But it looked like the warriors up there and maybe I couldn't go up there with the few Russians I got here." The Russian government told him, "Don't go up there. That's their land. That's their land. They lived there for thousands of years and we're not going to go up into their land." You will gradually find out that we'll hear, through the mukluk news
or snowshoe wisdom, this, you know... and the Russians never went up the Yukon River.

So, again, I'm glad that you mix with... I'm talking with the whites, you mix with the Natives but you're talking about people's lives, about their future, and I would say that the Indians should keep their land, some way or another. They shouldn't pay tax unless they make money on it, whether it's a mine or something, they find oil or something on it. But the Indians in Alaska are worried. And about jobs, I looked downtown here, after I looked downtown I go into a different coffee shop, different business places, and I don't see no Natives working down here. And in the villages it's nice to see the Natives, they're clerks, the girls is. They're very nice and they're just like anybody else. They're just like... just working people. They're nice. So it's too bad that there's not too many Natives working here. That's what I see.

Mr. Paul, he's a lawyer and he'll tell you about old times. He'll tell you about it.

Thank you.

MR. BERGER: Thank you, Mr. Starr. Thank you very much, sir.

Mr. Paul, Mr. Starr has introduced you and...

MR. PAUL: Thank you, Mr. Chairman.

I have a number of sort of miscellaneous points before I go into the political process.

There's an inherent contradiction in the settlement act. ANCSA corporations got their property, whatever they got, because of tribal rights so that, in the management and operation of the corporations geared towards profit, have had a tendency to forget the origin of whatever they have. We hear the comment corporation-for-profit, which is... which is totally opposite from the tribal creation of the property that the corporation has
so that management in the corporation have problems in satisfying the desires of the rank and file tribal members which we now call stockholders.

The legal rights, the trust responsibilities that the U.S. supreme court has, time and time again recognized, really didn't gain much support in the Native movement. We used to say the words, but it was hardly ever manifested into the actual wording of the legislation. It wasn't until Don Wright became president in the fall of 1970 that, with his support, people began to focus upon the trust relationship. He brought up leaders from the Lower 48, he was instrumental in getting Bob Jim of the Yakima tribe in promoting a very substantial loan to the AFN, 225 thousand dollars in the spring of 1970. Don's involvement in the NCAI likewise produced some support for the trust theory.

It wasn't really until February of 1969 with the release of the Federal Field Committee report that there came about a sort of general acceptance, somebody mentioned a general acceptance of legal rights in the Natives of the ownership of their land. I cannot commend the staff of the Federal Field Committee too highly, Dave Hickok and Doug Jones and especially the chairman, Mr. Fitzgerald, for the Federal Field Committee in its report explicitly recognizing, and I can quote the phrase... First, there had been a number of federal withdrawals and that land was gone. But it boiled down to... Instead of 375 million acres, it boiled down to 275 million acres which the Federal Field Committee said, "The Natives of Alaska have a substantial claim." That's their language, not mine.

I'm going to avert to the political process shortly, but with respect to whether or not there would have been a settlement at all had it not been accomplished in December of 1971... One of the problems of the Natives of Alaska, we had no money. Lawsuits cost money. When the Presbyterians gave a
grant to the Arctic Slope Native Association of 85 thousand dollars in September of 1971, it took us, I think, to get Edwardsen versus Morton on... on file. That case was directed at the Secretary of the Interior to require the Secretary to perform his duties, his trust responsibilities, to bring an action against all of the invaders of the North Slope to eject them. Had there been no legislation, that would have been a viable alternative.

Now with respect to Joe Upicksoun and Etok's plea for corporations, one must put it in the context of the times. As of then, the Natives did not have any desire for regional corporations. They had a choice of a statewide and village corporation. The Arctic Slope wanted a region. They felt that they were one people and they would protect all of the people through a regional corporation. The Arctic Slope was not getting any support for either the regional concept... or for their IRA desire as the mechanism to receive the yield of the settlement.

One has to be contemporary and the next best vehicle would be a regional corporation. And we were successful in the Senate bill of 1970, S-1830, of having created a "North Slope Native corporation." The AFN leadership and the Congress and general counsel to the AFN gave us a little sop in the North Slope Native corporation in giving the Eskimos 500,000 acres of surface rights. Not much value in surface rights on the Slope, particularly that small a size. We were able to convince on our own, however, when the bill got to the floor of the Senate to convert the 500,000 acres to fee simple acres.

I want to talk a little bit about the Alaska Federation of Natives. Let's take a look at it prior to the settlement. The initial bill endorsed by the first Chief's Conference, out of which the AFN grew, was based upon land lost. The bill provided that the court of claims would define the area of ownership still in the possession of the respective Native groups so that

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you'd have a court decree setting forth metes and bounds. And for lands already expropriated by the United States, they would be paid some money. The other Natives of Alaska realized that if the Eskimos were to get a share of their aboriginally-held lands, that perhaps the others would not get anything. I never understood that because I have a belief that the Natives have a pride of ownership in whatever land they have.

But the Alaska Natives are becoming somewhat Westernized. They're losing some of their commonality of ownership within their respective tribes so that, shortly, the voting procedure of AFN was based upon a population proportion basis. The Arctic Slope Native Association proposed that because its population being concentrated in the Tlingit and Haidas and in the Bethel area, the AFN, in its propaganda to the Congress, would swallow up the smaller regions, smaller in terms of population, Copper Center, Arctic Slope Native Association, Aleut. They would get the smallest.

Then the... We now have the settlement, and initially I was most impressed with John Borbridge, Jr.'s, remark about freedom in corporate elections. Particularly with the regions, there is no freedom of corporate elections, none. Management... This is the nature of the beast throughout the United States in the corporate world, management can spend corporate money to reelect themselves, and they do. Some of the larger regions will spend as much as 100 thousand dollars. They have TV ads, they have radio ads, they have solicitors, they have airplanes, they have free telephone and they hire girls to go around to bingo games and they pester the old ladies until they sign another proxy.

Now the structure of... of the AFN, Inc., after the settlement is based upon representing the regions. The village people have no representation in AFN, Inc. You have 12 directors representing the regions. Even the AFN convention has no power
according to its constitution. It's a great fellowship time and
that serves a function. Natives like to get together, see their
old school mates.

But there is no voice within the AFN, Inc., for the
village people. I was most impressed with Frank Peterson's plea
to the commissioner to listen to the village people. Now, when
you translate the lack of freedom in corporate elections into
the AFN, Inc., as it is composed today, you really have AFN
espousing the desires of the respective managements of the regions.

Now I want to go on to the political process. In
presettlement, the Natives of Alaska had quite a bit of clout.
They had legal rights, particularly after the Federal Field
Committee report was issued. They had the Udall land freeze and
it was of sufficient clout... Somebody mentioned Bill Foster's
lobbying on behalf of the oil companies during the last year
of the settlement. As far as I know, the oil companies did not
oppose any of the desires of the AFN during that last year, any
major desires. As far as I know, the orders that Bill Foster
had was to get a settlement, any kind of a settlement. It didn't
matter what it cost. By that time, the pressure on the oil
companies was immense. They had spent 900 million dollars for
some so-called oil exploratory rights in 1969, and I might men­
tion that the state of Alaska was so frightened of the legal
rights of the Natives that in the leases that the oil companies
bought for that 900 million dollars, there was a disclaimer
clause. That is to say, if the state of Alaska didn't have any
authority to sell those oil rights, the state of Alaska did not
have to return the money. That's what you call clout.

Edwardsen versus Morton was filed in the last year
of the presettlement and there was an article in the "Newsweek"
magazine which indicated that maybe... maybe the Natives of
Alaska did, under American law, own all of Alaska. That kind of
publicity is political clout. It worries people.
What kind of pressure do we have today? I was most impressed with Bill van Ness' remarks about what possibility is there to get some really substantive improvements on the settlement act. We don't have the land freeze. Title up here is pretty much fixed.

I've got to respond a little bit to the subsistence remarks of Doug Jones. Obviously, subsistence is a very, very important matter to the Alaska Natives. It was never a ploy during the settlement effort. It was never something we threw out to gain sympathy. It was a very real thing. That was not the problem, however, about subsistence. The problem, as of then, was that some powerful figures wanted to have subsistence rights as the real compensation that the Alaska Natives would receive in the extinguishment of their rights. There were real efforts. Chairman Aspinall, in his in-house explanation of HR-3100 in the spring of 1971, mentioned that in his bill they gave subsistence rights and that that was put in for "psychological reasons," in other words, to fool people that maybe the Natives were really getting something of substance.

One more thought before I leave the political process problem, there is an inherent conflict between the regions and the villages and the ANCSA corporations. One brief illustration is gravel. Who owns the gravel? Is gravel subsurface or surface? And gravel, in many areas, is very valuable. There's major litigation been had and still going on about the ownership of the gravel, part of the 50 million dollars in attorney fees that I mentioned earlier.

Now the only thing we have going for us for improvements on the settlement act... We don't have any real pressure, like a freeze. All we have is justice. Not so shabby a thought.

(OVERLAP TAPE 5)

MR. PAUL: But I'm cynical enough to say that the Congress does not enact laws simply because
they're just. Congress reacts to pressure. Congress understands power and this beautiful ideal we have of justice is not that kind of power. Well, that's pretty strong. It's an awfully hard job to sell to the Congress something that's not at a crisis level just for the sake of justice.

I have a belief, that if anybody can document the need for justice to the Alaska Natives, this commission can do so. While I'm somewhat cynical, agree with Bill van Ness to a large extent, one has to try. So we have this ideal of justice.

But let's suppose we fail in that regard, we get extension of stock alienation for ten years or so and we get some freedom of taxation for awhile, odds and ends like that. But the real substantive provisions that are troubling the people are lost, suppose that. We have to have a --

(TAPE 17, SIDE B)

MR. PAUL: -- there in front of them. It does not need legislation and it can provide a certain amount of protection.

Somebody mentioned that the ANCSA corporations would lose their economic power if they promote the IRAs. Well, we're talking about the same people. The assets that the ANCSA corporations have would not be lost, still there perhaps in the form of an IRA or some reasonable division between IRAs and ANCSA corporations so that their economic power and political power would be just as much as it is now.

One of the reasons why I have the belief that the ANCSA corporations have not utilized the IRAs is that it's sort of an unknown to most of us. What we do know about it is not very healthy, failure of the Southeast canneries, to a large extent the failure of the stores out here to the westward, has not been a healthy situation. John Hope has agreed with me that the canneries were being bossed by the bureaucrats from Washington, D.C. They never really had a chance. I was delighted to hear
Frank Peterson agree with that.

There is a substantial amount of oversight by the BIA for government-owned money. That is to say, the revolving fund that the IRA first established, but if the IRAs were funded by private money, including ANCSA corporations, you don't have that federal oversight. John Hope's example of Metlakatla is totally right. They exercise a substantial amount of self rule in Metlakatla. But again, it is an unknown.

So let's assume we baby-up into the IRA concept, utilization. Let's assume that there be modest loans from ANCSA to the IRAs, whether village or regional. See how it works. We don't have to strip the ANCSA corporations of assets totally. I agree with John Havelock to some extent. There are minority rights in corporations. By minority rights, I don't mean Native as opposed to non-Native. I mean minority in the sense that they're out of power... So that there has to be somewhat of an arm's length agreement between ANCSA corporations and the IRAs. It can't be a gift because then you invade the rights of the minorities in the corporations.

One of the fears I have of 1991 is corporate raids. We have some village corporations that are very wealthy. Kavilco, located at Kasaan, sold 15 percent of their timber rights, not the fee, the timber rights, cutting rights, for 25 million dollars. There are 120 stockholders in Kavilco. Multiply that out and that's 200 thousand dollars apiece. Now, I'm not suggesting that this would happen to Kasaan by any means, but some of these village corporations are going to be gobbled up by outsiders. People are going to sell their stock.

Again assuming that 1991 is not overhauled to any great extent, in the corporate world one knows that you don't have to control 100 percent of the stock or 51 percent of the stock to dominate it. You can oftentimes dominate a corporation by ten or 15 percent, and in the Native world, I rather believe that
that would be enough. An example, the canneries in Southeast
were dominated by the cannery superintendent. Some of them
weren't that worthy, and unless the villagers went along with
the cannery superintendent, he didn't get a boat, or his boat
needed repair and he didn't get financing, or if he didn't go
along with the superintendent the cannery tender didn't come out
and pick up his fish... lots of ways to control in the hands of
the cannery superintendent.

So it is a real problem about corporate raids. But
supposing the IRA were to have management of most of the ANCSA
corporation's assets. ANCSA corporations would have... would
own a debt that the IRA owed it... You know, some relationship to
fair value. There wouldn't be any enticement by an outsider to
come in there and pick up the stock because all he would be
getting would be a right to some payments by some sister organi-
zation. The management of the timber, for example, would not
be available to him.

There are... Before some of these gentlemen came,
we talked about this before, but IRAs have, you know, the real
virtue, only Natives can belong to it. But it also has avail-
able to its health the Self-determination Act, the Indian
Financing Act, the Loan Guarantee Act, the Interest Subsidy
Act... the federal government will pick up interest, instead of
20 percent interest it's going to be something compatible with
earning a profit. Finally, it has income tax... federal income
tax exemption. You don't pay federal income taxes when an IRA
makes a profit

Now there have been some remarks made about IRAs and
... Walt Parker, I believe, called it an anachronism. Bill van
Ness recommended against it, and one or two others made some
slighting remarks. I have a question to these gentlemen. What
is wrong with the IRA?

Thank you.
MR. BERGER: Thank you, Mr. Paul.

Mr. Peterson, I think I said if you had some further questions...

MR. PETERSON: Thank you, Mr. Chairman.

In school I learned that one never asks the questions unless he knows the answers. But for the benefit of those who may not know some of the answers or maybe to help pose further questions for the purposes of this commission, I'd like to ask these questions, especially to those of us here on the panel.

Number one is what, for historical perspective, is the genesis of ANCSA, and we can make references in trying to get the answer to the Russian statutes prior to the Treaty of Session. We could make reference directly to the 1867 Treaty of Session and also to the Alaska Statehood Act as it relates to the aboriginal title.

Next one is what was the Native claim to the land as was referred to by Mr. Paul? As I recall, in the mid '60s there were some 29 Native associations formed because of the claim that was being discussed by Native people. And as I further recall there, when asked to make the claim for the lands based upon the aboriginal title, that the entire state of Alaska plus parts of Canada were claimed under the use and occupancy laws.

Another question is what are the structures created by ANCSA as compared to the existing infrastructures of the Native community? As I understand, the ANCSA creates business companies but there seems to be a misconception by a number of people that the business companies formed by ANCSA also have additional responsibilities for social and governmental activities. The corporate structure, as created in ANCSA, totally avoids the infrastructures and the communal lifestyle of the Native people.
With regard to the land conveyances, what form should the land conveyance take? There's some discussion here about fee simple title versus trust. I think there's some... there can be some good arguments made as you conduct these hearings throughout Alaska and the villages for developing your recommendations at the end of the two year period that you're going to be working here. I think in arguing for both the fee simple title and the trust title, that it should be considered for any possible amendments to ANCSA as far as 1992 is concerned, that in order for Native people to be properly compensated for the 1971 ANCSA act, that we need to consider both the trust title and fee simple title in order that people can adjust to the Western economic system that we're being forced to live within through ANCSA.

I believe that both the Native community and the individual Native person will properly benefit by a conveyance in fee simple and trust lands to the Native community. I think this would also cause a shift of the beneficiaries of the claims act to date from the attorneys, the accountants, consultants to the originally intended beneficiaries and parties, that is, the Native individuals and the Native communities.

Also, I think as you conduct these hearings throughout Alaska and the villages, you will find that there are two types of Native people. One is the urban Native and the other is the village Native. That should be properly considered as you develop your recommendations. Each group has their differing views as to what should result from the claims act. Each group has differing views, differing needs. I think it's a consensus of a large part of the urban Native, for instance, to promote the alienability of the stock because they need it. They can use it. They know how to use these assets. But I think if you were to ask the same question of the Native person living in the village, that you would find their response more to say, "Why don't we keep the land or the money or the assets within the community for
community use," for the lifestyle has been generally communal rather than private land ownership.

We have an example in the Koniag Region in two parts of the settlement act. One is Section 22(g). According to Section 22(g), those lands conveyed to any of the villages within the wildlife refuge do not have or will not have fee simple title as was understood to be. A second example is in the D(2) bill or ANILCA where, for those lands exchanged or authorized to be exchanged in ANILCA, that those lands to be accrued now by shareholders of Koniag will not be getting fee simple title because ANILCA guaranteed public access to be accrued by the shareholders of Koniag.

I read in some of the material that you had distributed here and I was impressed with what Mr... the late Mr. Hugh Nichols said in his testimony. He says, "The ANCSA process is backwards." This was during the claims act days. He said, "The federal government should have been asking for the lands and that the Native people should have been giving." And I think that's very true because if we look at the statistics and the amount of lands that we were talking about under aboriginal title, 586,000 square miles or 375 million acres. And I was just checking with John here. He says the amount of land that the Native community is supposed to be getting is one-ninth of 375 million acres.

I think, Mr. Chairman, I must commend you again for this awesome task that you have to investigate how this... What shall I say?... landmark achievement in the form of claims act is impacting the Native community. And hopefully, when you come up with your recommendations, that we will have a consensus for 1992.

Thank you very much.

MR. BERGER: Just before we turn to Mr. Mallott and Mr. Johnson, I wonder, Mr. Parker and Mr. Borbridge, if either of you would like to add anything? You
had a... You spoke yesterday afternoon but you may feel that we haven't still got it fresh in our minds what you said. Otherwise, I'll move on to... All right.

Might I just make a comment that Mr. Starr has told us, in a graphic way, of what he regards as the fact of Native sovereignty because he referred to days when Native people ruled themselves and, to use his language, there was no Washington, D.C., there was no Juneau... I'm sure a ghastly thought to many, but he did remind us of those days.

Mr. Hope suggested that, at least in New Metlakatla, the reservation system had worked in Alaska, and Mr. Paul pursued that theme. May I just say that what strikes me is that all of you are talking about political institutions' governmental functions.

Mr. Johnson made it clear yesterday, and I think everyone agrees, that the regional corporations had sought to act politically on behalf of Alaska Natives as well as acting, as they are bound to do, as profit-making institutions. And Mr. Paul suggested that, since these are essentially corporations, and he referred to the way that elections are conducted, that is, by accumulation of proxies, I assume that that was what he was getting at, that they are not to be equated to elections that would be held normally in the political... in a political setting. I don't know whether I'm doing justice to what he said or what Mr. Johnson said, but that was my impression.

Then, of course, you have the state, which as I understand it says, "You want political institutions? You've got them. We've chartered first and second class cities all over this state, so let's get on with it." And it seems to me we're dealing with perhaps three points of view on that.

Might I also throw out for our... the visitors that joined us yesterday, a thought that many have uttered about ANCSA but... that they might reflect on and comment on, and that
normally in the entrepreneurial system, the capitalist system, or whatever... the market system... if somebody is an entrepreneur, he seeks or finds an economic opportunity. And then he goes and he gets a lawyer, I suppose, and he forms a corporation. Then he goes to the bank or an investor and he raises the money so that he can then pursue that economic opportunity. I mean, I think we were all raised to believe that's how the system works.

Under ANCSA, you turn that around and I... I'm the one, Mr. Petersen, who said ANCSA is a landmark achievement because when you think about it, even with the flaws that some have suggested it has, I think it is an achievement that... can only be described as a landmark. But ANCSA turned that around and they said, "Here's a corporation, here's some money, now go out and find an economic opportunity." I'm sure that's a trite thought, but our guests might like to consider whether, at the time of ANCSA, that occurred to anybody.

Well, perhaps we could move on then, Mr. Mallot, if you'd like to speak again now. You're certainly welcome.

MR. MALLOT: Well, Mr. Chairman, I'm not sure where we're at in this process and whether it's appropriate to continue going around the table commenting on what one another said. And if that's your intent... but having not said a word since yesterday morning, like everybody else you tend to have observations based upon what you've heard, and so if you'll indulge me.

The business of the... political nature and the difficulty with the election process of ANCSA corporation is as in the nature of most human events perceived by whose ox is being gored, to a large degree, and I think that's what we exist with today. The... I think there's an irony here and I'm not defending the process because the process of annual meetings and the election of directors in a form that is not well understood
and difficult to explain, even to sophisticated investors, is a
difficult one and has caused us, I think, a lot of grief. Every
year we're picking at a scab, something that is never allowed to
heal. But I'd just like to point out a couple things I think
that might help keep this into perspective.

The corporation allows every single shareholder the
opportunity on an individual basis to vote. There aren't very
many other institutions other than purely governmental institu­
tions that allow that.

Secondly, corporations, at their inception, had the
option of allowing cumulative voting which virtually every ANCSA
corporation, to my knowledge, did. And that puts substantial
power in the hands of minority shareholders.

For example, in Sealaska corporation, for every one
vote that management has, any other individual pursuing a
directorship on the board of directors has the equivalent of
six votes. And in an ANCSA corporation like Sealaska, the
power of shareholders to influence the corporation has been
very substantial. The corporation in each year of its existence
with only two or three years to my knowledge, has not been
able to elect its entire slate of candidates. Now, I don't
like the process but, once again, this dynamic, corporate
vehicle which many have said here is able to mold itself to
the needs of its owners, operates in many ways very differently.

It is bound by a huge history of precedent and law
and regulation that hamstrings the efforts of those in manage­
ment to a considerable degree to change that corporate system.
For example, and, gosh, we've had, in our corporation, for
example, years of training. You know, we've said, "Hey, we're
just a bunch of dumb clucks here. We've never run a huge
corporation before and we've got this money and what are we
going to do with it?" So we brought people in from the places
where people are supposed to know... John Fetters, with Arnold
and Porter, who's now the security chief of... or, the enforcement chief of the securities and exchange commission, taught us how to be board members. And the one thing that kept hammering at you is, you know, you have the obligation to the bottom line.

And one of the things they kept telling us was that one of the significant responsibilities of the board of directors of a corporation is to insure continuity of management, that financial institutions frown upon revolving-door boards of directors. You have to be very careful in how you assess and how you allow the policy-making of your corporation to be influenced. And so, in that context, there's been a terrific tug and pull because I, personally, feel very strongly that that process needs to be opened up somehow. But I'm also substantially constrained by thinking, you know, we've got 30, 40 million dollars in operating and long-term debt. What are the banks going to think about that? What are the financial institutions going to think about that? And those are very real problems that we all must wrestle with.

I know the frustrations, I know the anger, and I will leave it because, to a large degree, it is inherent in the vehicle that we've been beating from pillar to post.

The comment that was made more than once yesterday that ANCSA has avoided, and I am referring largely to Guy Martin's statement now, that ANCSA has avoided being static which has been the fate of most Indian legislation, and that is one of its important strengths, is something that I agree with because we, over the years, have had the opportunity, and Bill van Ness pointed this out, too... And I'm going to stop doing that. We're all going around the table more and more saying, "I agree with what someone else said," and pretty soon we're going to not be addressing other things. But I think that's something we need to recognize in ANCSA, is its dynamism and, hopefully, our ability as Native people to ultimately make it work for us.
I'd like to comment on... And this is the last time I'll do it, I hope, referring to another member of the panel... Dave Hickok's classification of periods of ANCSA development... and I've discussed this with David prior to this meeting. But after the passage, that period 1969, roughly, to '71 of active and substantive negotiation with Congress, the period of implementation ran, in my judgment, not really from '72 to '76 but from '72 to '79 because it wasn't until 1979 that we were able to get the state to make the advance payment of the state's portion of the dollars and I don't think we got most of that until 1980. And so... And it wasn't until 1979 and then beginning in 1980 that the land began to be transferred to Native corporations. And during that period from 1972 to 1976, we were involved as corporations largely in dealing with government. We were not, for all practical purposes, business institutions during that period of time. Some of us were making business decisions and were involved to some degree or another in business, but our principal focus was on Washington, D.C., and it was a very difficult period.

At one point, someone counted up the number of lawsuits that Native people... that ANCSA leaders were involved with during that period of time. There was something like 22 pieces of litigation on easements and transfers and... dealing with these federal agencies who continued to hang onto that land because they had been responsible for management prior to ANCSA. And substantial resources, both in human and dollar and the allocation of time terms, were involved in those battles. And of those 22 lawsuits, the Natives won 21. The one we lost, I'm not sure how important it was. But they were debilitating to a considerable degree on our efforts to really make ANCSA, at least the corporations, work.

And, of course, then we've got '79 to the present. I mention that, Mr. Chairman, only because if you look at 1991
and that date, that... Congress saying, "We'll give you 20 years to get your act together and then you'll function like everybody else." I don't think Congress envisioned it would take us anywhere nearly as long to get control of the assets and that to really implement ANCSA at the corporate level in the kind of business context that Congress had it mind... It ain't been 20 years, it's been something much less. For those of you who are English majors, I use ain't by way of emphasis as opposed to some other way.

The... Both... Well, I'll do it once again. Both Charlie Johnson and Mr. Borbridge raised the issue of confusion over what sovereignty means to Native people. To some it means, you know, one thing and to others it means something else, and that's something that the Native people are going to have to work out over time as we look at how we deal with ANCSA.

John Havelock pointed out something and it was his initial statement that I think is very important, and that is there was a failure in educating Native people in the complex law that was ANCSA. And then we heard also that Mr. Jones, in the years he spent in Congress and in the research arm of the Library of Congress, never saw a more complex act... And those, you know, that is something that I agree with. It's been a failure on the part of Native leadership but it also needs to be looked at in terms of being almost an impossible task when you juxtapose that need against all of the other competing needs at the time and the implementation of ANCSA. But I think it is correct to note that, in terms of our priorities, we might have done something differently. And not just us, but other institutions that had an obligation to implement ANCSA.

The... It was interesting to note that several speakers, at different times yesterday, said both that corporations were very flexible and dynamic and then said later that they were inflexible. The same individual said that.
I was interested in some of the comments that Doug Jones made because I think that they are important and to get that staff perspective helps us, I think, as Native people, understand some of the perspectives that existed at that time that maybe we didn't see because we had our own. And to... And while some of us were almost visibly reacting to some of the things that Doug was saying, I will give him the benefit of the doubt that from his perspective those things were real and they were right, and they're only wrong because we were feeling, as someone said, a different part of the elephant. And I think that what Doug said may not have been a personally held belief. He was a staffer. He was carrying out and reacting and building upon the direction and research that he had, that if you look at ANCSA from that perspective of what, ostensibly, Congress may have intended, that we should not be concerned about land falling into Native... about land falling into non-Native hands because that's what ANCSA intended, you know, is something you need to sit back and take a look at. I think it allows us to focus better on the job we've got to do. And, of course, if you lose the land, you get value in some other form, hopefully, and, hopefully, it makes sense in the marketplace. But, of course, to us the marketplace, itself, may not make sense, so we've got a problem.

And his comment that Congress hoped to attain attitudinal changes and maybe even cultural changes in Native people was one, I think, that we need to take note of. And, Doug, if I'm misquoting you or... or paraphrasing you in a way that you didn't intend, I know that you will respond. But I think that's what you said, because that's what I wrote at the time. And I think we have to recognize that, as Native people, as we put what we've got to do in order to deal with what we consider the problems of ANCSA into... into focus.

And I guess I might just, since several people have
posed questions around the table... If, Doug, Congress hoped to attain attitudinal changes and even cultural changes, what were they?

There was a thought expressed that the settlement could have just been land. We didn't have to get money, we didn't have to get other things. I guess, you know, my reaction to that is that, from our perspective, it certainly could just have been land. That's what we went in for. But that was not in the cards in any way, shape or form... at least to get, as Frank has pointed out, what Natives owned at the time. And I'm not sure in what context that was made, that maybe by accepting money you created your own problems because if we could have obtained just land, we would be, I think, in different circumstances right now. We may have had problems just the same, but we would be dealing from an entirely different frame of reference.

There have been several comments about Indian reservations and their success and it's something that I recall vividly back then when other American Indian groups began to understand where ANCSA was going and the comments almost universally that we heard from them was that, "You people are on the wrong course." That, "You are being terminated." I mean, it was almost universal, at least in my own recognition, and I wondered at that point, you know, "What are these folks talking about?" And I guess the only comment I would make there, Mr. Chairman, as to reservations being a failure... If there were no reservations, the Crows, for example, would not be sitting right now on 22 billion tons of coal and, for all practical purposes, there would not be Indians as we know them today if there were no reservations, and for all the problems, Indians still own land in this country. And to say that that is a failure, I think, is overstating in a very considerable way.

That's not to endorse how Indians got to the reservations...
but it's a comment, I think, on what exists today and the possibilities, slim as they are, as we look to what might have been.

Of course, there have been comments about... the subsistence comments that Doug made and the only thing I wrote here is "BIM comment, bull."

(LAUGHTER)

MR. MALLOTT: And that wasn't referring to Doug but whoever might have felt that that was how we felt at that time.

The comments that Bill van Ness made, Mr. Chairman, were hugely important to me because to a considerable degree they allowed me to recall some of our attitudes at the time, and that was to be realistic and to be pragmatic and to look at where we were going in terms of timing and to look at the art of the possible. But I think it's important to these hearings to note that all that was done in the context of having a touchstone of fundamental principle and I think that's what we've got to get back to, that if fixing ANCSA becomes a mechanical, technical sort of process without a question that Fred Paul used... there I go again... of justice... and for my frame of reference, not justice in the sense of throw ANCSA out and start over, but in the frame of reference of how, with what we've got and with what is realistic and what is possible, can we achieve but doing it from some fundamental touchstone that has less to do with tinkering with ANCSA than it does with what Native people view as being able to achieve as much as they can in terms of justice.

And, of course, the comment that, "Let's not raise expectations beyond where they already are in the galaxy," is certainly a caution that I think is very important because, as has been mentioned many times in these proceedings, that is one of the huge difficulties that we face and have been faced with.
since ANCSA became law. And as I've said and others have said here, the expectation issue is exacerbated to a considerable degree today because, to put it in a nutshell, again from my own perspective, the gap between the rich and the poor is growing. It ain't being diminished. And that compounds our difficulty as Native people.

The comments that were made... and I think it may have been part of the question that you earlier posed that you wanted me to comment on, both about the political nature of the elections and the political nature of the corporations, that is, corporations having both social and economic requirements, is both a burden and an incredible opportunity, and I think that if we are able to make that an opportunity, it requires time. And one of the reasons we are here is that it may require more time than Native people are willing to give to the institutions and the leaders of those institutions, for reasons that are fairly clear and which those leaders also understand and share.

But to change the institution, to change the perception of the institution, to change those levers and those demands and those dynamics that work within it so that we can be comfortable and successful with being both an economic, profit-oriented --

(TAPE 18, SIDE A)

MR. MALLOTT: -- institution and one which is able to deal to some degree with social and other needs is something that will take time and will have to be built upon a foundation of being able to prove something at a particular point in time that Native people can say, "Well, they've started, let's give them..." I was going to be cynical and say, "Let's give them some rope..." but, "Let's give them some time."

The comment that I refer to and others have referred to about corporations, and even in this instant moment, being dynamic and able to be creative, is also something that is both
possible and impossible, depending upon what kind of time frames
that you're talking about. And Dave Hickok's comment that we
can do anything... Not anything, but that we have flexibility
in ANCSA to deal with some of these problems ourselves, and
Mr. Jones' comment that one of the fundamental underpinnings of
ANCSA was that Natives were being given the opportunity to make
difficult choices, is one that is a belief that is not unknown
to us and many Native corporations and institutions involved
with ANCSA are making efforts to deal with that.

For example, Sealaska corporation submitted to its
shareholders at its last annual meeting a proposition which
essentially asked, "Should Sealaska begin to try to devise a
method or methods by which corporate-owned land could be taken
out of the corporation and be put into some other status for
the long-term benefit of Native people as Native people?" And
the response to that proposition from shareholders was over­
whelmingly yes. And as we began to look at how that might be
done within existing legis... within existing statute, we've
looked at things like the Bishop Trust and we're looking at
the Royal Dutch Shell and we're looking at all sorts of options
that we might pursue and we think that you could probably cobble
up something that, for an individual corporation at a particular
point in time, might make sense. But I think that that begs
the question of justice, and I go back to my Tununak observation
yesterday that the corporations own the land and its purpose
under ANCSA is an economic one. It has nothing to do with
tribalism. It has nothing to do with being Native land, and
we're trying to use structures that don't deal with those
issues at all to create some sort of patchwork response to what
is essentially a question of justice.

And again, I say that while we say it with some fervor
and justice can be very broad and... and overwhelming in its
connotations, that I think justice can be achieved within the
framework of the ANCSA legislation if we all put our minds to making those changes, that it would not do violence in any significant way to what Congress really intended for Native people, and would be responsive to what Native people had intended at the time as to how land would over the long term be owned and utilized. So some corporations, and most corporations, I think, are looking at these issues and are trying to be responsive to the interests and the needs of their shareholders. And, of course, having said as I have several times during my opportunity to speak at this... What do you call this thing?

MR. BERGER: Well --
MR. MALLOTT: Hearing --
UNIDENTIFIED: Roundtable.
MR. BERGER: It doesn't look --
MR. MALLOTT: -- hearing, okay.
MR. BERGER: -- very round,

but that's what it is. (LAUGHTER)

MR. MALLOTT: I have said it a number of times, that we need changes. It needs to be done within the framework of justice, that they're fundamental problems but that they can be accomplished within the framework of the existing law and our existing relationship and understanding with... with Congress. And so I guess to some degree I respectfully disagree with someone whom I respect very much, Frank Peterson, that ANCSA was a farce.

I agree that the corporation is an institution for trickle-down economics with large benefit going over time not to shareholders, but to the survival of the institution. And that's, largely, what corporations are all about. That's the way the law made them, and that's one of the things we have... It's been difficult for us both from a technical viewpoint and from a viewpoint of simple justice, I think again, to explain to shareholders. If you own 100 shares in IBM, IBM may earn
four billion dollars in 1983, but if you own 100 shares out of the millions that may be outstanding, that 100 shares might get you a hundred bucks in terms of a dividend, and if you don't like the way IBM is managed, you know, you don't go to the annual meeting and try to throw out the chairman and the board of directors, you sell your stock and you go somewhere else where you think your investment will make the kind of return that you expect. And it's in that inalienation feature of our stock that a large part of the political problem that we face flows. But it is also, of course, that feature which gives us the opportunity to maybe deal with some of the problems that we have with ANCSA.

The corporate vehicle is just really an anomaly dichotomy. I don't even know what those words mean, I just read them someplace. It's... It's very frustrating, and I don't know how Charlie or Frank or John or... John Hope might have felt at certain times, but there are times when I just want to rip off this suit, you know, and I feel like I'm outside myself looking at the guy being involved as a corporate mogul, to use a term that people have used, because a lot of times this thing doesn't make sense to me. Why should I be over here trying to make this business work when, for all the money we make, to the individual shareholder it's not going to make a fundamental difference in their individual economic status unless we liquidate the corporation. And if we liquidate the corporation, utilizing all of its assets, we will have disposed of land.

But at the same time, I look at the institution and I say minority people generally have been kept minority people in terms of their economic status and in terms of their social status largely because they haven't had economic power, and if we can use these institutions to, as a people, gain economic power over time, to be able to influence public policy, to be able to influence social policy, to be able to influence business
policy... then what an incredible opportunity that is for people. But the individual expectations and what the corporation can really do, both in the short term and the long term, are at this point very, very divergent. And that is a big problem for us.

There is an inherent conflict between village corporations and regional corporations. Witness what we're doing with ... with gravel, but they are conflicts that are able to be dealt with, I think, by Native people and the institutions, themselves. They aren't the fundamental nature that some of the other problems that we face in ANCSA may be.

The comments that Mr. Paul made about AFN... that it represents regional corporations, is owned by regional corporations, is certainly true. But it is also funded and its board of directors also includes the nonprofit corporations which have very powerful ties and involvements with particularly the village and rural areas and the convention has no power. That ignores, of course, the whole underpinning of Native strength as it's been demonstrated over the years which is that of moral suasion. And I think it was clearly demonstrated just the other night in an AFN dinner meeting that was held where a number of us were talking about AFN and where it's going with 1991... And I want to point out once again, Mr. Chairman, that there are other institutions that are as deeply involved and as concerned with and as organized and are working to deal with this issue, and at some point I would hope that there would be a way that all of those forces could be brought together at some point to see where we are, because these processes, these efforts, should be ones of fostering unity and strength as opposed to creating divergence and acrimony. And that just relates, once again, to one of the things that we've understood right from the beginning and which has been demonstrated here and in some form has been used on us as a form of tyranny... That
is, you have to be united, you know. If a senator says, "Don't come to us in Washington unless you're united," you know, he's just copped out, because sometimes it just ain't possible and I suspect that in dealing with fixes to ANCSA, that it is going to become more difficult for us to create monolithic and all-encompassing single kinds of solutions because we don't have the kind of flexibility unless we do start over that we had at the outset.

I do agree that even if we bring options, we ought to agree on at least the menu, and if that's what is meant by being united, I have no problem with that.

But to get back to the dinner meeting the other night, there was some conversation in which I was involved, saying how to begin to be more focused in 1991 in our response to the issues that exist and when it was all said and done, the AFN leadership, the management of AFN, said, "We don't want the regions to get too far out in front. We aren't particularly interested in what you folks cobble up as specific solutions. We want to go back to the convention. We want that gathering, regardless of why people come together, for friendship or whatever reason, we want that gathering which is a very responsive and widely representative gathering, to be largely responsible for giving this institution the direction that it needs." And I think that that is a commentary on how AFN functions and the kind of institution that it is that speaks for itself.

We're all concerned about the possibility of takeover and 1991, and I've got some personal feelings and ideas about how to deal with that, but I don't think that, at least at this point in your hearings, Mr. Berger, that that's... is appropriate, but what opportunity for losing the lands that 1991 makes possible, is very, very frightening and I think that that is a point that has been... that has been well-made here. I would make, once again, a personal observation, Mr. Chairman, by
saying that if the corporations were stripped down, race horse-
type of financial economic business institutions, without carrying
the obligation for Nativeness that comes to the corporation
because it owns the Natives' land, that at whatever time stock
may become alienable, that we would have a very different
capability to deal with those kinds of problems. But in a
for-profit business corporation in this day and age in this
current economy, the competitive edge that is required for just
survival is so great that to be encumbered with these other obli-
gations for a business corporation, creates serious problems.
And I'm not saying that in any negative way, but from a business
corporation viewpoint, I'm just stating what I consider to be
reality. And if we find some way to get the land, that land
which Natives identify as having Native cultural value, something
that is a touchstone of their history and their existence, which
may or may not be all of the land within corporations... I
would hope that it not be all of the land. I don't know that
any of us lived very deeply within the earth, for example, that
it would be important that the subsurface not be retained in
some manageable way that does not do violence to the surface
ownership for Native purposes that that might not be retained
in the profit-making corporation. But if we could create a
mechanism to separate those two, the chance of success that,
in my judgment, as we are faced with 1991 would be immeasurable
increased.

I thank you.

MR. BERGER: Thank you, Mr.

Mallott.

Mr. Johnson?

MR. JOHNSON: Yeah, I've been
sitting here making notes and sometimes I wanted to go like
this and say something, but it's kind of difficult when you're
sitting here.
Some comments... A statement made yesterday by Frank Peterson about ANCSA is a farce, we can tie that to a couple of other statements that have been made. Fred Paul made a statement about the roots of ANCSA settlement, you know, lie in the fact that there was tribal rights involved and the corporations are there because of tribal rights. John Borbridge made some statements about looking back about the legalities of ANCSA settlement which tie to statehood or tie to laws that were passed. And if we accept those statements, we must then say those are true if we assume that ANCSA was a just settlement, that it was a settlement that Uncle Same recognized our rights. The matter of fact is, Uncle Sam has never recognized the rights of indigenous people and settled them in a just manner. You can look down the history of the U.S. Not once has there been a settlement because Uncle Sam or Congress or whoever said, "These people have rights and we should acknowledge them and there should be justice."

It has never happened. It only happens if there's an economic or other gain to be had, and I think that we have to look at the fact that ANCSA... And really what brings it out is Mr. Jones' statement about what the feelings and what the thoughts were of the staff in Congress and the people that were involved. It really brings down to us the facts that the ANCSA was an economic settlement. It's not a settlement or recognition of any rights that we have. Whether those are there or not, it's a poignant argument to make, but it just doesn't fly in the face of fact. So ANCSA, then, is really an economic settlement.

Then let's look at some of the other statements that I'd like to make comments on. On the elective process, I've been involved with quite a few Indian groups in the states on reservations and the elective process that Mr. Paul talked about in the corporations and the tendency of management or those in power to insulate themselves or to use the mechanism of the corporation to remain in power is really not a characteristic of
corporations any more than it's a characteristic of municipal
government. The very same arguments that Mr. Paul has stated
have been used time and time again on reservations and when they
talk about the chief or the chairman of the tribal council, the
very exact same arguments I've heard time and time again by the
people that want to throw the bum out, or whatever.

The fact of the matter is in the corporations in Alaska,
at least the regional corporations, you can look at the changes
that have been made in the corporation's leadership and, in fact,
you have to come to the conclusion that they are dynamic corpora-
tions that are continually changing. Look at the fact that the
many people have been voted out of office and the statement that
perhaps the leadership in the corporation is not listening to
or does not represent the feelings of the stockholders is really
not there, because if you look at the fact of the matter, it
doesn't take very long for our stockholders, if the leadership
or the board or whoever, is not responding to what they feel
are the responsibilities of the corporation, for that person to
be voted out. And I've seen that time and time again.

Now, to the statement about an inherent conflict
between villages and regions, there's a couple of things I think
we should understand about that. One, you know, the villages
are both our strength and our Achilles heel at the same time
because let's look at the strength side of it and what we expect
or expected somewhat out of the land claims act. The expecta-
tions, I think, are starting to coalesce, that the act really
provided us a vehicle to remain unique and provided to maintain
some uniqueness as a people, that through the act and the
corporations, at least the village corporation's control over the
surface of the land, it allowed us to continue to live a life...
you know, free from some other pressures, perhaps, that might
come about if we did not have ownership of this land through
the corporations, that without that land base and without the
villages, we would not have been able to maintain, you know, our identity or our lifestyle or our culture. At the same time, we hear about some villages with tremendous wealth and the fact that when the stock becomes alienable, we might lose particular villages or the control of particular villages because of their wealth. And that's a very true and real danger in 1991 if we do not do something about the alienability issue.

Now, I want to also add to what Byron was saying about the fact of the existence or continued existence of Indians in the South 48 and I think the statement that he made that, were there no reservations there would not be Indians as we know them now, the fact that there is a Crow reservation or Sioux reservation has allowed them to maintain their identity, maintain their language, maintain their culture. Now if we grade the survival of people on, or if we grade an institution on how it effects the survival of people, then we have to say that the reservation system has been a success because the Indian people of the U.S. have survived because they have a reservation that they own, regardless of whether we make arguments about the imposition of the BIA and the trusts and whatever other federal or government institutions are placed upon its management, the fact is that because the Indians, or specific tribes in the United States, own land and have a land base, they have survived as a unique people.

If we use other measures of success such as the former Secretary James Watt did, then we can say they're a failure. Now, let's go back to our villages again, and more and more I think we're seeing a feeling or perceptible shift in the expectations of ANCSA. And that shift is toward an expectation, or maybe it's a hope, that the ANCSA corporations and the ownership of the land really is what we're going to need if we're going to remain a unique and survive as a people.

So... I'll look through here a couple times...
Back to the regional corporations, we see in several regional corporations now a move toward involvement of the villages in the decision-making process of the region. For example, Ahtna just recently merged with its villages. Control of that region is based now in the representatives from the villages. My particular region just went through a reorganization where we have given back control, literally, of the regional corporation to the village corporations where the villages now have more than a majority, a super majority, on the board, that the village interests and through the village representation perhaps a closer response or responsibility to the individual stockholders that live out there, that they can affect the regional corporation in a more dramatic and direct way. And we see this in... right now, in the regional corporations that... developing responsiveness to the needs of our people.

And when we go back to the premise that if the village people are our strength, I think we're seeing that the regional corporations are, in fact, strengthening themselves through this process.

Now, another statement was made... I don't remember who made it... about the fact that these are profit corporations. Byron has emphasized that we're not necessarily social institutions. You know, the fact is that it's true, however the response of the regional corporations, the profit corporations I'm talking about, to addressing some of these other needs is not always done by choice. We are expected by our people because, in fact, there is a gap or a void that otherwise... that should be filled by other institutions, that we are expected as representatives of our people to address some of these needs. So we are responsive and I think the moves that you see with the regional corporations to include villages, the fact that... there is constant change in the management or representation on the regional corporations indicates that, in fact, the stockholders do
exercise a lot of their responsibility in making the regional corporations represent what they feel their needs are. I mean, this is not to say that the corporations are the answer to the needs that we have as Native people, and I've said it and you've all said it, particularly those of you that have been leaders in the Native community, the corporation is... and ANCSA is not a perfect vehicle and it never will be. And I think what we're trying to do is, in the face of all that's wrong with it, trying to make it go and do the best we can with what we've got.

I don't think that a reversion to an IRA or whatever would solve the problems that we are bringing out. It's not a solution. I think, really, it's a set of another... series or institution with its own unique and otherwise almost insolvable problems that we have with the corporate structure that we're now in. So I'm not indicting or saying that we shouldn't go back to the IRAs, I'm only saying that the problems that we're bringing out with the corporations are also true of the IRAs. Whether or not there is advantages to that structure or... maybe I should say more advantages or less disadvantages really is an argument that I don't think can be won on either side. So if we look back again at where we are, I think that the issue of land ownership is really what is going to determine and with the issue of land ownership, the survival of... of Alaska Natives as unique and different people is going to determine whether or not ANCSA can be viewed as a success, because we, I think, do not want to be part or just another citizen. You know, we want to be Alaska Natives, we want to be Inupiaq, we want to be Aleut or Tlingit. We don't want to be just a citizen of the United States. And we heard from Mr. Jones that part of the process, or part of the thinking at that time, was that we, in fact, should be eventually just citizens. And I don't think we want that as Alaska Native people.

MR. BERGER: Thank you, Mr.
Johnson. I think, Mr. Johnson, I... just indicated the... some­thing that lies beneath all this discussion, something that lies at the root of it, and perhaps our guests might like to comment on it.

Mr. Martin, I think... I hope the members of the panel agree that we might proceed in this fashion for a little while and hear from Mr. Martin and Mr. Jones and Mr. Hickok and Mr. van Ness, and then, perhaps, have a little more interchange. But it's been a kind of a mixed verdict on ANCSA and you gentle­ment, as... not authors, but people who had something to do with... perhaps you were midwives, I don't know. But anyway, go ahead, please.

MR. MARTIN: Mr. Chairman, and I direct this comment to myself as to others, brevity may be the soul of wit but it is apparently not the soul of discussion of ANCSA, and at the risk of violating both your directive and the practice, I'm not going to choose to respond by speech at this point.

I clearly fall on the side of the people who believe that, first, for all its flaws, ANCSA has basically held up fairly well, particularly given the fact that it has been an act which has been willingly changed by Congress when good cause has been shown. I think that an analysis of the several amendments of ANCSA will disclose that, while some have fallen into the cate­gory of special interest legislation to address the specific needs of individual corporations... and I don't mean that pejora­tively... most of the major amendments have been those which dealt with institutional problems in the act which deserved serious attention and got it and got remedies... including... I think the best example is something like the land bank. In the future, obviously, there are amendments like that which seem certainly in store, addressing the taxation issue, address­ing the alienability issue, without knowing how they'll come out...
addressing the submerged lands issue and a number of others that are being pursued either currently or prepared for later pursuit.

So it seems to me clearly that the identification of flaws is a good and an ongoing process, but there's little doubt that the basic framework of the act has held up fairly well. Going just a little bit further, it seems to me that the kinds of concerns that seem to be provoking most of the discussion at our table today, which are those which apparently go to the organizational inequity and maybe the sort of social/cultural insensitivity of the act, are ones which at least I have found have been rather abstract in terms of the advocacy. In other words, while I understand the concern, I register it, I still have not heard the specific proposals for change that are inherent in moving toward an IRA structure, and perhaps even a little bit stronger, I have real reservations, in spite of the fact they ought to be discussed thoroughly, whether those kinds of changes are realistically to be expected in the context of the amendments that we've seen to ANCSA so far.

I have more to say about that, but rather than violate my own idea about not responding by speech, let me just put a question on the table that I would address to any of the individuals who either have deep concerns about the way the act's working now or who propose fundamental structural change in the organization or the implementation of the act. And that question is, what are the specific and highest priority changes that you want to accomplish by movement in the organizational structure... the specific and highest priority changes that you want to accomplish by changes in the organizational structure?

MR. BERGER: Mr. Hickok, would you like to follow?

MR. HICKOK: Thank you, Judge. I've only a few comments and I think we've heard enough of what has happened to the act, who wrote what, who did
this or. that, and I'd like my comments to be briefly directed to some future aspects for this commission and for the Native community as a whole.

First, I think you really have got to define sovereignty. Whether or not you agree with me that the United States is sovereign, above the states, Judge, and also above the Indian people is immaterial. I happen to know that the states of the United States cannot enter into treaties with foreign governments. I know that U.S. law prevails over Indian reservations. So my point is that there may be limited or diminished sovereignty. It may be inherent or otherwise, but you folks have got to define what you mean by sovereignty in the context of what you want to do.

Charlie Johnson says it means freedom to him. Fine. Whatever it means, define it.

I said the other day and I repeat it, that there is nothing in the ANCSA statute, itself, to prevent existing corporations from going to IRAs or to any other institution. It seems to me that this is a persuasive... task of persuasion internally in the Native corporations and the Native communities and I agree from my own research, having talked with several Congressmen in the past several months, that it's going to be a very, very difficult task to get anything except some perfecting amendments before the Congress.

I think, Byron, that you could put your land, Sealaska, in its own institution and separate, if you wanted to divest of the money, you could still retain the land. I think the flexibility is there to do what you need to do.

There are forces of change upon this land of great magnitude. Alaska is the most rapidly growing state in the nation. The resource and economic pressures that are coming here through particularly domestic demands but also international demands are incredible. There are U.S. international boundary
situations here in Alaska where, on the one hand, there may be cooperation and interchange, but on the other hand we may be faced with conflict. I happen to be one of those who's written for over ten years now on what I think is the coming conflict between the Soviet Union and the United States and Alaska in the oil aspects along the International Dateline. There are forces of change that you will not have any real way of coping with. You'll have to be part of that milieu that the rest of us are in and try and handle it as a people.

And the question of people is my last note. Fred Paul said that Alaskan Natives are becoming Westernized. I'd like to say to you that there have been many Western whites in this state that have become somewhat Nativized. Walt Parker and myself, when we were in our prime, would put ourselves up against any man in the woods or on the tundra or in a canoe. Walt won many dog sledding events. I won many things with axes and canoes. We both have hunted and trapped as well as anybody. We've probably been around this state in more pieces in the lands and on the woods and on the waters than almost anybody in the state. There is a... a thing in our history that the people of the worlds are becoming more and more homogenized, more the same. Many of you might be amazed to know that Mr. Starr's ancestors and my Celtic ancestors came from the same place in Central Asia. His people travelled east, my people travelled west from where we came, but we came from that same Central Asian steppe, as far as history of mankind is cognizant. So we are becoming homogenized. There are 16,000 Alaska Natives in Anchorage. There are also 3,000 Koreans here. In 1966, there wasn't hardly two or three. There is change, and we are, in many ways, becoming more and more one.

Thank you.

MR. BERGER: Mr. Jones?

MR. JONES: Thank you, Mr.
I think that it's a very good format, the one that you're following, to go around the table for at least one more round, and I don't think that the panelists... that we need to feel apologetic about doing that, maybe tidying up something that was either said or needs clarification from yesterday, or picking up on some point that another panelist responded to. And it isn't so much, I don't think, that the record be this or that, but rather that we understand each other, that we communicate well with each other and what it was you had in mind when you said it. So if I may, just a couple points that have come up.

Mr. Hope, I want to make sure that he, if I didn't communicate it well on the point of shares perhaps passing into non-Native hands and my phrase that's what we wanted to-happen or what we intended, be aware that the point there was that we wanted the possibility of that not to be precluded. It wasn't... I didn't mean to say, if I did, that I or anyone else is terribly anxious to see that happen. The point is that we didn't want to put unusual restrictions on it. We didn't want to, I don't think, attach constraints on it. We wanted to treat it neutrally, neutrally just like other shareholders are treated in the sense of being able to alienate it as they will. The only thing that we did attach to it was a time period in which it couldn't happen, which was, without trying to be parental about it, I think was... hoping there'd be a learning period there so the risks of alienation, later on, would be minimized. So it was really...

What I was talking about, Mr. Hope, was a push toward —

(_OVERLAP TAPE 5)

MR. JONES: -- equal treatment, neutral treatment if you will, and if that's a proposition you come with, neutral treatment, equal treatment, then you come to an answer like that rather than that there was anyone who was anxious to have it go into "non-Native" hands. We didn't want
to have a racial restriction, as I recall the matter, with respect to alienation.

Now, a lot of our discussion has to do, I think, with two levels of talking about these things, and I suspect the first one is a tactical view of how do you achieve changes, let's say, in the act, or whatever the act prescribed. How do you make it work out terribly well? And that's a very, very important thing, obviously. And... But that tactical view of it, talking about windows of opportunity to change it for the better and so on, is fine... okay, probably, as I say, more useful to you then the one I'm interested in, that is, a... on the... As best one can tell on the merit, what's the public policy aspects of some of these decisions. Nobody likes to yield tax preferences if you've already got one. Nobody likes to give up gains, usually described as hard-fought gains, but you may view it that way from the tactical point of view but you might come out with a quite different answer if you looked at it... one looked at it from a national point of view. So I think the windows of opportunity point of view is fine. The act certainly needs tidying up. But for me, if it means kind of a crass move to how do we hold onto things just on the basis of

(TAPE 18, SIDE B)

MR. JONES: -- that was earlier talking about, I think you come out oftentimes with different answers, including on the tax matter. Because, again, if your proposition is, over time, to bring things to be normalized and equal treatment, then that includes changes in the tax matter.

Now on the Indian Reorganization Act, and I'd forgotten that that IRA, to me for a long time had meant that's where you put two thousand a year in a tax-deferred fashion, and it took a little while to remember that it's, I think, the Indian Reorganization Act. So I don't know a lot about that. But a proposition that I think may cause trouble... I think this picks up on a...
on a point or two made this morning as opposed to yesterday, was
if you... if you set up a two-track system for gain and you say,
"I think I'll use the Indian claims route and the Indian Reorganiza-
tion Act route and maybe a BIA route and the Public Health
Service route and all those things that are specialized Indian-
related matters" and that's one route for gain and arranging
useful things for oneself, then when you've run that one out or
it seems to be a time that one shifts to the national political
route and, "We'll deal in some kind of political settlement for
other things," if you set up such a two-track system for gain,
I think that invites a lot of opposition because it means to me,
I think, carrying on in tandem, searching for gain on the basis
of differences as long as one can and then searching for gain
on the national political scene on the basis of sameness, and I
think that that can invite a good deal of difficulty.

Now, Byron, if he... mentioned that my reference
yesterday to maybe even attitudinal changes might have been some
of the motivation of some of the framers or some of the crafters
of the legislation, and cultural changes, and he properly said,
you know, what does one mean by that. What I had in mind in
using those two words, was that maybe attitudinal changes was
the racially-based dependency was... was what I was talking
about, BIA, Public Health Service things, racially-based
dependency and that attitudinal changes was the way I was
describing those. And I admit it's a pretty loose term and it's
totally fair to say why did you use a phrase like that and
what did you have in mind.

On the matter of cultural changes, that's still
tougher. But what I had in mind was that the act, I think some
folks felt, could induce or encourage cultural changes in the
sense of caring more about financial, commercial, so-called
market system, so-called Western financial-commercial institutions
was what I meant by cultural changes. I wasn't talking about
destroying other more artistic and other sorts of things, because I...

Oh, and on the just citizens one with Charlie Johnson, and just like everybody else, those two phrases which I know can get pretty heavy going, recall that what was being talked about there, at least when I used them, was I was talking about just citizens and just like everybody else in the sense of how government treats you in terms of entitlements and law and official relationships. And I suppose it's just... it's just a matter of how one views what you want, would like to see the long-term direction be. And for me it is, do you want to see things promoted that keep Native America and non-Native America running in some parallel course that never gets together, or do you want to have it go in a divergent course and be doing things, officially now is what I'm talking about, so that they go still farther apart in various ways, or is it your view of the world, as it is mine, that over time, one would like to see a convergence of Native and non-Native America and that that's the longer-term thing just talking about directions and thrusts. We're not talking about losing identities and so on in my view. So that's what I had in mind in using, perhaps, the too casual phrase just citizens, just like everybody else. I was talking official, technical treatment.

Back to the claims act, itself, it seemed to me that at least a lot of people felt that we were trying to do a fairly tricky thing, tricky in the sense of difficult not in the sense of deceptive, a fairly tricky thing. And that was, how to take an occasion which was inherently racially based, a legal, legitimate claim, and craft a solution in the longer term that had the chance of minimizing racial distinction, and that, I think, was a key thrust, in my recollection, in the trickiness of that awful hard task.

Thank you, Mr. Chairman.
MR. BERGER: I notice some of you looking at your watches. I was told yesterday that we remained too long, we should have been out of here by four o'clock, so if it's all right with you, perhaps we might adjourn now for lunch and hear from Mr. van Ness and Mr. Upicksoun this afternoon. And then others might consider the question that Mr. Martin put, and I know that David Case and Rosita Worl and Chuck Smythe will have some other questions this afternoon to put to all of you. Perhaps after we hear from Mr. van Ness and Mr. Upicksoun this afternoon, we could proceed in that way if that's all right. Perhaps we could try for 1:15?

(HEARING RECESSSED)

(HEARING RESUMED)

MR. BERGER: Maybe we could start. Mr. van Ness hasn't returned, but Vernita Zyles had one or two questions I think she wanted to ask and points she wanted to make. So since we promised the public they could participate, I thought we could let her have the microphone for just a few minutes and, by that time, Mr. van Ness will likely be ready to go ahead.

(INDISCERNIBLE COMMENTS ASIDE)

MRS. ZYLES: Thank you, Mr. Chairman, and members of the panel.

My name is Vernita Zyles. I'm from Unalakleet. I'd like to say at the outset that I came to Anchorage originally to organize and help the Alaska Native Women's statewide organization. However, Lily McGarvey, who is the president of the board of directors, was one of the panelists on Wednesday and brought me with her here to this meeting on Wednesday and I was... rather enthralled and have been enthralled since. But I am speaking today as an individual and not representing any organization.

It's very hard for me to sit. I have the same feeling
that Charlie had, Charlie Johnson, earlier when he said that it's hard to sit and not want to raise your hand. But I would like to make some observations on some of the things that I have heard this morning. And whenever possible, I will try to make reference to the person who spoke.

Mr. Peterson had spoken about the urban versus the village Native and I'd like to make an observation about that. He said that their viewpoints differ as to the optimum results that they would desire to attain from ANCSA, and that the urban Native would rather be considering the individual profit emphasis whereas the village Native would more likely consider the communal sharing of benefits. And I agree, however, I would caution that in looking at this particular viewpoint, the criteria used to determine who is urban and who is village should not be based on whether or not that person lives in the village or in the urban areas because some village people are urban in the extreme in their viewpoint and others follow the old dictum that you can take the Native out of the village but you can't take the village out of the Native. And I have seen examples of both of these kinds of people in my experience.

Byron Mallott spoke about the consideration that members of the boards of directors of the corporations have to give to the attitudes of financial institutions and I can see his viewpoint that it is necessary to consider their attitudes in order to gain their cooperation. However, to me this is the direct example of something that I spoke about on Wednesday, which is the one way attitude in education where Natives have traditionally and historically been forced to educate themselves toward the Western way's methods of doing business and there has been almost no reciprocity where the Western institutions have not educated themselves in the Native ways. And when boards of directors make this consideration, maybe unintentionally they are reinforcing that attitude that education is only one way. Our Native ways,
methods of doing business that the corporations and the villages
and the regions have taken is not necessarily a case of better or
worse. It's... But... But the ways that they have done business
are as much a fact of life as the attitudes of those financial
institutions of which Mr. Mallott spoke, and unless you move
the villages en masse to the city or educate the villagers who
choose to stay in the village en masse to the Western ways, unless
this happens this conflict is going to continue. And as Mr.
Mallott said also, 20 years... that's not long enough to overcome
that sort of problem.

In giving us this insight on the kinds of things that
successful boards of directors have to consider, and I thought
it was extremely eloquent, it's also a direct example of some­
thing else that I spoke of and that is the communications barrier
that arose when members of corporate administrations and boards
of directors were forced to... to school themselves in the cor­
porate process and in so doing made themselves more comfortable
in the English language, perhaps, than they are in their various
Native tongue so that when it came time to explain these kinds
of things, they were at a loss as to how to explain to share­
holders who were not comfortable in English this kind of problem.
Either the boards of directors will have to take steps to... and
this is... boggles the imagination to learn the Native tongue.
I know how hard it is, I had to practice for... let's see, how
long does it take to fly from Nome to Unalakleet to learn just
how to say a couple of sentences to my mother in Inupiaq.
(MRS. ZYLES SPOKE VERY BRIEFLY IN INUPIAQ)

In English... (PAUSE) It's very emotional. In English
that means I have been thinking it is time for me to learn my
own tongue. Would you teach me? So it boggles my mind and I
understand the problems that the... these executives face. But
... I think that they should make more of an effort to begin an
outreach to their shareholders to explain what they're up against
to make their corporations succeed in the Western sense.

Mr. Mallott also said that he had made reference to those people who have no economic power and to me it was implied that people with no economic power are pitiable. In my experience, there are people living now in the villages with no economic power whatsoever, who do not desire economic power, who use what little money they have to maintain the quality of life that they have succeeded in achieving in subsisting off the land... but whose quality of life is threatened by ANCSA's consequences should this law's intents be subverted or foiled.

On the question of unity, I think it was Mr. Upicksoun yesterday who made reference to Frank Degnan's often-quoted, "United we stand, divided we still stand," and since I am an individual speaking today I think I can say that it's also a reality on the question of unity that in some cases, united we have stood and united we have fallen. And there are corporations faltering right now to whom this particular statement applies no matter what the ideal is. I would like to see "United we stand, divided we still stand," but there's this threat also of falling as a people.

Charlie Johnson said ANCSA is an economic settlement and he wasn't too optimistic about the impacts resulting from this economic settlement. And, yes, I agree it is an economic settlement but as other documents like ANCSA, it is couched in terms that... that address the issue of justice. It has the... ANCSA has the face of justice and it is this face of justice that we should use so that the lip service paid to justice within ANCSA can be made into action. I don't know if this is possible.

Charlie also said that many executives have been voted out. I say that the ones that have been voted out, in many cases, are the ones who, when they achieved the status of being board members, realized the sometimes huge private and personal costs of maintaining a corporate position. The ones who have paid this
cost have stayed in some cases, but in staying and maintaining
their corporate positions, they're paying their way into another
world while simultaneously acquiring the ability to rationalize
and justify the payment, and some of them rationalize for public
reasons and some to be able to live with themselves.

I see, in listening to this hearing, that there are
two viewpoints that are arising, and one is the viewpoint of the
corporate executive and one is the viewpoint of the shareholders.
This is kind of inevitable. The question arises, when persons
strive to understand the Western ways with the intention of
helping their people and when these Western concepts of economic
success begin to make sense, what then happens to their Native
identity? I think it's important, yes, for them to achieve
success for the corporations and, by extension, for the share­
holders but I caution that they should be aware that in under­
standing and making sense of the Western ways, they not step
over into that other world that I spoke of.

And then Mr. Parker spoke of ANCSA and said that the
basic framework of the act has been holding up but in looking
around me at the economic and social impacts of ANCSA, I wonder
when he said that whether things are, indeed, going to plan. Was
it the plan of ANCSA to divide families using... I don't think
it was. He also asked the question, what the specific and highest
priority changes desired to be accomplished, and I will reiterate
what I said on Wednesday, that I feel that the... the children,
the 20,000 or 30,000 plus children so far who are disenfranchised
by ANCSA by being born after 1971 are... that's the highest
priority and I will use my own example.

When my daughter is 21, I'll be 51. When she's 21, I
hope that she would be in a position and desirous of being able
to speak for herself. However, under ANCSA she will have no
forum in which to speak for herself and she will not have any­
thing until I die, and I really don't plan to die when I'm 51.
I would hope to live my... for... My people have a history of longevity and if I follow in my grandmother's footsteps, for instance, I'm going to be 79, 80, 80-some years old before I die and she will then be middle-aged and have children and grandchildren of her own. This, to me, is the highest priority, that we take care of these people.

Finally... And I don't know how appropriate this particular statement will be to this forum, but for all of the plaudits that have been levelled at the grass roots efforts to understand ANCSA, I find that, as a grass roots Native and to a lesser extent some places and sometimes to a greater extent than others, as a woman, that my opinions are suspect because I am not affiliated with a properly recognized institution. I am not a board member of any corporation. In this respect, sophisticated Natives who do belong sometimes are capable of perhaps more virulent bias than their non-Native peers. Yet I am not a radical unless the definition of a radical is one who thinks and asks questions but does not run for office. I've had a Native person say to me, you know, "Boy, you really could have been something with an education." What am I now? What's this something that I lack without the education?

I know one thing that it's not. I do not lack my Native identity. I know who I am and what I can do. I think that hearings such as this have been a help.

Thank you for your indulgence.

Mr. BERGER: Thank you, thank you very much.

Mr. Upicksoun, please go ahead. You have... Mr. van Ness, I understand, has given you his time and you have your own as well. So...

MR. UPICKSOUN: Thank you, Mr. Chairman.

When you are a driving force, the first thing I have to
say is, "I am a landlord." I'll tell the commissioner, "You haven't paid your rent yet." Having made that statement, I have proof of being surrounded by the best technical people to say, "Joe is not blowing his stack." Now, we get into some other statements that I will make now and will simply tell you that "Look, when I made my previous statements, I said that in this white man's world, we need white man's tools." The Arctic Slope Native Association went beyond ANCSA and ANILCA because we were surrounded by technical people that kept us advised of how Congress was moving.

Now let me get down to what I feel about the leadership in this one piece of instrument, one white man tool. That's only one. When you define what a leader is, you have to understand that he has the ability to influence human behavior, on the other hand set a very good example, too, and really come out for tougher goals. Now that, giving you the definition of what a leader is, but to some they'll tell me, "Look, Joe, when you define a leader, it's that fine line between the hook and the sinker." That's different language. When I say that the Alaska Native land claims, itself, was just one of those tools, we as leaders had to seek some other course to resolve the problems that were identified by using another method.

Now I have eight months of combat and that's in Korea. My chances of coming out alive was that I wanted to be the leader because I know if I'm the leader I'm going to come out alive. But during the course of those eight months, the biggest enemy that I had was my own American G.I. rather than the enemy because I looked like a Korean and, by golly, when you are an American G.I. and you are afraid of your own troops rather than the enemy, then that's a different experience. It's a hairy experience.

Under the involvement that I had in fighting for my country, I went through a lot of leadership reaction tests to prove that I was worthy and when you go through 36 hours of reaction
tests, that's an experience.

Now, having all this behind me, I understood regimentation and learned how to develop new leaders. I can't carry the ball by myself. I need some help. The way you do it is you delegate authority. But when you do it, you have to make sure that that man is honorable. I handpicked people. In fact, being associated with Fred Paul and our ability to cause the Western civilization to support our side of causing Congress to move was that we told the Western civilization, especially the Pacific Northwest, "You write to your congressman, your senator and we'll tell you... we'll show you what impact it's going to have on your economy because when you look to the state of Alaska, its mineral wealth..." I can go deeply into Adam Smith... In fact, he wrote the book for me, but he never knew anything about Indian law.

Now having this one white man tool now is not the cure-all. It isn't. There are a lot of faults in the claims act but when you listen to your own people, they identify their problems and it's up to the leadership to find the answers and cure it.

Alaska Native Claims Settlement Act, as I said, Arctic Slope Native Association went beyond it. That's why we... when I made my earlier statement that, look, we know that Arctic Slope Native Association is going to get five million acres but we came into this with 56 and a half million acres and we were losing control over 51 and a half million acres, okay. There are other ways that we still can maintain control if we are going to survive as landlords, and that is the Alaska state constitution. Those framers were beautiful when they wrote the borough concept. I think we surprised them when we approached the voluntary borough act concept and got our people involved in it so that they elected to incorporate as a borough. We knew that we had the population, we had our own
mayor, we had our own assemblymen, we had an independent school district, well financed. We could never get our BIA.

No, I dislike going to Congress ever year for the appropriation to support a BIA educational system. I hate to go to Juneau to fight for my piece of the revenues that are being developed from my land. The one way to do that is cause your own villages to really understand grass roots. I want you to tell me what you want in terms of self-determination.

Right now, Alaska state government is getting too big. The federal government has been too big. There is lacking what we call free enterprise. What I am going to eventually close with is that... My opening remark was saying that in this white man's world, we need those white man's tools and the claims act was only part of it. And it can never resolve the complaints we get from our stockholders but we, as board members and stewards, have to acknowledge that and right now I cannot make a commitment unless I have specific instructions from my board of directors. I was able to keep my president and my chairman of the board advised of what was happening and I asked him, "What do you want me to do?" "Well, you've been involved in the claims act and we don't authorize you to say anything other than what the claims act means in the definition of another tool."

I think I... I know I've said my piece.

MR. BERGER: Thank you, Mr. Upicksoun.

Well, David Case had some questions that he wanted to put and perhaps you could go ahead, David.

MR. CASE: Okay, thank you.

My questions, I have three at the moment and two of them I think are interrelated and one is separate. I think they're all to Doug Jones.

The claims act has often been characterized, and I think President Nixon did this, too, as a... the first of the
self-determination pieces of legislation. And the term has come up here, too. Mr. Upicksoun just referred to it. But we really haven't talked about that very much as an item or a concept in public policy, and my question is, what is your recollection, your perception, of the idea of self-determination being a public policy concept at the time that the claims act was being crafted? Was it part of the policy considerations that went into the claims act? And then, I guess the next part of that question is, if it was then how, specifically, perhaps not completely, but specifically do you see that it... the claims act addressed that policy consideration?

MR. JONES: What are the other two questions? (LAUGHTER)

MR. CASE: There's one other question but it's unrelated to this one, really.

MR. BERGER: Could we tackle that one first, Mr. Jones, and then...

MR. JONES: Well, not tackle it very well, I guess. Perhaps, David, you'd help the question out a little bit more though if you'd mention to me what you think surrounds the self-determination question --

MR. CASE: Well, that's the point of the question.

MR. JONES: Well, perhaps, although... If you don't, then I have to say, well, I don't remember the phrase self-determination being a central one at ... in a lot of the discussions surrounding it. Now, if you mean by self-determination, though, some of the things I was... as Howard Cosell would say... alluding to on relations, perhaps changed relations, with the Public Health Service and BIA, that sort of thing, the dependency question, then I'd answer a little differently. But if the phrase self-determination as you use it is one of those crucial phrases like termination was or is and

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a handful of a few others, I'd say that was not one that I'd recall as frequently surrounding the discussions on the issue.

MR. MARTIN: I disagree slightly in this sense, that I think Doug is exactly right in that there was no academically-styled policy debate over what self-determination was in the legal sense and some conscious decision made to promote it in a strict legal sense of the act. But I think that those words came up. I would say I recollect them coming up fairly often in the context that Doug mentioned, and that is that there was clearly a reaction against the kind of settlement that had been visited upon the tribes in the Lower 48, which was regarded in, you know, sort of the buzz word on the other side of the ledger, paternalism, the reservation status, and to the extent that that whole issue was resolved.

It's like some of the others that I differed with my friend Dave Hickok on. I don't think they were discussed a great deal but I think they were mentioned. I think there was a conscious decision to have the settlement involve self-determination and the manifestation of that self-determination was essentially what we got in ANCSA, the corporate structure, the fee conveyance of land, and the idea, particularly in the... maybe I saw it more starkly than Doug did on the House side because, as someone mentioned, Wayne Aspinall, who was chairman of the Interior Committee at the time, may very well have had in his mind ANCSA being kind of a subtle termination sort of statute and so he may well have accepted without saying so some method of self-determination, but in his mind, and I'm projecting here, the cost for that in terms of the corporate structure and fee simple was, "Do not expect to return again, nor expect that you will receive the same level of benefits from the federal government" even though in the final negotiations over ANCSA, it became clear that Mr. Aspinall and his general philosophy with regard to the reduction of federal services and federal benefits to Alaska
Natives could not be meaningfully reduced by virtue of this act.

MR. CASE: That the services could not be meaningfully reduced?

MR. MARTIN: That's right. I think in the final analysis, the notion that, at least I took away and which was tried later in, you know, various ways, was that there would not be a meaningful reduction of federal services and the 2(c) study... Is that the right... Yeah, the 2(c) study was, I think, seen in different ways by different people but I have a feeling that Mr. Aspinall may have left the table thinking the 2(c) study would prove that those services were too much and, you know, some years hence that those services were still great, they were still costly, and, therefore, there should be a policy decision made to reduce them. I think other people left the table feeling that the 2(c) study had the potential to prove the value of those services and the importance of them in an overall scheme.

I know I can speak for myself that there was no question in my mind, and several people said it... I think Byron said it and I believe Joe said it yesterday and I've written it several times, the Native land claims settlement, in my view, was never a piece of social or cultural litigation. It was basically a business deal. It was the settlement of a piece of litigation on economic terms and to the extent that it had... it had substantial social and economic implications, but when people left the table, it seemed to me that it was essentially an economic settlement of a legal claim.

MR. CASE: To respond to your question, Joe, by self-determination, I'm just... This is kind of historical interest because the policy seemed to have been thought about around the time of the claims act and maybe have been discussed or even voiced publicly by President Nixon and then...
it later became a statute with that name, the Self-determination Act, so I guess I think of self-determination as it's been later evolved as involving institutions or resources, or both, that... over which Natives have a great deal of... substantial control, if not complete control. And the policy has been one that... of developing or transferring to Native control institutions that have been under other forms of control. And so I was just interested in the claims act. I mean, there obviously are institutions, but I was... that are controlled by Natives as a result of the claims act, and that's what I was looking to see if you had some recollection of.

(TAPE 19, SIDE A)

MR. JONES: Right. Again, 14 years... It's hard to remember some of those things. But most of the things that I've tried to remark about the last couple of days, I think, was certainly consistent with self-determination and control. But recall that the thing that I kept emphasizing was the... what I think was the Congress' idea that self-determination didn't mean insularity and it didn't mean necessarily a permanence and endless trusteeship arrangements or wardship arrangements or overlordship arrangements, and it really was a self-determination that could go in any direction. That's what alienation... idea was dreamed up for, so that using the private corporation notion, people could do what they wanted to do after some 20 or whatever year period the Congress decided. So in that sense, I think that self-determination and the kind of deemphasizing differences and emphasizing sameness was what did surround the act.

MR. BERGER: Thank you for joining us after the great events taking place earlier today.

MR. HAVELock: I've been busy.

Thank you for letting me come back and I apologize for not hearing what was said earlier but, as you know, I had some preoccupations.
I just wanted to add one note to this discussion, and that is that, certainly, there was some discussion. I don't think it was the intent of the state in particular but there was discussion about this being a capitalists settlement. And just as the Allotment Act contemplated in some senses the conversion of American Indians into small farmers, there was no doubt that there was some fond hopes on the part of many members of the Congress that this act was going to turn Alaskan Natives into capitalist businessmen. And maybe that worked to a point, I don't know. But I think that certainly was there and some people were devoted to that proposition, particularly in the Congress, talking about people, a Republican from Pennsylvania, something like that, you know, who would have that kind of objective as part of their objectives. I don't think those of us from Alaska were thinking about it that much.

So the form, itself, presupposes a certain amount of ... of determinism that runs against the grain of what you think of socially as being the ordinary meaning of the word of self-determination. You buy into a whole lot of things with the form.

MR. BERGER: Next question?

Oh, Mr. Borbridge. Sorry.

MR. BORBRIDGE: I want to intrude myself because, while you gentlemen are talking theory, I'd like to tell you what actually happened in respect to one facet of this. Firstly, and this will have a bearing, Mr. Chairman, on this question. During this time, as we discuss it, a lot of things were happening. Not everything was just focused solely on the claims settlement act. Some of you remember President Nixon's message to the Indians and you remember that there was increasing emphasis, regardless of what we may think of how the terms or the rhetoric was carried forward, there was an emphasis and a desire in the administration to do something which was translated into this discussion we're having.
about self-determination.

It was mentioned by Mr. Jones that there was a hope that possibly the opportunities offered through ANCSA might bring in the melting-pot concept more into being, that newly emerged capitalists coming in from rural Alaska would somehow be fitting into this flow of history theme with all of its overwhelming pressures. Specifically at this time, the Central Council of the Tlingit and Haida Indians of Alaska of which I was a member and which I had the privilege of serving as president, was presenting itself and recognized as a tribal governing body. We considered that theoretically while the roots for the assertion of this status was derived from a long history to which I alluded the other day, we felt that the culmination of our efforts to be recognized for what we had been for a long time, a tribal governing body, had pretty much reached its climax with the recognition and enactment of legislation which the Tlingit and Haidas proposed to the Congress, which legislation proposed methods for the use of the Tlingit and Haida Judgment Fund. We not only proceeded, once the legislation was enacted, to implement the terms of the legislatively or Congressionally approved plan developed by the people, themselves, acting through their committees and their convention, but we, in fact, began to expand on the notion that we could act in a more powerful, assertive role by being a stronger tribal government.

See, there seems to be here a hint or a suggestion that a tribal governing body, if it associates too much with these Western institutions, might, itself, become a Western instrument and thus become alien to the very people who responded and who seized history to use it. But instead, in our instance, we used the tribal governing body by challenging the administration specifically through the Bureau of Indian Affairs to start to spell out some of the broad thrust of what President Nixon enunciated in his Indian message. The chief thrust of which we
saw that was useful to us was the emphasis on self-determination. One of the first steps we took, therefore, was to begin negotiations to take over the operation of the Southeast BIA agency. We began negotiations on the Southeast level. We encountered, predictably, the opposition of the entrenched people who, if we were successful in our efforts to contract, would be removed or transferred and replaced by people appointed by the tribe, itself. We were successful in the negotiations and that is evident today. We also began successful efforts to contract for certain... the administration of education funds which previously had been administered by the Bureau of Indian Affairs. We began to administer those under a contract.

We also began to investigate possibilities for being involved in housing, for considering a credit union, and we also began to initiate other efforts. The point I'm emphasizing here is that there was no splitting-off whatsoever from our sense of tribalism. We, by acting through our tribal status and by moving into these programs and using what was available to us through presidential announcement and through programs in the Congress and this... this emphasis on self-determination, we began, as a result, to become much stronger as a tribe by doing for ourself, which is the overall thrust of what we did through the contracting efforts we made. We, in fact, were exercising the strongest possible method of practicing self-determination. We, instead of depending on others to make judgments for us, were able to have our own people involved who understood more about us, had better insight about our concerns, our aspirations, and we considered that this was spelling out this whole concept of self-determination. I think this also partially assures some of us who were considering sovereignty as somehow a largely undefined theory. And even I may have suggested that. But at least in one instance, it was being spelled out.
The notion I had an opportunity to advance because I had the privilege of speaking for the Tlingits and Haidas was that we consider the status under which we functioned as a tribal governing body and the opportunities to strengthen ourselves. And I consider that Mr. Upicksoun's reference to how they analyzed their situation and began to respond to it and using tools or developing even innovative tools, is again much in that line. So there was a tribal governing body. It was active. It was functioning. It was contracting and it is no less a tribal governing body. It is even more of a tribal governing body than it was before it began to exercise the initiative to undertake these various tasks which previously were done by others for our good or our well-being.

I just want to put this perspective in, that we're doing what we were... what I hear was talked about here, Mr. Chairman.

MR. BERGER: Thank you, Mr. Borbridge.

We'll ask Mr. Case for his next question then.

MR. CASE: I feel like I'm on "What's My Line." Well, finally, there's been a fair... well, I think almost unanimous agreement that one of the major difficulties with the claims act as it's viewed today is the position of the later born children. And I guess the question that's... In view of your perspective on the... the social policy angle of developing the claims act or social engineering... whatever, what, if you recall was the purpose in crafting the claims act to limit shareholders or, certainly, in retrospect, a large majority of shareholders, to those who were born on or before December 18, 1971?

MR. JONES: Yes, David. I, again, don't remember that with great clarity. My recollection was though that the committee was looking around for choosing
some date and did not want to leave it open-ended, I think was one thrust. They did not want to leave it open-ended and you could decide on one generation's worth or two generation's worth, or you could do what I think was most immediate and most... or was at least defensible at the time, and that is choose a date certain and the date certain, as is often chosen in legislative acts, is the date of the passage of the act. So it was... You know, you could look backwards with legislation and do grandfathering of various kinds and you can look forward and set future dates. I think the Congress was just rather pragmatic about it, not wanting to leave it open-ended, just chose a date certain and that was the date of settlement. I don't think that there were and I certainly don't remember great deep-seated, raging struggles over that choice at --

MR. CASE: Why not --

MR. JONES: -- at the time.

MR. CASE: Why not leave it open-ended. Was there considerations given to leaving it open-ended and... otherwise.

MR. JONES: The best I could do on that, David, in recollection was that I think the worry about open-endedness was only to do with whether the numbers might get... the dollar amounts, the size of the settlement and so on might get larger, somehow, and not... I don't think the Congress would be concerned... I don't think the Congress was very concerned as long as it didn't mean a larger settlement in some fashion or another.

Do you remember that more clearly --

MR. MARTIN: I have one other --

MR. BERGER: Mr. Martin.

MR. MARTIN: I may be singing from the same songbook on a lot of these but with regard to a lot of these kinds of questions, I think the answer still is that
you're going to find substantial... and this was my difference with Dave earlier... substantial work done by some of the interested entities, whether it was academic work, whether it was Natives, themselves, you will probably find some history with regard to these events, but with regard to this one like some of the others I mentioned earlier, I think you're going to find perilously little conversation about it in the actual consideration of the legislation. In the case of the cutoff date for afterborn, others may have different recollections.

I recall that coming up basically in the context of what I would call the sort of the bean counters from BIA and the Bureau of the Budget and others who were concerned about enrollment, and on regular occasions during the... the consideration of this act, there were concerns raised, sometimes in sort of highly veiled forms, but basically what people were saying is that they were worried about cheating in enrollment and the mistakes on enrollment and explosion of the enrollment rolls of people entitled to benefits under the act, people who were concerned about which proportionality between the regions would be maintained where you use the population base as the criterion for dividing certain benefits under the act. And as a result of that, there was some pressure on Congress.

In the absence of great concern... I mean, I don't remember anybody in the delegation being greatly concerned about this and in the absence of some pressing social or philosophical or policy concern on the part of Congress, the administration pressed for some kind of certainty with regard to the enrollment and for some kind of certainty with regard to a cutoff date, and one was added.

MR. BERGER: Mr. Hickok and then Mr...?

MR. HICKOK: I think there's a lot to that. There was nothing about that date prior to the 1970
dialogue, and it came about in two ways. My memory is very much the same as Guy's, although I think nothing is better than some research on these things and there is a written record, as you point out, on a lot of these.

But it came about both from administrative demands and from the aspect that this was compensation of the time, of that moment in time. Those two things.

MR. BERGER: Mr. Havelock?

MR. HAVELOCK: I do remember discussing with the delegation the administrative complexity that would be involved in leaving a permanently open enrollment and the... Remembering that the... that one of the functions of the settlement, as Dave was just saying, was to terminate or to make the settlement end as of then, we were setting up a system of state-based corporations. If we'd left an open enrollment, we would have had a continuing set of rights based upon federal statute. And one of the things that was intended to do was break it loose from the... from that federal... from a basis of writing federal law.

Also, we were looking at the, you know... again, as a part of that, looking at the free alienability of stock down the road when having a permanently open class would lose its meaning entirely. And there was discussion about possible problems of people being disenfranchised in a sense, but it was thought it would be taken care of for the most part by inheritance and that in 1991 it would become a moot issue.

MR. BERGER: Did you have another question, Mr. Case?

MR. CASE: No.

MR. BERGER: Rosita Worl, do you have some questions?

MRS. WORL: I'll limit my questions to two questions.
During the first few days of the hearings and the record of the early ANCSA hearings, we heard that Native people had a very grave concern about control over their land, and it was the desire for control, as well as the fear of BIA oversight, which lead them to reject IRAs and to go with corporations. Mr. Jones has indicated that normalcy or equal treatment or, perhaps what social theorists would call economic assimilation, was the objective of many congressmen and ANCSA. This normalcy or economic assimilation was to be accomplished through corporations, but yet we had, at this period in time... already had the experience of corporations with the Menominee and, later on, with the Klamath Indians. And under this experience, we see that normalcy or economic assimilation was not accomplished. We saw, instead, a transfer of vast timber assets transferred from Indian ownership to non-Indian ownership.

The question I have is not really the contradiction between what the Natives wanted and what Congress wanted, but, really, what I'm asking is, perhaps Professor Jones and maybe Mr. Martin could explain to us the contradiction that I see between the ANCSA assimilationist objective and also the objectives expressed in other federal Indian policy which states that cultural pluralism is a policy of the United States. And I think we've heard John Borbridge talk about President Nixon's statement on self-determination or the right for Indians to maintain themselves as tribal entities. We also have the National Environmental Policy Act that, for the first time in legislative history, it says that, you know, rather than looking only at economic costs, cost benefits of development, that we would also consider cultural benefits. And under that act, we see the protection of many cultural societies whose economies are based on subsistence, subsistence hunting. So I guess I'd like to have them maybe comment on this contradiction between two policies.

MR. MARTIN: I think it's well
to have other people comment --

MR. BERGER: Mr. Martin.

MR. MARTIN: Yes, Guy Martin.

Let me suggest some other people comment on that because I don't think that's anywhere close to the exclusive province of someone who sat on the staff at the time. I think, in part, I've already given my answer, and that is that the reason that you do not see those policies that you articulated appearing as clearly in the Alaska Native Claims Settlement Act is because the act, as I experienced it in any event, did not start out with the slightest intention of being that sort of law in the eyes of most people, although I'm certainly willing to stipulate that there were lots of people who were involved in the debate who had policy objectives and some who pursued them throughout the legislation. Most people never pursued it with the idea that it was to be an important cultural and social... act in the way that some of the others you named were: There was an acknowledgement by some that what we were addressing was, as some people suggested, a matter of truth and justice. There were some people who felt strongly about it. For some, there was a sort of a passing acknowledgement of that as a basis to proceed and to give political justification to the act. For other people, it was simply enough to know that the Trans-Alaska Pipeline couldn't be built unless the claims were settled. For others, it was enough to understand that they ought to seriously consider the issue of settlement and if that didn't work, then find another way to build the pipeline. And I think people were spread out over that terrain fairly broadly.

When that was reflected in the act as I saw it... Maybe I should say one other thing. That sounds a little crasser and crueler than I would want it to be. I think most people clearly approached it from the standpoint of righting a wrong and satisfying something they saw as a claim which, for one reason or
another, simply had to be settled. I think there were fewer people spread out over that sort of more cynical spectrum.

But nevertheless, however they got there, I don't believe that Congress, at least, believed that it had been asked to pronounce important social and cultural policy. I believe that it had been asked to settle an Indian land claim and they proceeded to do that. And as the act unfolded over these, really over about a three year period of intensive activity, and over that final intensive year in which the act was passed the discussions that were held, both the discussions at the committee level, the discussions between the various interests, particularly the Natives and the Alaska delegation... and I'm sure that the discussion of the various interests in their own council, turned almost exclusively on a kind of a bargaining model in the sense that people were really trying to figure out how much they could get and how much they had to give in order to settle this matter, and that relatively little discussion was given to the issue, you know, which social and cultural injustices this would right or what policy it would set for the future, not as a final word to say that those issues were ignored.

People talked about effects a great deal and people talked about what would happen if different courses were followed. But I can't stress strongly enough how much it occurred, to me at least, to be an essentially an economic and legal settlement of a claim.

MR. JONES: Rosita, my recollection of that is quite consistent with Guy's, but a couple of other things I think are worth saying on it. Legislative acts, of course, don't have to be single-purpose, single-minded. They generally have a major or primary purpose but while you're at it, you try to accomplish some other things. Another thing that I once was involved in here in Alaska was the postearthquake period. Now, there's an analogy here so it isn't much of a
digression, if you will. The point is that when the United States government came to grapple with, together with the state of Alaska, the rehabilitation of Alaska, as it was called, after the earthquake, it's almost certain that we over did it, over did it in the sense that if you said that all you were trying to do was reconstruct things and get things back to just what they were the day before Good Friday 1964, that you would have done it quite differently than what we... Now, again, the we now is the United States government and the state of Alaska, public policy... we probably wouldn't have done anywhere near as much as what was in fact done. In other words, that's what I mean by over doing it. We said, well, here's a very serious thing, a major disaster and the United States government is pretty good about responding to major disasters, I think, and indeed, it sees it usually as an occasion to over respond, over respond not just because of political pressure to do so and that there's sympathy to do so, but you may find there's an occasion that's just exactly the right thing to do. What I have in mind in this case is that the state of Alaska had only been a state a half-dozen years or so at that time and as tricky as it is to create a new state in the United States politically, it's still trickier to create one fiscally, financially. And so it was seen that in... while we were doing the right thing of rehabilitating Alaska after the earthquake and immediate postdisaster period, here was the opportunity to go ahead and do a whole bunch of things you otherwise wouldn't do to try to make that forward thrust of economic development which was so primary in everyone's mind at the time.

I think the analogy here is not perfect, but something to it, that at least political economists, maybe the attorneys were a little more precise on this than the rest, but political economists anyway' and staffers of other stripes had in mind that that's right, here's a legal claim that you kind of want to
extinguish once and for all but while we're doing it with these
elements and components of the settlement, wouldn't it be smart
to go ahead and try to look to the longer term economic develop­
ment, frankly, of this particular portion of the Alaska citizenry.

So I would... never wanted to claim that it was a primary
objective. I agree with Guy, certainly, on that, but I would
claim that it was a major secondary objective.

On the matter of what about environmentalism and other
concerns that we now see, not everything is explainable in the
context of the times. There's a temptation always to do that.
But recall in the '60s, it really was a theme of upward mobility
and reducing economic barriers to upward mobility and the
economic development theme, and this was so in black America
as well. And not too many years after that, I think in the
black citizenry the United States has had a reversion toward
interest in differentness... and there were the black studies
programs and so on and so on. Well, fine. But it was... that
was not the themes of the '60s in my view in black America and
it changed over.

Well, I think perhaps here we weren't wrestling with
the environmental and cultural concerns. They were not center
stage. It's hard for government to focus on very many things at
one time I think.

MR. BERGER: Mr. Havelock?
MR. HAVELOCK: I think I could
hear Doug maybe establishing some distance from Guy's position
there in a way and it seems to me that there may be, with re­
spect to the social and cultural aspects, that maybe there was
more of a congressional view that it was simply settling a claim
but it certainly would not have been the position of most of the
state people, in the sense that the state... Anybody involved
with the state was aware of the impact that this was going to
have in Alaska, that economic impacts were going to have a lot to

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say about culture and everything else going on. So... And that
expressed itself in things like, for example, the 7(i), which,
you know, the Alaska Natives had an interest in it in terms of
the sharing of the pot, but the state of Alaska had an interest
in it from the point of view of attempting to do whatever could
be done within the context of the need for a consensual agreement
to spread the revenue so that you would not have more extremes
of wealth than would be inevitable within a consensual basis.

From the perspective of the Congress, also one of the
things I ran into on more than one occasion... maybe you talked
about it earlier... was that for many of the congressmen, it was
left over business from the Statehood Act because there had been
a provision that said... left the thing to be settled, and during
the statehood battle there had been arguments made that Alaska
was not ready for statehood and statehood should not come because
this settlement act... because the settlement of the claim was not
included in the Statehood Act. I can remember one congressman
in particular shaking his finger at the governor and saying, "I
told you, Bill, that you were going to have to come back and
do this and that we should have done... taken care of it at the
time." I might add, if they had taken care of it at the time,
it would have been... that quantitatively, it would have been a
small fraction of the settlement, and probably wouldn't have...
It would have meant a settlement that would have had to be opened
up again with a lot of bitterness later on.

MR. BERGER: Rosita, next
question?

MRS. WORL: This one is for
Fred Paul. This morning you suggested that there's a difference
between BIA oversight over IRAs when federal money and when
private money is used. As I recall, you said that BIA has
substantial oversight over IRAs when federal funds are utilized
and that they, BIA, doesn't have oversight when private money or...
You were, I guess, referencing the possibility of private assets from Native corporations. In your opinion, would... If, as you said this morning that in that instance when private funds are utilized then BIA doesn't have oversight, the question is, if they don't have BIA oversight, is the trust protection in place?

MR. PAUL: Yes, the government does not have federal oversight with respect to borrowed money from outside sources. You can compare it with a banker. When the federal government is the banker, the federal government is looking over your shoulder to see how you spend the money, and that's what the BIA did in the cannery situation, the boat loan situation, and, in my judgment, that's the basic... basic fault of the failure of the IRA business enterprises in Southeast and also in the stores to the westward. You would still have the trust concept.

For example, you'd have sovereign immunity from lawsuits, which is your basic trust protection. On land, because of sovereign immunity, and if it's acquired in certain fashion you'd still have protection from invading your land base. I should mention that there were 62 IRAs as of 1940.

MR. BERGER: In Alaska, or in the country?

MR. PAUL: In Alaska, and I believe there were about ten traditional councils, which is the amorphous form of IRA. It's not as structured but it has about the same legal capacity. Beyond that, I don't know what trust... You have to consider trust responsibilities with respect to a particular thing. Those are the two that I have in mind.

MR. BERGER: Excuse me, Mr. Paul. Immunity from suit and immunity from federal income tax --

MR. PAUL: Yes.

MR. BERGER: -- flow from the trust relationship and you say that even absent federal oversight
where an undertaking is being carried out with private funds, those two characteristics continue in force?

MR. PAUL: That's right, unless waived. Now, maybe, in order to borrow money, you've got to waive it. But that's your choice. It's still available. Sovereign immunity can be waived by an IRA.

MR. BERGER: And is there any accepted legal opinion as to whether or not state income tax can be imposed on an IRA or on income earned by an IRA chartered corporation?

MR. PAUL: Not in Alaska, of course, because we don't have an income tax up here, state income tax, and I'm unacquainted with any in the Lower 48. The state does impose state business licenses on the IRAs up here but I believe that was because of default. In other words, the IRAs engaging in business, now speaking of the stores to the westward, what I called ANICA, Alaska Native Industries Cooperative Association... They have about 50 stores that they supply merchandise for every year... I expressed disappointment that there wasn't a contest but it wasn't until... There it is.

MR. BERGER: I see, yes. Did you want to comment, Mr. Jones? No. Did you want to comment, Mr. Case, on Mr. Paul's answer?

MR. CASE: No, I don't. Thank you.

MR. PAUL: I had some other thoughts I wanted to express.

MR. BERGER: Well, go ahead.

MR. PAUL: Thank you.

With respect to our general discussion as to why we have ANCSA at all, part of it is Alaska has been plagued with what I call social do-gooders. We have had so many Ph.Ds up here who, in the space of one month, can identify the problem and
another 30 days they can supply the answers. To some extent, that is true of congressmen. They are in a position of power. They have the voice and the votes. It is their authority which enacts laws, and many of them try to do social good and, as a by-product, sometimes they miss the boat.

Certainly it is true of staff. I know that the youngsters we had helping Justice Goldberg exercised enormous power and did much of the drafting. I'm sure that that was true of the... the congressional staff. They had their idea of social justice. Doug Jones said that one of the thoughts that was prevalent back there was amalgamation. Certainly, amalgamation was in the mind of Senator Jackson, and --

MR. BERGER: Do you mean assimilation or amalgamation?

MR. PAUL: Amalgamation...

MR. BERGER: Oh, I see, yeah.

MR. PAUL: Same thing. We're going to have, as Doug put it a little while ago, we're going to have an end product of one people. That is, of course, the very antithesis of self-determination.

I don't share that criticism of the Alaska Native Review Commission, however. The commissioner's had vast experience over 16, 17 years that I know of and has fought very seriously for the rights of aborigines of Canada and so I'm not... I'm not classifying this commissioner with what I call the do-gooders.

An example of imposing... or suggesting, maybe not imposing, do-gooding is expressing an opinion that the IRA is not a suitable vehicle. I've thrown out this question in my presentation this morning and nobody's answered it yet. What's wrong with it? I don't share Doug Jones' criticism that it's wrong to have several layers or several different routes, is the way he put it, the IRA route, the borough route, the
settlement corporation route. I see nothing wrong with that. Each of them performs different functions and they can walk down the road arm in arm. There's a little confusion about it as to which agency should have jurisdiction over some social function, but those things will be ironed out. And I surely would get back to my question, why isn't IRA a proper vehicle today?

Thank you.

MR. BERGER: Yes, Mr. Parker?

MR. PARKER: Mr. Paul asked me that question earlier and I guess the time has come to reply.

The... I guess the difference is, visualizing the IRA as one avenue is very different from that which has been proposed by some as viewing it as perhaps the primary or only avenue for solving some of the problems that are arising from ANCSA. So I think that I would stand by my original contention that it is not the best avenue at this time in history. Some villages, some tribes, may find it one of the options they wish to exercise and it may work well for them. I am not sure whether, you know, the community of Metlakatla has become such a viable and well-functioning community because of or in spite of the IRA. I don't know Metlakatla that well. I know it pretty well and I do know it, you know, that it functions very well as a community but I have always attributed that to the ability of that people to function as a community and a very enterprising community, and it lies in the resources of Southeastern Alaska, in the seas and land.

I think many of the points that have been made around the table this afternoon are absolutely critical. In earlier conversation with David Case, he asked me why I expressed my antipathy towards Justice Marshall yesterday and the route upon which he set the United States. I say, in crystallizing that a little more than we did in our earlier conversation, it is because the tribe does not need the recognition of any particular
Western institution to exist. The tribe exists. The village exists, and it is for the convenience of Western institutions, primarily Western governmental and legal institutions, that we go through all this. In order to continue to exist, obviously, the tribe requires some geographical expression, some land base, and securing that land base, of course, is what Paul talked about and how to continue to secure it in the future has been many of the options I tried to bring out in the paper and many other people have taken up here today. But remembering what, you know, the ultimate goal of ANCSA as an economic, as a partial economic solution to long-term problems should not, you know, make it the final and end-all, and I think it's been very aptly and correctly brought out that, in the ideal world, each tribe, each community, if it has a state and federal government which are operating in the way they should, is going to be helpful in insuring that it is able to seek out those options that serve it best. And that's why I think that, in essence, those institutions which lend themselves best to that, in essence, probably not to trust institutions but institutions which have reasonable long-term firm backing of Western institutions are best. And there are many of those which can be exercised and those which would be best would be those that would be created by the tribe or village. As Joe Upicksoun pointed out, as John Borbridge pointed out, you take and use the tools, choose from the tools you have to satisfy the needs of the moment and I think that, in essence, is why I am not particularly strong for IRAs.

MR. BERGER: Rosita, you had another question? Oh, Chuck, yes. Chuck Smythe.

MR. SMYTHE: I have a question for Mr. Jones and Mr. Martin about subsistence. I'm recalling Mr. Jones' comment yesterday on the perception of subsistence among the staffers in Congress at the time, and I was wondering why or if you can recall why subsistence was deleted during markup
from the Hou... from the Senate version of the bill, I believe. Whether there is any, you know, rationale behind that, or was it just a bargaining?

MR. MARTIN: Well, I was thinking about that yesterday when Doug was speaking and I tend to think that I probably associate myself a little bit more closely with the recollection that Dave Hickok had of that entire issue, that... While it may be fair to say to some extent that... I can't remember the exact word Doug used about subsistence being regarded one-third as a... on the merits and two-thirds as a tactic to gain extra land. I... I'm not sure I'd say it exactly that way. I recall that it was being... that it may well have been a tradeoff to some extent and, in that sense, it was subject to the same discussion I mentioned yesterday that village interests, my view was that village interests as a whole tended, in the final negotiations, to be somewhat submerged, maybe not even consciously. And my sense was, in the final going, that there was a kind of a trickle-down of knowledge to the villages and I recall seeing increasingly more village representatives in our office who were concerned about things like subsistence and the trust land concept and so on right at the end when the bill was essentially being put to bed, completed and put to bed.

As to why it was taken out, I think that Dave's recollection is essentially mine, and that is that, as the matter was negotiated out in the final going, the concept of fee ownership and the sacrifice of a greater number of subsistence acres for a lesser number of fee acres became the dominant way of dealing with the bill. I'm not as expert as Doug is, certainly, on the Senate debate but they simply decided, for a variety of reasons, that the mix of those two kinds of ownership was a more creative way to approach the settlement. But as it wound down, the tradeoff of those two things was made.
Now, one issue, again, and I only put this in because I think it's always important to have before us the actions of Mr. Aspinall and I cannot overstate the effect that I think that he had on the bill. He was a person who came to this with very fixed views on how things should be resolved and he had a staff that had very similar feelings that I had to contend with on a daily basis. And I do know that both Mr. Aspinall and his principal staff, a fellow named Lou Ziegler, a familiar name to all those who worked on the bill, both sought absolute certainty of all terms and they were always uneasy with the notion of this trust land concept, they were always uneasy with the notion of something short of fee simple title, you know, another classification of land. And so as the matter turned around to the concept of a lesser number of fee acres rather than a greater number of subsistence acres, however described, they were very comfortable with that and it ultimately became a matter of just deciding on how many acres there would be.

So, for a variety of reasons, that concept got changed.

MR. BERGER: Oh —

MR. HICKOK: I would also comment on that. Matter of fact, in the conference report I wrote that section for Bill van Ness and there were, as Guy will recall, there was Lou Ziegler and van Ness who were writing the conference report and, on the Senate side, Arland Tusing (ph) and I helped van Ness with that report.

And what had happened in effect, and I was there with Bill at the time, and if he was here, he could speak much more clearly than I, but in effect, the subsistence thing just dropped through the cracks of the very, very rushed conference committee between the House and the Senate, and in addition, that Ziegler and others in the House wanted it to drop through the cracks. But the dominant thought was on other things. And if you'll recall, I think it's on page 45 of the conference report,
there is an expression of the Congress in congressional intent that the Secretary of Interior is directed to classify the public lands of Alaska for subsistence purposes. It's never been done. I, and others, have raised the question. Walt, I know, and Esther Wunnicke, in the Federal-State Planning Commission days, and I, myself, personally, with several secretaries of the Interior, raised this question over and over again as I did with the various heads of the Bureau of Land Management.

It's still on the books as the intent of the Congress as... Not in the statute, per se, but certainly in the history of the act. But it's never been done.

MR. BERGER: Mr. Jones and then Mr. Hope.

MR. JONES: Just, perhaps, a scrap of information to add to that, Chuck... And I'm beginning to feel a little badly that I brought it up that way yesterday on the subsistence use matter because, of course, it's merely an assertion that I thought one-third, roughly, is this way. I mean, that's an assertion. But it's a legitimate thing, certainly, to thrash out but obviously I would be hard put to demonstrate how it was one would argue that a third felt that it was on the merit and two-thirds of the argument was something else.

But that aside, in trying to do a little bit more in answer to your question, a couple of facts... On Old S-1830, the old Federal Field Committee proposal, there's a sentence in the legislative write-up of it that I might recall for you. It says, "No grants of subsistence use of the public lands are proposed. Reliance for protection of subsistence resources is placed in state management." That was the Federal Field Committee early proposal.

Now, I don't say that everything sprung from that, but I mean that was a... one base document, anyway, that had it at
zero. So anything after that was a building on that. And in the legislative report accompanying S-1830, this one, you remember, about June 1970, there is a legislative write-up that says that the committee was not persuaded that even subsistence use land... land use arguments that were persuasive for purposes of having surface estate, that the committee felt it was not persuasive that whatever the needs were of surface estate for subsistence use required that one also own subsurface estate.

So I would recall that, I think accurately for you, as some of the lines of argument where one... if you went all the way saying, "Not only do we need subsistence lands but, by the way, we have to own everything under it," that there was some reaction to that, as my recollection, saying, "Well, maybe subsistence is persuasive, but that doesn't require owning subsurface estate." That's the other... addition I'd make to that.

MR. BERGER: Mr. Borbridge?

MR. BORBRIDGE: Comment on that, Mr. Chairman --

MR. BERGER: Oh, I'm sorry.

MR. HOPE: Mr Chairman, I won't be here tomorrow and I want to say a couple of things before I leave. I'm glad for the opportunity to have been a participant.

I think I conveyed the impression I was advocating IRAs. I was just defending IRAs. I think the corporations are a very new instrument. It's likened to being thrust in the major leagues without even having seen a game before and not too many people will be off and running. It kind of reminds me, I went to radio school. That was kind of my career for awhile, I was a radio announcer, and I broadcast the very first football game I ever saw.
(LAUGHTER)

MR. HOPE: And I only have seen
once since that time. I'd like to think I did a good job, but
I know I wouldn't compete with people who are knowledgable in
that field.

But I think Mr. Mallott mentioned that we didn't become
viable corporations until the late '70s. Probably the last five
or six years we've been in the game and they didn't make allowances
for us. I mean, in the corporate world you're a corporate
creature and you live or die by your ability to survive, and in
this day and age in the time that we became active, we saw many
a corporation take a dive, people that knew what they were doing
and didn't do it right. I think Sea First... You know, millions
and millions and millions of dollars and they couldn't make it
because of the times and the economy just didn't lend itself
to making very many mistakes. So I think our corporations are
still in that formative stage, they're still developing. But
it's the kind of a game that won't allow you learn the game and
still be around, so there will be some corporations that just
won't survive the corporate world.

If there are alternatives, I hope they will be reviewed
objectively. I think people have made up their mind on some and
don't even know how they function or how they exist and some people
are suggesting that, if they fail, it's the fault of the instru-
ment but if they succeed, it might be in spite of the instrument.
I have some difficulty with --

UNIDENTIFIED: (INDISCERNIBLE)

MR. HOPE: -- that rationale.

(LAUGHTER) The other thing is, I keep hearing from Mr. Jones
that these racially-defined institutions perhaps should not be
there. He doesn't say that but it's kind of the way I'm inter-
preting it. Then I go back to the land claims act, Section 29
of the second one. This is what it says, "The payments and grants
authorized under this act constitute compensation for the 
extinguishment of claims to land and shall not be deemed to 
substitute for any governmental programs otherwise available 
to the Native people of Alaska as citizens of the United States 
and the state of Alaska." And to me that means they addressed 
that issue and they're not going to touch it. I think the BIA 
and IHS are when they meant here.

And further on in that same section, it says, "Nothing 
in this section shall be construed to create or terminate any 
trust relationship between the United States and any corporation 
or any individual entitled to receive benefits under the settle­
ment act." To me, that's very clear also. So I kind of worry 
if some people interpret it otherwise, that maybe the land claims 
act meant that we'd be off and running and we'd all be equal and 
we don't need these, as he termed them, racially-based institu­
tions. I worry a little bit about that and I take some comfort 
that the act, I think, looked into that and having looked into 
it, didn't terminate them. In fact, it did the exact opposite.

I just want to express my appreciation, Mr. Chairman, 
because I have to get back home. A lot of big things are happen­
ing our region. We're a tribe, as Mr. Borbridge has said, and 
the tribe is going to move into its brand new building and I'd 
kind of like to be there when all of that happens. But I also 
didn't want to miss participation in this. I think sometimes 
the things that we don't think is that important and we don't 
attend, sometimes might have an impact on your in the future, 
and I didn't want to miss this opportunity and I thank you very 
much.

(APPLAUSE)

MR. BERGER: Well, I think we're 
all grateful that you were able to spend the week with us, Mr. 
Hope, and I certainly am. And I think we all appreciate the 
usefulness of every intervention you've made. And I wondered if,
since you seem to be directing much of what you said to Mr. Jones, whether he wanted to reply at all?

MR. HOPE: (INDISCERNIBLE) I have no chance to reply to him.

(LAUGHTER)

MR. BERGER: There was one...

Just one other thing that had come up that I just wanted any comments on.

Walter Parker, in his paper, in his summation, said, "Operating under state sovereignty probably offers a greater range of political and economic options for the future of Alaskan Natives that does a return to federal sovereignty. The political perils are obvious by the present composition of the Alaska legislature and its increasing urbanization," and Mr. Parker mentioned that yesterday. "However, the urban areas have elected many who worked hard for programs and laws benefiting Alaskan Natives in the past and there is no reason why that should not occur in the future. Insofar as the possibilities of creating a special form of sovereignty, either federal or state, we must bear in mind that the ultimate sovereignty was originally vested in the states except where the constitution or the Congress preempted that sovereignty." Well, we can leave that argument for the moment.

He says, "The Civil War pretty well nailed down the bounds of separatism in the American Union," and I guess that's something nobody can argue with, "and unless some forms of commonwealth approach were taken, there would not seem to be many options." And then he says, and I wonder, Mr. Paul, if you have any views on this, "The way in which the parcels of Native lands have been interspersed with state and federal lands over most regions of the state would make it difficult to give such sovereignty any cohesive geographical expression."

I think that speaks for itself and I'm just curious
whether you would like to comment and then I'll ask Mr. Borbridge for his views.

MR. JONES: That word sovereignty, I guess, has a hundred different meanings.

MR. BERGER: Well, I think really what he's saying is, if you wanted to have IRAs governing tribal lands, how can you do it with the land scattered all over the place?

MR. JONES: That, again, requires a definition of sovereignty. Are you saying... When I say you, rhetorical you... Do you mean the management of fish and game, do you mean management of zoning, do you mean... ownership in fee simple except for the trust quality of IRAs? I'm going to say that there is a... a movement within the government of Alaska that they're not going to stand for any sovereignty over fish and game. There may be some yielding on subsistence, but so far as sovereignty is concerned, it's going to be a tough battle.

But whether the state government is for or against sovereignty, the state government has exhibited an indifference to rural Alaska. Now, there have been huge inroads in rural Alaska for the benefit of Alaska Natives. I do not expect the state legislature to enhance sovereignty at all. I think the gains in education, in particular, have been, in a sense, stuffed down the legislature's throat. It had to be. The Molly Hootch case where the Alaska supreme court said bring high schools to the bush. The North Slope Borough's a great experience in assisting in education, marvelous, you know, just beautiful, but not a product of the state legislature. The neglect of the unorganized borough, the unorganized borough has an assembly. It's never met. It happens to be the state legislature and the governor's supposed to be mayor of the unorganized borough, so to speak.

So I can see problems in the management of fish and game
by IRAs where you have checkerboard ownership. I find it very difficult to believe that the state legislature's going to yield any sovereignty in that regard.

MR. BERGER: I see.

MR. JONES: Those are my remarks.

MR. BERGER: Mr. Borbridge, you wanted to add something?

MR. BORBRIDGE: Yes, Mr. Chairman.

I almost sense that... Well, as Mr. Paul indicated, we're victims of a term that's not quite defined so we're able to perhaps give it various meanings. I tie it in with Mr. Hickok's earlier mention that the United States is the sovereign, which in that case is a reference to where is the supreme power. However, within the relationship that the American Indians and Alaska Natives have had with the United States, we have the exercise of sovereignty by the tribe. Sovereignty is an attribute of their tribal existence by which they are able to make certain determinations such as those that are made by various levels of government to whom certain powers are delegated. But in this instance, the powers of sovereignty delegated by tribes are not those that are delegated to them, but rather are those that are an outgrowth of their existence as tribes. During their existence as tribes, true in recognition of this other sense of sovereignty, the sovereign power acting through the Congress has, in fact, been able to, has the power and has used the power to restrict the exercise of some of the powers of tribes. But, again, it's important to appreciate that the origin of these powers are as old as the tribes, themselves, and precede the formation of our nation. I think we are beginning to use almost interchangeably the sense of sovereignty as it refers to a supreme governing power, the federal government, and sovereignty as an exercise of
an attribute that a tribe possesses. I think we're all pretty much aware that through the Non-intercourse Act, the federal government made quite clear that certain relationships with the Indian tribes were reserved to and were the exclusive domain of the federal government.

Having given that background, I then consider that what Mr. Parker may be referring to is that it's possible that the Indian and Native tribes in Alaska might conceivably in the exercise of powers of sovereignty... and one example, clear example, of a power of sovereignty is the right to determine one's membership in the tribe. That is something that the tribe determines. Another is they have the land base, the power of taxation, a regulation over the ownership of certain things such as land and other tribal property. These are exercises of sovereignty.

And I think the suggestion made that the shift in sovereignty from state to federal is, perhaps, not so much a change in the sovereignty, the power exercised by the tribe, because that, in fact, may not be assumed by the state government. It simply doesn't have that power. That is the province of the federal government. But the tribe, exercising sovereignty as a tribe, subject to state laws and regulations, conceivably within that framework could decide that it will want to function within it or law may determine it and the tribe will be subject, as it is now, to certain state regulation that pertain to all citizens and, by force of the law, to the tribe, itself.

So I do caution all of us against the notion that sovereignty is readily transferrable. It is not... Or, that it can be diminished by a non-federal entity. It may not be, nor do we as members of our tribe, challenge the notion that the federal government is the supreme power. It is, but we have existed as tribes, as has been defined before, as domestic-dependent nations and there has been a gradual change in the terminology. But it follows pretty much the development of the law since that time.
This is no specific answer but I think it does say certain things that have been said are not correct as far as their jurisdiction and their pertenency to tribal sovereignty, Mr. Chairman.

MR. BERGER: Do you want to add something, Mr. Hickok?

MR. HICKOK: I would like to remind John about something. At the time of the dialogue in the Congress, there was testimony after testimony after testimony from Native Alaskans, themselves, that outside of the Tlingit-Haida, there were linguistic groupings and there were ethnological groupings but that... and this is in the words of many, many Alaska Natives, that, "We did not have tribes." And that, I would refer you to the written testimony.

MR. BORBRIDGE: I would be pleased to speak to that, Mr. Chairman.

Likewise, we refer again to the past. This is the Native way. That way, we don't keep repeating the same mistakes. And one is that historically the Alaska Natives, like the native American nation of which they are a part and were clearly a part then, therefore, have also been caught in the flow of history.

Let me give you an example. I agree with Mr. Havelock's comment and others have commented that, had there been a settlement a year later, and I think it was even suggested months later, there may have been... there would have been less land, less money and a few other changes that we wouldn't have been happy with. I suggest that if there had been a settlement prior to 1871, remember, that would have been a settlement in which not only the Native tribes or groups up here would have received land, but there would have been, consistent with national policy, a need to settle with tribes as such. And so, the United States, as was the policy at the time, would not only have settled the question of land and the ownership to land, but would have likewise dealt
as it had been dealing, with Indian tribes. It would have had to define more about the tribal government. Because, up to 1871, tribes had been, as a matter of fact, dealt with by virtue of treaties and once the practice was changed and there was a move backwards by the federal government from dealing through treaties and, therefore, recognizing tribes as sovereign, independent nations, there was a lessening of a need by the federal government to do anything about recognizing tribes as they negotiated out settlements.

Here in Alaska we were subject to the same flow of history but just as I've indicated previously, we benefited because the land claims was not dealt with, although promised in '84 and, therefore, we benefited by a number of things in 1971. Also during that same time, Interior did not, in fact, ever complete its obligation to address the status of the Alaska Natives. The fact that they were not, however, called tribes, denoted as tribes, did not indicate that they did not regard themselves as such. It was merely not spelled out in the legislation. Whether we call tribalism or tribes a manifestation of Alaska Nativeness which fits within the total flow of history from native Americans, I just don't find any inconsistency. The fact that... what Mr. Hickok, in large part said, was true does not mean that they did not so regard themselves as a part of native Americans. They were, they are, they were then.

MR. HICKOK: That's fine. The problem comes down to a very... I don't argue that. The problem comes down to the way that Congress received the testimony and, in turn, provided the compensation. The package of compensation only involved proprietary jurisdiction, not legislative jurisdiction or judicial jurisdiction in the bundle of aspects that make up whatever definition of sovereignty you want. So it becomes moot in my opinion because the message came to the Congress and the Congress, in turn, gave back the jurisdiction only in the

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Anchorage, Alaska 99501
MR. BERGER: Mr. Havelock?

Mr. Parker? Oh, sorry.

MR. PARKER: I just wanted to briefly describe what I meant by sovereignty in this case, and I was using it by then in its narrowest legal sense of the powers that exist between the federal and state government and the division of them. I think it's confused in the United States sometime when Congress ran off with all the bootle in 1913 with the federal income tax, why, of course, they acquired power over the states simply by cracking the fiscal whip. And that confuses the situation as to how much actual federal power exists in key areas that are closest to home of any individual, police, education, health and so forth. And it was in that context which I addressed earlier in the paper that I was saying it would be difficult, under the present land distribution, to give geographical expression to any form of new sovereignty. And I think it is difficult to define and, using the term sovereignty, which is, in essence, a legal term of Western institutions, to describe inherent tribal rights may confuse the issue and we probably should not use sovereignty in that sense.

MR. BERGER: Mr. Havelock?

MR. HAVELOCK: At the risk of the rest of the lawyers here jumping on me, I might wade into that a little bit. The... Sovereignty isn't really, in the context we're talking about it, a legal term so much as a term from politica science and international law. John Borbridge mentioned the form in which Indian law was treated changed with, I guess, 1871, when the United States said it wasn't going to work via treaties any more. From my perspective as a lawyer, from that time on when anybody here is talking about contemporary tribal... sovereignty, what they're talking about is jurisdiction, and when addressing... And that jurisdiction is whatever the Congress of the United States
defines as being that jurisdiction.

Now, there's not... The exception I would take, or, not so much an exception as a broadening of what Mr. Parker is saying, is that I think he neglects to look at the various bases for jurisdiction beyond territoriality. You also have jurisdiction over the subject matter and jurisdiction over the person, for example, and the jurisdiction of tribal entities with respect to its potential scope goes as far as federal power goes, and if you look... And that would be gauged, it would seem to me, in part by the scope that is being given to the rest of the Indian clause, which is the interstate commerce clause which allows for an enormous potential breadth of federal jurisdiction so that if the Congress was so disposed, they could write an act creating federal Indian corporations that had enormous jurisdictional power over persons, subject matter and, for that matter, places.

It seems to me the only ultimate... That is, once... Under the supremacy clause, once you decide that the Congress has the power to do something, it is simply, if they can adopt any reasonable means to bring that about. And if the... Under the commerce clause, the... as it has been interpreted, the United States has the authority to deal with the welfare of Indian people on a broad scale, then there is very little limitation to what they could do with... by respect of granting jurisdiction to political subunits to... such as Indian tribes on a wide variety of things. The only... The only ultimate limitation it seems to me you would run into is when you start hitting other provisions of the Bill of Rights, notably the due process clause.

In some senses, the Indian clause already has a little bit of an exception carved in it to... with respect to equal protection. The due process might pose a limitation in the... that part of it involving the taking of property, that is, the
deprivation of liberty without due process of law. And when you look at the body of law on that topic generally, the government of the United States can regulate all over the place without depriving people of property. For example, as coming very close by regulation to expropriating the ordinary uses of property, for example, is considered regulation even though it may deprive people of the ordinary and usual use of that property so long as, as I understand the law... Maybe David Case or someone more expert could go on on it... but so long as it doesn't involve the transfer of a property interest from one group to another, that is if it is carrying out a basically regulatory function then... then the Congress is without limitation. So the requirement of a cohesive geographical expression does not seem to me to be a significant limitation on federal power. If the government of the United States decided, for example, that in the interest of protecting fish, game, water, you name it, with respect to the use of Indians, that they could pass those regulations and not worry a whole lot about where these little scribble lines are on maps that separate out the jurisdiction.

MR. BERGER: Well, Mr...

Gentlemen and ladies, my sense of things is, especially in view of the fact that we have to leave at 4:00 p.m. that we have had a good five days and, certainly, I want to thank Mr. Borbridge and Mr. Hope and Mr. Starr and Mr. Paul who've been with us for those five days.

We have ended up this afternoon on the subject that we're going to explore next week starting on Tuesday with Native leaders and scholars from the Lower 48 and it occurs to me that this may be an appropriate point at which to terminate our discussion. Mr. Case and Rosita Worl and I thought that it might be an imposition to ask you to come back tomorrow in view of the fact that some of you are leaving and in view of the fact that it's a Saturday and we've had an excellent discussion.
David suggested we have what he calls a reality check. I'm not quite sure what that is and we just have a few minutes this afternoon. And I think that we've made... had an excellent discussion and unless any of you are... feel that we've left any avenues unexplored that should be explored tomorrow, I'm inclined, as chairman, to say that it's a good idea to conclude a session like this when everyone feels... still feels that they have... that it has been an advantage to be here, let's put it that way.

I think that you know that the first three days this week we discussed what Native people wanted to achieve under ANCSA. We've had some time to talk about what the legislators in Congress thought they were trying to achieve. And we're grateful to our visitors from the Lower 48, Mr. Martin and Mr. van Ness and Professor Jones and, of course, to Mr. Havelock who was then in Juneau for informing us on that subject.

We've had a --

UNIDENTIFIED: (INDISCERNIBLE)

MR. BERGER: (LAUGHTER) Yes, (INDISCERNIBLE). We've discussed some ideas for the future and I hope that next week, because you've raised IRAs, reservations, sovereignty, I hope next week we can take a good look at these things from the point of view of Lower 48 people who've had to live with those institutions.

And I should add that, in addition to our panel for next week convening here Tuesday, and they are people from the Lower 48, I've invited the AFN and the UTA, the Alaska Federation of Natives and the United Tribes of Alaska, each to participate by having somebody at the table to ask questions and I hope we can arrange that. We've talked about it and I hope it can be worked out and I think that would add very much to those discussions to make sure that all points of view are canvassed.

The week after that, that is, a week from Tuesday, we
will have representatives from Canada, Greenland, Australia, Norway, and perhaps other countries, to talk about the mechanisms, the instruments, that they've used to manage their land and govern their affairs. And it may be we'll get some new ideas out of all of this.

In addition, of course, the purpose of the commission is, as well, to enable people in those other countries to learn from the Alaskan experience. That's why there's a transcript. I hope that the report that comes out of this next year will be of use, not only to Alaskans, but to people in other countries.

May I repeat something... reiterate something that was said earlier, I've forgotten by whom. But that is, it seems to me that it is wise in such a discussion as this... It has been diffuse at some times, perhaps overly general at times, but you have to start somewhere. You have to nail the first board to something, and I think that, if we have as... discussions in the next week and the week after that are equally useful, then the visits to the villages and the meetings there will be... will enable us to know what people really want to do. Where do people... How do people feel about all this? What do they really want to do? Then we can call in some of the legal and constitutional experts and say, "Well, this appears to be what people have in mind. These are the directions they want to go and how can we achieve this?"

And I want to remind those who have attended the meetings as members of the public, we've tried to accommodate as many of you as we could. Some of you have spoken once, some twice. One of you, I know, wanted to give a 45 minute talk and I said no because I felt that would be asking too much time, given the fact that none of the panel have given a talk at that length, at least not that I can remember.

We will be holding a village meeting in Anchorage. It may take a night or two nights or three nights, however long it is
required, and we will be in other villages and communities
throughout Alaska through the remainder of the year.

I've had five days of village meetings last week and
five days of these meetings this week and I wouldn't mind having
a couple of days for reflection. There's been an awful lot of
interesting and worthwhile things said and I hope all of you have
found it useful, a useful exchange of views and, in my view, a
good beginning.

So if you don't all hate me, one way or another, for
suggesting that we wrap it up now, that's what I intend to do
and we'll reconvene again on Tuesday morning at 9:00 a.m. when
the people from the Lower 48 will be here and I just want to
thank you all again, most sincerely, for your participation.

UNIDENTIFIED: Thank you for
making this a very challenging week.

MR. BERGER: My pleasure.

(APPLAUSE)

(HEARING ADJOURNED)
CERTIFICATE

UNITED STATES OF AMERICA )
) ss.
STATE OF ALASKA )

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

That the annexed and foregoing pages numbered 416 through 512 contain a full, true, correct and verbatim transcript of the proceedings in the matter of the Alaska Native Review Commission, Overview Roundtable Discussions, as transcribed by me to the best of my knowledge and ability from cassette tapes provided by the Alaska Native Review Commission.

That the original transcript has been retained by me for the purpose of filing the same with Don Gamble, Coordinator, Alaska Native Review Commission, 429 "D" Street, Suite 304, Anchorage, Alaska, as required by law.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 22nd day of March, 1984.

SUNSHINE V. SHEFFLER
NOTARY PUBLIC IN AND FOR ALASKA
MY COMMISSION EXPIRES 8/06/84

Accu-Type Depositions, Inc.
727 "L" Street, Suite 201
Anchorage, Alaska 99501
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