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MARCH 08, 1984
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Alaska Native Review Commission Overview Hearings
Anchorage, March 6, 7, 8, 9, 1984
U.S. National Policy: Week 2, Session 3

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Walter Parker  
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Alfred Starr  
An Athabaskan elder who was involved as an early proponent  
of a land settlement to preserve Native rights.

*The Menominee Tribe was at one time terminated as a federally  
recognized Indian Tribe and the period of "restoration" was  
a movement to restore the rights and recognition of the tribe  
as a tribe.
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MR. BERGER: Well, let's get underway, shall we? We'll begin with Ted Chamberlin this morning and then we'll turn to Alma Upicksoun, Kim Gottschalk, Dalee Sambo and Alfred Starr. We were expecting Browning Pipestem after that. He can't come this week but he is coming next week, so his presence next week will, perhaps, offer a kind of transition between this discussion of what are essentially Lower 48 perceptions and experiences and international perceptions and experiences next week.

We have an hour-long documentary on the Navajo Nation that we will show sometime this afternoon, if that's agreeable, just at a time if discussion is flagging at all. It hasn't thus far, but it may.

So, maybe we could begin then with Ted Chamberlin. Ted, will you proceed?

MR. CHAMBERLIN: (OPENING REMARKS INDISCERNIBLE)

(LONG PAUSE)

MR. CHAMBERLIN: I'll just start right in. I have a few things to say that I hope will be of some help to the commission in its review of ANCSA. I... I'm presenting it, obviously, from the perspective of someone working outside Alaska and outside the United States but within the broad framework of Native land claims in North America. I think Tim Coulter's right in emphasizing that, at least the panamerican character of the situation Native people find themselves in but my ignorance gets the better of me when I get outside of Canada and the United States.

I should add that I've been one of those that have been very skeptical of the Alaska Native Claims Settlement Act as the model for land claims settlements for Native people in North America.
Canada, mainly because, in the Canadian situation at least, I think that land claims settlements hold promise for the future only if they constitute a beginning rather than an end, and it has been all too easy, for outsiders at least, to see ANCSA as representing a tidily packaged end of the story, a final legislative settlement of an awkward and somewhat anamalous claim for compensation, a closing of the file.

This review commission contradicts that, of course, which is one of the reasons it's so important, and not just for people in Alaska. I think the need for the review is urgent, and not only because 1991 is coming soon though obviously that's of prime importance. As an example, in November I was in Inuvik giving some testimony to the Canadian government's Beaufort Sea Environmental Assessment Review Panel on the effect of the proposed hydrocarbon development on Native land claims across the north of Canada. During the hearings, the proponents of the oil and gas project, Esso, Dome and Gulf, brought in someone to speak about the Alaskan experience. He presented, on the whole, a very cheerful picture of Native and non-Native Alaskans, happy with their new prosperity and welcoming more industrial development. During the questioning period that followed his presentation, I asked him whether all was as promising as he'd indicated and why some of the communities in Alaska were concerned about what the future held in store for them. I was interrupted by the chairman of the environmental assessment panel, who instructed the person giving testimony not to answer my question and told me to sit down and shut up since these were matters that he deemed irrelevant to the panel, which, at that moment according to its schedule, was supposed to be considering socio-economic impact.

It's a silly move and a silly situation, but I think it's indicative for it's a small part of a much larger pattern in which every effort is being made to reduce Native claims to questions of land and money and to reduce Native claimants to
supplicants. Things are changing, at least in some jurisdictions, but not enough and perhaps not quickly enough. ANCSA is such a prominent part of the recent history of land claims, this review has a particularly important role to play in focusing attention on some of the crucial issues. I realize that many of these are urgent community issues that need practical attention and the devising of new institutional structures congenial with community priorities. I want to speak to that in a general way and specifically about a dilemma that seemed to me to arise out of yesterday's discussion.

I'm going to begin with the question of sovereignty raised by Mr. Naranjo and the limitations of the statement that to be sovereign is to have authority over the land. It is not so, as Tito Naranjo said, and it is not so not only for the reasons outlined by Professor Lerner, but for other reasons, reasons that will continue to complicate any simple resolution of land claims issues. For one thing, there is the sense, as Gloria Brennan said, that Native people belong to the land more than the other way around. In those same... same set of hearings in Inuvik, one of the Dene who was giving testimony, asked the panel, in really quite startling terms, whether anyone was listening to what the earth was saying, and it... it was a striking kind of comment consistent with some of the points that were made yesterday and reinforces for me the limitations of any notion of having any simple measure of sovereignty or authority over the land when the relationship is of that sort.

Also, of course, is the profound religious attachments which bind Native people to the land, whether they are actually living on it at one particular time or not. And that, I think, is an important point. I'm just going to quote very briefly from a report that's just come out. In fact, I'm not sure it's released yet, by Mr. Justice Toohey in Australia. It's called "Seven Years On" and it's his report seven years after the
passing of the aboriginal land rights in the northern territories.

Mr. Berger: Let me spell Toohey for the record, T-O-O-H-E-Y. Forgive me.

Mr. Chamberlin: He's talking about the... the land rights act and the provision for community living areas and some of the limitations on the act and quotes from the Central Land Council's report about the need to define particular areas to which... which would be living areas within large agricultural leases. "Even with excision," even with the defining of these areas, "there will be important sites and hunting areas and favorite camping places not included in the excised areas. There will be old men who now live on the former government reserves and around Alice Springs who would like to sit down for a year or two at places in their country where they grew up." Toohey... Mr. Justice Toohey, then moves to take that comment very seriously, indeed, and to recommend provision in a revised act that would allow for that return to those places which weren't specifically inhabited.

And I mention that because I think that one needs to extend, where possible, the notion of attachment to land beyond residency on the land, extending the notion to include those whole series of values involved in that attachment which are spiritual and not specifically material, though they're often located in property rights, and which are inconsistent with any simple notion that one can exercise any easy form of sovereignty over that land, since the powers residing in that land are not subject to such temporal sovereignty.

Now, these aren't small matters. They may seem... to be irrelevant to the practicalities of negotiating new arrangements or redefining or defining the possibilities within ANCSA, but it seems to me they're important because of that dilemma that faces many Native people, which is the dilemma... the dilemma of how to use structures, legal in particular, which aren't
specifically indigenous in order to protect indigenous values and indigenous rights. There... And, here, I'm going to move away from land claims just for a minute and then immediately back to them.

There's a Northern Irish poet by the name of Seamus Haney (ph) who, as with a lot of poets writing in colonial or postcolonial situations, finds himself in a similar sort of predicament. He has the language, which is not his, to use in order to celebrate the things which are his. The language is English, the things which are his are the places to which he's strongly attached. And Haney talks, at various points, about the tension between what he calls territorial piety and imperial power. The power resides in the language, which is for him the English language, a language of... of considerable oppression, a language which is alien, a language which is inconsistent with the values of the land, and yet the only language, the only instrument, he has at his disposal. Somehow he has to find a way of accommodating within that language what he calls the piety which attaches him to his land, to his homeland, to his place, to his inheritance. These two, that territorial piety and imperial power or plenary power or the power of the law, however one wants to read that, they aren't easily reconciled but they must be made to coincide, to come together, because the power, whether it resides in language or the law, is a necessary condition for maintaining that territorial piety, just as it's a necessary condition for Seamus Haney in celebrating his land and his inheritance, or it's a necessary condition for a West Indian poet or for an African poet writing out of an English literary inheritance. And I think the analogy is fairly close since Alaska Natives, as Natives in the Lower 48, belong, as Professor Lerner has said, within an American inheritance which has value to them and which they want to be able to use in order to protect those other sets of values to which they're committed.
The poets obviously try through... through that language to generate images, ways of celebrating their attachment to the land. Native people have been trying with laws, in a sense to get beyond laws to a protection for their... for property rights and liberty, to use the language of the Northwest Ordinance. It's not easy to reconcile the two. That... And, again, I'll use Haney's words here, that piety involves, in some measure, a surrender to the rhythms of life and of nature, a kind of humility, a... a relax and almost casual attachment to the land and to its mysteries, a sense of place in which a place... and the place in the community are combined. The power, on the other hand, which resides in the language of the law, insists on a self-conscious independence of the rhythms of life and nature, an intense exercise of authority, individual or corporate, a commitment... and this is one of the most difficult things, a commitment to a certain kind of clarity of expression, whether that clarity is expressed in legislation or in plans or in programs, which isn't always easily suited to the indefiniteness of the land or of the attachment to the land or of the sense of community or of the spiritual values that are part of all of those.

The only way that I can see, and that I think history shows, of making these two coincide is by somehow generating a view of the future, which I'll call a vision of the future just for want of a better word, in terms that are indigenous, that come from the people themselves and from their land rather than from the legislators, the lawyers or the advisors, though the legislators, the lawyers and the advisors, in whatever order, can be used to give shape to that vision. That vision has to be informed by the imaginations of the people in the communities and by their desires, both material desires for a better way of life and spiritual desires for a stronger attachment to the land and to their tribes or to their communities, by the dreaming, if you want to use a notion that certainly the Australian aborigines...
would find congenial, a dreaming of health and happiness, of peace and prosperity, as well as a number of other things... by the dreaming, by the imaginations, by the desires of those to whom it really matters, the Native people themselves. It must come from the communities. It must come from that attachment to the land.

And I use the word visions deliberately. Visions are not impractical, visions are what make things happen... visions of a free republic or visions of a garden blooming in the wilderness. That was the vision that dispossessed the Indians of Oklahoma... or visions of pipelines across the tundra. Those are all visions and they need to be matched, it seems to me, by their own kind of vision, a vision of their own kind of development. It may be industrial, it may be governmental, it may be whatever, but the key thing is that it be their own and that it inform the language and the laws and the institutions and the institution structures that flow from it. That, it seems to me, is the only way in which the Native people of Alaska are going to, in the long run, make things happen rather than simply letting them happen. It's the only way to use Tim Coulter's description, to avoid making decisions on someone else's terms under legal duress, as it were, under the broad framework of duress that he was describing yesterday.

It's the only way to establish a pattern of relations, relationships between individuals and the natural world, between individuals and their communities and between those communities and the larger group, and to incorporate these relationships and institutional structures, whether they're political or economic or social. That's why I think ANCSA and this review are so important for all Native people and, indeed, for all people. They provide an opportunity to do this, to transform the principals, the anxieties and the aspirations of the Native people of Alaska from the late 1960s into terms appropriate to and generated by the Native people themselves.
by the Native people themselves.

I think I'll stop there. I have some other things that, in a sense, follow from that, but perhaps I can leave those for now and... and close with... with those comments which, as I said at the beginning, may seem of an extraordinarily general nature but seem to me to be... to be specific to the particular need of Alaska Natives right now to find a way of turning ANCSA to their own advantage, of transforming it or reshaping it or whatever into an instrument for their own future.

Thank you.

MR. BERGER: Thank you, Mr. Chamberlin.

Any observations or questions arising out of Ted Chamberlin's remarks?

David Case.

MR. CASE: Thank you. I have some questions but they... I mean, he's touched on some questions that I think have come up throughout the first couple of days here. I don't know that it's necessary to go into it right now but I think we have to go into them at some point.

I would certainly like to ask, at some point I'll have Mr. Jim and Mr. Naranjo and Ada Deer and Kim give us your thoughts on the degree to which, the necessity you've found, to use Western institutions for your own purposes. And I've heard you discuss your experiences that seem to raise this question. I don't know if now's a good time to go into it or not, but I think we should go into it.

MR. BERGER: Well, that seems to arise out of what Ted Chamberlin was saying, so carry on, if you wish, to... Tim Coulter? You're on the verge of something here.

MR. COULTER: Yes, I... was very pleased to hear you suggest that... that it may not be
necessary, in fact may not be advisable at all, to take hold of
and use models for development, models for organization developed
by others. I know I'm not saying it really the way you did, but
that applies, as well, to models for activity. It's not, of
course, necessary to rely alone on the processes of the law,
the processes of Western political interaction, even, and, in
fact, Indian people, indigenous people, in many places have been
quite successful in resisting that type of approach and insisting
upon and managing to hang onto some of their rights and interests
by deliberately staying out of the courts.

I, for years, represented... in fact, still do... a
community of Mohawk people that took over several thousand acres
in the Adirondacks in New York state, their original homeland
that they'd never given up. And they just kept it and they held
off the state police for years with weapons, managed to convince
practically everybody that they were sincere and had a just
cause and they're still there. And they have a thriving and
successful community, living peacefully with their neighbors and
they never had to go to court. In fact, they were sued... millions
of efforts... well, dozens of efforts were made to get them into
court, none of them successful. And they have done extremely
well by using their own model for asserting and defending their
rights and by avoiding what they felt was a very serious trap.
And there are many kinds of practical approaches that might be
useful and valuable here.

I know I'm expanding very much on ideas that you only
mentioned, but it did spark something that I thought was some­
thing that had been left out entirely yesterday and that needs
to be mentioned and talked about.

MR. BERGER: David Case?

MR. CASE: Well, that's... That's
sort of what I'd like to go into, what are... You know, avoidance,
either by force of arms or demeanor on your face or otherwise,
can... It certainly seems to be one tactic to... Well, Ada Deer has asked, I think... suggested that one thing that Native people share is the desire to remain Natives, native Americans. And Professor Lerner asked, "What is an Indian," and I'm not sure that's the point you were making in that question but I hear the same issue. What does it take to remain an Indian? And I think this is, I guess, what I see as being summed up, and I'm not sure it is, in the idea of self-determination, the ability to determine, yourself, and who you or we... The concept applies to any human being, I suppose, or any group, community of people, potentially.

So, I guess my question is, what are some other strategies in the experience of Native communities to... that have been used or tried to maintain or to remain Native and how well have they worked. And maybe that's enough. I have some specific things in mind but maybe I should just let it go now for the moment and --

MR. BERGER: You might let us have those specific items because I have one or two myself.

MR. CASE: The... The strategies that have come to my mind over the last few years are, I think, two and then Mr. Naranjo suggested, I think, a third. Just that last second, Tim Coulter suggested another. So I'm less than convinced that I've got all of the categories here.

But... Control of economic resources has often been characterized or seen as essential to self-determination for Native people, and I think that's particularly the focus of the claims act to the extent that it may be self-determination sort of legislation.

Another strategy seems to be that of political control what I hesitate to call sovereignty. and so won't, but at least the ability to govern oneself. Now, I'm not sure that means governing land in the sense of controlling land in a way that
is offensive to Native Americans, but at least controlling social relations among a community of people. Community control of some kind... I separate that from ownership of property in the Western sense, and, of course, this is a Western mind, you know, categorizing things. And so... But I think that political control, I'd be interested to know to what extent political control is viewed as important, necessary or whatever to achieving self-determination.

And then, Mr. Naranjo seemed to me to suggest that it was... One strategy to remain Native was to maintain a sense of cultural integrity, for lack of a better term... It's not his term... but that the Pueblos have persisted over a long period of time because of... and, forgive me if I'm wrong and misinterpreting you... because they have a sense of community and a very cohesive religious philosophical base that has been able to essentially, I think, co-opt other institutions to their own view, but that... that cultural, that sense of who we are, who they are, has been important, maybe all that's necessary. If there was no economic resources, no electricity in Taos Pueblo, it is simply sufficient to have a sense of who one... who you are.

But I'm interested to know in what... you know, what institutions... Are there institutions that are necessary to do that or can it be done without institutions. And another strategy, I suppose, is isolation, keeping apart, and that can be physical isolation as is possible in a lot of Alaska. It can be political isolation in some sense. It can be, in the case of the Mohawks I suppose, some kind of demeanor or repartition that keeps people away.

So those are the things I guess I had in mind and I'd like to explore the extent to which any of these or other strategies have been important in maintaining Native American communities in remaining Indian in your experience.
MR. BERGER: Mr. Naranjo, do you want to respond?

MR. NARANJO: Yes, I would. I think that one of the kinds of things that maybe we haven't talked about is how a people... see themselves as a beginning. I talked about the emergence legend, how the people came about and how the people are going to live. But the Pueblos actually do perceive an end, meaning that when we no longer are Indians and we no longer can define ourselves as a people, then we should give everything back to the river, then it should... this life should end, this way of being should end. When we can no longer nourish the sun to go on its journey in the summer time and in winter time, then life should end. When all of this web of life is no longer meaningful to people and people, by... I guess...

There were Pueblo prophets who said there will come a time when this way, which is termed a heavy way, this life that we carry is no longer meaningful, then we must end it. And I think... I was talking to Ray Hudson this morning. Some Pueblos have done this, as a matter of fact. Pecos Pueblo, in New Mexico, in 1829, 1830, thereabouts, vacated the pueblo, a reservation... a trust piece of property, moved to Pecos... moved to Jemez, excuse me, and said, "This is the end, the lights are out. We no longer are a people." The land reverted back to... is now a museum and the Park Service runs it, sort of thing.

So it's not that, you know, these people want to go on living for the sake of owning a piece of land alone. I think they can only live in the sense that the culture defines living, at least for the Pueblos this is the way it's defined. It may be defined other ways by coming generations of Pueblos, but for the time being, for those who carry on this tradition and this culture, they say there will come a time when the end will come and we will return back to, again, the lake, you know, and the forms of life will continue.
So there is an end and maybe if the U.S. government waits long enough, this may happen. The other things, I guess, in terms of this membership... The Pueblo peoples have never really had trouble with defining who they are. I think Santa Clara versus Martinez is very important because one thing was it reaffirmed that people know who they are and that the people define that they are... we are we. How can... How can anyone ask who the group is in the Pueblo sense because we sanction each other, because we know who influences us, we know who we interact with, we know who is a member by participation. We know who is a member by culture. His skin may be white, his hair may be part blond, but if these things are working, these kinds of things that we identify as being a part of what we consider... for example, a taywah (ph), then he's a member of the group.

And I think probably some... there are other facets of that... of exchange with each other within this... within this message that we carry in our heads about who we are that defines membership, and it's not by blood. It's because of the constitution, you know... we define it as down the father's line and one-half blood, but that was forced on us at a point in time... There was a German school teacher who lived long enough there and they said she is a part of us. We should give her the right to be us, and there was debate in council whether or not she was to become part of us. So there wasn't a rigid written system. When people, I think, are forced to write and to make it rigid, then this kind of cultural identify with regards to membership loses its viability... if that's... you know, according to that way. But in terms of ongoing kinds of identity, there's no problem with identity.

Again, I've got to go back to a religious philosophy, and this religious philosophy is so important that it's an umbrella over everything else, this religious philosophy that says who we are, where we came from, where we're supposed to live,
that also determines government, that also determines the family, that also determines how we make money and so on and so on...

That sort of thing is... It just infuses all of life, as far as Pueblos are concerned, spiritual, sacredness, whatever you want to call it. And all kinds of infringements can occur upon that but as long as that basic structure is standing of this philosophy that people carry around in their heads... And we don't even know that what we're carrying around is philosophy except that we talk about it in terms of seeking life. We're in the process of seeking life. They say... (NATIVE TONGUE) "We are seeking life," and that determines that we're still in process here. But when that process ends, whatever... you know, if ultimately all the kids decide to watch television forever, you know, and decide that seeking life is no longer meaningful, maybe then it... and... whatever... immense kind of other influences come and destroy this philosophy, then I think then there is no more identity.

MR. CASE: I don't want to really get into discussing --

MR. BERGER: David Case.

MR. CASE: -- cases... forgive me... but I think we should. What would have happened, what would have been the effect on the membership interest that you mentioned if Santa Clara Pueblo versus Martinez had come out the other way? In other words, the court had held that the equal protection language of the U.S. constitution controlled the determination of pueblo membership, would that have had a significant negative effect in your opinion?

MR. NARANJO: The Pueblo people... this thing has remained intact. I can't answer for you specifically because some kinds of group processes go to work immediately, and these processes always take time, and that's why I am struck by what Ted Chamberlin said. A vision... and that
it informs the institutional structures, you know. Well, people develop visions as things happen of how to cope with this kind of thing. But if there's some kind of institution there to cope with that... Santa Clara either was going to subvert it and incorporate it, nominally or was going to handle it in fashions that they had handled the Indian Reorganization Act, the Spanish imposition, the going into the kevah (ph) of the sacred dances, what is really meaningful is going to be protected. But I... specifics, there can't be any specifics. It's only what Ted Chamberlin said because these kinds of things when... inform the institution and the institution begins to protect and to cope and it... I think it implements a process and where this process goes is that I think it, again, reaffirms this philosophy that's there, to seek life and to seek life as we know it.

That's not very specific answer to the question but...

MR. CASE: That's fine. That's your answer.

MR. BERGER: Russel Jim?

MR. JIM: Thank you, Mr. Chairman.

One comment on the Martinez... perhaps it would not have caused the negative while it... the negative effect is dependent upon which organization you belong to, ERA, for instance.

But I wish there were... I wish these questions were brought up a hundred years ago, how do we preserve and protect a people, and, as of now, how do we sort this road to eventual genocide? And it is approached in many ways. Take Western water law, for instance. The Yakimas are not an agriculturally-oriented people, and yet in Western water law, first in time, first in right, use it or lose it. And we had somewhat an abundance of water and so we said, "Well, how do we save our
water?" and 50 to 60 years ago we put it under irrigation, put our land under irrigation.

What has eventually resulted is that fertile valley which is raising contemporary crops is now devoid of much of the natural foods that were there, and the natural foods are an integral tie to the culture, no different than the languages.

And I appreciate, also, Ted Chamberlin's thoughts wherein the... the laws that were given to the indigenous people dealt clear down to the smallest microcosm. The institutions that need to be advised from here on are, perhaps, the educational process. The present method is to... is set to assimilate. As I mentioned in my first talk two days ago, the textbooks must be changed.

The attitudes must be approached differently towards the preservation of a culture, quote unquote. And I appreciate the opportunity to speak of visions, to speak of rights of... as someone mentioned, perhaps in a flip way a couple of days ago, the rights of rocks. They were, perhaps... chastizing the environmentalists for going overboard in many ways, but let us step back, take a couple of steps back, and look at the indigenous world. Let us look at other indigenous countries where corporations have... have... taken all the resource they can out of the land and then moved. But they have also allowed these people to become dependent upon a different way of life, and then when they say, well, how did we live here for the last 10,000 years, let's go back that way, but when they try the resource is not there to support that cultural way of life. Which brings me, again, back to my --

(TAPE 29, SIDE B)

MR. JIM: -- chastisement of

of the bureaucracy, the Bureau of Indian Affairs, and I would like to perhaps clarify it in my statement, which may come back to haunt me again one day in regards to the Bureau of Indian Affairs and the ineptitude of people that are there. There are very good people in the Bureau of Indian Affairs, but not enough
good people. The statement of our new... at the time a year
and a half ago... our new area director for some reason or
another stated, "I'm proud to say that 78 percent of the Bureau
of Indian Affairs employees are Indian." Ah, but the methodology
in which these people create our... obtained these jobs created
by the bureaucracy, in order to climb up this GS ladder you had
to move. You had to move from place to place, reservation to
reservation, and this is, I felt, one of the methods to devoid
you of your culture eventually, no different than the relocation
efforts which created, perhaps, the many Indians in Chicago
that are still remaining there. The relocation process was a
fallacy. It was disasterous to Indian country.

So perhaps I tread on dangerous waters here but I think
it has to be said. Let us not disregard the contribution the
demise of cultures promoted by Christianity. I hate to go into
detail, it takes some time, but for instance, in the Yakima
some years back... not too long ago... where they would come
into the long houses and break the drums and incarcerate the
Indian leaders, publicly beat them, sometimes even hang them
to rid us of this... of these visions that Mr. Chamberlin spoke
of and Mr. Naranjo, because they misinterpret exactly what these
cultural people were trying to do.

And on top of all this, it seems to be a vicious cycle
wherein, in my religion, religion, I guess, to utilize this
borrowed tongue that I... without a better way of defining it...
This English language is limited in order to define what my
people say... But in this religion of ours, I was taught to not
criticize another demonation lest when I am laying cold, my
body is cold and my heart is cold, that criticism sticks to my
body and how do I rid myself of it in order to be clean to get
into that Great Land? So... But I think time has come that
perhaps it would be a sin for me not to say something in order
to preserve and protect the indigenous ways and the culture of my

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people.

So, the institutions are perhaps here, but they need restructuring. They need to turn their ways of thinking. They need to be... They need to be made aware, but you can only be made aware to a certain step because take for example, my people will not allow you to come into the long house on Sunday or when there is a body there and have all this paraphernalia you have running here, all this equipment, video tapes and recordings, because they feel that it is not ours to be given away in this manner. Perhaps an example would be the Watusi, the dance that was so popular 20 years ago, made popular across the United States, sold millions of records, made a lot of money for certain individuals. But how do we know that it was not a sacred dance out of Africa and here they brought it out and modernized it. That's what the fear of the Yakima is in regard to our sacred songs.

And it gets down to another little intricacy. These sacred songs that we sing were not made here on this earth. You... The songs were brought back from the other world. About three or four years ago, perhaps, you remember on television when someone said, "Well, I think I truly died and I could see my body laying there and I went to this place and there was this door and they said, 'No, you go back. You're not ready to come in here yet.'" Well, they were sent back and they said, "Well, what a strange phenomena." Well, the Indians have known this for thousands and thousands of years. They were not made here on this earth.

And the... The major problem we have in this regard, another contribution to the culture genocide, is that contemporary society says whenever a person dies, "We must know why that person died." So they drain your blood, they break your jaw so you don't grimace, they cut your muscles so you don't sit up and et cetera. But you are... They make sure you are dead and
so the elders of today say, "Who's going to bring back these songs in the future? When you die today, you die forever."

I appreciate this opportunity and the questions that you raised, Mr. Case. Perhaps in the eyes of my elders, I have overstepped my bounds. But like I said, allow it to be my sin. I think it has to be said sometime or another. Not to... Not to... Try not to allow this continuation of tom-toms beating and calling rain and these... these methods of... or, this way of thinking about the indigenous people and their strange ways.

Our people had many visions. They visualized this "tao-taoli"... It's a metal object that will come down the trail with big eyes that can even see you in the dark, eventually that's coming. And they said this hundreds of years ago. One day there will be a people coming, round eyes and very pale and hair all over their faces. And my father was a little boy and he say the first people come down on the wagon train with hair on their faces and he was terrified, he was petrified, hiding in the trees way up there in the brush, petrified to move when he saw the vision come true. The metal object that can go into the big water with people inside and stay for days and days and it would come back up and those people would still be alive.

But also, there is this. Man is made to destroy himself and one day the earth will burn and turn over and man will have caused the destruction of himself. But as I try to... As I speak to the younger generation, do not allow the thought that two men in this world sit with their fingers over a red button... do not allow this to deter you from seeking a way to preserve and protect your culture and your way of life because many of the children today are lost as a result of many of the institutions that I spoke of awhile ago. They... It is no different than prior to the... The Indian Child Welfare Act was implemented and passed and supposedly enforced. Many of the children were taken and put into homes of non-Indian. But eventually, in their
adult stage, they began to look at themselves and say, "I'm different. Who am I? I have this feeling inside of me." And many of them found their way back to the land and their homes, their origins and wanted to know who their people were. No different than the people of the last few generations that start out, perhaps, on these two roads that must be walked today, the indigenous road and the white man road. But perhaps in an influential year, the early teens perhaps, they, coupled with the ridicule provoked by their peers, they wander away from this road. But through either happiness or sorrow or maturity, they come back to this road. But there is this void here that they left. For instance, they can't sing the songs and they can't speak the language, but they have this feeling inside that they must. And I think everyone... I won't speak for the atheists... but everyone needs to have some type of spiritual assistance and help.

So what do they... What do many of the children do today? They turn to a denomination they can understand or they create their own, the Native American Church. They use peyote up here in Northwest, which they really don't even understand what it's supposed to do, but they're trying something to perhaps... that has some semblance of the Native rights. And all these institutions, methodologies, that have been imposed upon the indigenous peoples, is causing us to raise a generation of culturally-deprived people.

If you have any specific questions, more, I would attempt to answer. But I thank you for this opportunity.

MR. BERGER: Rosita Worl and then Dalee Sambo.

MRS. WORL: Ted's commentary this morning reminded me of when I first went to the North Slope to study the political development of the Inupiaq and I spent the first year looking at the development of the borough.
And it lead me into looking at the traditional political elites who were whaling captains. So I started to take my field work out in... I said I would start looking at whale hunting. And the captains called me into the... their organization and said, "Well, if you're going to study... If you're going to study whaling, you're going to have to learn Inupiaq because we don't whale in English." I think it... I think that Ted and David are really pursuing a course that I think can be of some value to us, and that is, how do Native people utilize Western institutions to protect cultural elements.

We have some good examples of some things, you know... I think one of the points that Byron Mallott said was that Native people put all of their hopes, dreams and aspirations on Native corporations and then expected the Native corporations to respond to all of those needs, and he was suggesting that Native people needed to look out at other institutions that could possibly respond to some of those things.

We have an example in the North Slope where they formed the North Slope Borough. They also formed the Inupiaq Community of the Arctic Slope with... Well, under ANCSA they knew that they were going to get their five million acres. With the North Slope Borough they knew they were going to get zoning and planning powers and, perhaps, you know, through their planning protect subsistence areas and then... and then, like through the Inupiaq Community of the Arctic Slope, there was that... that desire... that objective to maintain the trust relationship that is... exists with IRAs.

We have the Tlingit and Haida who, under Public Law 93-638, began to contract educational programs. The Tlingit and Haida people have always valued education. In fact, when they first met the Westerners, they said, "Why is it that you're so knowledgeable? Why is it that you have this science and technology? Is it, perhaps, of your God?" And so they adopted
Christianity and it took them some years to learn it was really education that they wanted. And so they demanded, you know, that educational institutions be developed in Southeast.

Under 93-638, they contracted for higher education programs and when they first started off, they had 30 Tlingit and Haidas in college. And they began to change --

MR. BERGER: What year was that?
MRS. WORL: Oh, 1968. They began to change some of the rules in... in the educational programs, the scholarship program. One other thing they knew was very important that was, upon the death of an individual, they had to come home, not only for the funeral but also for the 40-day party. And what happened before that was, when kids went off to school and when they had cultural obligations, they usually came home right in the middle of the year and didn't go back just because of lack of finances. So they developed the educational programs so that they could bring kids to meet these educational needs and then send them right back to school.

There were a couple of other things that they did but, you know, that suffices for an example. When ANCSA was passed, the part of it that I became very interested in was in corporations. Now, how can corporations be compatible with Native cultures? One of the things that I looked at was Japan. And "Aha," I said, "here's a model. It looks like a model for us where we have, in Japan, instead of the large, large multinational corporations..." or, "they have large multinational corporations but they also have these very small family-based corporations," and those family based subsidiaries take care of all of the housing needs, you know... provide loans and, in a very modern capital way, take care of the needs of the smaller families. It looked like a viable model to me. But then there was one thing that was missing and that was in terms of the values.

Now, most Alaska Native economic systems... their
subsistence systems are developed on reciprocity, redistribution and exchange, and so they have the value of sharing, and which, really, is very different than... you know, all you need for capital and acquiring wealth and acquiring that surplus so you could reinvest in that one particular corporation. So there has been some suggestion, you know, that Native people don't like to work hard. Well, when you look at their traditional economic pursuits, there was considerable expenditure of energy.

And I haven't come to any resolution about it but I do think it's one of the... one of the areas that we might pursue, either in this hearing or, perhaps, you know, at some other point in time. But I think it... the question to ask is, is it possible for corporations to be compatible, you know, with...

It seems to be the thing that is at odds is... is the value system and that's the sharing versus the accumulation of wealth.

MR. BERGER: Thank you, that's a most thought-provoking statement. Dalee Sambo?

MS. SAMBO: Well, I wanted to get back to what David was talking about in terms of the strategies and is it possible to have more than one... or, to have a combination of the strategies that were discussed rather than a choice of one or the other. Like traditional self-government of Alaska Natives before the coming of the white man where there was a combination of the control and management and the full and wise use of resources and also political control, and also the maintenance of cultural integrity, all combined and also including, not quite avoidance but moreover isolation, where they're... where they were able to keep all of these things intact because of isolation. And isn't it possible to develop a new vehicle that... its a combination of all these strategies?

MR. CASE: That's a question to me? or is that --

MS. SAMBO: Or... to everybody.
MR. CASE: Yeah, okay. I...
I mean, I didn't mean to imply that these were exclusive options. I look around and I see these various strategies being suggested and I guess I suspect that the mistake is to put all the, so to speak, eggs in one basket. But I'm just not sure what everybody's experience is with any of these, strategies whether in combination or in isolation, and that's what I'm most interested in learning.

MR. BERGER: Ada Deer?
MS. DEER: Sorry to have missed the earlier point in your discussion. I hope to catch up with that later.

But I wanted to respond to this issue of corporations and their interaction with the cultural needs of the people. After termination, a state corporation was set up. They hired white managers to come in and run our tribal mill and, of course ... I shouldn't say of course, but, really, what happened was they fired a lot of people. There was an extremely high rate of unemployment, although the effort was to become more efficient and be... and utilize modern business methods. This caused a great deal of disruption in the community, needless to say. I should say that our main economic base on our reservation is the lumber industry. We have now a modern lumber mill with computer operation and so on. But at the time of termination, there were no Menominees that were trained to be managers and supervisors and I feel that this is certainly due to the lack of the Bureau of Indian Affairs' training people to assume managerial and administrative functions.

At any rate, over a period of time, many of our people did suffer a great deal due to the lack of employment there and over recent years now, with the Restoration Act, the tribal... corporation has a board of directors composed of all Menominees and people are slowly learning about business practices. But I think it will take a longer period of time and we need to diversify
the economic base.

So, we're still in the evolving stage, utilizing this corporate model and I hope that, over a period of time, it will be modified to maintain the cultural integrity that I feel is so necessary.

MR. BERGER: Thank you.

I was just going to ask Ted Chamberlin if he had anything to add in light of the discussion that has ensued.

MR. CHAMBERLIN: Thank you.

Just a couple of points.

Without getting into the details, and I... I suggest that it may be a mistake to see the strategies for... for protecting indigenous values, to see them as separable. I think that there is a hazard in separating out economic control and political control and notions of cultural integrity and isolation, and seeing them as distinctive. I think that they need to be seen as part of the same seamless web and that property rights, for example, need to be recognized as economic and political and cultural and spiritual, together, and that whatever strategy is devised incorporates all of those values. That's part of the reason why I used that... used the term vision. It seems to me that that sense of... of how to move... that that sense of the way... to hold to the things that are of value has to... has to bring all of those things together.

And related to that, though it's a separate point, is the question of the extent to which Western institutions, laws or whatever, are a necessary part of this process. What I was suggesting is that, necessary or not, there is a tension that is there for most Native communities between those Western institutions, the language, the laws, the structures, corporate or otherwise, and indigenous values and attachments to the land and combinations of material and spiritual rights and so forth, and that... that the process is one ultimately of trying to go
beyond the... those laws or those institutions, just as... And here I'm picking up the analogy I began with... just as the poets, such as Seamus Haney, write their poetry and attempt to go beyond language to say the things that can't be said, to somehow reach past the limits of language. I think, for the Native groups, the attempt has to be to move beyond the laws and beyond the institutions. The fact that they may never get there makes it all the more important to move in that direction, just as the poets are never going to get beyond language but keep trying. And it seems to me that that instinct to accommodate both the possibility of it and the possibility needs to be... needs to be kept to the center of... of things and of thoughts, especially now as the Alaska Native move to taking stock of what the next decades hold in store.

Thank you.

MR. BERGER: Thank you.

Rosita Worl?

MRS. WORL: Well, I just, first of all, wanted to say that I forgot to mention that, under that Tlingitization of that bureaucracy, in terms of education, that I think right now we have... every year we have about 400 Tlingits in college. So, I mean, I'm saying that it can be successful, at least in terms of one element. But I do agree with Ted that the difficulty comes in trying to merge all of those values... all of those systems under one system or under one institution and I don't think that they are separable in many instances. But, I guess the point is that... and I guess here is the, maybe, the cynic or the realist in me, is that we have to keep trying, you know, to find as many different ways that are possible while maintaining that, you know, that always in our mind and heart.

MR. BERGER: Ralph Johnson, you've been writing away there. Did you want to add something?
MR. JOHNSON: One of the diseases of an academic is to write.

Well, responding to Dalee Sambo's question, it seems to me that... and responding also to the very profoundly important statements by Russell Jim and Tito Naranjo and others about what... what we're trying to do here, and applying that to institutional structure, it seems to me that a few observations are relevant on the kinds of institutions that might be considered in Alaska.

First, history... I think in whatever form, whatever culture, shows that moving slowly and incrementally from past practice and from past institutions is... is really the way to go, that looking for brand new institutions is often a hazardous occupation and does not accomplish the vision that the people who seek that new institution are looking for. So I think that, looking at gradual transition from what is now in existence from traditional forms to something that seems to fit or be compatible with those forms is called for.

There are three kinds of organizations at the village level, to speak specifically and get down to some of the nitty-gritty here, that the IRA corporations which offer certain powers and advantages under the federal incorporation... The traditional form of government which surely --

MR. BERGER: Excuse me, sorry.

You said IRA corporations?

MR. JOHNSON: I mean, the IRA... Well, it's the IRA... It's an IRA form of government, constitutional. I don't mean an IRA corporation, I mean the IRA form of government, constitutional government, the traditional form of government and then the municipal form of government. And each one of those... The municipal form of government has the advantage of relating specifically to state government, of potentially obtaining state revenues and support, of obtaining state
power, in a sense, but the disadvantage of probably bringing in
non-Indian or non-Native voters under the equal protection
clause to participate. That may or may not be a problem, depending
upon how many non-Natives are living in the area, whether that
is important.

Each one of these, it seems to me, has some slight
... some slight advantage or disadvantage. There's also ... and
I think that David Case might speak more knowledgeable to this...
more knowledgeable to this, and that is there are definite
undercertainties as to whether each of these can exist together
as to what the legal effect of having one or two or three of these
is at the present time. They were each dev... They were each
defined originally as something that would be complete. They
would be the sole form of institutional structure and when you
stack one on top of the other, there is a good deal of uncertainty
as to what the end result would be.

I would think that one of the things that might be a
sub-part of the commission's work would be a careful study...
even a more careful study than the very excellent work that David
Case did in 1978... a contemporary study of the legal effect of
those, not only legal effect but clearly the more profoundly
the more social and economic and religious effect of laying,
overlaying, layering those structures on top of each other, and
a recognition of the specific kinds of uncertainty that are
provided by that layering.

MR. BERGER: Before we turn
that subject over to David Case, could you comment, Professor
Johnson, on the question that John Havelock raised here last
week? He served as attorney general in the Egan administra­tion
in Alaska and he offered the opinion... I... in the course of
discussion that the state of Alaska might be disabled from provid­ing
programs and funds to Native governments, traditional govern­ments or IRA governments, because this would be in violation of the
Alaskan constitution... Is that a... and Ada Deer adverted to that in the course of her discussion of the institutions established by the Menominees in recent years... Is it possible to tell us what the position is in the Lower 48? How... What is the relationship between Native governments, using that term broadly --

MR. JOHNSON: Well, there's no fundamental constitutional disability of... by a state government dealing with a tribe in the Lower 48. There was a constitutional disability, or a federal law disability, under... I guess prior to 1975, but now federal law has been enacted which authorizes the tribes and the states to contract with each other so that it is perfectly possible for the tribe in the Lower 48... using the tribe as the entity... and the Yakima Nation, for example, to negotiate with and contract with the state of Washington for certain services.

So, legally, you can get over that hurdle I think and accomplish many of the same results that would be accomplished, for example, by the state of Washington dealing with the town of Puyallup or the city of Seattle or something of that order, the county of King, the county of Pierce or whatever. You could do it by contract, but at the same time there's a recognition of the political problem that the state frequently views an Indian tribe as something, "Well, if they aren't part of the state, why should we support them?" I mean, if they're really on the federal role, then why should we support them. So you've gotten over the legal hurdle, possibly, but there is that feeling that, "Well, if they aren't part of the state and they aren't part of the institutional structure of the state and don't pay state taxes or in lieu money," and there is a lot of that paid, but "if they don't pay that, then why should we allocate state funds for that purpose?" That may be a misperception but it is surely a perception and I'm sure Ada Deer has seen that in many circumstances as well as others.
But I think the legal answer is that they can do it.

MR. BERGER: Dalee Sambo?

MS. SAMBO: Ralph was talking about the different layers and mentioned IRA governments, traditional governments and municipal governments, state charter. I think ANCSA added another layer in village Alaska with the village corporations and then, also, the nonprofits that are regionally based that provide some of the same services that municipalities and... local traditional governments or IRA governments would provide. So there is another layer added to that.

MR. BERGER: Rosita Worl?

MRS. WORL: Yes, I just wanted to ask David a question, insofar as our constitution saying that we, you know, the state can't contract to... on an ethnic basis or for Alaska Natives in this case. The state does serve as a trustee for our... for municipal lands for communities that don't have organized municipalities. How does that relate to the problem in our constitution?

MR. CASE: Well, I've never been convinced that there is a problem with the constitution. It often seems to me that the attorney general's view of that, the equal protection language of the Alaska constitution, is a political decision that is dressed up in judges robes, dressed up in a legal opinion. But it's really, I think... underlying that is what Ralph talked about, is this political... antipathy of the states towards the tribal governments.

Now, as far as your question goes, the municipal lands trustee, I suppose, sees this as a trustee for... as the function of being a trustee for a state municipality, or a future state municipality, and that state municipality is not going to have any ethnic basis or bias. Of course, the... the legal theory of Native political communities and powers is that they are not ethnically oriented either. You know, it's sort of now you see
it, now you don't. It's one of these things that the law is always good at manipulating. But the theory and the legal reality is that Native American communities are distinguished or discriminated for and against on the basis of a political rela-
tionship, as Ralph Johnson discussed yesterday. And that political relationship is the process... is the product, in my view, of a rather long history, which we discussed, I think, yesterday in the course of Ralph Lerner's remarks.

So the point is, it is not ethnically based. That's the point. The distinction or the status of Native Americans is not at law an ethnic status. It is a political status and that is what distinguishes Native Americans in law from other ethnic minorities, and accounts for, you know, Title 25 of the U: S. Code. And however that may have been the doctrine that was ginned up in 1973 to support the code, that's still the law and I have no doubt that it is going to remain the law... I mean, because the government is not about or the court is not about to jettison the last couple of hundred of years of law-making in this country.

MR. BERGER: Excuse me. I thought that we might take about a five minute break now. And when we return, Ralph Johnson, we'll turn to you, then to Alma Upicksoun, Kim Gottschalk, Dalee Sambo and Alfred Starr, if you wish to speak. And there were one or two others in the hall who had wanted to participate, and maybe we can arrange that.

So we'll just take a five minute break and have a cup of coffee.

(HEARING RECESS)
(HEARING RESUMED)
(TAPE 30, SIDE A)

MR. BERGER: Well, I thought that what we would do now is just pursue this for a little while, this discussion that we initiated just before the break about the rationalization of relations between Native governments, to put
that very broad label on them, and state governments, particularly here in Alaska. And Ralph Johnson was going to say something and Walter Parker was going to add something... and then, perhaps, any others. And after that, we might ask Bill duBay and Vernita Zyles, both of whom wish to say something, to make their contribution. And after that, Alma Upicksoun and Kim Gottschalk, both here from NARF, have got some extended remarks each of them wants to offer. And then we'll turn to Mr. Starr and then we'll go back to some of those who... so fascinated us yesterday and the day before.

So, perhaps we could just start off, Mr. Johnson, with you and then go to Walter Parker?

MR. JOHNSON: Yes. I'd like to emphasize one thing I said before the break, and that is that I would like to be involved, and hope that others here would also, in a more intensive study of the potential different institutional structures that exist both in the Lower 48 and in Alaska to see what the advantages and disadvantages of various ones are. It's not a subject that can be exhaustively explored in a plenary session. It takes some very hard, careful work and I'm sure that is on the agenda of the commission.

But in a broader sense, I wanted to make one comparison and a very brief one, between the Lower 48 and Alaska. In the Lower 48, and especially in the Pacific Northwest where I come from, there is a deeply-held feeling by the states that the treaties were signed between the United States and the... the United States federal government and the Indian tribes and the states were not part of that and they don't want to have anything to do with it. And they have a general antagonism toward Indian tribal governments, Indian tribes... They don't understand, they have forgotten that in 1856 to 1860 that the Indians gave up about 41 million acres in the state of Washington, which is the state of Washington, in return for about two million acres and a few fish,
a fairly bad bargain on behalf of the Indians but nonetheless they bargained. In the state of Alaska, that exchange is much fresher and I sense up here, but as still a new comer, I sense that the state does recognize that the Natives have certain economic powers, some bona fide political legal claims, and there is more of a willingness to deal back and forth, maybe with some hard terms, but to deal and exchange and negotiate than there is in the Lower 48. So I would be a little bit wary of making too many comparisons in the Lower 48 where views have fossilized and hardened and become rather difficult to deal with.

MR. BERGER: Walter Parker.

MR. PARKER: The conven...

When the claims settlement was passed, the conventional wisdom of the legal establishment and those in government and so forth was generally against forming the village corporations. It was Alaska Natives who insisted on the village corporations and the reason, of course, that the insisting on the corporations was, as I said, in the paper last week, that it was one of the few options that was offered at that time as an institution. But it was the wisdom of Alaska Natives and, you know, recognizing that the village is the institution which maintains that seamless web that Ted referred to... that seamless web of continuity and that is the handhold to which you can reach out and grab hold and hope that you can hang on into the future.

Now, we've interjected all these other institutions and coping with them has been recognized as a problem ever since statehood but with an increasing degree since the passing of the act. In every village, you've got several institutions at play now and, as you found out, Mr. Chairman, in Tununak, of course, they expressed some desire to get rid of at least one or two of them so that they don't have to deal with all of these institutional conflicts that exist, and it's...

I agree with David Case that the constitutional barriers
that have been raised against forming institutions which have some form of ethnic base or which relate to the totality of the village of an institution, I think those barriers are more perceived than real. I don't particularly read the Alaska constitution that way. We've gone back and forth over it for the last dozen years in trying to deal with subsistence and most unsatisfactorily, simply because it hasn't been approached with any really good faith effort to eliminate those perceived barriers.

I have, you know, some confidence that, within the framework of the federal constitution and the Alaska constitution, that the village, as an institution, can truly be creative and without trust relationships or any kind of imposition. The question, I think, is... and this is where, not being a lawyer, I can say this... I say the... you know, the question has been simply that tie partly with the legislative process that needs to be explored but more, it has been the legal process which has intruded time and time again into the core of the village as an institution. Because, as I said in the paper, you know it's all based on Western law and the village simply did not evolve from there. And how do we resolve that particular conflict? We don't have to write a whole new code of law because the code of law which the villages, in many parts of Alaska, still make some of their most basic decisions based upon, exists there and it's not necessary for us to codify that, I don't think, in any Western law. It's necessary just to establish the... a recognition that these things do exist.

The other two elements that intrude, the village has handled them themselves. The intrusion of Western religion is something that is, as I perceive it, being handled reasonably well. And the intrusion of Western business through the corporate structure, or any other means, is being handled. But... the villages presently... as presently... in their present situations, just have this extreme difficulty in coping with Alaska
statutes, with the federal statutes, as they impose upon them.

So the... I think that's all I'd want to say at the moment, other than we simply have to make the kind of leap of faith that Alaska Natives made when the approached the Congress for the claims settlement that, you know, good faith did exist and that... in the United States on trying to resolve that and the corporations were simply the best option that anybody evolved at the moment, and sit down, think hard, and take the next step in evolving an institution which truly reflects the village.

In Alaska, I tend to use village rather than tribe because it did more aptly express the situation for most people, recognizing that in Southeast Alaska, why, tribe is sometimes the more accurate description. But whether it is tribe or village, it's the same situation... same remarks that pertain to either.

MR. BERGER: Thank you. Mr. Lerner?

MR. LERNER: Just a point of clarification, please. What do you mean when you say that the village handles the intrusion of Western religion fairly well? What does handled mean?

MR. PARKER: I mean that, in Western religion, in dealing... because it is fragmented, at least as it approached Alaska, a very different situation from that in Latin America or other areas of the world, why, because it has been fragmented, there is more of an ability in the village to choose to accept or reject, whereas, you don't have that same ability to accept or reject in the law. The law is imposed with some force, if necessary, and so accepting, you know, that the acceptance of religion was under, in some... many cases, under false pretenses, why, at the same time at this moment in history, I think the capacity exists in Alaskan villages to make their... to establish a concordant with... concord it with whatever form of Western religion is in the village at the...
moment... or religions. In most villages... or, in many villages, there are several religions present. Why, you know... They can... Because they are not dealing with a massive institution, they... massive institution that is accompanied by some force, they can handle that.

MR. LERNER: May I come back?
MR. BERGER: Yes, Mr. Lerner.
MR. LERNER: I take it you're speaking about proselytizing?

MR. PARKER: Mm-hm.
MR. LERNER: And you're distinguishing, say, proselytizing with a sword in the spirit of the Spanish conquistadores or... or Islam, in earlier times, from a situation where a missionary comes or some sect or other, and tries to persuade people to give up their old ways?

I'm trying to understand how, from the standpoint of someone living in the village, isolated somewhere, having this perhaps rare, unique confrontation with the white man speaking very different language... I mean, language not in the sense of the dialect but to use the earlier term that was his vision... how they are better able to decide freely for themselves?

MR. PARKER: The... I think...

You know, what I'm saying is that... you know, what has gone before has gone before, and at this particular time in history, the typical situation in Alaska village is that the religious presence that's there has modified itself in many cases to the needs of the village as... Just as an anecdotal expression of that, the... There are two villages in Western Alaska who are served by the same priest, and at the time that birth control measures were being taken out to the villages by the Public Health Service, why the health aides were right in the middle of this situation and, you know, under some trauma as to how to handle this. The Public Health Service was saying, you know, "Pass out
the pills to your clients," and the priest was saying something else. Well, the same priest served the same two villages and one health aide perceived the priest as giving her carte blanche to pass out the pills and the health aide in the other village perceived the priest as imposing an absolute prohibition against passing out those pills. That's why I say that because the priest had no legal authority to say, "You will pass out those pills," the situation with religion is very different from that dealing with law and that's why I feel that the villages have the ability to cope with the imposition of Western religion on their own terms.

MR. BERGER: The health aides being Native in both cases?

MR. PARKER: Yeah.

MR. BERGER: David Case and Tim Coulter.

MR. CASE: Just a short, kind of historical question. You said that the conventional wisdom opposed the idea of village corporations. I wondered if you had recalled that there was another institution then that the conventional wisdom had in mind, or was there no other institution?

MR. PARKER: Well, they started out with, you know, the statewide corporation and kind of worked down from there as my... as far as the corporation went. The... There was a great jump forward at that time in the '60s against using anything that had anything to do with reservations or the... which included the IRA councils at that time, because... at least, in the... When I'm saying this, I'm not talking about Alaska Natives. I'm talking about those in the state and federal government who are dealing with the issue. That was... There was no strong support for using the conventional institutions that were in use in the other states.

So they very much wanted to create a new institution and
I think, considering the scope of the task, moved to the corporation fairly quickly. And hindsight is always easy, but had there been more intensive roundtables throughout the state, and had it have been possible to take more time, why a better institution could probably have been evolved. However, in that case Alaska Natives might have missed the window in history which made possible the passage of the claims settlement. So that's... you know, the imponderables that you have to deal with on that one.

MR. BERGER: Yes, Mr. Lerner and then Tim Coulter.

MR. LERNER: I'd just like to remind you that the notion of the village is not all that alien or remote from either American experience or American law. The oldest forms of self-government, in New England, and not only in New England but many of the original 13 colonies, were township governments which were basically cases of the... whatever the politically relevant part of the population was there, governing itself. I mean... That's probably the oldest political institution in this country. That it doesn't everywhere have the vitality and significance that it once had, or maybe that has nowhere the vitality and significance that it once had, has to do with dramatic changes that have occurred in American society and the economy, as well as the fact that we've got a constitution of the United States.

But it's by no means something fanciful, to think of a recurrence to that form, adapted, to be sure, to the peculiar circumstances of Alaska. Alaska isn't Connecticut or Massa... or Massachusetts Bay Colony, but it's by no means outlandish to think that that oldest of American political form, derived in part from English law, should have a life and significance here.

MR. BERGER: Did you want to add anything to that, Walter?

MR. PARKER: No, I'm... I'm glad
that Ralph Lerner brought that up because I believe that also and, you know, the village exists throughout the world. Only about 30 percent of the world's population lives in this highly mobile urban state and moves around. The other 70 percent still live in villages under village institutions. These... Probably the urban areas, if they were wise, would, you know, look for reinstituting the village as a more reasonable institution to live their daily lives under.

MR. BERGER: David Case?

MR. CASE: Just another comment on that point, and I think Walt suggested it. Villages, I don't think, are really... We have to question whether they're the product of American experience at law, a United States immigrant experience in law. As near as I can tell, many, if not most, Native American societies lived in villages and certainly Pueblo... I believe, is translated into the word village. And so these... I guess I would say yes, indeed, the village is the oldest form of government on North America and it was probably here before the Europeans arrived.

But that's not really a function of law or politics. It's probably a function as much of population and vocation and convenience and other things that I'm probably not qualified to discuss.

MR. LERNER: I was only stressing it to suggest that, to the extent that you're looking for forms that others can relate to out of their own experience, that's something that one might think about. These aren't merely addivisms... you know, like our wisdom teeth or our appendixes.

You drive on the roads of Massachusetts today and you see that the boundaries are all township boundaries and they tell you when it was founded, 1688, 1642, whatever. So... I... I was... trying to think of ways in which matters... arrangements that are native, so to speak, to the Natives might be rendered
intelligible to the non-Natives, that's all.

MR. BERGER: Tim Coulter?

MR. COULTER: Well, before we pass to something else, I wanted to just quickly list for the record, some of the other examples of alternative forms of activity outside of strictly legal ones. One example has to do with law and order jurisdiction where the Onondagas near Syracuse, New York, simply insisted on being responsible for that themselves. They simply didn't permit the local law enforcement authorities to do that and their cohesiveness won the day and local law enforcement authorities, despite their supposed right to exercise jurisdiction there, just decided not to.

Hunting and fishing rights have, everywhere, been maintained to the extent they have been maintained largely because Indian people have gone out and exercised those rights, usually in violation of the law and, in some instances, like Washington state, that's been followed, and I emphasized followed, by judicial decisions recognizing some of those rights. The Shoshone example, the Dann sisters, who simply continued to run cattle on their ranch and exercise their right to use their traditional land, has also been quite successful. They did that despite the legal pronouncements of all the non-Indian authorities and the legal victories have followed that exercise of that right.

The Hopis fought a long time to avoid the imposition of an IRA constitution back in the '30s. There's a rather well-documented history of that. After a very few years, the Hopis were successful in killing that constitution simply because they didn't take part in it and the whole tribal council that was set up died a natural death because people just didn't go. They never had a quorum. It was totally destroyed in that way until finally the oil companies and the BIA set it back up again. But they were successful for moral and practical purposes.
Bridge crossing, up by the... International Bridge crosses the St. Lawrence River near the Mohawk Reservation has been another point of contention. The bridge authority started trying to charge a toll and since the Mohawks don't recognize that reservation... don't recognize the border, they didn't like to pay a toll to travel back and forth from Canada to the United States. The bridge people took the name of one Mohawk and issued him a citation or fine for running the toll gate. When other Mohawks found out that this little confrontation was brewing and found out that they, too, had an opportunity to run the toll gate, they lined up for the chance. The bridge people just had to cave in. There was nothing they could do and they invented a way to permit the Mohawks to pass back and forth without paying a toll.

The rejection of land claim awards has been another area where the law has been successfully resisted. There was an instance on one of the Seneca reservations where the Clam Mothers came out and literally forced the BIA officials to pack up their gear and leave. They had to hold a hearing, you see, before they could distribute a claim award. The Clam Mothers simply said, "Don't even bother to unpack." They unpacked anyway. There are some famous things put in the transcript about, "We want you off the reservation now and don't dilly-dally." It worked. The Bureau was totally unable to carry out their legal duties. The award has never been paid.

Language and the insistence upon use of Native language has also been important, especially where it regards education and governmental rights. There have been several examples of successful Indian schools where Indian parents have decided to set up their own, supposedly illegal schools, schools operated in violation of state and local laws, so that they could teach their children their proper language and carry on their instruction as much as they wanted to in their own Native language.
It seems that the lesson of this is, to quickly summarize, that the exercise of rights is often more important than what the letter of the law says. That, secondly, the success of that activity often depends on the cohesiveness of the community in exercising those rights, especially in the language area. And I was discussing this with one of the Native women here, the ability of a people to be cohesive in their desires to maintain their language and carry on their affairs in their Native language. That is important. But, thirdly, I think... and Ghandi, the other Indian, and the example of Martin Luther King and many others seems to demonstrate that success also depends on the ability to demonstrate that the law that is being resisted is unjust and that the cause or the right being exercised is, in fact just. And where those conditions are met, we seem to see a pattern of success.

MR. BERGER: While I think of it, a social note. The commission is having... is inviting you all, the panel and those people who have faithfully been attending, both the media and members of the public who've been faithfully attending last week and this week, to the commission's offices at 4:30 this afternoon when refreshments will be served. So you are all invited and...

Now, this might be a good time to hear from you, Bill duBay. Perhaps I might say that Bill duBay is editor of the publication so much in the news at this roundtable yesterday, the "Arctic Slope Record"... "Arctic Slope Review."

MR. DUBAY: Thank you very much, Mr. Chairman. It's a real privilege to address this group. Although I work for the North Slope Borough, this is in no sense... am I speaking for them, but rather as a writer with a little background in philosophy, I suppose.

I'd like to address two points, and the first quite briefly, I hope... is your question about the state responsibility.
John Havelock made the statement last week that a lot of perceptions among Natives perhaps about the performance of the profit corporations has to do with the fact that they expected the profit corporations to perform in the sense of tribal organizations and offer a much larger umbrella for the Native peoples, especially in rural areas. And he said what, in fact, happened and perhaps with the intention of Congress was for responsibilities to be passed from the... not from the federal government to the profit corporations, but to the state. And, certainly, this is what, indeed, did happen with ANCSA. It unleashed a whole slew of activities which kind of overwhelmed the activity... or, I should say, the impact of the profit corporations upon the villages and what gave all of this a big kick in the pants that nobody expected was OPEC, which, in 1974, upped the price of oil from three dollars to 30 dollars a barrel and brought tremendous revenues into the state which was then able to, through new political manipulation, the Native caucus and things like that, to pour tremendous amounts of money and programs into the villages and which a lot of villagers see as both benefits and a kind of intrusion, you know, of white structures upon their way of life. It's also brought improvements of situations, for example medical care, made the villages much more amenable to nice places to live and white people began moving out there because there were jobs available and... All of a sudden, the Natives saw themselves and their land as moving out of their own control.

And I might suggest... You know, a lot of the discontent has to do, not with the failure of ANCSA, but of its complete success and in ways that nobody had envisioned. And that very success is what's causing a lot of the discontent, that Native peoples are looking for other ways to insure what they expected from ANCSA to actually take place... In other words, having more control over their land, especially, and their relationship to the
Secondly, I'd like to address some comments made by Mr. Lerner, and I hope I understood you right yesterday. And I can really sympathize with what he had to say regarding the difficulties in a democracy of recognizing Native sovereignty. It seems to go against the general democratic principle of avoiding classes of privilege and dual citizenship and this whole idea of being equal before the law. And these are questions that I had. These are questions, certainly, that a lot of Alaskan Natives have had. This is one reason that so many Natives in Alaska have embraced American institutions so vigorously, including people in the North Slope Borough, you know, as ways of protecting their Native rights.

You'll see that, you know... Mr. Chairman, as you go up to the borough, you'll see how much the North Slope Borough has done in terms of language and study and subsistence protection and has lead the way, not only in Alaska, but oftentimes nationally and internationally in the protection of aboriginal rights. But still, a lot of Natives have questions about this, you know, because of conflicts in the nature of the structures, itself. And I'd like to point out to you... Well, Mr. Martin, Guy Martin, last week said that he thought a lot of this discontent was based on a vague sort of cultural insensitivity of the corporations to Native interests. And it's not that at all. It's very concrete complaints.

And one good example of that was in the 1979 Beaufort Sea oil and gas lease sale. It was challenged by the North Slope Borough in court along with several villages who joined with the borough in attacking that sale as being against the law because it violated provisions of the Environmental Protection Act, the Marine Mammal Protection Act and other legal... instruments of the federal government which gave special recognition to aboriginal peoples and subsistence uses.
At the same time, there was at least one corporation and perhaps two or three, NANA Corporation, I think Calista and perhaps Cook Inlet Regional Corporation, which were actually entering in the sale with other oil companies. And I think... you know, I might... I think that the other corporations would have done the same thing had not they come... They came under tremendous political pressure from the North Slope Borough not to do so.

In these areas, you find a real poverty of leadership and a lot of times you have the same leaders on the heads of the village corporations who are opposing the sale who are also, you know, on corporation boards who are placing bids in that same sale. And I think Rosita can come up with other indications, you know, of these real cultural conflicts. As Byron Mallott pointed out last week, there are real conflicts having to do with the nature of the animal, and it has to do with a lot more than just the structure of the thing, but the whole constellation of symbols and values that go up to make the human side of that organization.

If I may, I'd like to make the point that --

MR. BERGER: Before you go on, Bill, could I just say for the record, because people will be reading this who are not intimately acquainted with the North Slope Borough that it is a borough encompassing the northern 30 percent of Alaska and whose... where the populace is predominantly Eskimo and, thus, Eskimo people have... I think it's fair to say, dominated that government from its inception.

MR. DUBAY: We often say, "The Eskimo-run municipality," right.

Mr. Lerner talked about the Natives eschewing the idea of individualism and individual rights, and he questioned the idea of giving special rights to groups and I certainly have to agree with him. That's certainly very offensive to me, but what
we're dealing here with, it's not so much... questions of privilege but questions of dual citizenship, which is something quite different. And this might be better understood if we analyzed better this term sovereignty, which has created so much problem in the discussions of the past two weeks.

The idea of Native sovereignty is not something that we've invented or even that Natives have invented, but it was something that, you know, was kind of imposed on us by our ancestors and it certainly came from our European background, this concept that the right to self-government as relating from attachment to the land, is very old and certainly very universal, going back... way back into probably prehistoric times, and it certainly well-developed during the Roman empire. In fact, much of their legislation was based on that fact and this was like a universal concept... you know, of all people, certainly up to the 15th century. And because of our mobility as Americans, you know, we've lost the sense of landedness, the sense of rights, individual rights as well as social and political rights, as developed and directly depended upon, and also, not only that... identity, both social and cultural and political identity and personal identity is radically based on your attachment to the land... is foreign to us, mm? But certainly wasn't foreign to the explorers who discovered this land.

You have to remember that, by the 15th century, human beings successfully occupied every section of this globe quite successfully and there was a belt of what's called the Hoe Culture all around the world where people were successfully cultivating the land and when the Europeans arrived here, they saw civilizations that were not too much different than their own. The only way that the explorers, who were kind of rednecks, you know, and renegades and adventurers, could justify the moving in on these people, the sovereignty they didn't question, was to question the humanity, itself, because they knew if they recognized
that these people who were different and spoke different languages were really human beings, they were sovereign.

And we have problems with the word sovereignty because it's got two very distinct and even opposing meanings. One meaning of sovereignty has to do with a ruler. This comes from the obvious Latin term, you know, "super reignus", which meant, as you said, the guy who has the last word. And this has to do with relationships between individuals in a group. Who heads up this group, that's the sovereign. And as you said, we have a hard time delineating and defining who the sovereign is in our state, our country, because we did away with sovereign. We divided that thing up. We put some sovereignty here and some sovereignty over here. We have a tri-part government and we've got federal, local and state government and all this kind of stuff, because we don't want sovereigns. That's why the best thing we can say about ourselves is that the people are sovereign. And it's more correct to say there is no sovereign in this community, in that sense of dealing with the idea of sovereignty.

But there is another sense of sovereignty, especially as in reference to the term sovereignty as a noun, which deals not with individual relationships but with group relationships, and the meaning of that sovereignty is freedom from external control. We established our sovereignty when we threw off the bonds with England. We defined ourselves as a sovereign nation, and in that sense of sovereignty and of dealing with groups between one another, there are limitations. We can't admit of degrees... In the older sense of dealing with sovereign as a king, you don't admit a degree. If a person is sovereign, he's got ultimate sovereignty without any limitations. You can't say diminished sovereignty in that sense.

But in the sense of sovereignty meaning the group over which a sovereign has power, that certainly does admit a degree. Some groups are more sovereign than others. In other words, the
state is less sovereign than the federal government, and in this sense, certainly is the sense in which our ancestors saw the Native government... as being sovereign, having some measure of internal control and freedom from imposition of the crown's control, some way of looking upon themselves.

Now, the Greeks had a word for all of this, you know, which I think is very interesting because the French use it in their reference to aboriginal. The French, I think is "autotone" and we say "autophone"... autoph... autochthon ... It comes from a Greek word which is very revealing because it's made up of two words meaning self and land... or self and earth. And it contains a lot of this Indian idea that the person doesn't own the land but the land owns the person, and it's the land that defines self-hood and self-concept and responsibility and defines the nature and the identity of the group, too. And the word came to be understood as meaning a person regarded as being sprung from the earth on which he inhabits, and all of his dignity, and all of his methods of thinking about himself and his relationship from the world is rooted in that attachment to the land. And this is very universal among mankind. This is not something new, this is not something that was invented by Charles V or Vittoria de Las Casas when they were asked to comment on this. This is something that came from long, traditional background. The church recognized it, the Roman empire recognized it... the Romans in their going out and developing, you know, a law which can encompass all of these different peoples recognized that and they not only saw that, you know, you can't rule peoples. We can go over there and set up a governor who acts as kind of a peace-maker and he can exact the tithes for the empire and all that, but you have to respect local leaderships because of the fact those people have been living there from time immemorial.

And it's interesting to note that the French also used that term in reference to themselves. They see themselves as
autochthon, mm?... as to most but not all European societies... as having residing there and having right to self-government because of their long, long tenure in the land that we were discussing before hand. The English got a way of this precisely because they were overrun so many times by so many peoples, the Romans, the Danes, the Normans, the Saxons, everybody else, and they're the ones that started developing concepts of dividing up this idea of property and land tenure and all this kind of stuff because they knew they had to establish some kind of identity, some kind of relationship to the land, as divided. And that's where we get our ideas of property, with the division of those concepts. But still, in our own culture and in our own society, we still think of ourselves and our identity in terms of property. It might just be your home or something else, but this is one reason we defend capitalism so vigorously... because our identity and our self-concepts are so rigorously attached to ideas of property and land.

And so, you know, these terms of... these terms of... you know, collectivisation or tribalization of laws really are not opposed to tradition —

(OVERLAP TAPE NUMBER 8)

MR. BERGER: -- Might I also just indicate that the North Slope Borough was incorporated as a first class borough, first July 1972. A home rule charter was adopted by the borough on 30th April 1974. The borough is the regional local government of northern Alaska with mandatory powers of taxation, assessment, education, planning and zoning. Within its boundaries are eight Inupiat Eskimo communities, population 4,693, seven military installations, population 193, and Prudhoe Bay Resource Development District, population 7,843. The borough encompasses 88,281 square miles of land and nearly 800 miles of Arctic coastline, constituting 15 percent of the state and is the largest municipality in the U.S.
I got the impression that Mr. duBay was addressing his remarks to you, Mr. Lerner, and seemed most supportive of what you had said yesterday. Do you want to add anything?

MR. LERNER: I shall, but I'm not going to now. I... One of the few things I heard about Indians before I got here, and maybe it's apocryphal, was that in those negotiations between whites and Indians in the Eastern United States, when the whites made a proposal it was regarded as rude to respond to someone's proposal on the same day that he heard it. It would suggest that you were flippant and took it casually. If you slept on it, then you showed that you had thought about what was said rather than sort of giving something off the top of the head.

I don't know that I will sleep on it, but I want to think about what you said some more before I respond.

MR. BERGER: Just before we adjourn then for lunch, Ralph Johnson, did you want to say anything about Mr. duBay's explanation of the genesis of notions of sovereignty?

(TAPE 30, SIDE B)

MR. JOHNSON: Well, I'm not going to add anything. I thought it was a highly articulate and accurate description of the various ways that sovereignty can be defined, and it is important to keep in mind that sovereignty is a many splendored thing. He described that historically and practically and very capably. Delighted to see it.

MR. BERGER: Well, that seems to be a... Oh, Ada Deer?

MS. DEER: I have many thoughts but I particularly wanted to address something that Mr. Parker said having to do with the roles of religion and the legal system, the intrusions into the villages.

I feel that... and I'm sorry that he's not here at the
moment... I feel that his characterization is somewhat oversimplified in stating that the villages can be selective, for example, in their relationship with the religious groups in particular. I view the role of the church and of religion as something that has been extremely detrimental to Native cultures across the world, and I think that it's important for everyone to question the roles and the functions of churches today. And in my opinion, the... Christian religions, in particular, have done severe damage to many Native cultures in separating and alienating individuals from the Native religion and culture and are responsible for a lot of the factionalism that exists today.

MR. NARANJO: Amen.

MR. BERGER: That was Mr. Tito Naranjo who made that last observation.

Well, we'll adjourn until 1:15, and then we'll hear from Alma Upicksoun and Kim Gottschalk, of the Native American Rights Fund, NARF.

(HEARING RECESSED)

(HEARING RESUMED)

MR. BERGER: Well, let's get together again.

(LONG PAUSE)

MR. BERGER: What I thought we would do this afternoon, if it's agreeable, is hear from Ralph Lerner if he has anything to say by way of rejoinder to Bill du-Bay, and then from Alma Upicksoun and Kim Gottschalk and Alfred Starr and Dalee Sambo. And if it's agreeable, Tito Naranjo has brought a film that is about the Navaho Nation, America's largest and most enduring Indian tribe, have kept their native language, 40,000 of them still speak no English. Only recently has their language been written since their culture has been handed down verbally through the elders of the tribe, and so on. Mr. Naranjo says this is really a film illustrating progress towards
self-determination. So since Tito has to leave tomorrow, I think we might show this at 3:00 and cluster in here around the television set to watch it. Perhaps some of you have seen it, but I haven't and... You've seen it? Well, I think we should...

Well, did you have anything to say, Mr. Lerner, in response to Bill duBay's remarks?

MR. LERNER: I don't want to say it's in response to it in the sense that I'm answering, though he set me thinking in a... about some matters... though I can't say, and you will confirm it, that I had much chance during lunch to turn my thoughts to it, since we talked about faraway places very far away from Alaska.

The connection between peoplehood and the land is a very provocative one. The American people, under the constitution, constitute... No, let me step back from that. The American people, in their primary foremost national act, constitute themselves a people in the Declaration of Independence. And in the first paragraph of it, they talk about a people, separate from other peoples... "When in the course of human events it becomes necessary for a people to assume that separate and equal station..." Yes?

Who are the American people? Why don't they include the people from your country, Mr. Berger? Why did they stop short of New Brunswick? Prince Edwards Island? Why didn't they include other English-speaking peoples in the Barbados, the British West Indies? I don't think that you can say that it was a pattern made up in heaven that the American people would consist of 13 colonies and only 13. There were probably around 16 British colonies, English-speaking colonies, on the eastern coast of North America at the time. I'm leaving the Quebecers aside. And yet, the Declaration starts from the premise that, of course, the Americans are a people... you know, the usual way in which lawyers like to argue. You assume the thing to be...
proved and take it from there.

I sometimes wondered about that and the remarks that Mr. duBay made and that others have stirred in talking about this brought back some of my earlier wondering and misgivings about it. The American people, in 1776, seem to have been a people... surely not, as Mr. duBay spoke of, autochthonous people, people that grew up out of the earth. That's utterly impossible. They were all greenhorns. They're all people who just got off the boat, so to speak, either the day before or the year before or the century before. They're all newcomers. So they're not a people by virtue of their having grown up out of the soil. They're a people by virtue of their proclaiming themselves a people, seeing themselves a people, thinking of themselves as a people, acting as a people.

It doesn't turn on race. It doesn't turn on religion, because they weren't a uniform people on either of those respects. But it turned on a certain political self-definition that they were in a position to do something about, and they thought that the basis of that lay in certain rights, founded not on their peoplehood, but on their individual character, the inalienable rights that were owing to them as individuals and by virtue of which they could constitute themselves a people and form a government that would secure those rights to them, each and every one of them.

That was, to use the language that was mentioned earlier by Mr. Chamberlin, a vision... quite at odds with the prevailing notions of the time, and they tried to act on that vision. I'm very far from... being disdainful of visions though I'm wary of them. Maybe we live by visions that we have, maybe to the extent that we're incapable of having any, we're already dead. But you know, there are visions and visions. If I put my hand in my jacket, button it up and go around proclaiming myself Napoleon, you're not obliged to believe me. There might be a social worker
around who would be prepared to commit me somewhere. 

So I'm really struck by things that Mr. Naranjo and Mr. Jim have raised. The fact that another doesn't see it doesn't mean that it isn't there, doesn't mean that it is there, either. So one has to be pretty careful about the kind of visions one pursues.

Can I get in the spirit of this place, which has been to tell stories? I'll tell a story. I haven't told stories, really, since my children were little.

There was... There was a famous Jewish general who lost the battle and a war during the revolution of the Jewish people against the Roman empire, and his fame rests not in his having lost the battle and the war, but on the history that he wrote of it, kind of participant's account. So when the conquering Roman general entered the temple in Jerusalem in the year 76 and strode in, as I'm sure a conquering Roman general would... not amble in but strode into the temple, where, of course, only Jews were admitted, and strode into the holy of holies, in which only one person was admitted on one day of the entire year, and that only for a special prayer at a special moment, namely the high priest on the Day of Atonement... This Roman general strode into the holy of holies in the temple and looked in and he said, "It's empty. There's nothing there."

Well, I guess the moral of that story is, a vision isn't necessarily everyone's vision and one can be blind to things if one is only looking for the tangible, the material, the transportable.

So all that is a round about way of saying that the Native peoples have visions of their own to pursue, but they have to be careful in only... in a way that only they can tell about which visions they mean to pursue. I suppose Hansen Lake had a vision and the prophet had a vision. I wonder whether, in talking about the vision of the Inuit and the Aleuts and the Indians in
Alaska, one runs the risk of taking rather diverse people with
diverse visions, diverse and maybe equally legitimate wants and
hopes and fears, and squeezing them into a convenient little
package which will then be marketed to the world at large or
to the BIA or to Washington or to Congress as what "the Inuit
want." Somewhere I seem to recall having read that the whole
notion of tribe... I'm speaking now of, say, Eastern United
States Indians, was a construct of anthropologists. Am I mistaken
of this? I don't know... I mean, you can't... I may have heard
it. That doesn't mean it's either right or wrong... That it was
easier to think and deal with the complex interrelations among
various Indian groups and families and clans and Lord knows what
else by putting them in this thing which is called a tribe.
You now have a handle. You can deal with someone. You can sign
paper.

From the things that I had read in the earlier papers,
especially Ms. Fienup-Riordan's summary of the earlier testimony,
I was impressed by the variety of Indians and Aleuts and Eskimos
and the variety of their hopes, not only their contradictoriness
in some way, because that could be quite human within one person
... Yes, that you want things that don't go well together, but
that they may really be different peoples. And if you're talking
about... If we are talking about self-government now, self-
determination, avoiding that whole baggage of misleading and
possibly terrifying and possibly unproductive overtones of
sovereignty, if we're talking about self-determination of peoples,
of a right of a people to institute such governments as to them
seem proper to secure their inalienable rights, their pursuit of
happiness, then I suppose we want to be careful that we don't take
those subgroups and ride roughshod over them, fit them into what-
ever prevailing notions a temporary majority might have of what's
the right way of thinking and the wrong way of thinking. One
wants to avoid the tyranny of the white man over the red man,
but I suppose if these are all, indeed, human beings, as I take it we're all agreed they are, one wants to avoid any kind of tyranny, whether it bears a red hand or a white hand. It's not better for being red.

A final thought I would raise about this is... that to add to the complications and the human dilemma that's involved here, it may be that the legitimate aspirations of one group to make X out of themselves, whatever that is, to pursue the traditional life of subsistence and living in perfect harmony with the world, as removed as possible from the world of plastic, or the legitimate aspirations of another group to enter into the mainstream of Western life, retaining such elements of tradition as to them see... as they see fit... It may be that those competing aspirations and programs, if pursued, will have terrible consequences for others with other aspirations and other hopes and other plans for themselves. Even if you've got 44 million acres, or whatever it is, to sort of work it out... one people says let's go for oil and in doing so, make it impossible for other people far, far away to do what they've been used to doing. I don't know how one resolves that. I'm saying that that's yet another aspect of the sense in which we've got a problem of the Native peoples for the Native peoples to decide, and where it's not going to be appreciably easier than it would be... or, more comfortable, I should say, than it would be for the white man to decide it for them.

All this is not to say that it's hopeless, but to say that it seems to demand every resource of thoughtfulness and introspection that you can muster, and it's an area in which lawyers are a late and limited resource. The problems begin at home and they have to start... The resolution of those problems, it seems to me, have to start there. And probably it's an area in which you have very little guidance from the experience of mankind.

MR. BERGER: Thank you, Mr.
Lerner. Well, I think that we should hear now from the representatives of Native American Rights Fund, Alma Upicksoun and Kim Gottschalk. So, Alma, if you'd like to proceed now?

MS. UPICKSOUN: As a means of introduction, I am Inupiaq. I grew up here in Anchorage, recent law graduate and have been working for NARF for about five months. I'm an Arctic Slope shareholder and would like to get back to some of the questions we had talked about earlier, about Western institutions looking at the corporation as a means of implementing that.

First, I would like to come back to the discussions we had yesterday, partly from Mr. Lerner's presentation, the questions about individual and group rights. To begin, in talking with Mr. Lerner and others, federal Indian law, U.S. federal Indian law, as a field, is something that is very unique and often times misunderstood, and those concepts and ideas have been a basis in many instances for looking at ANCSA. ANCSA was the development, in many instances, of federal Indian law and policy and it has to be viewed in that way.

As well... looking at the legal aspects of ANCSA, looking at the policy from which it's developed, I think it also needs to be understood in other aspects, how the law has affected the people. I think Mr. Chamberlin and Rosita and others have emphasized that and looked at those aspects. And that is one area which I want to talk about specifically in regard to some of Mr. Chamberlin's comments about corporations. He had inferreded that it was the people's visions that should more or less influence those institutions, the language, and it's something that I think is very difficult for... for people outside Alaska, people even in Alaska, to understand.

ANCSA imposed a corporate system as a means of settling the land and money issue and I first had contact with the idea of a corporation, what it was and how it was set up, when I went to...
Barrow, and went there specifically to work for the corporation and find out more about what ANCSA was, how it was being implemented and what it actually meant. And I knew very little of this, and this was a time when I was in college. I think that's the case with many people, lawyers and non-lawyers, that there is a lot of misinformation, a lot of things are not understood... how the land is held, et cetera. And I was very disillusioned in my exposure and frustrated about many things I saw. And in speaking with one of our attorneys, I was told that the frustrations I had about the role of the corporation, what it was doing in many instances, could be answered in this way, that the corporation was set up as a business entity to make profit. And I think that is the view of many Native leaders, many of the attorneys who work with the corporation, work with the individual people in the corporation.

And we had talked... The discussion had gone into looking at institutions, other means of fulfilling the goals and the dreams of Native peoples, when they looked at the corporation, what it was. I think we talked about the North Slope Borough, as well. I think the Arctic Slope might be a unique situation where you have a regional corporation. You also have a local government composed of Native people which is able to offer, through tax monies from oil development, services which other areas could not provide. That may not... That is not the situation in most parts of Alaska and I think the contrast there between what the corporation is doing and how it's meeting some of those goals is a much... much more of a struggle.

Apart from those problems, I think, looking at the corporate mode in the village sense, you have a much... a problem which is even more intensified. My village corporation, for instance... and I'm sure many others have had this problem... even in complying with state laws to stay incorporated, has posed problems. And I think it's... it's hard to understand, looking at...
And I wanted to come back to Ada Deer and talk more about the corporate system that was set up there. They had a state chartered system... What has been the effect of a corporation as a means of implementing policy or a means of implementing actions that are directly tied with people?

MR. BERGER: Did you want Ada Deer to respond to that?

MS. UPICKSOUN: If she would.

MS. DEER: Again, I want to emphasize that the corporate model was imposed on our people. The Menominee people did not understand the corporate structure and the... termination plan, as it was finally implemented, had several layers and boards. I'm sorry I don't have my book here. Another person is using it at the moment, but at any rate, there were foreign structures superimposed over the former tribal structure, and so the people did not, from the beginning, understand the corporate structure and all during the termination period, in my opinion, most of the people did not understand the corporate structure.

I mentioned earlier the... mill and how it was being operated and the lack of administrative and managerial expertise that is needed to run an operation. And now, efforts are being made to train people but this, again, is under the direction and the will of the Menominees. We want to have our own people at all levels in the structure of the mill, which has been converted from a state corporation, now, back to a tribal corporation.

The problems still are with us in terms of the unemployment, but... the people have, through their board of directors, made the basic decision that it's more important to employ people and not make such a high profit, or even lose money, than it is to have a high rate of unemployment, as first occurred when termination took place in the early years.
We're not through yet, in terms of making this more responsive to the needs of the people, and I think that this is something that the Native people here and others that are involved need to keep in mind... how to make institutions more responsive to the needs.

I'd be happy to answer some specific questions, if I can.

MR. BERGER: Anything further, Alma? Kim Gottschalk, would you like to carry on from there?

MR. GOTTSCHALK: Well, I'd like to start off by making the same disclaimer that Mr. Lerner made when he started off, and that is, I... this is my first trip to Alaska and so I don't purport to have any special expertise. As I understand it, one reason we're here is to see if there is anything we can offer about our background from the Lower 48 that might be relevant, and so given the understanding, I realize everything I say is subject to different application up here because of circumstances of which I'm not fully aware.

I'd like to address a few comments to, I guess, a subject from the Lower 48 that I may have the most experience with, which is the General Allotment Act and how that might be relevant up here.

And I want to say, also, it's been a privilege to me to listen to the eloquent statements given by Mr. Naranjo and Russell Jim this morning, and to hear the other people talk about the Alaskan vision, or visions. There is, however, one thing that has me worried and that is there almost seems to be an underriding presumption that ANCSA is a mutually agreed upon temporary arrangement and that we're... Alaskan Natives should stop and think about what their vision is and then let's implement it. Also related to this is Mr. Lerner's comment that attorneys are a late and limited resource. And I feel that, in one sense, that's very true. I think lawyers can just muddy the waters if
they're brought in too soon and if the presumption is that we're looking just at a long-term solution of what the Native vision is, then I agree with that statement.

Unfortunately, ANCSA is a reality and 1991 is very close at hand. And I think the response that happens to ANCSA before 1991 may have a lot to do with whether any vision, whatever it may be, has any hope of succeeding. And I base my statement on that, in a large part, on the history of the General Allotment Act in the United States. The parallels that I see between the General Allotment Act and ANCSA... and, once again, there may be factors up here which are going to render whatever I have to say irrelevant but for whatever value it does have I would like to discuss it a little more. I realize it was covered by Mr. Jorgensen but I'd like to go into a little more detail.

The General Allotment Act, of course, was... similar to ANCSA in that it provided for restriction on alienation of land which was allotted to individual Indians and the reason land was allotted individual Indians was, I suppose, to a large extent similar to the reason behind ANCSA, namely make land available for Anglo society, because once the allotments were issued, any surplus land was available for sale then and settlement by the Anglo population.

They were also similar in that there was a problem with after born, so to speak, because land became more and more fragmented and the same problem is faced here with those children who are not eligible for shares. So you have a real continuity problem.

They were also similar in that there were limited restrictions on alienability and taxation during what was felt to be a transition period. There was one important difference which gave the Indians under the General Allotment Act actually more protection than the Natives have under ANCSA which was that the president of the United States was given discretion to
unilaterally extend the trust period on allotments and, in fact, 
did so and probably thereby saved what few were saved. And —

MR. BERGER: Excuse me, Mr. 

Gottschalk. That was a 20 year period, was it?

MR. GOTTSCHALK: 25.

MR. BERGER: 25.

MR. GOTTSCHALK: Yes.

MR. BERGER: And the president

was given discretion to extend the 25 year period?

MR. GOTTSCHALK: That's right, and did so. And ultimately, it was then extended by Congress.

MR. BERGER: And... I see.

MR. GOTTSCHALK: Now, for

whatever reason, prior to the expiration of the 25 year period, 
some Indians wanted their land in fee and they would go to 
Congress and Congress would pass special bills granting an 
individual Indian a patent in fee.

Also about this time, the supreme court, in a case 
called In Re Heff, ruled that an Indian became a citizen of the 
United States at the time of the issuance of the allotment and 
not at the time of the expiration of the trust period, which had 
been the intent of Congress. And that decision was subsequently 
overruled and Congress, immediately after the Heff decision, made 
clear that it had not intended to grant citizenship at the time 
of the issuance of the allotment but, rather, at the time time 
the fee was issued. And this had important jurisdictional 
ramifications as to whether an Indian was a citizen or not in 
those days.

To counteract In Re Heff, Congress, in 1906, passed 
the Bruke Act, which was to eliminate the supreme court's 
decision as to when an Indian became a citizen, and also was to 
do away with the need for individual Indians to come to Congress 
for a special bill to obtain a patent in fee. And so what they
did is, they stated that the secretary of the Interior had the
authority to issue fees when he felt that the person was ready
to handle that. And it's obvious from the congressional debates
and the overall surrounding circumstances that the act was only
intended to apply to Indians who wanted their patent in fee.
Although there wasn't application language in the act, that seemed
clear and, in fact, that's how the act was interpreted for ten
years after it was passed by the secretary of Interior. So, if
an Indian applied, then a determination was made of competency.

Even at that point, there were terrible consequences of
allotment. No one knew what it meant to say that the Indian was
ready to have the patent in fee. There were examples of fraud
and duress, overreaching by Anglos who desired land to induce
Indians to apply for fee patents and then they immediately bought
it at a very low price and turned around and made a profit on it.
But things got worse because as the pressure for increased land
grew, the policy was changed to, "Well, let's go out and find the
competent Indians. Whether they want a fee patent or not, let's
go find them and then issue them." And so that went on for awhile
and then that was perceived as too slow a process so then they
said, "Well, if you stop and think about it, I guess we can all
agree that if someone has more than half white blood, they must
be competent." And so they just got a blood roll, went down the
list and looked at blood quantum, and if a person fell on one
side or the other, they got issued a patent or didn't. And then
it was changed to, "Well, if it's exactly 50 percent white blood,
that's sufficient," and many Indians were fighting in World War
I in France for their country and came back to find their land
was not held in fee but, not only that, was on the block soon to
be sold. And so they would take out mortgages or whatever to
stave that off and then, eventually, the mortgages were fore­
closed.

The result of the policy, which I guess is really the
point of this whole thing, is that millions of acres... of land
were lost. Many people were issued policy patent fees... in
other words, based on the quantum of blood that they had even
when that person had individually applied for a patent previously
and been determined not to be eligible for a patent. In other
words, they were found not to be competent to handle their own
affairs. But under the policy patent, then they would automatically
be issued one nevertheless. People in Washington were telegraphing
friends in South Dakota of who was going to be placed on the list
to receive patent in fees so those people could approach those
people and sign contracts even before the patents in fee were
issued. Of course, the contracts were illegal under the allotment act.

Not only were millions of acres lost, but it also
created a jurisdictional nightmare and what I am worried about is
the frightening parallel between ANCSA and it's very limited
restrictions on stock and etcetera, and the General Allotment
Act and what happened. And if I were to guess, without having
all the facts available to me on the situation in Alaska...

Well, let's put it this way, I'm very frightened at what's going
to happen and I think if something is not done before 1991, many
of the visions that have been talked about will become geometrically
harder an achievement because the tribes in the Lower 48 who were
submitted to allotment have not yet and I doubt ever will recover
from it.

MR. BERGER: Could I ask you a
question, Mr. Gottschalk? The... When a reserve... reservation
was... When the reserve was allotted, carved up into allotments
for each adult male, you said the surplus was then available for
sale to the general public. Do you mean that if the... if once
there had been allotments to all the male adults in the tribe,
that didn't take up all the land they had, then the surplus was
available?
MR. GOTTSCHALK: That's right.
(TAPE 31, SIDE A)

MR. GOTTSCHALK: I mean...

Allotments were not just issued to the adult male, but that was the whole purpose of the allotment act, was to free up those ex... quote, unquote, excess lands.

MR. BERGER: So that the lands were... were lost to Indian ownership through sale of the surplus and then, by one means and another, through assignments of the allotments in fee?

MR. GOTTSCHALK: That's right.

MR. BERGER: And, Mr. Jim?

MR. JIM: If I may elaborate a little further. I appreciate very much Mr. Gottschalk's analysis of the General Allotment Act, the Dawes Act of 1887.

To be somewhat frighteningly specific, many of our people still hear the stories of non-Indians getting some Indian drunk and the next morning he wakes up with money in his pocket and his thumbprint on a piece of paper which is in the possession of the non-Indian who says, "You sold me your land last night."

The jurisdictional nightmare should be elaborated on somewhat wherein land that went out of trust status because of the General Allotment Act... since 83-280, continuously haunts and plagues many of the tribes in the Lower 48. The enforcement of certain types of laws on the fee patent, the checkerboard of the reservation, is very difficult.

And in regard to the allotment of 80 acres, or if it was in a supposedly semiworthless area, like, for instance the area I grew up in was in a canyon and the mainstream looks at that canyon as rock, sagebrush and semiworthless land so instead of 80... "Ah, let him have 120." They expand it a little bit. Or, if it's way out there in the wilds in the timbered area, "Let's give him 160 to make up for the difference." But there was
so much surplus land there left and not enough Indians, not enough
Yakimas to give land to, so we had visitors from the coast, from
the Nez Perce, from the Coeur d'Alenes, from the Colville and
the Warm Springs, the Umatillas, that were living on our land,
and so they gave them allotments, which creates another problem.

And I'm sure somebody will address this problem one
of these days, the inheritance problem that comes along with that.
It's very complex. And, again, I agree with Kim that it's
somewhat frightening.

Thank you.

MR. BERGER: David Case?
MR. CASE: Yeah, Kim, I wonder
if you could be a little more specific about the relationship you
see between the pattern of difficulties with the allotment act
and, particularly the heirship issue and the claims act. And, I
guess... Are you talking about the analogy between allotments
and stock in the corporations, or something else?

MR. GOTTSCHALK: Yeah, that's...
... What I'm talking about... I guess the overriding analogy is
that there's a time certain at which the Indian interests are
fair game and you will be... If it stays the way it is, I think
people will look back with grudging admiration at the ability
of white society to get huge hunks of that in amazingly short
periods of time. I think... I think it's an emergency.

MR. CASE: Let me just carry
this a little bit further. Suppose the... stock were perpetually
restricted but could be passed only, as it is now, by inheritance.
What, if anything, would be the consequences of that?

MR. GOTTSCHALK: Well, you get
me into an area that I'm really not that capable of talking about
because I think it gets into the area that Coulter has raised and
many others about what is the ultimate vision. I don't know if
this is even the ultimate system that they want. All I'm saying
is, if you can't come up with an alternate system by 1991, certainly some type of... continuation of the restriction buys you some time as far as... It has nothing to do with the after born situation, which I think would seem to me as an outsider as an extremely serious problem. And to me, that's going to require more than just a slight modification of some time periods. Obviously, there's... To me... There's... A major overhaul needs to be done. I'm worried about the impending time periods and I don't know... I think maybe all types of strategies, not just in the sense that they've been talked about earlier, but in the sense of timewise, all different levels of strategy need to be pursued, short-range, mid-term and long-range. What the specifics of those are... I mean, that's where I agree with the observation that, in the long-term, perhaps lawyers should be latecomers to the whole thing. Lawyers cannot be latecomers to the 1991 problem because it's here right now.

MR. CASE: What, in case of the allotments, is the consequence of the land being restricted and passed by heirship?

MR. GOTTSCALK: Okay... Well, it's not as analagous in that situation because stocks are more easily divisible. But the... What has happened is... a whole new set of problems that have also given rise to lawsuits, called secretarial transfers... you end up with a piece of land with, maybe, each person owning 1/64th interest and so what do you do? So, Congress passed an act that said, well, the secretary, upon application of the heirs, or if one heir was found to be incompetent, not in... in the mental sense, then he could sell the allotment. So many of those have been sold without the application of the heirs and there's many lawsuits brewing in the Lower 48 at this very moment based on that. There have also been provisions passed saying... I can't remember the precise formula but if a piece of land is of a certain size... you know, small size,
if its income-producing ability is very small, it automatically escheats to the tribe, and so now there are lawsuits by individual Indians suing over that, arguing that that statute is unconstitu­tional because it's taking their property away.

But the heirship problem has just been devastating. I mean, you have lands sitting there that so many people own such a small interest in it that no productive use can be made of it. There are all kinds of arguments over what's going to be done with it. It's just a total disaster.

MR. BERGER: Just before we go to Mr. Lerner, David Case, would you like to supplement in any way what Mr. Gottschalk has said by referring to allotments in Alaska?

MR. CASE: Well, the heirship problem is the same with allotments in Alaska except, of course, the allotment act that was primarily implemented up here was a public domain allotment act. It did not divide up reservations. It... Well, it took land out of the so-called public domain and, theoretically, largely, made it available for Alaska Natives. But you have the same heirship problem in Alaska that arises out of the fact that one person obtains an allotment and then passes it on by inheritance to several people who then pass it on by inheritance to several other people who then pass it on to several other, and, of course, within two or three generations you have sometimes 100 people owning the same 160 acres of land, or less, and no division of... Well, it just makes it very difficult to deal with the land as an economic unit, for one thing, and usually often ends up in the land being leased to an outside economic interest, which then can return cash as a payment for the lease, which can be distributed among 100 people, whereas the land can't. So, you see, the institution, itself, sort of divides up and does very... often devastating things to people in their relationship to the land.
You want to say something, and I don't want to...

MR. GOTTSCALK: Well, I was just going to say there's a side issue to that that's even compounded further. In Minnesota, where I was mentioning they have the secretarial transfer problems where the secretary of the Interior transferred land without the consent of the heirs, they've estimated that the probate work to go back and find out who all the heirs are, alone, would cost 40 million dollars. No one knows who the heirs even are, it's been so long since work has been done on it.

MR. CASE: And just... I mean, to tie this... Maybe it's obvious, but nobody ever says this, but I suppose maybe it's important to say this, that what's... You sort of have to look at the result of inheriting ANCSA stock, and the way the claims act, of course, is set up, one... every person got 100 shares in a particular corporation, or, maybe, 100 shares in each of two corporations. And then, those people will pass those 100 shares on, perhaps to multiple heirs who will then pass them on to multiple heirs, and you will have the same multi... increasing division of these 100 shares into... They're more easily divisible but the question, then, becomes what is the value in any term, and maybe there is some value, of owning one share or two shares or five shares, in a corporation. Whatever the value is, it is probably not economic value.

MR. GOTTSCALK: I agree with that. Before, when I said it wasn't quite as analogous, I meant the precise point you made, that since it's 100 shares, it is somewhat more easily mathematically divisible but, ultimately, you reach the same problem.

MR. BERGER: I'm... Mr. Lerner and then Dalee Sambo and then Joseph Jorgensen. Sorry.

I'm told that some of the corporations are down to fractions of less than a share on their roles, and that's only 12
years after... Did I say Ralph Lerner? Yeah.

MR. LERNER: I first raised my hand because I... There was something I didn't understand in what you had mentioned. You said under certain conditions the... the land escheated to the community, to the tribe?

MR. GOTTSCHALK: That's a very recent statute and it's being tested now. If a person's interest in land fell below a certain percent and it's income-producing ability fell below a certain dollar amount, they just declared it escheated to the tribe and that's now being challenged in court.

MR. LERNER: By individuals who don't want to give up what they own --

MR. GOTTSCHALK: Right, right.

MR. LERNER: -- they thought.

Now... nice.

Let me just raise a question and this is something that lawyers would know about. In a big city, you could have an apartment building that is run, not as a condominium but as a cooperative. Okay? Where, strictly speaking, you don't own the apartment in which you may be living, but a fraction of the building of which that apartment is a part. And, that apartment building, or the owners of the cooperative, has an interest in maintaining the character of that building. They might not want to have an apartment taken over by young swingers... okay?... who are going to have party time at 3:00 a.m., or they might have other kinds of motives. They want to have some control over who lives there and how that person or that family will comport itself. So they have an arrangement... I've heard of it, I don't live, myself, in such an arrangement... They have an arrangement whereby if you want to move out of that apartment and you're going somewhere else and you want to sell your apartment, before you can sell to a ready buyer, that buyer must have the approval of
the board. Or, if the board turns down that potential buyer, the board reserves the right, the cooperative, as it were, reserves the right to be the first buyer of that apartment.

Now, there are all kinds of arrangements that lawyers have concocted for people who want to have some control over their neighborhood. In the old days, people used to worry about black people moving into white fancy neighborhoods. They had restrictive covenants which have been struck down by the law, but have contrived other devices whereby they have some kind of control over who buys... not over your right to sell, but over the identity of the buyer. Now, that's under a cooperative arrangement. Your individual right to your property remains in the sense that it is your title, but the community, whether it's a cooperative or an apartment building or what have you, preserves some leverage in maintaining the special character that it wants for that building or that neighborhood or that something or other.

I wonder if that's out of the question? That's one question. The second is very brief.

The fact that one had only a share or 100 shares, it doesn't matter, in a corporation, or in a cooperative, for that matter, and that that becomes divisible and divisible and re-divisible... I mean, after all, it's the division of property that lead all those younger sons to leave the easternmost settlement of the United States and go west. The farms became so small they couldn't live off them in eastern Massachusetts and Connecticut and so on. But the fact that the share is divisible doesn't mean that it must be worthless.

I would have been very happy if my father had had both the means and the foresight and wit to buy one share of General Motors or General Electric in 1924. That one share would... You know, there's such a thing as splits. Okay. Now, it may be that some of those shares and some of those corporations, because of good luck and good management and whatever else goes into it,
become very, very valuable, indeed, and maintain a multitude of
descendants. It may be. But it may also be that they'll be very small.

MR. CASE: Well, right, and the
point --

MR. BERGER: David Case.

MR. CASE: -- the point that
I meant to make is not that this is necessarily bad that shares...
100 shares will be divided up down through generations. It kind
of depends on your expectancy, though, as to what is going to be
the economic benefit of owning shares in ANCSA corporations. And
the expectancy may have been that owning 100 shares of a corpora-
tion would result in some fairly substantial income to individuals
... to the individual that owns 100 shares, and the fact that
the shares then, in later generation, become further and further
reduced, reduces that likelihood. So it depends on the expec-
tancy that you have of this institution.

And, you know, there's a great deal that is also left
to chance and later development. That's my only point. I'm not
saying that this is bad or good. It's just that there are some
consequences to the restriction on shares and the restriction
that they can only be passed by heirship, at this point.

MR. BERGER: Kim Gottschalk.

MR. GOTTSCHALK: To answer your
question as to whether something like that is possible, it's
already in there to a certain extent in 43 USC 1606. The cor-
poration can, by the cutoff date of 1991, if it so chooses, in
addition to any other legally permissable restrictions, of which
I have no idea what they are, have a restriction denying voting
rights to any holder of stock who is not a Native or a descender
of a Native, and the granting to the corporation or to the
corporation and a stockholder's immediate family, the first
right to purchase.
Okay? So some of what you've said is in there. I leave it to other people to say whether it's adequate. I guess my reaction is, based on my experience in the 48, and the reason I rebell against this provision and your suggestion is, I'm opposed to the whole idea of an economic entity as opposed to a governmental anyway. That's what sovereignty is all about, is government, not... in the 48, okay? I don't want to make a value judgment for the people up here, but for the tribes I've worked with, they've been membership entities, not economic entities. They've been governmental entities first and so, in a certain sense, I would reject the premise.

MR. BERGER: Could I ask you a question, Mr. Gottschalk? In a... You prefer what you... what really are political entities with certain law-making functions. What about the land, where you have land that the tribe or people consider to be theirs? How should it be held? And by what entity?

MR. GOTTSCHALK: I don't know if I want to answer how should it be held, but I can answer how it is held with the tribes... Mostly, I've worked with the Mescalero tribe, okay? I've been with NARF for a year and a half. I was with the Mescalero tribe for eight years and their leader is Wendall Chena, whom I consider to be one of the finest Indian leaders in the country, or one of the finest indigenous leaders in the world, as far as that goes.

I... I know him well enough to know what his response would be to that and that is, the tribe owns every last acre. At least, no non-Indian owns any, and the land is essential and it's held by the tribe as a governmental entity and the people hold membership in the tribe.

MR. BERGER: Dalee Sambo, and then Ralph Johnson and... Joe, and then Ralph. Sorry.

MS. SAMBO: Under the General
Allotment Act, it seems that it's taken... in terms of allotting land to people on an individual basis, has broken down the tribal institution or... and severed the land that once belonged to the tribe in common, or communal, or held within the tribe. So what's the responsibility of the tribe as... as a tribe to the individual allottees? And it seems to have broken down an essential part of an Indian community by allotting on an individual basis.

MR. GOTTSCHALK: Without mentioning a specific tribe, but it's a tribe that I'm aware of, they have a real problem having their own people accept the tribe's right to tell them what they can do on the reservation. They have a hard time with the idea of tribal government because the whole reservation has been so decimated by allotment. It's a terrible problem, and to compound that there are Anglo holdings within and...

I don't know. To me, it's just... This whole idea of allowing Anglos to have their foot in the door by getting some of your stock is just devastating.

MR. BERGER: Joe Jorgensen?

MR. JORGENSEN: One problem about allotments and their aftermath that hasn't been discussed yet but should be is, what does happen when, through secretarial transfer or through purchase, funds made available by Congress for tribes to buy back allotments or land tied in up heirship... What does it do to the former allottees, or those who presume to be the heirs? And one problem is that, when the IRA governments then received this land back, they were authorized to assign land for use by Indian persons who desired to use the land. This would allow them to farm, to raise livestock, to engage in any small enterprise. Here are some of the kinds of problems that have emerged from that on several of the reservations on which I've worked over the years.

The former allottees, or heirs, have been unclear about
the nature of the transfer even if they received payment back for
the transfer. Many of the transfers of allotment and heirship
land on some of these reservations were made to pay back debts
incurred in irrigation projects put on those reservations that
had not been desired or voted upon or agreed to by the allottees
or their heirs or the tribes, themselves, as a matter of fact.
When they knew that they had land that would be theirs, they
assumed in perpetuity... of course, it was a 25 year trust...
that first wedge, a wedge perhaps that Ralph Lerner could talk
about, was made. That's to say, they now became individual
property owners, which was what was desired by some framers of
the General Allotment Act in the first place. If a person would
but assume land, he would become responsible for his family and
for the continuation of that family through time. And if they
were witty and wise, and used their resources well, they could
purchase more land on their own.

But what I saw in the 1950s and the 1960s were such
things as fist fights, challenges to the authority of the tribe
to assign land. I saw land assigned to people and the tribe
afraid to take it away from them, even if it was not in use for
several years when someone else wanted to use the land and have
it assigned to them... That there were these conflicts about
who owned the land, for what purposes it should be used and
whether the tribe, by its authority, could control land that
was presumed to belong to former allottees or former heirs.
It could be awfully divisive.

The contradictions, then, that emerged have continued
on and they haven't gone away, that there would be corporate
resolve among all members of the community without factional
disputes or catch-as-catch-can wrestling matches, is not a
foregone conclusion. I think that, without a larger land base,
without some way to take care of future generations, that ANCSA
will run into precisely the same kind of problems that have
emerged on these various Indian reservations, especially in the Western United States.

Sometimes these problems on allotments and assignments can be compounded, particularly if oil and gas happens to be on those reserves. Allottees or heirs control the subsurface rights. They lease their oil and gas, they receive directly the benefits from it. Assignment land next door, once owned by Indians now still residing on the reservation, also have oil and gas wells in place but those monies go back to the tribe and they feel that they have been deeply deprived.

Those kinds of problems are very serious and very real on several of the reservations.

MR. BERGER: Ralph Johnson?
MR. JOHNSON: I'd like to call forth an analogy from the other field that I spend most of my time in, and that is the field of public land law. Just as an introduction, about a week ago, a federal judge in Portland, Oregon, enjoined all herbicide spraying in all national forest lands and all BLM lands in all of Oregon and all of Washington because of the failure of the National Forest Service and the BLM to prepare what is known as the worst case analysis. The National Environmental Policy Act was enacted in 1969. In 1979, the president issued an executive order... President Carter did... saying that the only way we're going to find out the important information about the impact of federal projects, for example, spraying herbicides on national forest land, is to have the agency prepare something explicitly identifying the worst possible results that could come from that. The agencies don't like to do that. In fact, they refuse to do it. They refuse to do it time and time again, even though ordered by the court to do so. In 19... As I said, about two weeks ago, the Ninth Circuit simply ordered the agency to stop all herbicide spraying in all of those two states until such a worst case analysis was prepared.
Now, a worst case analysis is different than what some of you might think. It doesn't... You can't brush aside the possibility that the disaster that has been alluded to here by Kim Gottschalk and David Case and others might occur. You can't just say, "Well, there's not very much chance of that so we don't have to consider it." The worst case analysis requires that you spell out what that worst case possibility is and some idea of the chances of that occurring. You have to write it out. You have to say, "This might occur and this might occur and this might occur," and I suspect that revealing that information might affect those who are making decisions about it. And, as I say, if you just shut it off and say, "Well, there isn't very much chance of that happening," then people blank it out of their minds. But there is a whole methodology now that requires you to spell that out, say what would be the worst case.

For example, on the herbicide spraying there is some chance that 50 women will have spontaneous abortions in the area that is sprayed. There is some evidence that is true. Forest Service and BLM said, "Well, that isn't... We don't think that's true and that isn't likely," but they couldn't prove it wasn't true and so they had to... They must reveal, in their analysis, that this could be the result. Then the public, the federal agencies, the Congress, the people who all are going to decide that question, will be able to decide, "Do we want to go ahead with that?" And that, it seems to me, is where we are here.

One can ask for an explicit revelation of what is the worst case analysis of 1991? Not whether it might likely occur or not, but what is that analysis and then let's consider, "Do we want to take the chance? Is there any way we can reduce the chances of that happening? Is there any way to plug those holes so that won't happen?" And then think of the avenues to go about it. I think that methodology is available. It's a question that fits very appropriately here and should be asked and should be
analyzed here.

MR. BERGER: Yes, Russell Jim?

Oh, sorry... It's... Yes, Russell Jim.

MR. JIM: Thank you. I... I certainly agree with Professor Johnson but I think it warrants a little elucidation in regard to some of these worst case analysis... and that is, in regard to the allotment on the Yakima Nation.

In 1953, with the fast pace or fast changing of value system by the Yakima people, themselves, in selling off their allotments to anyone, non-Indian alike, the Yakima Nation exercised its sovereignty in 1953 through the general council body and passed a resolution that said no more land will be sold to non-Indians.

But as I mentioned earlier, there are these allotments that are up in the timbered areas which is a closed area to non-Yakimas on the Yakima reservation, especially during the fire season. But these allotments are inherited eventually under the laws of the United States of America, and the one allotment specifically... I'm sure Professor Johnson knows the case of the Yakima versus Brendale. Mr. Brendale was that... about a sixteenth or a sixty-fourth short of being enrolled a Yakima member. But he inherited this 160 acres from his mother whom was enrolled and passed on, and through the laws that were created here not too long ago, the gentleman inherited. And so eventually he wanted to develop... he wanted to divide ten acres up there into two acre plots and sell them to non-Indians up in the closed area, which is a beautiful area up there in the timber.

And we argued, "You can't do this. The Yakima Nation, through its own sovereignty and through its zoning ordinance and code controls all lands within the exterior boundaries of the reservation." Of course, you know the ramifications and the court cases that have always come out of that. But we did
eventually have to go to court and first, the county commissioners in Yakima said, "Well, we grant Mr. Brendale the right to develop." I'll make it short as I can, but eventually the Yakima Nation won the case. The question still is among the county commissioners, "Should we appeal?"

But this is one of the worst case analysis that could be thought about, and thought hard about. The... The development and the manner promoted inside the closed area was going to affect the resource, the important resource, itself, the environment, the aesthetic, animal habitat, and the bottom line... the natural foods and medicines that are very essential to the culture of the Yakima Indian Nation.

I could elaborate further, but I think I'll let it stop right there.

MR. BERGER: Yes, well... I wonder if I could make a suggestion now. It's about five minutes to 3:00. Tito Naranjo brought this movie with him and I suggest that we turn now to watch the movie and then everyone in the hall, I repeat, is invited back to the commission's offices for refreshments at 4:30. Tito Naranjo has to leave tomorrow morning, so I think we should show the movie now and invite Tito to say a few words to us afterwards.

And I have some more hands up. Yes, Ralph Lerner?

MR. LERNER: Could you spare three minutes?

MR. BERGER: All right.

MR. LERNER: Okay. This appalling narrative you gave... I mean, of these allotment frauds, encouraged, I think, under... You know, because of the individual's inability to work within the confines of white property law. I mean, it's just simply dreadful. I wonder whether that example of the Lowr 48... I'm talking like a native already... Okay, I mean Alaskan... okay... I wonder whether that experience of the
Lower 48 is so... necessary or... or... or fearsome up here.

Let me just suggest a couple of things that strike me as putting Alaska in a special and maybe more favorable light. First of all, the very thing that seems so ominous, that you've really got only seven years and the clock is running, might actually be working in your favor rather than against your favor. I'll explain that in a second. And the other thing, that you've got so much territory, an immense amount of land... What's that?

UNIDENTIFIED: (INDISCERNIBLE)

MR. LERNER: You may say not enough, but it gives you room for maneuver and error.

Let me suggest a possibility. When you have more time, you have more time for the division of minds. Maybe it's possible that, with some tribes or some corporations or some boroughs, there's something approaching unanimity. We don't want that... X. Okay? We want to be able to control it according to a certain vision that we have. That would be the moment, it seems to me, to act on that before people have had a chance to divide to form the kind of factious behavior that Mr. Jorgensen described. To the extent that you're talking about a community, a community meaning having a common mind about the most important things, whatever those things are for those people, is it out of the question that that community... that those individuals vested by the law with these individual shares should contract with one another to form some kind of an organization, some kind of a community, and even if it has to be called corporations, so be it, whereby their common purposes, their common interests, their common dreams might be served? That community, recognizable by the law, corporate law, property law, whatever it is... the law of associations, that's a recognizable and falling under the protections of white law for such arrangements, might then make what arrangements it pleased.

For example, I would imagine that the first thing that
they might want to do is to provide for all their children. The 11 year olds as well as the 12 year olds. I mean, I can't imagine a human being that would settle for saying yes for this kid and not for that. And, again, talking not about giving him a parcel which will then be inadequate in the third generation, but giving him a share... that corporation could then arrange for the use of that land, distributing it and arranging for its use in any fashion that it saw fit. Probably there would be all kinds of division of minds. Probably you'd have politics, the sort of thing that Ms. Deer alluded to in talking about the Menominees because the Indians and Aleuts and Eskimos, like other people, are going to have divided minds about what's good and how to go about it.

But if you've got actually a moment, and it'll only be a moment, probably, when you have some kind of clarity and agreement about it, maybe that's the moment to strike and settle for that, and at least foreclose the possibility, insofar as human beings can foreclose anything, that the whole thing will just be frittered away in devisiveness and mutual recrimination.

There is the place where I think a lawyer could be helpful.

MR. BERGER: Ada Deer?

MS. DEER: This will be short.

In terms of analogies between the Dawes Act and ANCSA, some framers of the Dawes Act had the vision that this would solve the Indian problem. It has compounded the lives of thousands of people and didn't solve anything from the Indians' point of view. One of the speakers talked earlier about the object of getting the land. That was a masterful way to separate Indians from the land. I look at ANCSA and I see this corporate model that has been referred to as model legislation, as an economic instrument that will shatter the lives and the lands of the people up here unless something is done. I see cultural arrogance
in the drafters of the Dawes Act and I see the same arrogance... you know, pettiness, smugness and self-satisfaction in the minds of some of the drafters of the ANCSA legislation. Perhaps they... they, I mean the white drafters, the aides and some of these other people... were not as clear in telling everyone what they had in their minds, and I know that this is a major piece of legislation. I don't know if all the people that were involved in drafting this legislation fully understood the implications of this but I'm certain that some of the major drafters of this legislation knew exactly what they were doing in getting the land. And I think it's imperative on parts of all concerned to look with vision in rectifying this before it gets to late.

MR. BERGER: Well, I think Walter Parker, the last word this afternoon.

MR. PARKER: Just as a quick add on to that, and of course it was in the overview statement, at least one of the drafts, one of the business leaders in Alaska made it quite clear that he felt the business community should get behind the act because the land would be in private hands, ergo transferable.

And a brief comment on the allotments, and I've been waiting for somebody who's been more involved in the last few years in allotments in Alaska than myself to speak up but nobody's come forward. There are probably around 8,000 allotments filed in Alaska, only probably less than 1,000 of which have been processed. Most were filed immediately prior to the passage of the act on the fear of Alaska legal services and many Alaska Natives that the act would not pass, therefore got some land while it could still be gotten, and those are still on the books and whether it is a major problem or not depends, you know, on how vigorously the applicants want to pursue their rights.

MR. BERGER: Yes, just following
up on what Mr. Parker said, there is a point of view in Alaska that the... the passage of Native lands from the hands of the Native corporations, that is if the corporations come under the control of non-Natives and, thus, the land under the control of non-Natives, that, nevertheless, is entirely in keeping with the purposes of the act because the act was really an event in the mighty struggle between the state of Alaska and the federal government to bring federal lands under state jurisdiction. And by that reasoning... And it's quite explicit and regarded by many, I'm sure, as perfectly legitimate... By that reasoning, the land held by Alaskan Native corporations today is land in private hands under state jurisdiction. What was formerly federal land is now in private hands under state jurisdiction. If the corporations cease to be controlled by Native persons and their land ceases to be controlled by Native persons, it is, nevertheless, still land in private hands under state jurisdiction.

That's a view expressed last year by Governor Hickel, who was, I believe, the secretary of Interior, at the time of ANCSA in --

(TAPE 31, SIDE B).

MR. BERGER: -- or, just before.

At any rate, it comes from a man who's credentials are well-known to Alaskans.

Well, could we start at 9:30 in the morning? I know some of you... At least, Tim Coulter has to leave and I thank Tim for coming. Tito Naranjo will have to leave, too, and I thank him for coming. Kim Gottschalk will have to leave. Thanks, likewise to him. I'm not being more flowery about this because you are, of course, going to be enjoying our hospitality later this afternoon.

I think you can leave it to David Case and Rosita Worl and me to come up with an agenda for tomorrow. And if Dalee Sambo and Alfred Starr wish to lead off the proceedings
tomorrow, if I may say so, perhaps the most senior and the most
junior representatives at our little table here, they will be
most welcome and we will carry on perhaps until noon tomorrow.
And that may very well furnish a sufficient examination of
these questions for the time being.

I haven't forgotten what Ralph Johnson said, that is
that we ought, at some time, consider alternatives to ANCSA and
IRAs. That is, what instruments might be devised... I think
others have adverted to this... that might enable us to consider
a wider ranging of alternatives than those that have dominated
our discussions last week and this week. And we might join with
people in the Lower 48 in working together on such an examination.

Well, let's watch that movie now.

(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 749 through 832 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 3rd day of April, 1984.

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