TRANSCRIPT OF PROCEEDINGS
ROUNDTABLE DISCUSSION
VOLUME XXIV
ALTERNATE APPROACHES TO
NATIVE LAND AND GOVERNANCE
DECEMBER 12, 1984

ALASKA NATIVE REVIEW COMMISSION
HON. THOMAS R. BERGER
COMMISSIONER
TRANSCRIPT OF PROCEEDINGS

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

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Roundtable On
Alternate Approaches to Native Land & Governance
Anchorage, December 12 - 15, 1984

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Mr. Berger: Well, my name is Tom Berger and let me welcome you all here this morning, the members of the roundtable and others who are here today. The way we propose to proceed is this, I will take the liberty of making some opening remarks and then I will ask each one of you to introduce yourself and then we will ask Ralph Johnson to summarize his paper on Native land and government here in the United States and in other jurisdictions and then we will ask David Case to present his paper on village home rule in Alaska and then we will have some discussion. There is an agenda that has been circulated -- it is just a draft agenda -- we have found that the best way is just to get started and then to revise the agenda each day as we go along. So, feel free throughout to mention at the breaks or at lunch... feel free to mention any changes you want made in the agenda... Mention them to me or to Rosita Worl or to David Case because we meet each day after the roundtable to see if changes should be made in the way that we are proceeding. The proceedings are being videotaped by independent public television and the University of Alaska Information and Telecommunications System and they will be making television programs to be shown on Learnalaska, and will be making a documentary as well, and they have asked me to remind you all to speak to a microphone. There are microphones nearby each seat so I don't think that will present any difficulty. Jim Sykes is taking down everything that is said on tape. Jim is the man just putting on the earphones and he is wearing the colorful suspenders and he has been taping the proceedings of the Commission from its commencement, in February this year. Well, having disposed of those preliminaries let me attempt to explain why I have called this meeting.

The Alaska Native Review Commission has held 52
hearings in villages and towns throughout Alaska and more than a thousand Alaska Natives have testified at those hearings and that has kept us travelling throughout the state now since February. And the paramount issue for those people in the Bush, and for Alaska Natives who live in the urban centers as well, according to what they have told me, is whether or not they will find a way to retain the 44 million acres of land authorized to be conveyed to the Native corporations under ANCSA, the Alaska Native Claims Settlement Act of 1971.

In my view, there are three principal threats to their land: corporate failure, corporate takeover and taxation. There are others, but I happen to think those are the three principal ones. Well, at the roundtable in November, last month, we had some corporation lawyers here and some Native corporate executives and we looked at possible solutions to 1991. We considered whether or not restrictions on the sale of shares might be imposed together with a possibility of distribution of shares to new Natives, that is the Native children born since 1971, thereby insuring that the corporations and the land would remain in Native hands. We also considered whether or not it would be feasible to transfer land from the corporations to some other entity and that brought up the question, "what other entity?" And we looked at the land bank, we looked at non-profit corporations, in the written version of my opening marks, "profit corporations", but that should be "non-profit corporations". We looked at cooperatives and we looked at IRA's. I will be dealing... in my report which I expect will be made public late next summer, I will be dealing in my report with the usefulness of each one of these ideas. But, I wanted to take a longer look at IRA's and various forms of Native self-government. Now, there is a strong IRA movement emerging in Alaska, I think I may say that because I have been to all of these villages and in many, many of them the subject of IRA's is brought up by the people

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there. IRA's have been much talked about at the hearings in the Bush. As I told Emil Notti and his colleagues on the Governor's Task Force on State-Tribal Relations, the IRA's are not viewed by people in the villages simply as a place to park Native land... simply as a safe place to keep Native land. I think the whole idea may have come about because people were concerned: "Well, if the corporations are not the best place to keep our land then what should we do with it?" And, of course, transferring the land from the corporations to the IRA's was suggested and many people think that is a sound proposition, whether or not it is, is something that we discussed last month and there is no point, it seems to me, in going over all of that ground again. Likewise it seems to me, we have covered the possibilities of transferring land to cooperatives, to the land bank and to non-profit corporations.

Just to summarize the discussion, we looked at all four of those possibilities and none of them came out a clear winner, there were problems with each one. But in the villages, it seems to me, that IRA's are not viewed simply as one other way of preserving land. That is, one other alternative besides the land bank, cooperatives and non-profit corporations, they are seen by Native people as Native governments managing the land and passing laws regarding activities on the land, especially subsistence. In fact, it is my observation that the IRA movement or the sovereignty movement, self-determination movement, whatever you want to call it, has arisen in response to what are seen to be the twin crises of land and subsistence. IRA's are thought of as a means of keeping the land in Native hands and as a means of defending Native subsistence rights in Alaska against further encroachment. We want, therefore, to look at IRA's --and by IRA's I include traditional councils -- we want to look at the upside and the down side and I hope you will all feel free to uphold them, but better still to attack them and to attack the
whole concept as we proceed. We also want to look at what is
happening in the Lower 48 and in other countries.

We have been looking closely at ANCSA and we have been
looking at ANCSA for the whole of the year and many of you have
been looking at it for a lot longer than that and it is a kind of
bottomless pit; once you start discussing the problems of ANCSA
you seem to generate even more problems and it's something that
we have spent a year, now, reviewing in some detail. But now it
seems to me, we want to take a look at alternatives to ANCSA
because there are many complaints about ANCSA, yet let's be sure
that discussion of alternatives is about real, practical
alternatives and not about alternatives that, in the end, may
cause more problems than ANCSA itself. Having said I don't want
us to spend our time talking about the endless problems of ANCSA,
let me say that whenever you are reviewing a subject like ANCSA
there is a tendency to look at what is wrong with it and that is
perfectly natural and probably the best way to conduct a review.
People come and they tell you what is wrong with it, but it is
worth remembering that there are some features of ANCSA that it
seems to me stand out.

I was in Kuujjuag on Monday; that is the center of the
Inuit Home Rule Government in Northern Quebec and they asked me
to come and to be keynote speaker at a conference they had on
Monday and wanted to know about what we were doing in Alaska and
I told them, I said, "Remember three things about ANCSA: that it
has been the means for 13 years for Alaska Natives to manage and
consolidate and retain 44 million acres of land, that's a very
important thing to bear in mind. Secondly, it has enabled Alaska
Natives to invest in business and to become active in business
and that seems to me an important achievement. The presence it
has given Native people in the business community, it seems to
me, has also given them enhanced influence in the political life
of Alaska. I don't think that should be overlooked." But for
Native people in other countries it has also been important because it was a breakthrough. It meant that ever since 1971 Native people in other countries who go to the governments to talk about land claims are able to say, 'we are talking about real money, like Alaska, and we are talking about vast tracts of land just like they got in Alaska'". Now, in those other jurisdictions they usually go on to say, "But we don't want shareholders corporations where shares are transferable, we want to avoid the problem of the new Natives, we want to make sure that subsistence lands cannot in the future be taxed and so on and so forth". But the achievements of ANCSA are worth bearing in mind. But it is the flaws in ANCSA that have lead Native people here in this state to talk seriously about IRA's and that is why we are here to look at them, the up side and the down side. What are the alternatives? What does U.S. Federal Indian Law offer and we have three of the editors of Cohen on Federal Indian Law here at this gathering today, we have Bob Arnold who has written a book on the Alaska Native Claims Settlement. What can other countries offer? And some folks are here from other countries. And, finally, is it possible to devise new arrangements for Alaska combining the advantages of ANCSA corporations and Native governments. We are not working in a vacuum so we should bear in mind relationships between IRA's and Federal, State and Local governments. Ralph Johnson is going to be laying all this before us and David Case has prepared a paper trying IRA's on for size as vehicles of Native home rule in Alaska. Now, there is some questions for discussion that I wrote on a piece of paper just to give you some idea of the kind of discussion I was hoping we might have and I asked the question; is there a movement by indigenous people in Alaska, in the Lower 48 and in other jurisdictions to govern themselves and their land? The second question is, do IRA's work? Is it possible to keep Native land in Native hands without submitting to Federal
supervision? What are the implications for State tribal relations? How is the issue of State tribal relations been tackled in the Lower 48 and in other jurisdictions? What is working? And what is not working, I should have said that too, what is not working? What is possible, what is not possible? Can State chartered governments meet the objectives of indigenous self-government here in Alaska? Have they done so in the Lower 48 and in other jurisdictions? Can indigenous self-government be accommodated in the United States, in Alaska and in other jurisdictions? And ought indigenous self-government to be accommodated in the U.S. and in Alaska and in other jurisdictions? Well, it seemed to me we should go into these things because they are linked to the way in which people in rural Alaska are looking at ANCSA. I hope that the discussion will be wide ranging and that all of you will feel free to join in. I will act as a moderator and try to make sure that there is a kind of, I won't say order but at least logic, to the flow of the discussion and we will take a break for coffee in the morning and in the afternoon. That will come as a relief to those of you who have attended before when I never did break for coffee and there has been much complaint about that, so we intend to break this time. Well, thank you all again for coming and perhaps we could introduce ourselves and perhaps we could start with David Case to my right.

MR. CASE: My name is David Case. I am the Commission's counsel.

MR. LERNER: My name is Ralph Lerner. I teach at the University of Chicago.

MR. GETCHES: David Getches, currently Executive Director of the Colorado Department of Natural Resources.

MR. JULL: Peter Jull, I work with the Canadian Inuits setting up a Inuit government in the
Northwest Territories and with the Inuit Circumpolar Conference.

MR. ARNOLD: I am Bob Arnold. I am Deputy Commissioner of the Alaska Department of Natural Resources.

MR. CHAMBERS: I am Reed Chambers. I am a partner of Sonosky, Chambers, Sachse and Guido with offices both in Washington and Anchorage. We represent Indian tribes.

MR. HARHOFF: I am Frederick Harhoff from Copenhagen in Denmark where I teach international law and European community law. I am also the legal advisor to the Greenland Home Rule.

MR. ASCHENBRENNER: I am Larry Aschenbrenner, an attorney with the Native American Rights Fund here in Anchorage, Alaska.

MR. WORL: I am Rosita Worl and I serve as special consultant to the Commission.

MR. VASKA: I am Tony Vaska, one of the members of the Federal/State Tribal Relations who are present here at this meeting and we'll have a public hearing tomorrow here in Anchorage.

MR. WILLIAMS: I am Spud Williams from the Tanana Chiefs Conference.

MR. WILKINSON: Charles Wilkinson, at the University of Oregon Law School visiting this year at the University of Colorado. My specialties are American Indian Law and Federal Public Land Law.

MR. CHAMBERLIN: Ted Chamberlin from the University of Toronto in Canada.

MS. MILLER: My name is Mary Miller. I work at Kawerak, Incorporated, which is a Native non-profit in northwest Alaska.

MR. JOHNSON: I am Professor Ralph
Johnson at the University of Washington in Seattle. I specialize in American Indian Law, Water Law.

MR. BERGER: Maybe I could just say that, I am pleased that members of the Governor's Task Force on Federal/State Tribal Relations are able to be with us. I think some have been held up by the weather but I am glad that you gentlemen are here. Dalee Sambo is here as the representative of the Inuit Circumpolar Conference and there are some folks from Canada who came because they wanted to learn from this most distinguished group of people we have assembled at the roundtable and I think you will be meeting them over the course of the next few days. They are representatives from British Columbia, from Makivik, the regional Inuit corporation in Northern Quebec and from the CBC. Well, Ralph, could we turn to you then.

MR. JOHNSON: Thank you, Mr. Berger. It is a tribute to the work and the efforts and the success of the Commission that we have such a distinguished and learned and experienced group of people here for this important session. It is a real pleasure to participate. This is my third roundtable and I find that, I think I learn a great deal more from these roundtables then I am possibly able to give. At the outset I want to give my special thanks to Charles Wilkinson, and Doug Sanders, who could not be here, for ideas and critique and such, but especially to David Case who continues to teach me so much about Alaska problems and Alaska law. I guess the one definitional thing... I think I should say at the outset, you will be pleased to know I am not going to read my paper. It was an effort, as you probably have discerned if you had time to look at it, to try and bring together some movements, some ideas, some political actions, legal actions that are occurring throughout the world in relation to indigenous peoples. It hasn't... it is very tough to put these pieces together into some kind of a
mosaic and what I did, I hope, is a start in that direction. Anyone who reads the paper should realize that it's only a start because there is so much going on, it is very difficult to weave it into a fabric that is really truthful and complete and so forth. One thing that is quite clear and that is, that although I tried to put events in historical perspective, there are other historical factors going on; there is the Republicans versus the Democrats, there is the "states' righters" versus the federalists and the United States, the federal side in Canada, there is the Quebec question which drives, and in some sense controls, the windows of opportunity that are provided by Natives. I was not capable, in the time available, or in less than several hundred pages, to paint that kind of a historic mosaic. But, surely it is something that must be kept in mind by people who are realistically concerned about this subject. Oh, and there is one definitional matter that I feel compelled each time I speak to this to mention, that is the word sovereignty. The word sovereignty is, by itself, not very helpful. People tend to think, especially people who have not been around the field very long, they tend to think that sovereignty is either black or it's white, I mean either you've got it or you don't got it, there is nothing in between and yet that is clearly not true. We treat of it all kinds of ways in other contexts, but when we come to Indian or Native sovereignty, we think in those absolutist terms. Sovereignty is really in mind-view and nothing more than a statement of governing power and if I say that a group of people have governing power, your next question is, well how much. Well, that is the same question one should ask about sovereignty. You can have a lot of sovereignty or a lot of governing power or you can have a little bit of sovereignty or a little governing power. The States vis a vis the United States have quite a bit of sovereignty but they lost some in the Constitution. The cities in the Lower 48... in Alaska have some aspects, attributes...
of sovereignty, they don't have other attributes. So, I urge that as we go through this we tend to think as sovereignty as a word that is the beginning of a discussion, not the end of the discussion.

I have tried to identify in a sketchy sort of way, the existing world-wide movement of indigenous peoples to gain recognition, to gain status, to assure land tenure, to get some kind of self-determination, self-governing rights. It's a movement that I found far more broad than when I started this project and I was only able to cover the four countries, but it is very broad. It is being recognized in the international bodies in the United Nations. It is being recognized in Latin America. Each country has its special history which drives the particular attributes of the search for self-determination and land tenure of the different indigenous peoples. But the movement is there, the movement cannot be denied. It is expressed in so many different ways, and as I say, I have just touched on a few.

I want to spend just a few moments telling you or highlighting a few items in my paper. I think that first it's important to realize that the initial policies toward Alaska Natives were created at a time of particular history of the United States toward Indians in the Lower 48. There was the "removal era" of the 1830's to the 1840's, '50's, along in there. Then there was a "reservation era" from about 1850... these numbers are not precise, 1850 to 1880, 1890, somewhere along in there. But the particular period in which Alaska was acquired and the initial formation of policy toward Alaska occurred was in the most virulent, if you want to call it, assimilationist era that the United States has ever had toward Indians. There was a second assimilation era of the 1950's but it was very short-lived and did far less... had far less impact upon the Indian population. But the Dawes Act... the Dawes Act, the Allotment
Act which broke up reservations, took about two-thirds of the lands of the Indians and got into non-Indian hands, one way or another, was a massive attack upon the communal life. It was driven by two major forces, if I can simplify this, it was driven by bonafide Christian ethics and it was driven by bonafide capitalistic ethics. You've got to deny or destroy the "heathen, pagan" religions of the Natives and you've got to break up the communal kind of life, both of which may be viewed as either good or bad, or moral or immoral. But, in fact, those two forces joined together to get Congress to enact the Dawes Act which essentially broke up many reservations into parcels of land, individually held parcels of land. It was that era... it was exactly that era in which the initial policies toward Alaska Natives were undergoing formulation and, of course, the idea at that time was not to give any special recognition toward Alaska (But, that Natives and the initial attempt was to deny that they had the same kind of attributes of the Natives, the Indians in the Lower 48. But, by 1900, 1905, 1910, it became apparent to anyone who studied the question that there were really no significant differences between the Alaska Natives and the Natives of the Lower 48 and so, gradually national policy switched around to recognition of Alaska Natives in the same context, with the sovereign governmental status -- and I don't mean to say there is unanimity on this -- but, the same ideas of sovereign governmental powers. Sovereignty, the governing powers that the Natives had for themselves, was from time immemorial, it was not created by the Act... the treaty with Russia in which Alaska was purchased in 1867. The Natives governed themselves from ever and that came forward and had not been destroyed by the acquisition of Alaska from Russia or by any other action. Well, gradually it became recognized that this policy was one... the policy toward Alaska Natives should comply and should conform with the policies toward Indians in the Lower 48. We had the
first self-determination era, which I just remarked about. The first self-determination era in the United States, which was not the same at all in Canada, as I'll comment in a moment, but, that era was from... in 1934 with the enactment of the Indian Reorganization Act, I am always reminded of the... I believe it was Robert Service who wrote the piece on "the land God forgot", about Alaska. I always think that this is the land that Congress forgot, they forgot it in the 1934 and so 1936 they had to pass a special Act about Alaska, we forgot that. Well, then in 1953, Public Law 280 was enacted and they forgot Alaska again. Well, in 1958 they had to enact a special PL-280 for Alaska. Those are only symbolic because Congress has never been that concerned with... until recently, until oil was discovered and the state land selection process got under way, had never been fundamentally concerned about Native populations in Alaska. But in the 1960's, with the advent of Statehood, the land selection process, the discovery of oil and Native litigation that may have provided a basis for Native claims to huge shares of land, produced a Congressional consciousness about Alaska Native aspirations and claims and then produced the Alaska Native Claims Settlement Act. That Act has aspects of termination, it has aspects of continuation of Native life and Native economic welfare in it. One of the common assumptions that was extant after ANCSA was passed, was that Native governments were gone. That ANCSA settled all this. Well, that isn't true, as this Commission and others have now so artfully drawn out. If you look at the ANCSA itself, you find that it is a Land Settlement Act, it did not treat of the question of governance and, of course, that is one of the fundamental questions that is now being addressed here.

Now, a few comments about the movement in other countries. Australia, when you look at the question of Australian aborigines and the land tenure question, the

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governance question, you find a very different history then you find in the United States. The aboriginals of Australia largely were pushed around without recognition of either land tenure or governance rights until the Woodward Report of 1974. That report caused, along with a change in political attitude in all of Australia... it didn't make any difference as it doesn't make a lot of difference in the United States whether you have a conservative or liberal regime in, the attitude toward Native people seems to be powered by general consensus ideas in the society. Anyway, the Woodward Report started such a change of consensus and the Aboriginal Lands Right Act of 1976 was enacted having to do only with the Northern Territory and it purported to assure the aboriginals of a certain quantity of land, if they could show that they had traditionally occupied that land and gave them some control. Not in the same sense of governmental control that you find on the reservations in the Lower 48, but it did give them some control and still does through aboriginal land trusts and aboriginal land councils. All of which are discussed more completely in my paper.

In New Zealand, the Treaty of Waitangi of 1840, which was the basic starting point for Native claims to governance or land tenure, was essentially set aside by judicial decisions which said, quite different from the United States, which said that the Treaty of Waitangi is a statement of policy, it's not a document that is a legal document. It does not control the New Zealand courts and subsequently the attempt by the Maori to claim that they had legal rights deriving from that treaty were denied, most of the land was lost to the Maori, there are small parcels of land... significant parcels but fairly small parcels that are still owned by the Maori. Major problems, though, have arisen over the years because of the fractionated ownership. As descent and descent and descent occurred, as people died and the numbers of participants, or the numbers of owners of those lands
increased it became impossible to manage them. So, in recent years, in the 1960's, 1970's, attempts have been made to merge the control of those fractionated ownerships so that some kind of economic usefulness could be derived from that land and that has now resulted in a series of incorporations and a series of trusts that have been created to allow some kind of management, by the Maori themselves, of those lands.

Canada... it's interesting when you live south of the border, you tend to look to the east or the west and I am ashamed to say, we look too infrequently to Canada. When I started to look seriously there... I have been teaching Indian law all these years and I thought, 'well, I know quite a bit about Canadian Native claims and all this'. Well, I discovered there was a vast array of important materials there and I don't know that I have done it complete justice. But, in any event, I think it's fair to say that the policy in Canada until the 1970's really, was a quite consistent policy of assimilation. It did not have the self-determination era of the 1930's that occurred in the United States, it is significant that the Royal Proclamation of 1763 did state a basic policy that you should not overrun the Native population, you should not take their land by military combat or whatever, there should be negotiations and that policy, which was also the policy in the United States... imperfectly exercised, nonetheless, but still the policy was one that did drive Canadian relations with the Native population. The Indian Act of 1876 was a compilation of a variety of statutes. I guess the... if I were to pull out one of the highlights of that Act, I would point out the fact that the provinces in Canada exercise a great deal more control over Native populations than they do in the United States. Provincial law essentially controls in Canada except where the provincial law is explicatively contrary to the Indian Act. The Indian Act itself, the Federal Act controls if it is explicit on the question, but other than that the control is in
the provinces and in a de facto way, that means a great deal more control in the provinces than in the states, in the United States. Also, since 1951 a province cannot enact that which is in violation of a particular treaty provision. There are far fewer treaty provisions and treaties, incidentally, than there are in the United States. Well, that assimilationist policy drove Canadian policy until 1969 or 1970, a series of events; cultural attitudes, consensus ideas changed. In 1973, the Calder Decision which Justice Berger was counseled for on the Natives on that litigation, was decided and for the first time the Canadian court system recognized, to some degree in a split decision, aboriginal rights to land. Well, that was part of the shift over, part of the change that was occurring in Canadian policy. Incidentally, there were treaties signed between the Canadian government and the Native population until 1956. In the United States, treaties were not signed with Native populations after 1871. We had agreements and other things, legislation; but no treaties were signed after 1871.

Now, the Northern Territories, I guess I would like to cover two agreements and then talk generally about Canada's policy toward... out of the national Parliament. The Northern Territories agreements... now, the James Bay and Northern Quebec Agreement of 1975 was an expression of the changed Canadian policy and of the international movement by indigenous peoples to gain greater self-determination, involving the Cree and the Inuit bands of Natives in Northern Canada, is a very complex agreement. You would find that it is pages and pages and pages long. This is not a simple little document, a boilerplate treaty, this has been a carefully crafted, hard-fought, worked out document drawing upon a broad range of aspirations of all sides. Basically, it says that the land near the villages, where the Cree and Inuit live shall be forever. That is the idea in the ownership of the Native population. The minerals, as is true in
Canada generally on crown lands, is held by the crown, by the
Federal Government but is under some control. There is some
control on royalties and how the development should be made by
the Native population. Hunting and fishing rights are much more
extensive than the lands that occur just around the villages.
They are in far broader areas. Corporations were set up, but the
corporations are not like the corporations in Alaska which own
the land, as well as a business side. These corporations are
basically designed to do business and the land itself is held in
a different ownership so it will not be lost to the Native
population. A regional government was created for the Inuit and
Northern Quebec, which Commissioner Berger was just there and can
tell us more about. But that government is largely controlled by
the Inuit, but primarily not because of a special thing that says
only Inuit can be members but because the Inuit are the dominant
population of the area. It is a very interesting structure that
was set up. The other settlement that I would refer to is the
COPE Settlement, ratified in 1984, just this year. Again, a
carefully negotiated arrangement between the Native population in
Inuvialuit, I am not sure I say it correctly, and the various
other entities of the Federal Government or the Territorial
Government and so forth. The land conveyed to the Native
population cannot be conveyed away. Again, it is not like the
regional corporations, which may lose their land by conveying it
away, or by corporate takeover or whatever. It cannot be lost to
the Native population. There is a complex corporate business
structure but it is considered a business structure, not one that
can wipe out the assets of the community. The Native population
has substantial control over game management, but not exclusive
control. It is a carefully arranged set-up where the Native
population has some greater control over areas of its own vital
interest and less control over areas where it's not of its keen
and vital interest, game councils, consultancies and so forth.
Again, the thing... without going into the detail, the thing that becomes apparent here, was there was an intention to sit down with the Native population and negotiate to say, "where are your critical interests?" "Where are your vital interests and where are our vital interests?" "Let's try to work this out in a negotiated pattern." It seems to me, that's the message that comes through in those two situations.

Now, at the national level. I think that if one went back (and I think there is an important lesson in this for the work of this Commission), if one went back in Canadian history ten years and asked the Native population or any advocates of their views," would the new Constitution of Act of 19... the constitution, that is actually an amendment of 1982, contain a clause protecting Native lands or governing rights", you would say it's ridiculous, nobody is going to do that. And, yet, that is exactly what happened and in 1982 in the Constitution Act of 1982, the Constitution Act recognized aboriginal rights and treaty rights. It did not define the nature of those rights, but it did create a process by which the definition would come in constitutional conferences, as they were held in 1983, 1984 and others yet to be held. As a part of this ongoing process, in response to a wide-spread view that there ought to be negotiations, there ought to be a new pattern of relationship with the Natives. The Penner Report came out in 1983, strongly affirmed the notion of bi-lateral arrangements, of reviving the idea of treaty negotiations with the Native population. There is nothing that bars that those negotiations in Canada. Then, as a product of that, or as a response to that, government came out in Canada with the Indian Self-Government Act of 1983, Bill C-52 which went... I guess one would have to say that it went farther then anyone could have possibly expected toward recognizing Native self-government ten years ago. It did not go nearly as far as the Penner Report had urged and did not accept, at least...
has not so far, it is still in draft form. But has not, so far, fully accepted the concept of negotiation but it has gone a long ways in that direction.

(TAPE 1, SIDE B)

Now, I would like to turn for just a few minutes to the "Alternatives" section of my paper and you can see that I am not going to dwell in great detail on a lot of the in between stuff. But I would like to focus our attention for a few minutes on the alternatives and suggest that this is only a partial list of what can and should be considered by the group here today. I looked at four, what I called "process alternatives". One can consider litigation, it's a lengthy process, uncertain results. It produces a decision at a given point in time but does not have the capacity to consider a complex negotiation arrangement as we found in the COPE Settlement and the other settlements in Canada. We have legislation as a process that can be considered. That would either be state legislation or federal legislation in the United States. I want to pause there for a moment because I have not touched on this before. I did have a section, in the paper, on the "takings" clause and the issue of whether the Congress of the United States could enact a law which would either place the village - for example, village corporation-owned land back into a trust status and whether that could be done constitutionally. I think that I have established... at least I am satisfied, I have had others read this, without any question that if Congress chose to do that, that it has the power to do that and probably without payment of compensation. There may be some compensation elements somewhere down the line but I think it is possible to do, at least the way I have described it in here, and it is possible to do in a way that Congress can carry that authority out. That would either be placing the land back in trust or it might be limiting the sale of the land, it might be limiting the voting rights of the stock, it might be placing the land under certain
restrictions or whatever. That power is in Congress to carry out as it in its political wisdom is appropriate. There could be a Constitutional amendment and I'll remark about a couple of possibilities a little bit later. A Constitutional amendment, incidentally, is what the Penner Report recommended in Canada, the reason is that the Constitutional amendment you entrench an idea in the Constitution, in a sense, permanently. It is not quite permanently, you know, but it is for a very long time, it's tough to remove it and it does assure people of a future without the vacillations of changing political administrations. There is the possibility of administrative action in recognition of Native government or Native land tenure. One of the problems with that is that, that is the most chimereal of all. That is, it can change, it can be affected by different political views and the last one I have mentioned is self-help. The village of Akiachak, some of the other villages that have taken actions on their own part and can, in significant ways affect their own futures. As far as the subsidy of alternatives, I have mentioned that one such substantive alternative is to either place the land of the villages, I would suggest, back into trust to restrict the sale or restrict voting rights. We have examples of that, the Menominee Termination Act of 1954 which went into effect, I guess in 1961 and was undone in 1972, '73 in the Menominee Restoration Act is an example where land was taken out of trust, the ownership of it was held by the members of the tribe as stockholders in a corporation or they held certificates which were transferable into stock and then went back into trust status. There is also another substantive alternative that could be considered, called a "conservation easement". It has not been used in Alaska, to my knowledge, in any broad scale but is a method by which an easement could be created which would be enduring; one can ask well, is the easement... does that remove the possibility of state taxation? It does not remove it
explicitly or it may not, that may depend on the legislation setting it up. But one thing would be true, if the land was burdened by a conservation easement its value would be far less than it would be if it is sitting there as a potential for either timber harvest or development or whatever. So, the tax base would be very low. Conservation easements might be designed for subsistence, for open space, for fragile ecosystems. Some things that would benefit the Native population, some things that would mutually benefit the non-Native population as well. The Alaska Land Bank looks something like that. The problem with the Alaska Land Bank, as far as this is concerned, is that a change in ownership or change in attitude of the Native population of the corporation can un-bank the land and then it is out of that protection. The conservation easement is a more permanent methodology. There might be legislation, Congressional legislation affirming sovereignty, affirming governing powers. One particular kind of either Federal legislation or Constitutional amendment or judicial action that might be achieved is to compare... is by comparing to the "equal protection" clause of the federal Constitution. Let me put that a little bit simpler. If Congress passes a law affecting voting rights in the United States, a voting right is conceived to be a fundamental right. Any legislation that affects a fundamental right will receive strict scrutiny by the federal court system, which means that Congress... that the courts will not simply say, "oh, well if Congress wants to do that, we will accept Congress' motives". The courts will look at it strictly, go back through the background, ask what does it do, how does it affect voting rights and they will not sustain a law that affects voting rights, or I might say race relations, unless it is found to be necessary to achieve a compelling governmental interest. It is a tough test to meet and, in fact, if you look at the cases, you find that almost no legislation can meet that test if you are
going to change the voting rights from a "one person, one vote". Or if you are going to enact legislation that bears especially upon people because of their race. Well, the result of that is that there is a very strong protection of the "one person, one vote" rule and there is a very strong protection against racist legislation. Such legislation or such a constitutional amendment might be possible as one's substantive response to protection of Native land tenure or of Native governmental power.

Lastly, it seems to me that one of the movements that is very much in place in Canada, and that is potentially in place in Alaska, is that of negotiation. Is recognition that there are legitimate rights, there are legitimate concerns, there are vital interests that are to be served by the Native population, there are vital interests that are to be served of the non-Native population of the State and Federal Government. But the way to handle that is to sit down at the table and negotiate, and I don't mean negotiate on the sense that you are going to take this and you are going to take that. But negotiate, as was done; for example, in the Passamaquoddy settlement in the Northeastern and the Maine area and in the Menominee Restoration, where people sat down at the bargaining table and pounded it out as we found in the COPE Settlement in the Northern Territories Settlement in Canada. I think that is a movement that deserves most serious consideration. Thank you very much.

MR. BERGER: Thank you, Ralph. Well, with that overview in mind, maybe we should turn now to David Case and have him become very specific about this and advance an idea for Village Home Rule in Alaska. So, David...

MR. CASE: Thank you, Mr. Chairman. I don't know if you have had a chance to look at the paper, I guess it's available. I will not read it either, thankfully, and attempt to summarize what I have put forward here in the paper. I say in the paper, I think, that this is written
from the standpoint of an advocate, in other words, the paper itself is advocating a particular approach to the questions of Native land and governance in Alaska. There is a danger always in advocating anything. That is the danger that one will say either too little, in other words, take a position that is giving up too much or will say too much and attempt to take a position that stakes out too much territory and is simply not defensible. There is also a danger, I suspect in those of us who do not live in villages, to which this paper and this concept of "village home rule" is principally addressed. There is a danger, for those of us who don't live in villages, in advocating anything, because we don't have to live with the consequences of that advocacy. Nonetheless, one is either faced with the choice of saying something or saying nothing, and for better or worse, I have chosen to say something. The paper is intended to be attacked and is intended to... as just a matter of self-defense to be something that is provocative of discussion and which I reserve the right to disavow. But in any event, I would like to put forward an idea for people to discuss, if you wish and I suppose you don't even have to do that. One final point, I guess: it should be clear that what I have written here and am about to say is not necessarily the position of the Commission and does not pretend to prejudge that position. I think it is important for me to start out, as I do in the paper, by declaring some of the assumptions and the limits that I have put on my thinking about village home rule. The first of these (there are others that I have mentioned in the paper, I will just touch on a few of the more important ones) the first assumption or limit is that we are faced, in Alaska, at least at the present, with an off-reservation situation. There is only one real reservation which the lands are held in trust or restricted status and that is Metlakatla. That, I believe, is a fundamental restriction on the ability to apply all the doctrines of Indian law assuredly in
Alaska, the same way in which they can be applied with slightly more assurance in the Lower 48, in the reservation situation. There is also, I think... it is my impression, a resistance in general, to reservations in Alaska. Not only among non-Natives, where one would expect it but among Natives as well. Now, this is not true of all people in Alaska, of Natives or non-Natives and indeed there are some obvious places where reservations and the Native communities in those places are in fact desiring and demanding reservations and feel it has been an injustice that the reservations were terminated in the first place. Of course, I think I am speaking of Venetie in particular. There are other places in Alaska where reservations would seem to be, if they are desired by the people living there, a positive development and those are places in particular where there are large areas of land under village corporation or tribal ownership which are isolated. Those seem to me to be the best situations where a reservation kind of structure would work. I guess I am thinking there of St. Lawrence Island, for example, Venetie, the former Chandalar Reserve and even Tetlin, which is a large area. Which is not to say that people there wish those things, but those offer large areas of land over which the problems of defining jurisdiction are simplified and all the rest. So, I am not suggesting that what I have called 'village home rule' is the answer, by any means, for everybody or even anybody. But I do think, and this paper does address the question of land and governance in village situations, and by that I am excluding regional corporation situations or regional land-holding situations. I am not suggesting that home rule is a concept that could apply to an entire region... Native region or Native corporation region in Alaska, but it has its application principally, in my mind, to isolated villages with small populations, which I think are the villages in which this Commission has focused its inquiry.
Finally, in the way of an introduction, I have skewed or slanted my title of this paper to imply that what I am suggesting is practical and you should be aware of that. That is a loaded term, of course. Practical means... to some people anyway, that it's a good idea. It's good just because it's practical. But practicality implies some kind of compromise and compromise between competing interests that will be addressed in the course of reaching some "practical conclusions". It also assumes that things as they are now... it assumes that the doctrines of federal Indian law, as best as we can understand them are as they are now, it assumes that there are no reservations in Alaska or no general authority to create new reservations in Alaska. But things I think we should remember, can and have changed. Ada Deer reminded us of that at one of the very first roundtables that this Commission held. When the Menominee were "terminated" it was viewed by many, a few years later, as just impossible, crazy, outrageous that the Menominee could ever be restored. Nevertheless, Ada Deer has described it to us, the thinking, the assumptions that people had regarding the Menominee changed and they changed because the significant numbers of people that were affected by the Menominee termination, and the Menominee themselves, made them change. That can and could happen in Alaska. In which case, perhaps, "village home rule" would be saying too little. So, needless to say, if things change then one's view of what's practical also will change. I'll leave that caveat out.

Well, what do I mean by "village home rule"? To me it is a two-pronged idea, it means on the one hand that there are substantial powers of self-government, home rule that would be exercised and clearly lodged and unquestioned in a village and the second part of the idea is that these are in villages, small communities, not home-rule boroughs, not communities of... not even first class cities with 400 or more people, which is the
current requirement... the current first hurdle on the way to home rule in the state, under municipal law, is that you have to be, first, a community of 400 people in order to be able to obtain a home rule charter. So, I am suggesting that there is room and a place indeed for home rule, substantial control at the village level, even outside of a reservation and outside of the municipal laws of the State of Alaska. It is, in short, an idea which, to me, seems to be one way to bridge the gap between the expectations and aspirations that village people have for self-government and sovereignty and the political philosophy of the state, which is opposed to those ideas, at least as far as anyone can tell. Which, on the other hand, accepts the idea, at least in terms of municipal government of home rule and indeed home rule and local control is an ideal that is entrenched, if you will, in the Alaska State Constitution. I am simply suggesting that the concept of Native American sovereignty is an ideal that is also consistent with that ideal in the Alaska State Constitution. In other words, it lodges village home rule, Native American sovereignty lodges self-government at the local level and assumes that that government has substantial powers unless proven otherwise.

Why am I suggesting that there should be such a thing as village home rule? Well, first, I take it as given that in most villages, that is villages that have corporations with relatively small land holdings and a few assets, that in most villages these corporations simply aren't working. More than that, they put the lands, the ancestral lands that are retained under the Claims Act at great risk and the corporations themselves are subject to either corporate failure or takeover by outside interests and that these risks are simply unacceptable. There has to be another institution to assure that land and community control will exist into the future and the profit making corporation isn't it. Perhaps I said that with too much
conviction, but nonetheless it is the assumption that I have made here.

MR. BERGER: Nothing should be said with conviction, that's always a mistake.

(LAUGHTER)

MR. CASE: Too much conviction.

The other point is, as to why there should be a village home rule or something like it, is that there are simply too many institutions in most villages. Most villages, we have heard it said over and over again, will have typically four, if they are lucky, institutions and may have, in fact, many more. There may be a municipal government, or municipal council, a tribal government -- either IRA or traditional council, a village corporation board and then an advisory school board, in most communities. And then there will be people in the communities who will be called upon to act in or interact with subsistence committees, local subsistence committees under ANILCA and state law, who will then also be required to interact with regional subsistence councils and you may even have participation in a Coastal Resource Management Area council and it goes on and on. That is not the end of it. There are many, many institutions that affect... with which these communities have to interact and it is absolutely ridiculous, as we hear. From a community of 25 to 200 people to have the necessary individuals to interact with all of that, they are simply being overwhelmed by outside institutions and the result is that people in these communities don't have power and they are, in effect, even though they may have the aura of being consulted about things, there are too many places that you have to go to have your "input", a very powerless word I would suggest, into state decision-making and that is something that is not good. It is not good from a village standpoint and I would suggest it is not good from a state policy standpoint either.
Finally, perhaps not finally, another point as to village home rule, I guess I see it as one way to resolve by negotiation and there are risks in negotiation, but in terms of a strategy to approach these things, it is one way to resolve the uncertainties of off-reservation jurisdiction. In other words, to negotiate the scope of village home rule in an off-reservation context as Alaska would be one way to resolve these jurisdictional questions without creating new reservations. But it would be a way to reserve, if you will, in law and in people's heads and in the legislature's mind, if there is such a thing, the scope of Native American rule in Alaska Native communities.

As I said before, home rule as I have suggested implies a partial satisfaction of competing interests and that means, I think it should be said, that everybody loses something. Maybe that is the negative way to look at compromise, you can also look at it as everybody gaining something and, of course, the main thing that one gains in a compromise and a negotiated settlement is certainty as to the result. And, so, I suggest that what I have described as 'village home rule' in this paper may be a scenario, and this may be a red flag, but a scenario for the possible negotiation of the scope of Native sovereignty and if you are unhappy with the scenario, when you get done with the paper or listening to this discussion then I would suggest that you may be unhappy with negotiation as a way to approach this issue.

Let me turn now to what I think that village home rule would do for the 1991 issues, or at least some of them. There are two that I guess I am principally addressing. One is the question of land protection: We have heard it cussed and discussed as to the effect that Native sovereign ownership of land might have on the protection of that land from all the various risks; corporate loss, taxation and so forth. I guess that this is an idea, the more I think about it, the more I think it will really work and that is, that the idea of Native American
sovereignty carries with it the legal immunity of the sovereign from suit and so it is impossible for, since these things have to be resolved in the courts of the United States or the State, it is impossible for a creditor or any one dissatisfied with the Native government to sue it and to acquire principally its lands or other assets by judicial procedure. It is a procedural impossibility. In other words, the dissatisfied person may have a legal right against a government whether it is the United States government, the State or a Native government, but it has no remedy. The result is just as good, as far as the government is concerned, as the creditor or other... person opposed not having any right at all. There has been some question, of course, whether Native communities in Alaska have sovereignty or sovereign immunity, a question which I think is answered with the response that, "yes, they do", but recognizing that courts can change a lawyer's idea or firm conviction. Beyond that, though, there are statutes which I don't think can be read any other way but to say that, if a Native community in Alaska has complied with the statutes or falls under them that they do indeed have the power to prevent the disposition of their lands or assets without their consent and that is one of the specific provisions of the Indian Reorganization Act. I can't imagine that it means anything more or less than what it says and that is, that Native tribes organized under IRA, whatever else they may be able to do or whatever other powers they have, can indeed prevent the loss or disposition of their lands or other assets without their consent. Maybe I am just slow on the uptake, but I can't see that a statute that says that, means anything else.

Finally, there is the question of the Indian Non-Intercourse Act in Alaska. The solicitors, as probably most of us are aware and for whatever it is worth, some years ago said that the Non-Intercourse Act which prohibits the disposition or alienation of Native tribal lands without a treaty doesn't apply
in Alaska, or at least it doesn't apply to ANCSA lands and that is a conclusion that is, every scholar I have ever talked to says, "What? You've got to be kidding." But, nonetheless that is the conclusion of the solicitor. If the Non-Intercourse Act were to be held to apply then it would be an additional protection for all tribally owned lands, whether they were owned by an IRA or traditional council, I would suggest. Well, really the land protection questions are the easy ones.

MR. BERGER: You said the solicitor, you mean the solicitor for the Department of the Interior?

MR. CASE: Right, that is who I mean. The solicitor for the Interior Department. The land protection questions, it seems to me, are really the easy ones. If you were to want to protect lands perpetually without a change in the law, then transferring them to a tribal government, preferably one organized under the IRA, would almost surely do it. How you get there? How you transfer the lands? Those are other issues. But the real question... I think the questions that we always find ourselves debating about and which are probably the focus of this roundtable, are the questions of jurisdiction and governance, political authority, political control. And these are... I'm not so sure that they are such difficult legal questions but they most assuredly are difficult political questions and so it doesn't really matter whether they're big legal questions or not, because politics can influence law. The greatest problem, of course, the greatest question arises in Alaska, it seems to me, and I have thought about it a long time and that's about all I can say as to why my thinking about it should be legitimate. But it seems to me that the big problem is that there are no reservations. There is enough problems with Indian law frankly and the question of the scope of government, tribal government, on reservations -- the
current Supreme Court is cut away at the scope of tribal
government inconsistently but with some serious effect over the
last years. But nonetheless, absent reservations, I think there
is nothing else to do but assume that the rules are going to be
different.

In fact, the Supreme Court has said so in an Alaska
case, one that is much criticized and is confusing and perhaps
confused -- but that is Kake v. Egan -- but the Supreme Court is
fastened, at least in that case and in subsequent cases, on
reservations as being significant when it comes to the
determination and maybe even determinative of the scope of tribal
jurisdiction. In the absence of reservations, I would suggest
and do in the paper, that tribally owned land is the next best
thing. That means that the ownership of the land in the village
corporations has got to change, if your intention is to assure
tribal jurisdiction. It is possible to argue that tribes and
the Native villages, and it is creditable, have jurisdiction over
corporately owned lands. The argument is just stronger when it
is tribally owned land. I say that because of the tests that, it
seems to me, the Supreme Court is using to describe the scope of
tribal and state jurisdiction when those two powers compete and
that test essentially is two-pronged, two independent tests. One
test is whether the state's jurisdiction is pre-empted, precluded
by a specific Federal law from applying to a tribe. The other
test, which the Supreme Court has talked about over the years,
but to my knowledge has maybe only once, and perhaps never,
employed, is the infringement tests. That is a test, as I
understand that says not too simply, that in the absence of a
Federal law... in other words, in the absence of preemption,
state laws may not infringe on the right of tribes to govern
themselves. Now, what the Supreme Court always has said though,
is the right of reservation Indians to govern themselves.

There is only one case, to my knowledge, where the
Supreme Court has analyzed the effect of the infringement doctrine and that was in a case called, and I won't read much of this, a case called McClanahan v. the Arizona State Tax Commission in 1973, it is on page 8 of the paper at the bottom. There the court, in McClanahan, cited to Kake v. Egan in this discussion and it said that there are two circumstances in which the infringement test is employed or should be employed and that is when the tribe is attempting to exercise jurisdiction over non-Natives, non-Indians and when the State is attempting to exercise jurisdiction off the reservation, the Alaska situation, and it cited Kake v. Egan. Then it said: "In these situations, both the tribe and the State could fairly claim an interest in asserting their respective jurisdictions. The infringement test was designed to resolve this conflict by providing that the State could protect its interests up to the point where tribal self-government would be effective". In other words, in either the off reservation or non-Native situation, the tribe and the State may both have interests and those can be balanced. The Court has gone on in later cases, in very recent cases, to discuss the nature of the balance... the criteria that are to be put in the balance in weighing tribal and State interests and, basically, the closer you get to internal tribal affairs the greater the protection of tribal government. Likewise, if the tribal government can attach its exercise of power to its political integrity or economic stability or health and welfare of the members of the tribe or if it can attach it to consensual relations between it and non-members, then the powers of the tribe are given greater weight in these balances. So, that is why I say that tribally-owned land tends to enhance all of those criteria. If the tribe owns the land then its economic interest in the land may be a lot stronger than if their land is owned by a corporation.

Similarly, if the tribe owns the land, it is in a
position to require consent from people who operate on the land and to establish its jurisdiction that way. So, it seems to me that a prerequisite for effective village home rule, as I have talked about it, is that the land or some substantial portions of village lands be owned by the village Native governments. It's possible that you can do it without that, but it makes things a lot stronger.

Let me turn now, if I can, to some of the reasons that I think village home rule makes sense to the State of Alaska and not just to Alaska Natives, if it makes sense to them at all. In the first place, there are big difficulties with municipal government in Alaska and it's no secret to anybody who lives here or reads the paper or keeps up with what the legislature does or does not do. The legislature, we probably realize, one or two years ago attempted to pass a complete revision of Title 29, the State's Municipal Codes and that is in limbo as far as I know. But small communities organized under the laws of the State of Alaska, second class cities typically, less than 400 people, do indeed have many powers and they are all specified in 55 provisions of three statutes and they can regulate everything from vehicles to insects. But you have got to read those 55 provisions and you have got to figure out what they mean and you've also got to rely on the State bureaucracy to tell you what they mean. And that, it seems to me, is the absence of power and local government and local control. It is a system of laws that makes it very difficult for people to know what they can and cannot control in their communities, and moreover municipal government offers no protection for Native lands. In fact just the opposite, the temptation on the part of the municipality is going to be to tax property if it has that power and most second class cities don't. Home rule in Alaska, on the other hand, moving away from second class cities and limited municipal government, is somewhat similar insofar as the scope of powers
that local governments have, somewhat similar to the kinds of powers that Native governments have. In other words, home rule municipalities in the State are presumed to have powers of self-government unless they are prohibited by the laws of the State. One can similarly say that Native American governments are presumed to have powers unless they are specifically taken away. In fact, this idea of home rule is really entrenched in Article 10, Section 1 of the Alaska Constitution.

I do think though that the village home rule as I have described it would be a broader kind of home rule and have a greater scope of authority for Native villages than would be possible, in many respects, for Alaska municipalities. Most notably, villages have the authority to establish their own courts. Alaska municipalities, no matter whether it's Anchorage or a small second class city, have no such authority. Alaska, for better or worse, is constitutionally required to have a unified court system and that has been held to mean that Alaska municipalities cannot have their own court system. If you want a magistrate in a small village, a presence of the State Court in a small village, you have to meet criteria and it has to be funded. That, in my experience, has been a notoriously slow process. Furthermore, if you have a magistrate and a criminal problem comes before the magistrate there is a right for the defendant to require a District Court Judge to hear the case. So, a smart defendant can effectively prevent any local judicial hearing on an infraction or any other matter. Native courts are not burdened by that requirement. So, I would suggest that village home rule would be a way to include within the powers that village governments could have, the interests that the Native community may have, and that those interests could be protected in the Native community and excluded from substantial control by the State.

I think this idea that I have suggested, suggests

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probably most importantly the risks and the possibilities of negotiating a settlement or a resolution of the claims of jurisdiction and sovereignty that Alaska Natives, I think justifiably, assert. We have patterns of previous negotiated settlements, particularly in the case of the Menominee and the Passamaquoddy. We had hoped that someone from Passamaquoddy would be here but perhaps... and they were unable to make it, but perhaps there are those at the table who can discuss the Passamaquoddy situation, and perhaps the Oklahoma situation which I understand is largely off reservation, and we can come to some appreciation of the possibilities, if there are examples of this kind of home rule as a negotiated settlement with states elsewhere. This idea that I have suggested may appeal to some because it is an attempt to balance what, let's say, are legitimate interests. For those of us who are interested in balance, that may be a good thing.

In any event, and in conclusion, I would hope that if there is discussion of this proposal it will enable those of us who are concerned with this issue to better determine the best strategy to pursue when it comes to the question of Native land and governance in Alaska. If negotiation is likely to give up too much or result with too little then that says something about the advisability of negotiated resolutions of these issues and says something conversely about other alternatives which Ralph Johnson has suggested and which we may well come up with here. Thank you very much.

MR. BERGER: Thank you, David. We'll break for coffee in just a moment, but I should welcome Sheldon Katchatag, President of the United Tribes of Alaska who has joined us since we began and I see Sam George here. I don't know whether Willie Kasayulie is coming, Sam, or whether he is going to be late, but if you want to take his seat when we resume after coffee, please do. Then when he comes, if he does, we will
leave it up to him to throw you out of there.

Maybe after coffee we might resume this discussion and I have a suggestion to make about that, in light of the fact that members of the Governor's Task Force on State-Tribal Relations are with us today and cannot, I believe, be with us again tomorrow. So, perhaps when we resume after coffee, we might ask Tony Vaska to give any comments that he wishes to on David Case's paper and we might also ask Bob Arnold if he wishes to offer any observations that he thinks are appropriate. I was told you had to leave later on today, Bob. So, this is your opportunity. We might also consider the question of principal that I suspect is in the minds of the Governor's Task Force and always comes up and that is, if you have the kind of home rule set-up based on Native limited sovereignty that David has suggested, you have the philosophical question that non-Natives are excluded from participation in that government and that is something that is always at the root of these discussions and anyone who wants to say something about that should feel free to do so. That is, the question of ethnically based governments is one that we are going to have to struggle with throughout this whole Arctic region. In the James Bay Settlement in Northern Quebec, the Inuit have a regional government under provincial legislation and it is not ethnically based but there just as in the North Slope Borough, the Inuit constitute a great majority of the population, about 90% of all the people, they are not at all perturbed about losing control of that government. The Cree under the James Bay in Northern Quebec Settlement are a minority, so they insisted they have an ethnically-based government under the Indian Act.

So, it is something that comes up everywhere. Others from the Lower 48 might, perhaps, be willing to comment on David's paper and what, of course, Ralph said and tell us: well, you've got these things in the Lower 48, you've got IRA's, you've got reservations, you must have IRA's with some off reservation
jurisdiction. Does the whole thing work or is it falling to pieces. I think that we would like to hear about that. Well, let's take a break for coffee then.

(HEARING RECESSES)

(TAPE 2, SIDE A)

(HEARING RESUMES)

MR. BERGER: Well, maybe we could start again. I said that Tony, who is one of the members of the Task Force, might like to comment on David's ideas. So, Tony, if you would like to go ahead, please.

MR. VASKA: Thank you, Mr. Chairman. It is difficult to sit here: I haven't read either of the papers except for listening to Mr. Johnson and Mr. Case. But basically it seems to me, in addition to the discussions that have been going on concerning the... I think what it is, is the desires of people to govern themselves locally in relation to the federal or State governments, as well as with other local governments around them. There has been a lot of discussion, that we have listened to, the Task Force has listened to in the last month from people in the villages, people that represent the different governmental organizations, as well as individual organizations. The discussions basically from the villages are quite simple and they are that we want a locally controlled form of government. What shape that takes doesn't seem to quite matter when you get to the specifics. What is probably more important to the local village governments is, in fact, that the governing powers by the local governments be internal to the village, internal to the community and that it work in relation to both the federal and State governments. So that, from my perspective at least, my preliminary perspective from the Task Force, is that the problem doesn't seem to be within the village in terms of what they want for local governing powers. The problems seems to be with the State and federal governments
recognizing that local governments can in fact govern themselves.

That is probably a more difficult concept from the legal standpoint of the State of Alaska trying to give certain powers, sometimes undefined powers, to local government. If in fact the State legislature can't see its way through to passing the mostly technical revisions of Title 29, the municipal code, I hardly expect that the State Legislature would be willing to grant limited or unlimited powers to local governments other than what are defined in Title 29. So, from my perspective it's a matter of a political decision that is probably more difficult to make then the practical aspects of giving local powers to local governments for specific purposes. There arise a lot of questions, at least in my mind, throughout the hearings that we have had and basic to a lot of the testimony is, in fact, the practical responsibilities of that local government to its citizenry. How that translates into the State looking at a local government and saying, "what benefits are you going to give your citizens?" I don't know the answer to that and we have not gotten a clear answer from the general public nor from any state institution what the answer to that question is. I think there is a lot of fear on the part of non-Native members when they look at a Native community, and I think Mr. Case is right, it's sometimes difficult to understand the analysis that people like him go through in analyzing the local governments and what it is that they want. The discussion so far today brings to mind one question in my mind and that is; while we get a brief glimpse of what is happening to the aboriginals in Australia and a brief look as to what is happening in Canada, how might those examples be applicable to the State of Alaska, when in fact we can't identify specifically the actual differences between the Alaska Native experience and local governments and the Native Americans experience in the Lower 48.

As far as the historical sequence that was given by Mr.
Case, about termination and what that meant and its applicability to Alaska Natives... I don't know what the discussion was that he had with Ada Deer but I would ask the question of Mr. Case and that is; in a termination, what gets terminated and then restored? I don't know the answer to that question and I don't know the answer to the question of whether, in fact, we can identify sovereignty in its ideal form in the State of Alaska and apply it to local Native governments and how they might exercise local control in a fast changing world. I stated it in that way only because the influences on those communities by the State, whether it's influx of oil money going to those communities in capital projects or revenue sharing or municipal assistance, and how the local governments might deal with identifiably public monies and that's basically how the State has viewed those public monies going into the local governments. As far as the different jurisdictions are concerned, it's probably easier to identify the powers of a local government in criminal law, and admittedly I know less about that than either Mr. Case or Mr. Johnson, but basically I view the villages wanting to take control of that aspect of their lives, as well as other aspects, and the comments that we have heard from many, many people point out many examples of how, in fact, they can control their own lives in relation to what responsibilities both the State and Federal governments have. I'll stop there. I can probably ramble all day, but I'll stop there.

MR. BERGER: There was a question about the Menominees. What gets terminated and what gets restored? I think that really should have been directed to you, Ralph. Do you want to just answer that?

MR. JOHNSON: I would like to refer to Charles Wilkinson, who participated actively in the Menominee restoration. Why don't you comment, Charles, on what was the status of the Menominees after restored?
MR. WILKINSON: I would just like to say that I really am honored to be included in this. I'd wanted to come up on two earlier occasions and had scheduling conflicts that I couldn't break. It seems to me that even in the Lower 48 states, many, many people involved in this field would consider what this Commission is doing to be perhaps the most vital and progressive movement in Indian policy today. I congratulate you for that. It is nice to be dealing with a Commissioner whose most controversial policy is his coffee break policy.

I represented the Menominees, as a lawyer, in the passage of the Menominee Restoration Act which went through in 1973. I know Ada Deer was here earlier and I really think before talking (and I won't go on at too much length, I will take questions if anyone has them), but I think, rather than mentioning specifics on that Bill first, I think I will mention a general point, which is that to an almost astounding degree, Menominee Restoration was what the Menominees wanted it to be and it seems to me that's a concept that Alaska Natives need to be working with all the way through this process. What is practical and what works is what will happen, but you must start first with your dream. You must clearly have in mind what you believe is right and then work back to the practical. I think it is much too easy to compromise from the beginning and I think because of the unique leadership of Ada Deer and some others, that's what was done at Menominee and they set their chart and were reasonable, backed off it somewhat but it came very close to what they originally wanted.

In an era now, when many are critical of some aspects of ANCSA, I think it is important to remember that there were strong elements of that in ANCSA. Alaska Native leaders who worked so hard for ANCSA, in my judgment, were enormously idealistic. They talked amounts of land that no one was willing
to consider and amounts of compensation financially that no one was willing to consider. So, it seems to me that's a crucial part of this Commission's work, is to identify what you believe is right, not in a radical sense but just in a sense that was stated earlier that Alaska Natives want self-rule. To turn to the Menominee situation, there are just a whole series of parallels between the Menominee termination and ANCSA. Both groups had large holdings of land in a state corporation. The Menominees had over a quarter of a million acres which is a large amount in a much smaller state; Alaska Natives here have, of course, a large amount.

Most basically what the Menominees did was to re-establish the full range of the Federal relationship and they were able to re-establish courts without criminal jurisdiction over non-Indians, they were able to re-establish their tax exempt status and able to re-establish a central concept of tribalism that has been troubling Alaska Natives which is that, you don't determine tribal membership by means of people who were alive on certain date and then go to inheritance as you do with shareholders but rather a tribal group is one that is constantly expanding and contracting and people pass away and are born and the Menominees were able to do that.

I think what Ralph said earlier, many people have said in earlier hearings, is absolutely true and I endorse it, which is that the vested rights problems here, to the extent they are raised, can be overcome, in my judgment, by Congress and we could have technical discussions on that but it seems to be much more important to recognize Congress' broad power if Alaska Natives decide they wish to remedy the injustice that children born after 1971 have suffered, if I am correct in phrasing that. I think if Alaska Natives want to remedy that, Congress has the power and there aren't going to be vested rights obstacles. So, what the Menominee Act did was to re-establish the Federal relationship,
all aspects of it. The Menominees today are in substantially the same situation as tribes in the Lower 48 are concerned. What strikes me as important about the Menominee situation and I do think it most important is that a whole or partial termination (and Alaska Natives have been partially terminated because of the way in which the Federal relationship has been removed, in some respects), that that can be corrected but that Congress has enough authority that it can be corrected in a creative way. The Menominees chose one way. What's important is not the way they chose but the fact that the flexibility is there for your model to be adopted.

To just make a brief statement about a matter not involving the Menominees, I really believe that the look you have taken at international matters is of great importance, because when one looks at the international sphere, what one sees is that in almost every nation aboriginal people are struggling for self-rule. The fact that the concept of self-rule is not just circumpolar or is not just in the United States but is literally world-wide, I think attests to the force and dignity of that concept. There is a deep moral component here of aboriginal people around the world who are simply not willing to let go of that ideal. The reaction of other nations has not comported with the ideal. Around the world we have seen many situations in which aboriginal movements have not... their requests have not been met with legislation granting self-rule. But, as I think Professor Johnson's studies and other have shown, the movement has been quite extraordinary because it was a concept that wasn't going anywhere, it seemed, even 15 years ago. But in a number of nations, and China is another one where there are developments, are recognizing to some degree self-rule. I feel that all who deal with this problem must appreciate the depth of that desire for self-rule. I think that Natives need to appreciate its force because I think it is your greatest ally, other than your own
will. I think that those who are not Natives who are dealing with this situation, must appreciate the impetus and the force of that ideal, and I think that means that, for those who wish Alaska Native self-rule well or ill, I think there will be changes here because of the force of that movement and the determination of Alaska Native people.

I believe that if you set your ideals, and you are going to have to back off of them, but if you set your ideals there is every realistic chance that a fair remedy can be found. I guess I draw that from my experience with the Menominees and also with the Siletz tribe and a fascinating situation a couple of years ago with a Texas band of Kickapoos who have a reservation in Mexico and in Texas. And legislation was passed in early 1983 by this Congress, and it just seems to me that it is realistic to be impractical as a starting point.

MR. BERGER: Thank you. Could I just ask you a couple of questions about the Menominee Restoration while we're on that subject? As I understand it, the Menominee tribe was terminated, in the sense that they ceased to receive any Federal aid and their tribal holdings were turned over to a corporation and they were all issued shares in the corporation. Those shares were to be transferable but the day of transferability was postponed a number of times, I believe.

MR. WILKINSON: Yes, and interestingly enough it was postponed by State legislation, Wisconsin State legislation, so that their "1991" date kept getting pushed back by the State effectively.

MR. BERGER: But the movement to restore the Menominees led to the re-establishment of the tribe and was the land and the other assets held by the corporation transferred to the tribe?

MR. WILKINSON: What's not commonly realized about the Menominee Act, the first piece of
legislation by Congress was passed in December 1973, it did not transfer land title. Rather, Congress directed that the tribe negotiate with the Department of Interior to come up with a plan for transfer and we spent the next year negotiating a very complex transfer agreement in which these questions of share ownership were resolved. Then, the transfer agreement went into effect in early 1975 and the transfer, Judge Berger, yes, was from a State corporation, with Menominee shareholders roughly parallel to the ANCSA corporations, back to the Menominee tribe of Wisconsin, to be held in trust by the United States. So, there was a transfer from one entity to another, much like many here advocate a transfer from, let us say, village corporations to the IRA's. It seems to me it was conceptually the same transfer and it was approved.

MR. BERGER: Approved by whom?

MR. WILKINSON: The plan, in a procedure that might now be subject to constitutional objections under the Chada decision that came down a year and a half ago, but the provision of the Menominee Restoration Act was that the plan would be negotiated. The idea was to keep Congress out of these extremely complex issues involving stock ownership. The idea was for Congress to set a broad provision and then have the parties negotiate out the details - a concept that I think will be very important in whatever recommendations that you come up with here, because it is so hard for Congress to deal with all of these details. So, Interior and the tribe were directed by the Act to come up with a plan and then the plan was submitted to Congress and would go into effect unless it were disapproved by either House of Congress within 60 days. So, we lodged with Congress, there was no objection from either House of Congress and it went into effect in 60 days.

MR. BERGER: During the negotiations or since, has the whole question of the relationship
of the tribe with the State of Wisconsin come up? Was the State a party to those negotiations?

MR. WILKINSON: Yes, they were and, certainly my view is — I think this goes without saying, that there just have to be early negotiations with the State. In the case of the Menominees, the Bill we drafted was basically... well, not "basically", it was a negotiated settlement with the State ahead of time and then the State supported the Bill as it went through the legislative process.

UNIDENTIFIED: How many years was this possibly?

MR. WILKINSON: The Menominee people began objecting in the late '60's but the Bill was introduced in February 1972 and was passed on December 11, 1973. The Bill went through very quickly. There had just been a crisis reached with the Menominees that is somewhat different from the crisis here, in that the State corporation that owned the land was just not viable economically and was almost at the point where it was going to have to keep selling off more land to pay the bills.

MR. BERGER: That's not altogether...

MR. WILKINSON: I understand that and all I mean is, that isn't the case across the board with all the corporations.

MR. BERGER: Well, in the end, what was the relationship that the State acknowledged with respect to the Menominee tribe? Where does that sit?

MR. WILKINSON: The... and again, for a basic concept, the Menominees were fit back into the system of Federal Indian Law with relatively few deviations from the basic Federal-Indian relationship. That was thought to be desirable at that time. One advantage of that, of course, is
that you have a relatively well-established body of law and so your tinkering and making modifications can mean that you have a kind of instability because you can't plug into an existing body of law. The Menominees did plug into the existing body of law. The Menominees are now a non-Public Law 280 tribe. In other words, the State of Wisconsin does not have jurisdiction under Public Law 280, by an agreement with the State.

MR. BERGER: And what about, if you are able to answer this, the question of receipt of State funds by the Menominees. That's a matter of some moment in Alaska.

MR. WILKINSON: As to whether a separate federally-recognized government should receive State funds, the Menominees do receive State funds. One way in which they receive State funds is that Menominee County has the same boundaries as the Menominee reservation, so that some State funds go to the county. I would say... and I appreciate, this is an important philosophical issue obviously, it seems to me what the Federal-Indian relationship has always been is a measured separatism in that the tribes are largely separate from State law, but the treaties and implementing statutes have provided for some federal support, and indeed, some State support. That is a relationship that remains somewhat controversial in the Lower 48 states but I think is generally accepted. It seems to me that, since under the Federal-Indian relationship, federal-tribal relationship, a tribe is not truly separate and there is some state jurisdiction in there and they remain state citizens and they are not foreign nations, it seems to me, consistent with that, that some State support can fairly be provided. But I realize that that issue will always be controversial to some degree.

MR. BERGER: Tony Vaska.

MR. VASKA: My only familiarity
with the Menominee case is through the work of Dr. George Spindler, who is an anthropologist, but basically what he states in terms of the economics of not only the Menominee tribe in its relation to the federal and State governments, but he identifies the Menominee County prior to the termination of the tribe (if that's a way to put it, he puts it that way), as being one of the richest counties in Wisconsin and years after that termination, where the Menominee tribe had to be like every other county, it became one of the poorest. Do you have any comment on the economic conditions of that and why the economic conditions took a downfall?

MR. WILKINSON: Afterwards? Well, the reason is that the federal support was withdrawn and with the budget adjustments in Washington, you are getting a different financial flow in Indian country on federally-recognized Indian reservations than was the case a few years ago. Nonetheless, most studies that have been done reach the result you suggest which is that Indian reservations are not drains on the State but, in fact, there is sufficient federal support that the demands on the State are minor, or indeed are a benefit. This is a matter which... I don't know if this has been done but at some point it would probably be good basic data under current economic conditions to have an analysis made; and again I'm not suggesting, I'm here to listen on this issue. So, I'm not suggesting that we should have a reservation system in the villages. I'm not suggesting that, but it seems to me that you should obtain that data. You should determine what the cash flow difference would be if we take a hypothetical question; which is that all or a certain percentage of village corporation land were transferred to IRA's and the land were taken into trust, and make an analysis of the cash flow to see what the burden on the State would be. I have done that in regard to three states now in tribes I have represented, the State of Oregon with the Siletz,
the State of Wisconsin with the Menominees and the State of Texas with the Texas Kickapoo. Each of those states was very satisfied with the result and found that the economic situation, from the state's point of view, was improved as a result of having federal trust land within the state. Other studies have reached that result too. But you could have, I think, a very cooperative study of some kind done with, and maybe the Governor's Task Force is working on this, but with representatives from the State and Natives and the Federal government to come up with an estimate of cash flow.

MR. BERGER: Spud Williams.

MR. WILLIAMS: I think that's already been done in the State, but this State is such short sighted and they got such knee-jerk reaction against any type of Native entities being maintained in the State, that they are willing to forego that economic consideration, especially in times of wealth that this state has. I mean, the schools alone is going to be millions and millions of dollars of drained State revenue, you know, through... forever now, with the position the State is taking. The social service functions of the federal government and Alaska Natives: "no problem, go ahead, we'll fund it." This has been the State's position. They're very, very short sighted but shooting themselves in the foot because they think they are overly wealthy. They're assuming these functions despite the long-range advantages of maintaining Native sovereignties and jurisdictions in the State.

MR. WILKINSON: One lesson from my experience is, and I can understand that and I can see that happening here, at the same time one of the great advantages you have from a prolonged deliberative process such as this, coupled with the Governor's Task Force, is that you are building a record and there are, let's say, ten sets of concerns among Alaska State government officials and citizens at large. By taking the time
to do the spadework and meet those concerns, there is a chance, over time, that those kind of attitudes can dissipate, and for example, there are green eye-shade people in the State government who collect taxes and people in the education department and my sense is that, without making it sound too easy, that over time, if these studies are done, that those objections begin slowly to dissipate, issue by issue.

MR. BERGER: Just before we move on to Reed Chambers and David Getches, could I just ask you a question about... and to Bob Arnold... a question about the presentation that David Case made. There is only one Indian Reservation in Alaska. If, instead of creating reservations, the Native corporation land – at the village level, let's leave the regions out of this for the moment – were to be transferred to the IRA's and they were to hold it, David says they would, because of sovereign immunity, not be liable to pay taxes and so on, and the IRA government could exercise jurisdiction over that land. Is that so that you would achieve...

MR. WILKINSON: Some of the same results.

MR. BERGER: Some of the same results but you wouldn't have a reservation. Does that proposition make sense to you?

MR. WILKINSON: First of all, I think the State is going to litigate that proposition and I don't pretend to know who is going to win, but I think your result is going to be by the Supreme Court of Alaska or in federal court and I think, and David recognizes, that those are very close questions as to whether that land would be taxable. I agree there is a good argument for the Natives so that I wouldn't be willing... I just think a court's going to decide that and there is a good argument for the Natives. My general sense would be that, if that result is to be reached, you shouldn't omit the
possibility of trying to reach that result by federal or State legislation because that would settle it. When you have a legislative settlement, you can build in a kind of flexibility that you never can in a court case. So, and again I am from the Lower 48, and no sense in trying to tell people what this legislature would do, I hope that... that is just obviously. But I sure hope you don't rule it out. I think that there are possibilities there that building goodwill over time, there is a flexibility there and in Congress that is greater than with litigation.

MR. BERGER: Charlie Edwardsen, you had your hand up. Why don't you move up and take a seat at the roundtable and we will... but before we come to you, Charlie, some other people have their hand up. I wonder, we've got a few minutes, Reed Chambers, did you want to add to that?

MR. CHAMBERS: I just wanted to (INDISCERNIBLE - OFF MIKE) the odd thing is that the State of Alaska, obviously maintains a government relations office in Washington, and its Senators and Congressman are all the time trying to get federal projects located here in Alaska. I mean, it's a Washington political game called the "pork-barrel process" and if anyone was talking about establishing, let's say a military installation in Alaska or something like that, why the Governor's office in Washington and the Senators and the Congressman would be falling all over themselves to get it done, you know. That gets federal dollars into the State and it's real important... I think what Charlie is saying is absolutely right, Charles Wilkinson is saying, if you get a federal Indian establishment in Alaska, you get exactly the same process going and you have that going now and you don't want to lose that. I mean the State, it should be in the State's enlightened interest not to lose that. In Maine, for example, I represent one of the tribes in Maine, the Houlton band of Malaseets and the State
resisted when we were negotiating to settle the Maine land
claims, resisted having the Houlton Band of Maliseets recognized
as a federal Indian tribe, but they now support that because,
into the town of Houlton you have a large number of federal
dollars coming in for welfare payments and the State is no longer
responsible and federal contracts getting set up under the
Johnson/O'Malley Program and the Indian Self-Determination Act
and, I mean I don't know whether it's a million dollars or three
million dollars but there is a good deal of federal money coming
into the town of Houlton, Maine that wasn't there five years ago.
So, it is something that, once you get past the knee-jerk kind of
resistance, it is something that I think State legislators and
State executive officials tend to come see, that it is in their
interest.

MR. BERGER: Well, this afternoon
perhaps we could ask you, Reed, and I think, Lawrence
Aschenbrenner; you were both connected with that Maine
settlement, and that's the most recent land claims settlement in
the United States. This afternoon, perhaps, you might tell us
how they sorted out these questions of State-tribal relations and
taxation and so on in the Maine settlement. But David Getches
and then Bob Arnold.

MR. GETCHES: Thank you, Judge
Berger. Thank you for inviting me, I am pleased to be back in
Alaska and privileged to be a part of this Commission's work. I
want to pursue this same issue that we have been looking at and
that is, the practicality, if you will, of some kind of
restoration legislation that... we have leapt into from David
Case's paper and kind of left the "home rule village" for a
minute, but I am intrigued by this notion that I agree with, that
Charles Wilkinson said, that you really ought to start with what
you would ideally like to have in terms of restoration and then
work back from there, that a lot more may be practical then one
thinks. If you look at what really was terminated in the Menominee case and compare it to what's been terminated by the Alaska Native Claims Settlement Act, much less has been terminated by the Alaska Native Claims Settlement Act. You've terminated... the Act, in Section 4, terminates rights in land, aboriginal claims and claims against the Federal government pre-dating the Act. But it does not terminate sovereignty of the Native organization or the comparable organizations to tribes in Alaska, nor does it terminate a trusteeship relationship with the federal government. Now, if you are looking at State opposition, public opposition, I would like to ask, first Charles, and then people from Alaska particularly (I understand there are some legislatures here and people who deal with State government a great deal), first Charles, as the attorney who successfully represented the Menominees in their restoration battle; would one expect less State opposition as a result of the fact that we already have sovereign status that has been unextinguished, of Native people in Alaska? We already have continuing trust relationship. There is less to restore, should we expect less opposition?

MR. WILKINSON: I feel as though I would be guessing on that in Alaska, so I will beg off on that.

MR. GETCHES: Well, I don't think you should talk about Alaska but what about in Wisconsin. Was the State of Wisconsin more concerned about the fact that land would be removed from the tax rolls or were more concerned that there would be another sovereign in their midst?

MR. WILKINSON: In Wisconsin, Oregon, Texas and Utah, the places I have dealt most specifically with in restoration, in each case their benevolent opposition to any increased sovereignty, as there is here, - over time it faded, as the spadework was done. Whether it might, I'm just not going to take it further. I don't feel comfortable with saying
it's going to be easier here or not. I guess I happen to believe it can be done, I think Alaska Natives have a set of human resources that are in excess of any Indian group in the United States except maybe the Navajos, I think that there isn't much that they can't accomplish as a group. So, I would expect that they could achieve that but whether it's easier than in the other states, I guess I don't feel quite as comfortable.

MR. WILLIAMS: But the burr under the saddle in these states was...

MR. WILKINSON: Very similar.

MR. WILLIAMS: Was related to sovereignty, not just the land being restored to tribal ownership.

MR. WILKINSON: Well, one burr under the saddle which is a small percentage of the population but is just there, is just racism against Indian people and that's one burr under the saddle. Then, yes, and that you ultimately can't deal with, and enlightened State legislatures recognize that I think, they start getting mail and then months later they realize that that is an irrational response and they can't deal with it. But then yes, there is just opposition to sovereignty. But here you are going to have hunting and fishing issues, of course, which are almost a separate question that would have to be resolved and then there is a separate philosophical question which is just separate status. Were a negalatarian nation, and it really isn't sovereignty so much, it's just, "why should we single out any group?" And that has to be overcome.

MR. BERGER: Bob Arnold, would you like to make any observations on this as the...

MR. ARNOLD: I feel as though I've an undeserved distinction because I am leaving early. I am not sure that I have anything profound to say. I feel that I kind of
lack the cumulative experience of those who have participated in earlier sessions and found myself somewhat puzzled in arriving this late in the Berger Commission to see clearly what objectives would be served by the title given to today's session. For instance, the use of the conjunction "and" between "land and governments" made me... "And", of course, is a word that doesn't tell much about the relationship between the two words. I know from reading about the work of the Berger Commission, that certainly central to the discussions is the preservation of land base and so I made that connection for myself. But I think there are other objectives that have to do with governance that have not been fully spelled out yet and it would be beneficial to see them spelled out in the course of four days.

For instance, if an objective is self-rule to the exclusion of State oversight, it is very important to kind of say that, because otherwise the solutions are hard to find. Incidentally, speaking of the State, although I work for the State I cannot speak for the State on matters related here. Indeed I am not even a member of the Sovereignty Task Force. Speaking of today's issue, however, in terms of preservation of land base, I believe that Native corporations are in varying stages... face varying degrees of jeopardy with regard to the loss of lands. And honest persons might disagree how much jeopardy there is, say from the standpoint of taxation, for most Native corporation lands lay outside of taxing jurisdictions. There seems to be as great a concern over the decisions of shareholders to allow land to be sold or perhaps to allow their stock to be sold which would obtain the control of land. Both David Case and Professor Johnson spoke of alternatives. Professor Johnson spoke of alternative approaches, David Case talked of the distinction that he had made between large communities, which can win first class status and have home rule powers, and the small villages.
My view, I think, is that it's hard to anticipate a kind of global solution because the situation of communities, Native communities in the State, not only varies with regard to the jeopardy that they face with regard to the lands, but also in the situations and the impulses that animate the people of those places. To this point in the discussion, I am led to the conclusion that a variety of approaches from which Native communities might chose is perhaps what should be sought. For instance, the federal land bank exists now, but exists in name, in that it hasn't been enacted. At the State level, we have been discussing a state land bank which might have some variant form, though following the federal model and perhaps other kinds, and for some corporations, given the impulses that animate their members, perhaps the land bank will do. So, I know that legislators and Congressmen, just as an observer, like to find unanimity in the community that is seeking the legislation. Perhaps it is useful to think of alternative approaches, not one over against the other but alternative approaches from which Native communities might select that scheme that is best in league with the future, for their people, as they see it. So, in my eyes that is one of the great benefits of forums such as this. I only regret that I can't stay longer.

(TAPE 2, SIDE B)

MR. BERGER: Thank you, Bob.

Might I just return to Charles Wilkinson for a moment. David Case outlined the multitude of local government authorities that Native people in the villages must contend with but there is another side to that coin. In some villages they have been able to use all of these abominations of governmental authority to assist them in the local scene and to obtain access to resources, perhaps that might not otherwise have been available, and I got a whiff of that in the Menominee thing because you said that, in the end, they wound up with their IRA restored, their IRA...
government, their Native government; it holds their land and that means it is immune from taxation and the... but you said that the county, which is a State government, the county governments boundaries are co-terminus with those of the Indian lands and so the county government has remained and is a vehicle for providing state funds, is that really what happened?

MR. WILKINSON: Yes, the county government, though, is smaller and less important than the tribal government. There are just more powers that a tribal government has within Indian country than a county government. So, the county government is just smaller. There are some state programs though, that do go to the county. In an ideal situation, at least, I would think this would be ideal. It might be that the state could amend its laws to provide that some of those funds could go directly to a tribal organization rather than a county. I am not sure there are substantial benefits from the two separate organizations. I suppose that would need to be thought through.

MR. BERGER: What about non-Native people living on the Menominee land. They can participate in the county government, they cannot participate in the tribal government?

MR. WILKINSON: They can and you mention your unitary court system, of course, many of their matters would go to state court. So, there are some functions of county governments, one may be voting. Under Alaska law they may have functions such as voting, there may be some non-Native land where taxes could be collected, so there definitely are functions that remain, I don't mean to suggest that. But it does seem to me wise to explore the possibility of some state funds going to the tribal organizations.

MR. BERGER: David Case and then Sheldon.
MR. CASE: I have a couple of questions about the relationship of the county and the tribe and maybe the origins of it. Was that something that the Menominee desired in the first place, as a part of the restoration to retain the county or was that a matter that was negotiated?

MR. WILKINSON: Well, there just has to be a county government in Wisconsin because there just are county functions in there, so you could not, it seems to me, do away with the county government. So, it wasn't so much that the Menominees desired it, although I guess they did but it was accepted that it was necessary and that there were functions that continued.

MR. CASE: And it still accepts it that it's necessary; is that?

MR. WILKINSON: Yes.

MR. CASE: And the county and tribal government, are they separate... the peoples that are on the governing councils are separate, different people or are they overlapped or what?

MR. WILKINSON: They are more separate, I think, then many of your... as in the case in many of your villages. Generally, there are different people on the county board as opposed to the tribal legislature.

MR. CASE: Are there any jurisdictional conflicts between county law and tribal laws?

MR. WILKINSON: Yes. Although it tends to be State laws more than county laws in the case of the Menominees because, since the boundaries are the same, it is mostly Menominees in the county government, so you don't have the conflicts. On many reservations, most reservations, the county lines are not co-terminus, so the county boundaries which extend off the reservation include large numbers of non-Indians and so there is a potential for conflict there that, it just happens,
doesn't exist at Menominee. I don't know of another reservation in the country where the county lines are the same as the reservation, so that is unique and certainly atypical... it may be unique and is atypical.

MR. BERGER: Sheldon Katchatag.

MR. KATCHATAG: First of all, Judge Berger, I would like to apologize for being a little late but I was doing a little research that I had to catch up on. One of the things that has been mentioned is the fact that tribal governments are racist institutions and I think I must repeat often, as often as I can, that tribal governments are not racist and the IRA Act that recognizes tribal government... formalizes tribal government, recognizes that we are political institutions recognized by the Federal government to do those things for our membership, our constituency, our tribal members, for their common good. The constitution, "boilerplate" people call it, for IRA Constitution and Bylaws, I have a copy of the Native Village of Unalakleet’s Constitution. Under Membership, Section 1, Section 1, Section 5, Membership Rules: "The village may make rules to govern membership either for the purpose of carrying out this article or covering membership matters not taken care of in this article." Traditionally, village people have accepted or rejected participation in the village life of our society on the basis of are you or are you not a contributing, viable, constructive addition to our tribe and as a result, I think there are a number of non-Natives that are even members of tribal councils. One that comes to mind immediately is Bill Miller, who happens to be president of the IRA council or the traditional council of Dot Lake. But there is an understanding there, there is still only one chief in that particular village and his obligation is to oversee the functioning of that council, to provide for the common good of the tribal members. Even if it means abiding by a non-Native president. If he is at the present
time, that person that is qualified, who has been approved by the membership of the village to be a member of the village and if he has the expertise necessary to carry out the will of the chief and his council, then it is their obligation, to provide better government for their people, that they must utilize him until such time as one of their own can assume those responsibilities. Again, if that is the wish of their people. Federal Indian Law, one of the bases of it, says that statutes passed for benefit of dependent Indian tribes and communities are to be liberally construed for the benefit or in favor of Indians, and for all intents and purposes, the Natives of Alaska are Indians.

I would like to state at this time that the tribal governments, the rightful governments of our people which predate not only the State of Alaska but also the United States of America by thousands of years are legitimate governments. We trusted the Federal government with certain things, lands protection, education and educational services, health and medical services. We didn't entrust these particular rights and protections of our government to the Federal government forever and we didn't entrust them to the Federal government to be diminished in any way. Our understanding of this relationship as tribal governments is that, if anything, our rights, our powers as tribal governments are to be maintained unchanged and if possible, if possible the Federal government has an obligation by whatever means available to them, to improve not only the effectiveness but also the authority and rights of that tribal government.

There are a number of other things that I think we, as tribal governments have a right and responsibility to our membership to seek, when we see that legislation that has passed regarding our people is seen by the government of our people to be detrimental not only to our people, as ANCSA is, but it is also very detrimental to the tribal governments of our people.
ANCSA specifically states it is not a jurisdictional Act. But by
the very exclusion of tribal governments and their functions as
that most powerful protector, of not only our lands, our tribal
lands, but also that most sacred institution of our people, our
tribal government, we have an obligation to stand up and say,
that is enough! And we can demand, we have a right to, full
restoration to the peace, dignity and sovereignty which we
enjoyed, not only prior to the Statehood Act, but prior to Treaty
of Cession. Thank you.

(APPLAUSE)

MR. BERGER: Thank you, Sheldon.

(APPLAUSE)

MR. BERGER: Well, Spud, do you
want to...?

MR. WILLIAMS: I also have a
little trouble with the title of this roundtable commission. I
think a more appropriate title to this would be the Alternative
Native Governments with its Land, because I think there is
something very viable that is being missed that really we're not
looking at as thoughtfully and as fully as we should. Sheldon
mentioned the ages of Native governments, there is something very
valuable in something that has lasted thousands of years, that is
older then even most European countries. We must have gone
through those infantile stages that most of the European
governments are still trying to struggle with. If you really
look at what Native government is all about, it's nothing more
than an extension of the family, the very basics of any
government system and if you really sit down and look at your own
government in your own household, you don't stack the house with
books on the relationship between you and your wife, you don't
stack your house with ordinances and agreements between you and
your children, you don't stack libraries full of garbage with the
relationships between you and your other relatives (your mother,
your father, your grandparents, your in-laws and some out-laws), you don't have that garbage and I think we are losing something very basic when we started dealing with paper and pencil. We're getting entangled like a fly on flypaper and every time you stick out and go a different direction you get stuck harder. I think we have to look at the value of Native governments, why they lasted so long and why we're fighting so hard to retain them? Something that can last that long has some very real values and I think it's in the best interests of all governments, if you want to look at this internationally, to find out why they lasted so long. What made them function? What made them work? It's basically a government by consensus, which is the same that you do in your own household, a government by consensus and I think the technology today in the world is getting to the point where we can now use that on a much broader basis.

Before, you used to have to put everything on paper because the information had to be passed in that form in the western types of governments, you didn't trust each other so you had to put it on paper so you could go back and refer to it later. There was no real mutual trust, and there still isn't, and that is part of the problem that we are seeing with our negotiations of retaining our own governments today. So, when you are considering these types of discussions, also consider the value of something so old that nobody can really remember where it is coming from, something that is just an extension of ourselves and our families and see if that can be passed to you instead of you trying to think that you are taking something away from us.

MR. BERGER: Thank you, Spud. Well, I think that that's been a good morning's discussion and if Tony will give you the last word before we adjourn then.

MR. VASKA: Thank you.

MR. BERGER: Tony Vaska.
MR. VASKA: Thank you, Commissioner Berger. What I wanted to do was, for the record, identify what the function of the Governor's Task Force on Federal/State/Tribal Relations is doing here. What we are doing... well, we have been doing all fall, is collecting public testimony to give to the Governor to make a recommendation to the state legislature and there are four legislators on the task force plus seven other members from the general public representing the State, the Governor's office and a variety of other organizations and individuals. We are gathering public information and we have been traveling throughout the State, holding public forums and we have one more public forum before we meet next week in Anchorage to analyze some of the public information that we have gathered.

Our purpose here today was, once we looked at your agenda and saw who was going to be discussing the different facets of tribal governing bodies or tribal governments, we thought it was well for us to come and listen to other experiences in other states or countries. Most of us who are sitting here from the task force will probably apply what we hear today and probably gather more information from not only the Commission, but other individuals in the next couple of days.

MR. BERGER: Thank you, Tony. By the way, if members of the task force are returning this afternoon and I hope they do, and have any questions that they would like to throw out to some of these folks who are here from the Lower 48 and other places about State/Tribal Relations, please feel free, through Tony or Mr. Hope, you or any of the others because we are quite informal here. Well, let's break now until two o'clock.

(HEARING RECESSES)
(HEARING RESUMES)

MR. BERGER: Well, the first thing
I want to mention is, for the folks in the audience, the Governor's Task Force is meeting tomorrow at the Egan Convention Center in Room #6, that will be a public hearing by the Governor's Task Force and you're all welcome to go over there and Jennifer Fate pointed out, it's just a block away and so you would be able to take in both the roundtable and the Governor's Task Force hearing. So, I hope you will feel that... perfectly free to go over to the Governor's Task Force hearings, they're tomorrow, December 13th at the Egan Convention Center, 10:00 a.m. to 6:00 p.m. Jennifer assures me there will be some very interesting testimony from some groups recently featured in the newspapers who take a somewhat different view of sovereignty, I gather, than has been expressed here.

Well, we'll just carry on with the discussion of the matters that came up. This morning we heard from Ralph Johnson and he told us about the history in the United States and other countries of IRA's and Native governments generally, and then David Case presented a proposal that he wanted us to discuss for "village home rule". And then we had a discussion, generally, of State/Tribal Relations and this afternoon I was going to call, first of all, on Reed Chambers and before I do that, I want to welcome Willie Kasayulie and Sam George from Akiachuk, who have joined us since we adjourned at noon. And maybe we could talk a little bit, Reed, I mentioned that you and, I think, Larry Aschenbrenner, would be able to tell us about the Maine settlement in 1980 and how it dealt with the question of State/Tribal Relations, taxation of land and so on and so forth.

MR. CHAMBERS: Well, thank you very much, Tom. I represent one of the three tribes in Maine. It's the Houlton Band of Malaseet Indians. The Native American Rights Fund, which Larry is counsel for here in Anchorage, at that time represented the other two tribes in Maine. Now, in describing the Maine settlement, my client came into the
settlement rather late, they showed up in my office in the summer of 1979 and I frankly had never heard of a third tribe in Maine at that time, I learned about them subsequently. But they came in and said: "Look, we have an aboriginal land claim in Maine too." I said, "well, you do. How could you have a... this has been on the Walter Cronkite news show for the last seven years and you are coming in now when there is about to be a bill before Congress and putting together an aboriginal claim in Maine." And they said; "Well, yeah, we always had a deal with the Passamaquoddy's that they would cut us into their claim and they're not doing it now and we've got to get this put forward." It turned out they had a quite viable aboriginal land claim to about a million acres in that part of Maine that looks like a camel's hump. It's called Aroostook County and there was once a war fought, or almost a war, a war of words fought between Daniel Webster and a British foreign secretary named Ashburn about Aristic County, whether it was going to be part of the United States or whether it was part of Canada. But fortunately we don't have those kinds of controversies between our two countries anymore, Tom, but that was in the 1830's and I guess Daniel Webster won. But what it really was, was Indian country; the Malaseets Indians in 1838 clearly had a subsistence lifestyle in that area very much like Alaska Native groups do today. There is even a town in that part of Maine called Caribou, Maine and at that time they did have caribou in Maine at that period. They don't any longer.

In any event, when I got into the Settlement Act negotiations dealing with the two tribes and with the State of Maine, the deal had pretty much been cut. So, when I describe this deal I can't really tell you that it's a deal that I crafted in any way, in fact, to some extent I was unhappy with it. I still am. But I can describe... ultimately, we came in late enough so that we were sort of given, we were ultimately included...
in the deal but we had to pretty much take the cards as they had been dealt at that time.

MR. BERGER: Why don't you describe the deal to us? Criticize it and then Larry can defend it, if he's of a mind to?

MR. CHAMBERS: All right, let's do that. Well, essentially the arrangement was... the one thing that the State of Maine would not give on at all was having the concept of a separate political structure in the State that was going to be separate from the State government, that the State of Maine had been exercising or thought they had been legitimately exercising jurisdiction over, of the Maine Indian tribes ever since there had been a State of Maine, 1820. So that they were simply unwilling to negotiate very much about that so, we had to take that. They were willing, however, to support the concept of ultimately $81 million in payment for the three Maine tribes and about 300,000 acres of land to be purchased for the tribes. So, the way that it was structured was that the other two tribes, but not the Houlton Band of Malaseets, would become home rule municipalities within the State of Maine and that the State would have... the general State laws would apply to them including the laws dealing with municipal government. There were a couple of areas that the other two tribes, they had small reservations, the other tribes, the State was not willing to agree at that time to a reservation for the Houlton Band of Malaseets, my client, and that is still something actually we're still in negotiations now with the State about, in terms of acquiring land for the Malaseets, but that need not detain us here. Essentially the structure is that the Passamaquoddy and Penobscot tribes do function as home rule municipalities within the State, they have a court system that is like, in Maine there are municipal courts, so they have the tribal court system really is a municipal type court system. They do have some latitude about hunting and
fishing laws, that was one thing they were able to negotiate about, but otherwise, I suppose that if the State of Maine was to change its laws dealing with home rule municipalities it would affect the Indian tribes to the same extent that it would affect the other municipalities in Maine.

One of the results of that, for example, has been that Maine Indian tribes cannot play Bingo on their reservations, that other tribes in the Lower 48, including some of my clients, have found it very lucrative to set up Bingo games on the reservation and to some extent to be immune from the State laws setting limits on the amount of prizes you can have for Bingo games and the hours you can play and some tribes do have very lucrative Bingo operations. The Maine Supreme Court held, I think correctly so, given the Maine Settlement Act, that the Penobscot tribe, one of the two tribes that's a Home Rule Municipality, simply had to comply with the State laws dealing with bingo and the Maine Indian Settlement Act had abolished any special immunities that the Panobska tribe would have had from State jurisdiction there. Now, I happen to believe that it's very important for Indian groups to have as much immunity as they can from State jurisdiction. I mean I, and some others around this table, have spent a good part of their career fighting notions like Public Law 280 and trying to get it construed perhaps more narrowly than Congress really intended it to be construed. We have generally been successful in that. But I think it's important... Tom, I think it's important for the same reason that the land preservation is important, because Indian groups in the Lower 48 and certainly Native villages here, do live a separate cultural and political existence, they just do. To have the State be able to essentially impose its laws on those communities does make it much more difficult for the Native communities to have a separate culture and a separate polity, so I think that State jurisdiction is something that I have always resisted,
where I can, for my clients and I guess if I'd had the chance, if I had gotten into the Maine Settlement negotiations earlier, I would have tried to resist there. I don't know if I could have succeeded, it was one thing that the State of Maine seemed absolutely insistent on and it was important to get the Maine Settlement legislation passed in 1980 for various reasons, I think correctly. Those of us representing the Maine Indian tribes did foresee that it would be more difficult to get that kind of legislation through with a Reagan administration, which did seem probable then, than with the Carter Administration which we had and there were other reasons to rush it through as quickly as we could. So, I don't know that I would have been successful but I think that the other two Maine tribes did have the feeling that being exempt from State jurisdiction was not as important to them, after all, they had been subject to it and, actually, so have the Native groups here in Alaska and it was something the State was unwilling to give on, in any event. So, when I am being critical of it, I don't know that the soup would have taken the pepper I would have tried to put in it, in terms of trying to get a different kind of arrangement than the one that was crafted between NARF and the State. I don't know that I could have effectuated that, but it is something... I don't necessarily endorse this concept of a home rule municipality. But I think it's an interesting concept that David's put forth in the paper this morning. I think it may be a necessary compromise with the State government because I do think, if you look at all of the settlement legislation that has been passed dealing with Indians by Congress in recent years, none of it... certainly none of it overrides any state. If the state takes the position they want jurisdiction over the Indian country, none of the legislation overrides that. You have either got to do what Charles Wilkenson did, which is persuade the State of Wisconsin or whatever state it is, that it doesn't really need this kind of jurisdiction or
you've got to accommodate it some way.

The Maine Settlement Act does represent an accommodation to State jurisdiction, the Narragansett Act does that, the Western Pequot Act, I mean all of the eastern land claims that have settled, have settled on the notion of the State having broad jurisdiction over the Indian area. The Gayhead Wampanoag Settlement that's going to Congress, went to Congress late last year and will go again to the new Congress. All of these do have the feature of State jurisdiction. I mean, I have a feeling that that's something that's going to be pretty hard to beat in Congress right now. I think that with all of the... I mean, unfortunately, what Ralph Johnson was saying is very correct. The kind of political consensus that the rest of the country reaches at a given point of time, tends to govern what Indian legislation is going to be, whether you've got a liberal or a conservative government it doesn't much matter. The kind of political consensus that the rest of the United States is reaching now, is a political consensus in favor of decentralization, federalism, state government governing the things closest to it and things like that and I think that's a pretty hard tide to swim up against, so in that sense, I think that the Maine Land Claims Settlement Act represents a useful model. It's too early to say how it's working out really. I mean you can't sit there and say that, because the Indians can't play Bingo it's a failure. I mean bingo is, after all, something of a windfall... it may be viewed as something of a windfall for the groups that are able to profit by it. Notwithstanding the place that we're meeting in today. But I... so I don't know that... I can't...

I find it a nuisance. I mean it does mean that things like the... you do have hassles, for example in representing the Malaseets, I find that I have hassles with the Maine Equal Employment Opportunity Commission, that the Malaseets end up
discharging an employee and the employee complains that he or she is being discharged because she's not an Indian or something like that. Well, that is just the kind of thing you don't have to put up with in any other state. I mean if you get some hassle from the North Dakota Equal Employment Opportunities Commission, you politely write them a letter and say, "you don't have any jurisdiction here, bug off". I mean, you don't have to mess with a Commission hearing and you don't have to go educating a State Commission about Indian preference laws and that is really a federal contract we're implementing and the federal regulations allow Indian preference and you know, all of that is costly, all of that is time-consuming and you're always much better if you can just write the letter and say, "you don't have any jurisdiction and we're not going to have to do further business with you". So, there is certainly that. I can't really say that I have run into situations as General Council for the Malaseets that have really impinged on their self-governing authority yet, I think the jury is still out on it and I think it is probably on the other tribes too. It is different than representing a Sioux tribe in North or South Dakota or Montana.

MR. BERGER: You said that under the Settlement they received $81 million and the money was made available to buy 300,000 acres of land.

MR. CHAMBERS: Some of that was from the $81 million, there was a land purchase fund and then there was a separate fund for the tribes that was set up.

MR. BERGER: What is the status of the land? Who owns the land? If you went to the Land Registry Office and said, "who owns this land", whose name would be on the title?

MR. CHAMBERS: It depends on where the land is, Tom. For the Houlton Band of Malaseets, when we ultimately purchased land, the United States will own it in trust
for the Malaseets. That's also true of the traditional reservation lands for the Passamaquoddy's and Penobscots. The other land though, the 300,000 acres less the 5,000 that's going to be acquired for the Malaseets, 295,000 acres for the other two tribes, is going to be acquired in what is called a "restricted fee" status. That means that the tribes will own it, but they cannot sell it. They can lease it, they can make timber sales on it. There was the same feeling that, again and Larry may be able to speak to this better than I would be able to, I certainly had a sense that the attorneys for the Passamaquoddy's and Penobscots in Maine had the same feeling that some of the leaders of the Alaska Native groups had in the late '60's and early '70's, that they didn't want federal supervision of what they could do with their land. Now, I think that is an open question, whether you are better with federal supervision or without it. I tend to be more cautious about this, I tend to think that getting federal approval for land transactions is a basically healthy thing in the long run for Indian tribes, but it does subject to a bureaucratic review of your actions that tribes can reasonably resist and it's a question of... I think in the long run if you have Federal supervision of it, you may have to be more conservative about your use of your land but you are more likely to have it after awhile. As I say, the Passamaquoddy and Penobscot land is restricted against alienation, so it can't be sold but they don't have to get some of the same approvals from the federal government that other tribes do in the Lower 48.

MR. BERGER: So, the two larger tribes always had reservations and they then acquired, between them, 295,000 additional acreage that is held in restricted deed?

MR. CHAMBERS: That is correct.

MR. BERGER: But it's not part of a reserve?

MR. CHAMBERS: It's not part of a
reservation and indeed, as to those lands, Tom, they tend to be out in the forest. They are not around the subsistent, I mean the Indians live in Indian colonies or reservations essentially, which are like other reservations. Those have been State-supervised reservations until this land claim was brought and now they are federally supervised, as a result of the land claim settlement. The other land is investment land, forest timber land out in the unpopulated areas of the State. As to those lands, they have to comply completely with State law, say when they market the timber and harvest it and so on.

MR. BERGER: Is that land liable to State taxation?

MR. CHAMBERS: Yes, it is. They make payments in lieu of State taxes. They have set up a system where they make payments, they're not liable to the exact tax but they are required to make payments that are the same as the tax, in lieu of taxation. The State is able to invade the settlement funds to get that money if the tribe should not pay it. Now, the taxes are pretty low. You are dealing with unorganized territory in the State of Maine, it is rather like the unorganized borough here in Alaska, or analogous to that. It's funny, if you go up to Maine as I did the first time I went up to see the Malaseets, I looked on the map and you fly into Bangor, which is a fairly large city for Maine, 50- or 60,000 - 40,000 something like that, and then you see on the map that there is an interstate highway going up to Houlton where my client lived. I got on that highway and once I got out of the suburbs of Bangor, I didn't see anything. There was no, I mean it was undeveloped as the most undeveloped parts of the west that would have a highway going through them. Say the Bitterroot Valley or something like and you started going through areas that were called Township 2 North, Range 5 East. I mean it just didn't even have any name. Every once in awhile you would come across a gas station. Now, I have
never driven on the Alcan Highway, so I can't say what it's like. But I mean it really is, there are large areas of Maine that are simply unorganized territory in the northern and western part of the State, so there isn't substantial taxation going on there but there is a State timber yield tax of some sort and they do have to pay equivalent payments for that.

MR. BERGER: Well, just one other question. You said they were making payments in lieu of taxes?

MR. CHAMBERS: That is what it is called under the statute.

MR. BERGER: Is that a federal statute?

MR. CHAMBERS: That's right. That is the Maine... well, let me back up. I guess need to tell you maybe a little more than you want to hear. The way... once an agreement was reached between the tribes and the State of Maine, it was embodied in a state statute. I don't know why they did it this way, frankly. I mean, it wouldn't, again, been the way I would have preferred to do it, but I didn't have any choice on it. So, that the agreement between the tribes was first embodied in the state statute and then some draft federal legislation was taken to Congress and proposed to Congress and enacted with some changes. Now, I believe the payments in lieu of taxes are in the state statute. Aren't they, Larry, do you know? I think there is a provision in the state statute that talks about payments in lieu of taxes in the same amount. Probably, the federal statute ratifies the state statute, which again, is a funny sort of thing because then you don't really know whether the state statute is a creature of federal law or state law. But it's... I don't think the payment in lieu of taxes provision is in the federal statute, except to the extent it ratifies the state statute.

MR. BERGER: David, you had a question?
MR. CASE: Just a couple of small points. Are the tribes themselves deemed to be home rule municipalities or are there two separate institutions? A tribal government and a home rule government?

MR. CHAMBERS: I think it is just a single entity. Now, again, I don't represent either of those tribes, David. So, I...

MR. CASE: The Malaseets aren't in that position.

MR. CHAMBERS: The Malaseets I was able to get... rightfully or wrongly I got the...

MR. CASE: Take credit.

MR. CHAMBERS: Malaseets out of that particular provision. In other words, whether it's an advantage or a disadvantage to be a federally-recognized Indian tribe without being a home rule municipality, the Malaseets are simply a federally-recognized Indian tribe.

MR. CASE: Do the Malaseets have any difficulty getting State funding, any more than the Penobscots and the Passamaquoddy would have?

MR. CHAMBERS: I don't think they get any State funding. I was just thinking of that when Charles was answering the question for the Menominees. I could be wrong, but I think I would know about it if they did get State funding. I don't think they get any direct State funding. They do have very substantial, I mean for a small tribe, they are about a 400 or 500 person tribe, enrolled membership, they do get pretty substantial Federal grants and contracts under Public Law 636 and Johnson/O'Malley and so on.

MR. CASE: Are there any powers or authorities that the tribes have, either as tribes or as home rule municipalities, that go beyond the powers and authorities of the normal Maine home rule municipality? You mentioned fish and
game authority.

MR. CHAMBERS: Yes.

MR. CASE: Was that something that is acceptable?

MR. CHAMBERS: They do, and again, David, I would have to look at it and we could do that. I mean, I can supply you with that. It's not any mystery. Again, it just wasn't something that I was particularly concerned about in terms of representing my client, I didn't want it and we didn't have it. I think they do have some powers. They certainly have taxation powers on their reservations, but I think that is just the normal powers of a home rule municipality. But I think in terms of fish and game laws, they do have some fish and game powers that a normal home rule municipality would not have.

MR. CASE: So, there may have been some negotiations beyond the "super-home rule" powers, judicial powers...

MR. CHAMBERS: And they would have been provided as a matter of state statute. I mean, in other words, when the agreement was made it was put into a state statute, and the state, to that extent, did differentiate between these two tribes and other home rule municipalities. So, it is certainly possible to do that and again, it may be an inviting thing to do. I think that, in terms of making any kind of settlement here, I think you do have to bring the state along with you. Now, in Maine there was a substantial club over the state. I mean there was litigation that threatened the title to land of two-thirds of the State that would be brought if there couldn't be a settlement. So, there was a very substantial inducement to the State to settlement. I don't know that the advent of 1991 puts the same club on the State or whether Indian country kind of jurisdictional litigation here, puts the same kind of club on the state. Maine had a very substantial club...
that was really before I got into it. But there was a lot of
negotiation and again, the attorneys for the other two tribes
felt they had been very successful on that.

MR. BERGER: Well, Larry, you were
one of the attorneys, I believe, were you?

MR. ASCHENBRENNER: No, that's
just a mistake. Don't charge me with that any longer. I had
nothing to do with it really.

(LAUGHTER)

MR. ASCHENBRENNER: That was Tom
Tereen that handled the Penobscot and Passamaquoddy negotiations
and settlement act.

(TAPE 3, SIDE A)

MR. BERGER: Okay. Well, Charlie,
you had a question?

MR. EDWARDSEN: On the
propositions that we have heard today, I would like to make an
observation of the home rule concept and the first home rule
concept that has been applied uniformly in America is the Indian
Reorganization Act. This is an outcrop of liberal institutions
in the name of Americanization of Indians. So, "American Indian
law" is not a foreign institution, it is a creature of the
American people. They have opted for themselves these
responsibilities by their desire, by their choice, we did not ask
them to do this for us. So, when you take a look at American
administration, you Anglo-Saxons better watch out whose administration it is. It is your laws. So, State of Alaska is... came into the brotherhood of states and the primary condition... the primary condition for the evolution of government in this country is with the Treaty of Guss (sp), Alaska Natives have a treaty. I would like to put this question to rest; do Americans have a treaty? The only treaty that we are entitled to talk about here at this time is how American administration came in and we were a victim of selection by the desire, by the imperial desire of American expansion, American administration came upon Alaska Natives. And so the good faith that I would like to demonstrate, and where the good faith of the United States have not been demonstrated is, what it did for us in the name of ANCSA. So, this legal relationship that everybody is talking about, I am a victim of the process of which we are dispensing our peculiar situation. We did not get involved in this unilaterally, we were volunteered by Congress to be in this mess. So, bear with me because some of you are responsible agents for having created such an archaic mess by being blessed Americans.

Alaska Native land claims and State of Alaska upon our entry, what we have in the State is when the land claims negotiation process came about, all of us volunteered that this would be a meaningful way and a dialogue for the Alaska Native people and the United States government can harmonize and resolve a question of real estate transaction. So, we went in in good faith and some of us came out a lot less than what we thought we'd come in from. So, since this is an American law, the people that were victimized by this were not asked their permission if they would participate as consenting adults to this Americanization, to this process of liberation or process of being free. In the... which we call "land claims", the definition of freedom to an Eskimo is different from a definition
from an Alaska, what he thinks freedom is in State of Alaska, under the eyes of Section 6 person. The definition of freedom is still different from a person that you have exempted, the people of Alaska have exempted to exempt from its laws, from its claims, the Alaska Native people. This compact, the Alaska Statehood Act, we came in as equal... Alaska Native people came in equal to the State. So, those of you who are concerned about violation of equal footing, I think that our equal footing has been destroyed in the assumption greed, exploitation of States' rights and character, which are contrary to Federal law. So, where we are today and where we were in pre-ANCSA settlement is taking a look at the Bureau of Land Management, State of Alaska and all of the regional corporations and all of those valid existing rights that are about to be shut out by FLMPA, which some of you feel that it is not important to reveal what are the implications of FLMPA to Alaska Native people and here again is that the misanthropic American assumption of Indian justice, we automatically assume that we are going to give Indians and Eskimos their due by taking something away, not even asking their permission. When you do this, when you mandate this aggression, this alienated aggression that came upon and pounced upon the Alaska Native people, by an alien force called legislation. ANCSA has become that alienating force which is destroying or has destroyed the basis that the American people have so aptly volunteered to put it under its administration this responsibility called "trust responsibility".

So, what we did in Alaska is, when the Indian Reorganization Act was planted, what we found out was the charter of this Home Rule charter was uniform. It had everything in it except the boundary of the land that the Indians and Eskimos decided on was defined. Whose responsibility under the United States is it, that the boundary question resides at? This is very important to Alaska because of this, because ANCSA was not a jurisdictional Act. So, what we have done in the name of
Americanization of Alaska Natives is that we have created another land enclave, which we now have colored and say, "native corporations". Although by law State of Alaska cannot discriminate, but it has these discriminating corporations where in her own Constitution that it forgave title, interest and equity in Section 4 of the Statehood Act. So, when we talk about the Indian/Eskimo process, I think that you have to be so clear. Are you talking about the victim by the State or are you talking about that cherished product that the Bureau of Indian Affairs have under their responsibility, or are we talking about a group of people that have not been conquered by legal and civil procedure. And these rights today, in the American context, are important.

How we deal with the Alaskan question is equally important on how we deal with the Indian question in South America. So, the American administration, the John Marshall Doctrine and its implementation and its legal effect today in Alaska, if we were to exercise and the Bureau of Land Management and the BIA, if the government was in an ideal situation where we exercise all of our rights that we are entitled to and those thirteenth regional corporations provided that the legal abandonment of the United States, when it no longer wants its responsibility of trust be executed according ex-statute, that it has a statute for abandonment by itself and those people that it had abandoned in Alaska are entitled to the level of relief that the United States is going to give and this level is... with this level of support of abandonment that the United States, providing that these people wish to abandon themselves, in Alaska Native Land Claims we did not even ask them, they were volunteered to be abandoned. So, is this a taking question? In Section 14(c)3 a taking issue of lands without compensation? Carry that you give these people a creature of, called "exile", this is what you are going to do; however, on 1280 acres you are now going to
voluntarily surrender to somebody who you don't know. You don't know this creature, but you have to do it. Are these questions of equity, are these questions of conscience that were imposed upon the Native people, how do you think we feel about this? No, we feel this type of intrusion unwarranted, it didn't happen to the rest of the Americans, but it happened to us and State of Alaska, who some of you think so highly of and thinking that it is so great, let me tell you in my role in the development of home rule for our area, I was one of the principals that organized the petition for the North Slope Borough and went through the constitutional self-development from the IRA charter, from the Federal authority. When we had found out that we were going to receive less than entitlements that we had desire from Congress in the Alaska Native Land Claims Settlement fight, we saw the American corporate invasion coming in to annihilate the Eskimos with whatever means necessary and this also incorporated the mischief that it created with the oil industrious State of Alaska.

The North Slope Borough is a first class Home Rule Borough. To this very day, this great State of Alaska who has been crying to Congress that we are not giving any... that it is not receiving any of its lands, but the lands that it had selected on the North Slope Borough, it has not given one acre to the North Slope Borough government. So, when the citizens of Anchorage, or when the citizens of Juneau, or Fairbanks, cry about "the Eskimos up north are flooding high schools", is that an un-American activity, desiring the services that the State of Alaska in its Constitution had chartered, is it - what is wrong with local people doing it for themselves. Somehow that the people and Senators from Anchorage think it's an un-American activity to have a high school. So, we on the North Slope had attempted to preserve the corpus of the Inupiat empire under any administration. If we were to implement the law that we have in

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front of us in State of Alaska, of giving us the ten percent of our land selection entitlements and we were the only people. If it was not for Native American Rights Fund, the creation of local rule, local self-government would still be retarded if it was for the industry and State of Alaska. We had to go to court to prove the versatility of American citizenship is so versatile that it also encompasses Inupiats and even though that the political nature and the greed of these elected officials in State of Alaska, the 25 years of her management of natural resources has been deplorable. This assumed knowledge and grace and goodness that it has, is completely non-existent. Everything that we had to do up north, we had to go for it ourselves. Everything that we got in Alaska Native Land Claims Settlement Act, in there that is of any substance, was brought by us. The American administration, the State of Alaska is part of that administration, I know that it has its appetite and desires but more importantly it is a self-... the Constitution of Alaska is also a surrender and a self-limiting document to what State of Alaska can't do and cannot have. Once the American people start dealing with the Native people not as a foreign alien force on earth and to deal with them in the human context, and the problem that was volunteered to us by the bureaucracy and by the weight of the bureaucracy. Today, the past twelve years have been horrible and the future looks brighter for the simple fact that they forgot one big thing on who we are, they forgot to erase... they may steal your land but they forgot to erase the Eskimos, Indians and Aleuts, as a race. So, the human rights, the rights that we cherish and the rights that we want to pass on, we do not want them terminated in the manner like the Federal Land Management Policy Act did to the Alaska Native people, slapped the Americans in the face and tell the rest of the American people that they are not no longer going to enjoy the fruits of the public land of America and block everybody out, including
Eskimos, Indians and Aleuts.

I think the most disgraceful event occurred in the year 1976, when the Federal Land Management Policy Act was passed. However, it was so shocking that the Federal government felt slightly embarrassed so that they could go back in 1980 and wash their hands because some people could eat and make a living off the land that they love and so cherish. So, the question of jurisdiction and where we are today is real. The option that we feel, that it is essential in order for justice to be rendered to the Native Alaskans, is that we should ask them: what would you like to do? Would you like to re-establish? I would like to see Restoration Act passed and to give Title 25, take this monstrous, headless wonder called ANCSA and give it a head called Eskimo, Indian and Aleut under Title 25 and then we can go and deal with normal, federal-tribal relations as they had been originally designed for. And so, for my part and where we are coming from. I was involved in all of the process of negotiations and I would feel delighted that if the Commission would submit its report to Congress and this Commission asked the Inuit Circumpolar Conference to file their report and ask for it to be codified under Title 28, 1492. The findings of the Commission and a Bill for compensation would be drafted in remedy to either House and under Title 28, 1492 and to correspond with Title 28, Section 2509. I believe that the facts that this Commission is going to have recorded are correct and true and I believe that the certification of the truth to the United States and its full impact of a law that crippled three cultures. I am sure that this findings of this report can come into law and for their certification to be submitted to the U.S. Court of Claims and I would like to make this procedure open, that before the report is finalized, that the Commission submit to the Inuit Circumpolar Conference the possibility of submitting the findings directly to Congress under Title 28, 1492 and then to be submitted to the
U.S. Court of Claims to be filed to the U.S. Court of Claims and that the findings of this would become law, and that remedy that the Commission have found would be corrected. That would be the last draw, provided that the government is not embarrassed enough on their own initiative to have a Restoration Act as part of the American administration. But I say to you, as an American on the ICC, that I will seek for certification of this report and that we take it, that we are so serious at ICC that we will sponsor Title 28, 1492 recommendation to be made for ICC to certify the findings of this body so that we can bring it to justice.

MR. BERGER: Thank you, Charlie.

(APPLAUSE)

MR. BERGER: Well, Charlie has helped to give us some idea how we got here. Maybe I could bring us back to David Case's proposal for village home rule, and David Getches, you wanted to...

MR. GETCHES: I wanted to follow up on something that was suggested by Charlie's points that he made. I guess from the beginning here I have been wondering where all of this, that is this week's meetings, all of this should end up. I guess you have to ask where are we coming from. Charlie did address where we are coming from, but I think that there has been this underlying, this notion, since we got here, that something is wrong. Something is wrong in particular with ANCSA and we have gravitated immediately to the Indian law notions. Now part of that may be that the deck is stacked here, that is all any of us know about is Indian law and so, maybe we are seeking that out as an area of solutions. I would like to turn the clock back for a minute and look at what the late 1960's notion of all this was, what this discussion would look like if it were the late 1960's, the year 1970 when the final negotiations were taking place for what ANCSA would say. I think that the view at that point of Lower 48 Indian organization, was
a view of poverty, paternalism, powerlessness. It wasn't a very desirable scenario. Alaska Natives could look at their own villages and see a replication of that poverty, paternalism and powerlessness and I don't think that they wanted very much to be, as the same went under the thumb of the Bureau of Indian Affairs.

I think that at that time, there was a rejection of Indian law, of the Indian organization that we are talking about today. I don't know how much thought was given to that, the things that I was told and I'm much a late-comer to this, when I first got involved the Act was almost passed and people were saying, "Look, we don't really want to hear much about Indian law and Indian organizations, we've got a better way here. The corporate form is better suited to doing business, it gives us more independence, it avoids the overbearing influence of the Bureau of Indian Affairs and never mind some of these alleged advantages, we have the declaration in the Act that the settlement is to be accomplished without establishing any permanent racially defined institutions, rights, privileges or obligations without creating a reservation system or lengthy wardship or trusteeship without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States government and the State of Alaska." The Act is a clear rejection of these Indian law notions that we are now returning to. Now, either...

MR. BERGER: No question about that.

MR. GETCHES: Now, either what happened at the time that this Act was drafted and the provisions negotiated was wrong or something went wrong between that time and now. I would like to start by asking Charlie, I know there are a couple of other people in here that were involved in that process but I don't think anybody was more involved than Charlie
Edwardsen in this room, in the process of getting to this Act. The question I have is; what were the discussions then?

MR. EDWARDSEN: The processes that were involved was, at that time, had we not come up with a corporate form as a mechanism for resolution, Alaska Native Land Claims would not have passed today. So, the methodology of the corporation brought the settlement into a scope that the Anglo-Saxon community can deal with.

MR. BERGER: Excuse me, Charlie. Could I just intervene here for a minute? We went into this at length in March, David, and for about three weeks, and Charlie and many others who were in on the ground floor participated and I think it's fair to say, as I think and this was Charlie's view and the view of most others including some of those from Congress, that Congress wasn't willing to consider a settlement with the tribal governments. It was not prepared to duplicate in Alaska the story of failure that Indian reservations meant to Congress in 1971. So, they weren't prepared to consider that. Now, all I am saying Charlie is that, I don't want us to go back over all that ground again because we considered it at length. I am really concerned now and for the next three days; okay, where do we go from here? We all know what is wrong with ANCSA and we all know what 1991 means. I have been in the Bush and I know what those people have told me. They want a measure of local self-government. They want to retain their land. How do we manage that? How do we do that?

MR. GETCHES: Well, I think that we may not know completely what... we know something is wrong with ANCSA, but how much of it do you want to do away with and how much of the old Indian law and Indian forms of government do you want to bring back? That is, I think, more in tune with what we are supposed to be doing here.

MR. BERGER: Okay, but I really...
want to know whether the... see the people in the villages are
talking about IRA's because that's what they've got. They've got
IRA's and traditional councils, not all of them but many of them.
So, it naturally occurs to them: "well, let's transfer the land
to the IRA". But the IRA, as a government, isn't just a title
deed. So, I am really concerned about what an IRA implies in
Alaska. What tribal government implies, where that gets these
people, if after all of this 13 years of concern and debate, can
we make advances combining the advantages of ANCSA, and there are
advantages to ANCSA, Federal Indian law and perhaps foraging some
new pathways ourselves. We are not locked into all of these
structures. I mean, they aren't the only structures that Native
people can consider, that Congress can consider. I just think
that, having brought all of you together, I don't want to spend
your time going over the ground that we discussed at the very
beginning of this work in March.

MR. GETCHES: How much of the IRA
form do you want to revitalize? Isn't that the question?
MR. BERGER: I want to know more
about it and does it work in the Lower 48?
MR. GETCHES: In the process, how
much of ANCSA do you want to throw out?
MR. BERGER: Well, let's talk
about IRA's. We have talked about ANCSA for nine months. Let's
talk about the way in which Native people are governing
themselves in the Lower 48 and in other places and how it is
working.

MR. EDWARDSEN: (OFF MIKE) on the
degree of what you want to cut off. I have a proposal here from
ASRC's 1991 committee and it gets to the very point of what we
are dealing with and so, I would like to get to the root of the
matter. If you cannot go back to Section 4 (INDISCERNIBLE - OFF
MIKE) and then look at this proposition and show that you will
not deal in ANCSA as an abstract, but only get the definition of Section 4 and go down with the proposal that is in front of you and see how one region views this situation.

MR. BERGER: Well, I'll tell you what I think I am going to do. I am concerned that we should...

MR. EDWARDSEN: And that your concerns may be answered.

MR. BERGER: Well, Charlie, let me finish. I am concerned that we spend the time dealing with things that will show us where we go from here. This is a resolution that, no doubt, a lot of thought has gone into. But until we have had an opportunity to take a look at it, it seems to me that, we should carry on as planned. Sheldon and Reed wanted to say something and then I think we will take a coffee break.

MR. KATCHATAG: Yes, as far as the question you had, Dave, regarding how far do you take this. The answer lies in the fact now, where were tribal governments in Alaska, not in 1971 but before 1959. Okay, we were the sole local government in the territory of Alaska in our areas and it is time the State realized that. Our councilmen were the sole reference at all to law and order. The federal government, by imposing upon itself the trust responsibility, says it will guarantee to at least maintain whatever peace, whatever dignity, whatever sovereignty that we as tribal governments had. If an Act such as ANCSA totally demolishes not just our tribes, but our tribal governments, then this is conquest by paper and it is a greater sin than conquest by war because it is devious. We have a right, as tribal members, as tribal governments, to have those responsibilities carried out not to the worst of the United States' ability, but to the best of their ability. The primary thing that you have done with the Land Claims Settlement Act and especially with 14(c) of that Act is that, you have taken Native
people in whom the federal government has sworn that they have a trust responsibility to maintain their peace, their dignity and their sovereignty as a tribe and as tribal governments. You have taken that protection of the federal government, with no compensation whatsoever, by a few words on a piece of paper you have made Alaska's Native citizens into law abiding, tax paying, voting citizens of the State of Alaska and thereby liable to all such liabilities as that may be. In violation of their own right to government. Our governments have been here since time immemorial. Nobody knows how old they are. Why can you come in and say, because we have this piece of paper we now have extended our jurisdiction over not only you and your tribe, but over your tribal government as well. If that is not conquest, I don't know what is and you have no right to do that. Nothing can be taken from us, our people, our tribes, our governments, without our consent. No matter what you write on paper.

MR. BERGER: Reed.

MR. KATCHATAG: Genocide by legislation as genocide by war. Thank you.

(APPLAUSE)

MR. BERGER: Reed, did you want to add something?

MR. CHAMBERS: I think the answer to your question is that there is no alternative, but what he is saying. In other words, what you will find if you inquire about... not how IRA's work because there is some, as we have said, there are some governments that are IRA's and there are some that are just traditional governments. That's true in the Lower 48, that's true up here. There is really no alternative but supporting it and trying to make it work because that is the only way people can control their own environment, whether it's Native people in Alaska or whether it's Indian people in the Lower 48 or whether it's any people anywhere. I mean, aboriginal
people or non-aboriginal people. I mean, what you find in the Lower 48, I represent a number of tribes and, of course, I can't tell you which ones work well and which ones don't. That would be disclosing confidences and saying things that I would rather not about particular clients. It's certainly true that you have some... I mean, a lot has happened since 1969. Dave and Charlie and I got into representing Indian tribes about then, and whatever the fairness of somebody saying in 1969, that in the Lower 48 the Indian tribes were pockets of poverty and were controlled by the BIA and were not functioning well as tribal governments, a lot has changed since then. There are still some tribes in the Lower 48 that don't function very well and there is some tribes that function very, very well. Some tribes have separate judiciaries. David and Ralph, of course, can report and probably should report to you sometime during these four days about the enormous strides that have been made by tribal courts in the Lower 48.

Tribal legislative institutions function much better than they did, there are whole tribal executives now that have been set up mostly by federal grant programs, although sometimes by tribal taxes. Setting up service departments or setting up regulatory departments, a minerals department, for example; to oversee oil and gas leasing on the Wind River Reservation in Wyoming is just one example that springs right to my mind. But whether these institutions are working well or working poorly isn't the only solution to the problem that you're addressing is that, there has to be concerted effort made both by, obviously, the Native groups that are the tribal governments and by others in the society that support them. To enable an answer to the question ten years from now that, yes, these governments do work well. I mean, obviously, the people are capable of governing themselves. The question is whether they have the resources and financial support to do it and a lot has happened in the last ten
years to bring that about through 638, particularly through Public Law 638, but also the Tax Status Act and the Indian Child Welfare, the Indian Financing Act, a lot of very positive things have been done on that.

So, I guess I suggest that, isn't what we've got to do is not ask the question about whether they do work other places or not, but really how can we set up institutions or help, really help Sheldon and Charlie and the other Native groups that represent the tribes of Alaska, to set up institutions here that can work within this framework to control land use, to protect subsistence.

MR. BERGER: Rosita? Ralph?

MR. JOHNSON: I never cease to be educated by these proceedings. At the last session we had three days of intense discussion on 1991 issues, which was largely devoted to discussions of corporations and intensive debate about what the nature of the corporation as mergers and so forth. I heard people like Glen Fredricks, and a number of others, say how happy they were with certain corporate structures. What came out of that, as far as I could see, was not a denial of what Charlie or Sheldon or some others are saying here, but there are some places out there where the corporations seem to be accomplishing what a lot of people want and there are a lot of places where those are not and that in a simplistic sense, if one wanted to go back to the IRA kind of government for all of Alaska or for places where regional or village corporations are successfully accomplishing what I heard a lot of people say they should be doing. That would be contrary to the interests, at least of what we heard in this room, in fairly unanimous support.

By the same token, if one sorts out and looks at two-thirds or three-fourths of the villages and sees that in those places the corporate structure is not effectively carrying out the wishes of the people, and I think the hearings as I
understand it from Commissioner Berger, indicate that is their belief, that is not doing what they want, then to consider the IRA or traditional form of government then, indeed, is one of the most serious possibilities. But to change some of the village corporations near Anchorage, I can't name them but those that seem to be eminently successful business corporations, to change back some of the regional corporations or regional lands - that's a different set of questions, and I guess the way I heard the last session was that there are some places this would seem to work and there are other places it would not. I would be curious to know from those who know more about it than I do whether that perception is accurate.

MR. BERGER: Spud.
(TAPE 3, SIDE B)

MR. WILLIAMS: It seems to me that if village governments act as a city government or a state government they are considered a success. We heard this gentleman say that we have some successful and some unsuccessful ones and he mentions the successful leaps of tribal courts. At what yardstick is he making these judgments. You know, he is looking at it at his perspective and this seems to be one of the fallacies of groups like this or state or federal governments looking at Native governments. They have the wrong yardstick. They don't know how to measure successes or failures. If we do things your way, we are a success but if it's different and you don't understand it, you don't know how to measure it. We are not speaking the same thing and I think that is part of why this dialogue is having trouble getting off the ground. I think that you're trying to enforce a value system, instead of listening to ours. Mr. Case, a fairly nice paper, very short-sighted, very western in nature, still paternalistic. He is trying to put a system that he can recognize, because he can't recognize traditional forms of governments, he is trying to merge the two
systems, instead of accepting what we are asking. He is again falling into the trap of trying to teach us. I find that very revolting at times, that you won't sit down and listen to what is being said.

Part of the reason for the dissatisfaction with the Claims Settlement Act is not that it's throwing away our lands, not that's political genocide, as was discussed earlier, but is actually true cultural genocide as well. Our systems are inherently our culture and you are sitting there trying to tell us that a municipal form of home rule is the answer. Very short sighted. Sooner or later with the crunch of population of non-Natives, that municipal system is going to be taken over by non-Natives and then their value systems will be shoved on us. We are not dissatisfied with the corporation, we realize the subsistence economy is an economy that is going. Sooner or later it is going to be gone. We are not against making money. I mean, that is the system we are going to be forced... if we are going to survive economically and have food on our tables. I mean, that's a fact of life. Every culture changes but there are some things we want to retain and our systems of government is one of them, because that insures our cultural survival.

You talk about racially segregated political subdivisions. If we are going to survive as a people, we have to maintain a separate political entity. There is no other way we will be able to survive as a people. I mean, this is a proven fact as western society came across the country. What is making it a little difficult in Alaska, is Alaska still has some of that old basic pioneer spirit. I mean, this is the last frontier and there is still kind of a mentality that the only good Indian, is a dead Indian. Not as much as there was when I was a lot younger, it is fading because we are being invaded by a second group of non-Natives and that is the new generation from America, who have lost most of that pioneer spirit, thank God. They have
finally come to realize they are part of the community of man and
that man should be able to live as he so desires. But we still
have that fringe element. It just rose its ugly head in the
paper the other day. The Klu Klux Klan type of organization.
Even in America, the Americans finally realized that that wasn't
the way for people to get along but this state still can embrace
those concepts because of the last frontier mentality, the
domineering mentality.

Our governments were not understood and so, one of the
systems that was getting rid of our governments was that you
ignored the systems. You tore apart the credibility of the
systems themselves by total ignorance of them. You turned your
back on those systems, put in place your own systems. Those
elements of any society, those violent elements of any society,
those will not conform, are also alive and well in the Native
community, as well as they are in your community, when they saw
that they could subvert their own governmental systems and
controls, they readily did it. When they were able to use the
excuse that the white man says, your law doesn't apply to me
anymore. You very successfully tore apart those local value
systems by giving those people who will normally break laws
because of human emotions; greed, avarice, whatever. You gave
them an out and every person will take an out if he can get one.
I mean that is just human nature. None of us are puritans. We
look for the easy way a lot of times. But the village
governments worked as long as they were respected.

When the IRA Act... I was in one of the villages doing
one of our sub-regional workshops on 1991 and an old lady came up
to me and she said, "Spud, tell me one thing. What is IRA?" You
know, we have been talking these things for the last few years
and using this bureaucratic jargon and I said to her, "really
it's just another word for your village government, village
council, sitting down making decisions, sitting down planning,
sitting down making the rules, deciding issues". "Oh, okay."
Most of the people are so close to that government system they
don't even realize they have a government. They don't even
realize they are doing it, it is so natural, so easy and it is
done and most of the people don't even realize that they're doing
it. So, I wish when you are measuring success and what is a
success, that you will take out another yardstick and quit using
your own.

MR. BERGER: Thank you, Spud. I
think David and you are cross purposes. I think I should give
David the floor.

MR. CASE: Thanks. I knew there
was a danger in saying anything. Spud, I didn't intend to imply
that Alaska Native villages should become state home rule
municipalities. My point is that they should be treated as, with
the same dignity or more dignity actually, then a state home rule
municipality. That the state, in effect, should recognize
village home rule based on Native sovereignty and according to
Native institutions in Native communities and that should include
super-powers to control what is important to that Native
community, including exclusion of non-Natives, I would suggest,
and other culturally, necessary, appropriate, whatever important
powers.

The idea, though, in my suggestion is that, "Look, this is
an ideal in state government already." Not the exclusion of
people from a community that has to do with individual rights
under the U.S. Constitution, but it is the idea that a community
should be able to control itself is an ideal within the state
framework, the state legal framework at least. I am just
suggesting that you carry that a little further and what that
means is that a culture in a community should be able to control
itself. That is something that is not entirely inconsistent with
the idea of home rule in the state, but it can be carried a bit
further and called "tribal home rule" or "village home rule", as I have suggested. That's the point, I was not suggesting that Native communities should be satisfied with State of Alaska municipal home rule.

MR. BERGER: Mary, you wanted to say something? Mary Miller.

MS. MILLER: Just to re-state what Mr. Case just said. It is my understanding that you are proposing that the concept of home rule can be applied and implemented under the governmental powers of tribal government. Is that correct?

MR. CASE: That is correct.

MS. MILLER: Given that fact, I think that it's important for us to read the paper very carefully before we just throw it out the door. It's very easy to look at key terms and mistake them or misinterpret them, misunderstand them. That is just one thing I wanted to recommend for all of us.

The second thing is that, I have heard people talk about identifying and defining our ideals. I agree with that completely. I think it's been clearly stated and established by the over 1,000 testimonies that Mr. Berger has collected, that we have two very clear ideals, generally. One of them is to maximize the protection of our lands, maximize them not negotiate them away. The second thing is to honor our right to govern ourselves. Our people... when you look at people generally not the people who are in leadership positions, but people generally, the average resident of our small communities, we are still very confused. We have been trying to understand the Land Claims Act, we have been trying very hard with the village corporation structures to make them work, we have been trying to figure out what to do with city governments because a lot of the people are
afraid of losing state funding. So, I think it is important to realize that these are very agonizing tasks that we face as Native people.

One thing that, when we think about our ideals of protecting our land and guaranteeing our right to self-government and also recognizing that there are some village corporations who are succeeding, who have had the luck of succeeding. Looking at the option of separating out the business activities of that corporation from the land ownership and then, in that context, look at tribal governments as a viable, feasible option. We have been trying to make everything work and being in a generally confused state. I don't mean to say that as applying to everybody, but generally people still are confused. Now, we are looking at questioning the very feasibility of these institutions that we have been trying to hard to make work. So, as we look at options that are available to us, I think it is very important to try to include in our discussion process, a means of people being able to start at the right points in figuring out what to do, to deal with this confusion, clarify the issues and come to a good starting point so that it will maximize participation of all of those people whose future we are talking about. Thank you.

MR. BERGER: Thank you, Mary.

Charles Wilkinson.

MR. WILKINSON: Just very briefly.

David, do I understand that what you are proposing would be a system under state law that is similar to the current system under federal law, in that Native villages would have self-rule, choose their own court systems, membership would be defined by Alaska Natives, but that it would be a matter of state law and that, secondly, you are not addressing the issue of hunting and fishing, you are addressing substantially all jurisdictional issues except hunting and fishing, which you just don't deal with here and presumably leave to other means.
MR. CASE: Well, no. I guess I even think that hunting and fishing would... although it is politically difficult to see how that would be worked out. But even that should be one of the important powers that, if home rule is going to mean anything from a Native village standpoint, that there really is, as I understand it from the villages we heard from, there is an aspiration, a desire to control hunting and fishing at that level.

MR. WILKINSON: What would be the territorial limits of the hunting and fishing prerogatives?

MR. CASE: Well, that is a difficult question. I mean, the easiest answer but the least satisfying one is the lands that are owned by the village or tribe. Now, I suppose you could carve and describe jurisdictional boundaries beyond tribally owned land, but that is pretty clearly going to get you into dealing with the federal and state governments on those points. But it's concepts... you know, you can think about it, it can be done.

MR. WILKINSON: But, doesn't your whole pro...

MR. EDWARDSEN: (OFF MIKE - INDISCERNIBLE) territorial jurisdiction. So, some of these things exist as... I mean, are real. So we have some real dynamic functioning things that are not abstract.

MR. BERGER: Yeah, we had a look at AEWC at the Subsistence Roundtable in October. But later in the... tomorrow or the next day I would like to come back to the kind of thing that you are referring to. That is, if you do develop an idea for tribal government at the village level, "village home rule" or whatever you want to call it, then is that a concept that people feel can be extended and applied on a regional level, that seems to me that's a tricky question in many ways. But you were... you had another question, I think.
MR. CASE: That point, you may get to places where it would be possible to federate communities, the lands that are close to one another, villages that have a common history and family relationships and so on, could and I think there is movements in that direction in some parts of Alaska, to federate.

MR. WILKINSON: You see, it seems to me, the reason I distinguish the two is that it seems to me entirely reasonable to set up a system of tribal self-government under state or federal law which is limited in fairly tight to the villages because most issues will be near villages. But that hunting and fishing just involves more acres, more land and it seems to me that, hunting and fishing you ought to come about it from a different concept. Which is that Alaska Natives can hunt and fish for subsistence throughout substantially all the State of Alaska and it doesn't seem to me you want to tie that into the villages. So, that is why I would treat them differently. So, I can see you borrowing from the reservation system for matters such as zoning, taxation, child welfare, that whole range of issues, and crimes. But not borrowing from the reservation systems on the questions of subsistence.

MR. CASE: Well, that is a good point. I mean, that is a good point and maybe when you get down to thinking about it and how it should it really work, there would be people that would conclude that another way would be better.

MR. WILKINSON: Let me ask just one more.

MR. BERGER: Excuse me. Could... I think we will have to try to maintain some sort of order. Charles, you had one more question and then Sam George wanted to say something.

MR. WILKINSON: I do just have one
more. Do you propose substantially the same system under state law rather than federal law because you believe it would be of greater long term or short term benefit to Natives, or do you propose it because you see it as more practical and perhaps easier to achieve politically? In other words, do you see your proposal as creating a greater quantum of power for Natives or do you propose it because it might be easier to implement?

MR. CASE: Sheldon said both. I find I'm ambivalent, I'm not sure of the answer.

MR. WILKINSON: Oh, okay.

MR. CASE: But I think there is a risk in taking a step because you think it is practical or more likely to be achieved. I guess I agree with your earlier statement that it is important to begin with what the communities that are living with this want, whether it's the Menominee, the Siletz or the Texas Kickapoo or communities in Alaska, because... and as Spud maybe suggested, there is a danger that us "Outside" consultants, and so forth, will take a narrow view of what is practical and we don't have to live with the result of that. So, I am inclined to say that if this suggestion is really... I mean, I don't want to back away from it, it was my proposal, for Christ's sake, I do. I don't want to own this thing and have it swinging around my neck like a dead bird.

MR. EDWARDSEN: I would like to make a comment.

MR. BERGER: No, let David finish Charlie.

MR. CASE: But I do think it is important to start thinking in practical terms about what we got on the ground and what will work and also in terms of what people want and marry the two up. I do think we may be stuck with a non-reservation situation in most of Alaska.

MR. EDWARDSEN: (INDISCERNIBLE -
OFF MIKE) more of the pragmatism side of it that causes you to propose it, rather than the idea that Alaska law provides greater protections.

    MR. CASE: Absolutely right. If you could have a reservation or means of holding land in trust for Alaska Native communities and that was an achievable goal, this wouldn't be a close second.

    MR. BERGER: Sam George.

    MR. GEORGE: I have been listening and observing all this time and before we go any further I feel that, I appreciate the panelists that came all the way from all over the nation here. But the fact that we should point out is that, all this time and all through the history of the dealings with the Native people we have been victimized by so-called experts from the Outside and we are the ones, we are the victims of being planted and the victims that have to live with all these creations, such as ANCSA. I don't mean to criticize the point, but it's always the case and basically I think, look at the topic of this discussion. You know, we are the ones that should decide our future and I have been listening to all these so-called experts and they're trying to figure out what is best for the Native people and the answer to that is that we are the ones that say what we want and they are the ones that should carry out our wishes. As far as some of the topics we have talked about, such as jurisdiction, more or less, the Native people have been told that we have no such land base and so on, but the fact is that we are the ones that know our land more than, you know, so-called experts from the state government. As far as our hunting and fishing activities, you know, there is no way the State of Alaska can ever prosecute our people from breaking their state laws. But we are the ones that are experts in that area. As far as definition of Indian law, referring to reservation, I feel that it is just by definition that we are not reservation. I am sure
that you guys will agree with my point, that it is just by
definition that we are differentiated from other Indian tribes.
And with respect to the home rule, I understand the concept of
that but, you know, that's basically one of the main reasons why
we ever kicked out the City of Akiachak is to, you know, practice
our rights as self-government people.

As far as the home rule under the, you know, created
under the state law, I suppose you are referring to the state,
der under the state law it is very easy for, you know, as soon as the
population changes such as in City of Bethel, then the power
changed hands. I am sure that all over the state that will
always be the case. It's not based on, one of the reasons why we
want to have a one tribal government is to have more control of
our own destiny and going back to the statehood, the fact is that
our people were not involved in the process of adopting the State
Constitution and here we are trying to convince the state to
recognize our rights as tribal governments. To this day the
state people do not even understand that we exist and do not wish
to recognize us. It's just... the main reason is that they
assume that, you know, it was for the best interest of the
people. I hope that the panelists here would address... not only
address but, I really wish there would have been more of our
people here to address this particular issue and very few experts
from all over the nation. But that is basically what I wanted to
point out.

MR. BERGER: Let me say that I
invited these experts here and there is a reason for that and
let's deal with this now. I have heard from a thousand Alaska
Natives, more than that, all year in 52 villages and they have
said, we are concerned about the possibility of losing our land.
That is the paramount thing. So, they have said; isn't there a
safe place we can keep it and many, many of them say; well, let's
transfer it to the IRA council. I think that they have made
their wishes plain. Now, they would say sometimes let's transfer it to the IRA, sometimes they say let's transfer it to a cooperative or a non-profit association and sometimes they say, well, let's take our chances with the corporation. Not many say that but some do. In any scheme that is worked out, it seems to me that you are going to have Native corporations still in business, making money or losing money, whatever it happens to be. You are going to have land, Native ancestral land that people feel is theirs and ought to remain theirs for the next generation and generations to come and you are going to have a desire by Native people to have an awful lot to say about what happens on that land and in their communities. So, I think that on the basis of what people in those villages have said to me, I have got a pretty good idea of what is in their minds. Now, it's fine to say I could write a report that said, "well, here it is. People want to govern themselves so restore Native government." It could be said in one paragraph, if we wanted to proceed in that way, but where in the end does that get people.

It seems to me that it's useful to bring these people from all over the nation and from other nations together to talk about how all of these things might be achieved and to see how those ideas stand up under scrutiny and David has put forward an idea about village home rule government. It seems to me that gives us something to talk about, to explore the ramifications of what he has said and I think it should... the discussion ought to proceed on the footing, "well, this is an idea that is an attempt to build legal structure based on what those people in the villages have said." Now, I am concerned about this. All right, you say you want tribal government, you've got traditional councils, you've got IRA's. Well, is that all there is to it. Are those functioning in a way that suits the people there? If they got the land should the land be held in trust? What about the supervision of IRA activities by the Secretary of Interior,
is that what you want? What about reservations? Is that really what you are talking about or are we talking about something else that might, in the end, serve as a model perhaps for Native people in the Lower 48? Then there is the question of hunting and fishing. Now, it seems to me that is absolutely vital.

UNIDENTIFIED: (OFF MIKE)

MR. BERGER: Now, just let me finish. Spud Williams said that he thought in the years to come there would be no subsistence, that Native people wouldn't be making their living that way. In parts of Alaska I have been to, I think that he might find that people would disagree with him. I think in Southwest Alaska, where you come from, the people would say, "no, for as long as we can foresee we think we are going to be engaged in making subsistence living here." So, what is the jurisdiction that tribal governments ought to have in relation to subsistence and what are the implications of all of this from the point of view of the jurisdiction the state claims and the federal government. If we don't spend the next three days exploring these things, it seems to me, we will have lost an opportunity and that's why I, Sam, that is why I told these folks to come and I think it's been useful to have this discussion this afternoon, but I would really like all of you to address some of these questions that I have raised today. When we adjourn today, I am going to ask Rosita and David to help me to present an agenda tomorrow that might truly reflect where, in light of the discussion today, perhaps we should be going. But I think to imply that we send all these folks home and then say we know exactly what has to be done here, I don't think that is going to get us as far as we should be going.

MR. EDWARDSEN: Your Honor.

MR. BERGER: No, you don't have to call me Your Honor, Charlie. Go ahead.

MR. EDWARDSEN: I would like to
clarify one fact here. Some of us here are stockholders and we’re going to vote our share and I am glad that some of you are not going to vote mine. So, let's be more cautious on whose ticket, whose land, whose rights are we talking about. So, none of you here have my permission to talk about what is mine and so I would like to make that fact very clear and so, some of us are highly desired to go back to a federal restoration program and I have made a recommendation that this body reveal some Title 28, their jurisdiction of the United States, to reveal this process so that some of you who are not Americans will become familiar with American jurisprudence. And that we want to exhaust this remedy and the way to exhaust this remedy is that the findings of the facts that have been made available to this body are not going to change, they're not going to change if we go back to Congress tomorrow or the next day. That the wrong and the degree of the wrong is so large that what may change is the attitude, the arrogance, the arrogance that the American Congress imposed upon these things that they have never done to others, is what we are mad about and so, those of us who are speaking from equity, we are forced to tell you our alienation of this bad deal that you guys gave us. So, since we are dealing with this horrible process, that all of this is coming out, that it has to come out it cannot stay in there. So, all of the social experiments are over and so, the process and the evolution, this political process that we are going through, Congress is going to have some new assignments that there is a future to look forward to and I would like to row this Alaskan body open so that we can go start lobbying Congress so that we cannot talk about semantic injustice here so we can take it to Congress, so we can start doing our work and maybe that your professional opinion would be of some merit to an Anglo-Saxon Congressman of your Anglo-Saxon view on how bad we got shafted.

So, I view the gravest injustice that has been going on
among the Alaska Natives, has been a failure by the United States
government to determine land in holdings of the Indian
Reorganization tribes in Alaska, number one. Number two is that
the valid existing rights that the United States purport to
protect has not received any protection, meaning that State of
Alaska on the core township has commenced trespass, therefore,
that there are numerous 2415 claims which the Bureau of Indian
Affairs have not filed proceed. So, we are behind, 70 years of
backlog cases and which have been compounded by ANCSA. So, what
is the easiest way out of this mess as we see it, is to go back
to and examine the American jurisprudence and to hop on the
American ship and this means federal preemption, Indian law is a
preempted field and once and for all, State of Alaska, you cannot
get into the Eskimo business without our permission and we don't
want you in our territory without our permission. So, when you
get back to the basics and deal with this sovereign relationship,
not that Congress has completely have plenary powers, it is not
an absolution and so, therefore, I think our attitude towards
this problem and some new ideas to wash out of your mind social
Darwinist attitudes about American administration which have
functions to this point that we have to look at some new
enlightened philosophies. And one of them definitely has to be,
why are these Alaska Natives don't like what they receive because
their consent was not sought out for the basic violation, the
basic human right, the basic bitter root of truth was they were
not asked for.

So, in order for justice to be done in the American
sense, that we have to go back to Congress and say, by God we
gave it a good try and look at the mess that we have made. What
a great deal we have! So, otherwise that we may have to bring in
and prosecute the expert witnesses who have given this
corporation expert advice in the name of racketeering. Maybe
that the greatest defense for the Alaska Native people is a
racketeering act, is it illegal for a corporation to go in the
red. Is it unconstitutional when they go in the red. What is
this legality of profit? So, if you want to put some tighter
constraints, we don't know of any new tricks. So, the only trick
that I see that is going to get us out of this mess is to go back
and says, well, I am sorry, Scoop Jackson, that we did not mean
to be that mouthy, now that you are gone, but we are going to
have to re-look at Section 2 and Section 4. I am sorry, Scoop,
it didn't work. You know, we gave it a good try but we are going
to turn the other cheek and say we want to remain under American
administration, under American flag. What is so hard and so
desirous for Alaska Natives and Eskimos to have? Why is it so
hard for us to communicate to you our basic desire?

UNIDENTIFIED: (OFF MIKE)

MR. BERGER: That's a rhetorical
question, I think. Sheldon, you wanted to add something.

MR. KATCHATAG: One of the things
that has created a lot of the problems that we are facing right
now, has been a lot of propaganda on the part of that
organization that was supposedly looking out for our best
interests, that being the BIA. You ask the Alaska Natives, the
leaders at the time, what kind of an education they got regarding
reservations in the Lower 48. What was the attitude of the
Bureau of Indian Affairs? What was the direction that they
wanted you to go in identification with that old parallel,
Cowboys and Indians? The attitude of the Bureau of Indian
Affairs in that particular old ball game was that they wanted
Alaska Natives to think that they are special, and therefore
different from the Indian of the Lower 48.

Therein was the beginning, the germ that was set for
the orderly and "legal" takeover of the territory of Alaska and
hence, the State of Alaska. The IRA Act of 1934 purports to
identify the right of Alaska Native tribal governments to make
for ourselves this Constitution and Bylaws. It goes on to state that as far as choice of governing body, at a general meeting following the acceptance of this Constitution, the village membership shall decide what kind of governing body it wishes to set up to speak and act for the village and to use the powers of the village.

You mentioned fish and game, as far as Natives are concerned there is no such thing as fish and game, it is all food. And as far as food is concerned, the location of our villages is prime evidence that we were concerned, number one, with the protection of that resource, that food, the renewable resources of our land and as such, the Constitution under the IRA Act recognizes that we have the power to deal with the federal and territorial governments on matters which interest the village, interest in land as the Act itself says. What is the Native interest in lands? Primarily subsistence resources. For Alaska's Natives, subsistence... I keep having to iterate this, subsistence is not a way of life, subsistence is life and anything done to regulate that is interference with our life and according to our Constitution that you wrote up and printed we have the right to protect that resource and be absent from any interference, not only by the federal government but also by any third party, including the State of Alaska.

MR. BERGER: Mary Miller.

MS. MILLER: I think that it is important for us to recognize where alliances are possible and to form these alliances and because of that, I am willing to listen and have a dialogue with people who have been invited to this panel. One thing that really concerns me as far as tribal governments are concerned, and our ability to govern ourselves, is that our people have to face the fundamental question of the continued existence of city governments, state-chartered municipalities in our communities. It's not working having a
dual government, two of them. Especially if there are different 
people who serve on both. There is one community in my region, 
whose city government is the IRA government and whose IRA 
government is the city government. I don't know if that works 
but in that sense they have managed not to conflict with one 
another, but that is not happening in the rest of the villages. 

MR. BERGER: You mean there is 

exactly the same people?

MS. MILLER: The exact same people 
serve on both and on this point they are managing the situation. 
But they don't know what the future will hold, as far as whether 
that can continue. We are having difficulty facing this issue but I think we have to do it. If we are talking about planning, 
long-term planning for the governments of our people, we have to 
face and contend with this phenomenon that we face right now in 
our communities of having city governments and tribal 
governments.

MR. BERGER: Thank you, Mary.

John Hope, you wanted to say something.

UNIDENTIFIED: (OFF MIKE)

MR. BERGER: Well, actually I 
think coffee time has come and gone. So, it's all gone. Yes, 
would you please.

MR. HOPE: Judge Berger and 
members of the Commission. I think it's a fine commentary on 
both the United States government and the tribes as still exist, 
that after 200 years of formally addressing these problems, we 
are still both here to address these problems.

(APPLAUSE)

MR. HOPE: I am not sure who is 
going to be the survivor. I think when we talk about political 
solutions and I think this is what this is going to end up, I 
think that is the only way to solve these things. I think all of
us have an ideal solution and I know we'll not reach that point. As some of you might remember, John Collier was an activist who really understood the Indian problem and he was attacking government for its failure to meet responsibility and by chance he became the Commissioner of Indian Affairs. He knew the problems and he knew the solutions and he was not able to engineer and get through all of the remedies that he sought, but he did get the Indian Reorganization Act as we understand it, it was a political process. He did get many of the things that he thought were desirable and when you deal with a political structure, you know that the end result is not going to be perfect. It's going to be imperfect. We have experienced a few years now under what was supposed to be an improvement. A lot of people did not appreciate the Indian Reorganization Act and the burdens of it, it carried with it. There are some people who are still apprehensive of changing ANCSA into an IRA format. We have had a chance to experience the flaws of ANCSA and when we address them in forums such as these they come out and hopefully we can craft a solution that will be meaningful to us, as Native peoples, and the society, the greater society. As you know, every once in awhile we get people who are on the other side of the issue. We've seen that type sometimes dominate and usually they come out because they want equality. I think there is an association formed here in Anchorage, very recently, where it is racial and their desire is to be equal. Usually...

MR. BERGER: Yes, an oppressed group of white, middle-class males. Everybody knows they are oppressed.

MR. HOPE: Right. Just a few days before that, you saw in the paper where the FBI were converging upon the same group on Whidbey Island. I mean, that type of mentality usually advances to the point where the FBI is chasing them. Our society usually controls these types of things and I
am hopeful that the society will address these things. They look at the instruments that were developed and they will examine and Congress will begin to address these things. As far as ANCSA is concerned, I think the Secretary of Interior had an obligation to monitor the progress of that legislation and on an annual basis was supposed to report to Congress what happened as a result of that Act. So many things are obviously wrong, that he should have had volumes and volumes going to Congress and we shouldn't have had to wait until 1985 to seek remedies. I think on an annual basis, the things that didn't happen as a result of the legislation, Congress should have been dealing with that as it occurred because some of the things were things that Congress and only Congress could address. Personally, I am pleased that the questions are being addressed from more than one forum. Your forum has probably the most credibility. Hopefully, you didn't have an answer before you saw what the problem was and hopefully that will be how it is perceived. But I do believe that if people who are looking for solutions and offering solutions, I know there had been one offered and maybe three or four years from now if we were all to embrace it, we would be all attacking it and saying we had nothing to do with that and that is the way it goes with these political solutions. Everyone of us, if we do have a solution and I don't have a solution, I am just commenting on the progress of what I perceive as happening. I think you have to look back a little bit every now and then to see what happened and I think a lot of us, maybe, if we were attacking the Indian Reorganization Act legislation, do not realize that the authors didn't get what they sought originally 100%, but they got a large percentage of what they went for. When we look at these things, when you look at the problems that were generated by ANCSA, I think there are obvious solutions and I think they will generate because people are discussing them with the idea of correcting and I think if they do, if the United States continues
that attitude it will really strengthen the United States because we will still be around as a measure of their success. Thank you very much.

MR. BERGER: Thank you, Mr. Hope. Well, I think that the important thing is that... to explore all of these avenues and I think if we keep talking we will find that we've got clearer heads at the end of the week. We have to vacate this place for Bingo at 4:30. So, I am going to adjourn now but Rosita, David and I will be meeting overnight and we will start again at 9:00 in the morning and thanks, all for coming today and we will see you at 9:00 in the morning.

(HEARING ADJOURNS)
CERTIFICATE

UNITED STATE OF AMERICA

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 3 through 111 contain a full, true, correct, and verbatim transcript of hearing proceedings of the Alaska Native Review Commission, Governance, December 12, 1984, held at Anchorage, Alaska, as transcribed by me to the best of my knowledge and ability from cassette tapes provided for me by the Alaska Native Review Commission:

That the original transcript has been retained by me for the purpose of filing the same with Ms. Joyce Johnson, 429 "D" Street, Suite 317, 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 action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 15th day of April, 1985.

SUNSHINE V. SHEFFLER
NOTARY PUBLIC IN AND FOR ALASKA
MY COMMISSION EXPIRES 8/07/88

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