ALASKA NATIVE LAND CLAIMS

HEARINGS

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

ON

S. 2906

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO GRANT CERTAIN LANDS TO ALASKA NATIVES, SETTLE ALASKA NATIVE LAND CLAIMS, AND FOR OTHER PURPOSES

AND

S. 1964, S. 2690, S. 2020, and S. 3586

RELATED BILLS

JULY 12, 1968

PART 2

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ALASKA NATIVE LAND CLAIMS

FRIDAY, JULY 12, 1968

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m. in room 3110, New Senate Office Building, Senator Henry M. Jackson, chairman of the committee, presiding.

Present: Senators Jackson, Gruening, Anderson, Metcalf, Moss, Kuchel, Jordan of Idaho, and Hansen.

Also present: Jerry T. Verkler, Staff Director; William J. Van Ness, special counsel; Stewart French, chief counsel; and E. Lewis Reid, minority counsel.

Senator JACKSON. The committee will come to order.

This is a public hearing before the full committee of the Senate Interior and Insular Affairs Committee. The purpose of this morning's hearing is to take testimony on legislation now before the committee on the settlement of the Alaska native land claims. The committee held field hearings on this subject on February 8, 9, and 10, 1968, in Anchorage, Alaska. That hearing record has been printed and is available.

At present, there are four bills pending before the committee on this subject. The first of these, S. 1964, was recommended by the administration on June 15, 1967. The second, S. 2690, was introduced at the request of certain native groups in Alaska. The third bill, S. 2906, was introduced on February 1, shortly before the Alaska field hearings. It is the committee's understanding that S. 2906 was drafted by the Governor of Alaska's Task Force on Native Land Claims.

The fourth measure before the committee, S. 3586, was drafted and transmitted by the Department of the Interior on April 30, 1968, following the Alaska field hearings. At present, this measure represents the administration's current proposal for a settlement of the Alaska native land claims issue. All of the previously introduced measures appear in the hearing record on this matter. If there is no objection, S. 3586 and the administration's report will be printed in the record at the end of my remarks.

Subsequent to the Alaska field hearings held in February, I asked, as chairman of the committee, the Federal Field Committee for Development Planning in Alaska to prepare a report providing data, information and advice on questions and issues related to the proposed legislative settlement. Preliminary drafts of that report have been received and are available for the committee's use and information. It is anticipated that the final report will be published and will be available to the public in the near future.

I might say that the committee is extremely pleased that Mr. Fitzgerald, Chairman of the Federal Field Committee, is with us today. Mr. Fitzgerald and his staff have done an outstanding job and I want to especially thank them for the effort that they are putting into this all-important study. His letter transmitting the preliminary report and his followup letter explaining the complexities of the problem are of sufficient importance, I think, to be reproduced as part of this record. Therefore they will be included at this point.

(The letters referred to follow:)

FEDERAL FIELD COMMITTEE FOR
DEVELOPMENT PLANNING IN ALASKA,
Anchorage, Alaska, July 3, 1968.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: I have the honor to submit on behalf of the Federal Field Committee a preliminary report on "Alaska Natives and the Land." This report has been prepared in response to your request of March 8, 1968, and sets forth the background data and information relevant to a resolution of Alaska Native land claims.

There are six chapters to the report:

I. Alaska Natives: An Overview.
II. Village Alaska.
III. The Land: Regional Character and Use.
IV. Natural Resources.
V. Economic Development and Native Protest.
VI. The Land Issue.

The report is not in final form and is submitted at this time as briefing material for the Committee at the hearings now scheduled for July 12, 1968. The final report will include additional interpretative materials, a number of maps illustrating specific land and resource conflicts in all parts of the state, and our analysis of possible alternatives which might be considered in arriving at an effective legislative solution of Alaska Native land claims.

Sincerely yours,

JOSEPH H. FITZGERALD,
Chairman.

FEDERAL FIELD COMMITTEE FOR
DEVELOPMENT PLANNING IN ALASKA,
Anchorage, Alaska, July 5, 1968.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, New Senate Office Building,
Washington, D.C.

DEAR SENATOR JACKSON: Although the Federal Field Committee has submitted a preliminary report on the "Alaskan Native and the Land" as background material for the hearings scheduled for July 12, 1968, it may be of help to you to have in advance of the hearings a statement indicating how we define the problems and issues involved in a settlement of Native land claims and the questions which might be raised at the hearing as a basis for further testimony of the parties at the full hearing contemplated for the next Congressional session. This expression of views is not carried to the point of recommending specific provisions; rather, it is intended to contribute a measure of understanding to a very difficult problem, which is still in need of earnest examination by all parties.

In scope and urgency, the settlement of Native land claims and protests is the most important problem facing Alaska today. Until they are settled, development is confined to those lands in private ownership or under state control which total less than 5 percent of the land area of the state. Equally important, their settlement ought to be a major step in the efforts of government to improve the lot of Native peoples, whose deplorable condition is generally conceded to have no equal under the American flag.

The series of bills filed with the Congress and the supporting testimony of witnesses highlight the broad range of problems involved in the design of an effective solution. More specifically, the bills are in agreement on the desirability of (1) an extensive land settlement, (2) a substantial monetary settlement if the Native peoples are to be fully compensated for rights which they have already given up or which will be forever abandoned as a result of this legislation, (3) establishing machinery that both preserves the funds and property given in settlement and employs these funds in a long-range program for the benefit of the people, and (4) the gradual but complete passage of the entire management control of Native lands and funds to Native groups. The true issue is not reservations and federal trusteeship *versus* no reservations and no federal involvement, but rather dependence *versus* independence and the transition from one to the other.

Despite general agreement on the matters which should be included in the legislation, there are major differences among the parties on the specifics of the settlement reflecting their varying interests in the land, in its potential mineral wealth, and in its future management as a resource for the economic development of the state and the economic betterment of Native groups.

The importance of these differences transcends narrow, partisan self-interest. What is ultimately at issue is the broad range of public land management policies in their application to an area that is just beginning to develop on the basis of its land resources. These resources and some form of participation in them are vital to the Native groups if they are to share in the future economy of the state. Equally vital to the state is the ability to make resources available for development. Finally, the federal government, in addition to its general interest in achieving a fair settlement for Natives and economic progress for the state, has continuing major national defense interests and a deep concern for the preservation and wise use of lands for public purposes in this our last great wilderness area.

The nature and extent of the issues involved in the settlement of Alaska Native claims also gives more significance to this legislation than could be ascribed to past cases involving Indian land claims. This is the inevitable consequence of the past failure to settle the amount and location of the lands to be transferred to Alaska Native groups, resulting directly in their present claims and protests covering much of the land of the state. The explanation is rooted in a long history. The treaty by which the United States acquired sovereignty over Alaska was with Russia and not with the Native occupants of the land on the theory that Russia, by acquiring sovereignty, extinguished aboriginal title. As a consequence, Native rights in specific lands were not confirmed in that treaty, nor have they since been confirmed although they were acknowledged in the Organic Act of 1884 as a future obligation of the United States. Thus, by accident of history they live today largely by sufference on federal lands with claims to these lands that can be confirmed only by Congressional action.

By contrast, Indian tribes in the contiguous 48 states were granted lands for their own use by treaty with the United States; and their subsequent claims were limited to monetary compensation only in payment for rights in other lands taken at the time of treaty or subsequently under the General Allotment Act of 1887.

By filing claims and protests to most of the lands in Alaska, the Natives have placed in controversy all lands in process of selection and transfer to the state under the Statehood Act as well as the lease, sale, and other disposition of federal public lands generally. This has created what it commonly referred to as a "land freeze." Although Native groups are requesting title to 40 million acres out of the 296 million on which claims or protests have been filed, it is important to note that all of these claims and protests are essential to the full Native case because the Natives not only assert rights to land in which they wish to have title confirmed to them, but they assert claims to all other lands for which they seek compensation as a result of past taking or which may be taken under this legislation.

The most immediate and obvious consequences of the "land freeze" is that it makes essential a prompt, final resolution on all claims. The years required for litigation would impose an intolerable public burden. All of the parties recognize this fact, and the last four bills filed in Congress proceed on the basis that the settlement must be by legislative and not judicial action.

There is another and perhaps equally strong reason for following the legislative route. The judicial process can carefully sift all of the facts on which Native land claims are based and arrive at a monetary value for them. What it cannot

do is structure a program which accommodates the future economic development of the state or provide the detailed and involved machinery to manage the land and funds granted by the settlement. This is a field best suited to legislative action.

All of the major issues are aspects of the very difficult problem inherent in meeting the needs of a modern, highly technical economy developing in the midst of an ancient culture still very much dependent on the hunting and fishing uses of the land and a generation or more away from full participation in the social and economic structure of the state. The "land freeze" unfortunately casts these problems in a framework of conflict between the state and Native groups—a conflict which the state broadens to include the federal government by pointing to federal withdrawals as a source of at least half the lands to be conveyed to Native groups in partial settlement of their claims. If, on the other hand, the "land freeze" is viewed more constructively as a symbol of the dilemma created by the meeting of two civilizations and the need to accommodate the divergent interests of the parties during a very difficult transition period for Natives, an approach to a legislative settlement can be constructed around the long-term land needs of the Natives, the State of Alaska, and the federal government.

ESSENTIAL INTERESTS OF THE PARTIES

A. The Nation

The concern of the United States government for the welfare of Alaska Natives manifests only one aspect of its deep involvement in the lives of the people and the affairs of the state.

Although people of Native descent constitute only 20 percent of the state's population, together with federal employees and military personnel and their dependents, they swell the percentage of the population directly dependent upon federal activities and programs to well over 50 percent. Also, as the principal landlord in the state, the federal government controls 98 percent of the land area. As a consequence, there are few matters affecting the state in which the federal government does not have some degree of interest. It is this ability to mold history, as well as the specific need to do justice to the Natives in the settlement of old land claims, that brings into play the wide range of interests of the federal government.

1. The goal of full equality for natives

The President, in his message to the Congress on goals and programs for the American Indian, delivered March 6, 1968, stated broad national goals of political equality and the opportunity to share fully in the future of the Nation.

The enunciation of these goals has several major implications. First, it shifts the emphasis away from the past and forces attention on things that can be done as part of the land settlement to provide opportunities for Native peoples to advance. Thus, the provisions of the settlement which have prospective effect become more important than the backward look at what has been done or the precise determination of compensation for the value of lands taken.

Secondly, the goals stated by the President may be viewed as establishing a new set of standards by which to measure the prospective effect of legislative proposals. Provisions relating to the machinery for the management, investment and use of the lands and funds derived from the settlement must meet the test of progressively transferring responsibility to Natives so that they ultimately control their own affairs. Native-federal partnership may be required during the transition phase, but full equality and all that it implies is the final goal.

2. Military withdrawals

Alaska is an area of military significance and the withdrawal of lands for national defense will retain first priority in the scale of federal uses. Defense uses do not require many large blocks of land, but they do require very specific blocks of land which are often among the most valuable in the state.

3. National forests

The United States Forest Service manages the National Forests, which comprise the most valuable timber stands in the state. The management of these lands for a broad range of public purposes is a matter of national policy.

4. Conservation and recreation

Game preserves, wilderness areas, and the National Park system are cornerstone of our developing conservation and recreation program of national importance. As the last and most extensive wilderness area under the United States

flag and as an area of unparalleled grandeur, the conservation and development of substantial areas for this purpose is a national objective of high priority.

5. Natural resources

The nation has a stake in the development of Alaska's natural resources. In some cases they are an important part of our export program—timber and gas—or an essential future source of strategic minerals for our economy such as oil, copper, tin, lead, mercury, and platinum. To give full effect to national mineral policies, the government must continue to develop a land holding and land use pattern in Alaska which facilitates rather than impedes the exploration for and development of mineral resources—whether the land be under private, state, or federal ownership and control.

6. Public lands for State purposes

In the Statehood Act, the State of Alaska was given the right to select 103 million acres of land. In balancing the right of the state to select lands under the Act and the right of the Natives to claim lands as a result of prior intent of Congress, it must be recognized that the interests of the state are public interests—interests necessary because of the on-going need of the state to control the use and distribution of lands for the many public purposes it is the responsibility of the state to administer. The transfer of lands to Native groups, however meritorious, would not necessarily conflict with public purposes but would be primarily for the benefit of one segment of the population.

In summary, the broad sweep of federal objectives in Alaska requires a careful balancing of lands transferred to meet current and future Native needs as against the preservation of a flexible land management system that reserves to the state and federal governments the ability to meet all of the public and private needs for access to lands and resources for economic growth, national defense, conservation, and recreation.

B. The State of Alaska

1. Settlement of native claims

In 1959, Alaska became a state. As part of its endowment from the federal government, it was authorized to select 104.5 million acres of land over a period of 25 years. After the selection of about 18 million acres and the transfer of 13 million acres, the process of selection was halted because of the apparent conflict between the undefined rights in land, which Congress recognized in Native groups, and the right of the state to select lands under the Statehood Act.

While it has been said that the "land freeze" has converted a latent conflict into a direct confrontation, the state does not consider its interests to be wholly opposed to those of its Native citizens. On the contrary, it supports a prompt, just and generous settlement of Native claims and believes that it will contribute to economic development.

While the state is on record as favoring a generous land settlement for Natives, it also has very specific views as to how this generosity should be manifested. It would not only like to see uncommitted federal lands made available for this purpose, it would also like federally withdrawn lands made available in part to satisfy Native land claims. In most cases this cannot be done without sacrificing public interests that the Congress may judge to be more important than the interests of any one class of citizens. There is, however, merit to this position. For example, the grant of townsites to Natives living on Nunivak National Wildlife Refuge, the St. Lawrence Island Reindeer Reservation, or on the Petroleum Reserve at Point Barrow would not conflict with the original objectives of the respective withdrawals. This matter, however, is one of considerable complexity; and a possible approach is for the Congress to recognize that some presently withdrawn lands could and should be made available for Native selection but this determination should await the detailed study of all land questions in Alaska by the University of Wisconsin for the Public Land Law Review Commission. The University's report is due in December, 1968; and no great hardship would be imposed by this decision.

2. Dependence on resource development

The state recognizes that its economic growth now and for the foreseeable future is dependent upon development of timber, fisheries, oil and gas, hard minerals, and other hard resources, and the use of lands for recreational purposes. Anything that impedes these land uses is viewed as an obstacle to development, and this dependence is forecasted to continue for at least several decades. Wise public policy will seek to eliminate all roadblocks to this development and provide a favorable environment to the investment of private capital.

3. Protecting the revenue base of the State

The 375 million acres in Alaska are occupied by 275,000 people of whom approximately 53,000 are Native and 70,000 are military or military-associated personnel and their dependents, leaving about 150,000 people on whom the economic burden of supporting the government falls. As most of the land is nontaxable federal land, and many of the facilities are nontaxable government installations, the state is uniquely dependent upon oil and gas royaltiles for funds to support its operations. The fiscal strength of the state, and hence its ability to absorb greater responsibility for Native social needs, is directly dependent upon bringing land and land resources into the tax base.

4. Payment of percent of royalties for Native purposes

The state in its own legislation proposes to grant a portion of its revenues from future state leases (5 percent over 50 years) to Natives. This may indicate a willingness on the part of the state to favor a federal settlement which gives Natives a participation in future royalties and benefits derived from the land but not fee simple title to large tracts of land desired by Native groups solely for their potential mineral wealth. Those funds would be largely directed toward economic development in Native areas and the provision of community betterments.

5. Lessening Federal control over Native affairs

In territorial days, the federal government was the government of Alaska; and all Native matters were administered by it. Statehood at first made few changes in this relationship between Native and government. But the state desires to assume a greater share of governmental responsibility as its resources expand and it is able to do so. Without a history of "reservations" in Alaska, this transfer of functions will not have to overcome the incompatible pattern of reservation institutions. With one-fifth of the eligible voters and with Native representatives serving in the state legislature, the Native is more directly in position to give effect to his political views at the state level than he is at the national level. What he needs is an economic base that makes political participation meaningful. Once such a base is provided, the transfer of responsibilities for many Native affairs to the state should become a matter of national policy.

In summation, the state wants a just and immediate settlement of Native land claims, not only as a matter of justice but as an essential step in the development of the state. It believes that the fruits of settlement should be directed towards achieving maximum economic benefits for the Native as a class, while the principal, as distinguished from income, should be invested in capital improvements and should not be distributed to individuals. But once the needs of Natives for village lands, hunting and fishing sites, etc., are accommodated, it regards the public needs of the state for lands to be of higher priority than the needs of the Natives for large land holdings. It would, in its own case, solve this problem by giving a percentage participation in mineral and timber rents and royalties over a 50-year period. Although it has not expressed itself fully on what it would like to see the federal government do in this respect, other than the endorsement of the payment of a share of outer continental shelf royalties, it is an appropriate line of inquiry for these hearings.

C. Alaska Natives

The Alaska Native has watched the rapid growth of the state without achieving any substantial participation in that growth. Until recently, he has stood on the sidelines not knowing how to achieve a full and equal partnership in the social, political, and economic life of the state. With his roots in the land and with the gains realized by the Tyonek Indians from the oil on their lands before him as a success story, he is now turning to land and land resources as a means of achieving more than a toehold in this twentieth century American civilization. His historic land claims have suddenly become for him the immediate and tangible way to achieve this goal. In this process he also knows that he must achieve full control over his own affairs if he is to be an equal in his own land.

1. Need for land

Most of the Native people of Alaska live in small villages scattered throughout the state. They hold fee simple title to only an insignificant amount of land. Where their use of land is protected, it is usually under some form of land withdrawal managed by the federal government.

Their first need is for adequate village lands. There is no real argument here, although the exact amount required for each village varies substantially because villages are of differing sizes and because regional needs are different. The second

need is for land for hunting and fishing sites, and food and fuel gathering. In most cases, this also is not an area of serious conflict. Rather, the problem is one of the machinery by which the rights are confirmed. The third need is for security for their hunting and fishing and trapping activities on public lands. While the proposed federal legislation seeks to provide such security, it must be noted that this is a futile gesture unless the state also commits itself to constructive action in this field because regulation of hunting and fishing on federal lands is now a state function except in national parks, wildlife refuges, or other withdrawals where Congress has specifically acted. The fourth need expressed by Native groups is for title to broad tracts of lands (the presently requested 40 million acres would include up to 30 million acres in this last category). Title to these lands is also sought for their commercial mineral potential and the hard question is to what extent public policy is best served by such grants. Since the commercially valuable areas of the state may not exceed 40 million acres totally, there is no Solomon-like approach to a division of lands among state, federal, and Native holdings. But in treating the Native interest in the commercial value of the land resources, it would be possible to turn to participation in rents and royalties from lands, leaving them under state or federal management. This is the rationale of the state legislation and of the proposal to commit a portion of outer continental shelf revenues, or of Petroleum Reserve No. 4 revenues, or of all federal lease payments. This question deserves the most careful scrutiny for it suggests an approach that gives broad flexibility to the Congress. A settlement based on land alone would initially conflict with major state interests and some federal interests. A money settlement alone would raise difficult federal questions. Money and land together would still leave large state and federal problems. The addition of future participation in land revenues gives a needed element of flexibility that would enable the Congress to balance all of the interests of all of the parties. To date, this problem has not been explored in the depth necessary for effective Congressional action and it can, appropriately, be made a matter of inquiry at the present hearings.

2. Compensation for rights extinguished

The bills presently before Congress seek lump sum settlements for aboriginal rights which have been extinguished in the past or will be extinguished by this legislation. This is the best approach if settlement is to be made promptly without lengthy litigation. But the amount must bear a rational relation to the value of the rights taken. As the most valuable land in the state is in southcentral Alaska and the great oil potential begins in this part of the state and extends northward, the Secretary's figure of $180 million based on the value of lands in southeastern Alaska is probably conservative. The appropriate figure remains a proper area of inquiry at these hearings if representatives of Native groups are to know what evidence the Committee may wish to receive when full hearings are held at the next Congressional session.

3. Participation in the future

The Native considers that his aboriginal rights in land also give him the right to share in the future produce of the land. In this respect he seeks more than to "cash out" his interests in land. If Alaska prospers because of the richness of its resources, he wants to share in that prosperity.

Federal and state policy also recognize the need for Alaska Natives to have a share in the future as this constitutes a major path for the achievement of equality in the state.

As previously noted, to seek to achieve this participation by granting fee simple title to large blocks of land selected on a priority basis over state and federal uses would ordinarily create problems of great difficulty, whereas the grant of a percentage participation in land revenues would give the Congress far greater flexibility in the construction of an effective solution.

What is missing at this time are definitive analyses that suggest how the balance should be struck between land grants, money payments, and shares in future revenues. While the Federal Field Committee sees this as an area in which it may be helpful to the Committee when full hearings are held during the next session of Congress, it is clear that this matter could be profitably explored at their present hearings. To the maximum extent the parties should say what in their judgment is the best solution.

4. Achievement of self-determination

At the present time, there are many special federal programs to assist Native people. The problem is not how they can be terminated immediately but how

they can be supplemented and made more effective so that Native people become self-sufficient, sharing equally in our society, hopefully within a generation. But the transition away from dependence upon special programs involves the progressive transfer of control over their affairs as Native people achieve. It is for this reason that it is generally recognized that major steps in this direction can and should be taken in the settlement of Native land claims. The area of difference between parties seems to be in the extent to which these steps should be written into legislation. The Administration bill leaves this to future determination by the government, while the Natives seek a more concrete program that gives them assurance as to the specific steps that will be taken. Either approach can be made to work, but the Native will not be satisfied unless his path is carefully charted in legislation. This psychological factor is of upmost importance. But it should be recognized that to devise adequate machinery at this time that will accomplish the very ambitious goals set by the President and by the Natives for themselves is no small task. This is not an area in which we can say with assurance that we have the experience of past successful programs, nationally or internationally, yet we see no alternative to making the full effort.

D. The issues and the questions posed

The major issues involved in settling Native land claims emerge logically from an examination of the interests of the parties.

They can be grouped into four categories: (1) land, (2) compensation, (3) future participation in land and resources, and (4) the machinery needed to carry out the settlement. The questions they pose go to the reconciliation of the interests of the parties so that the goals of all parties are met, or at least accommodated to a major extent. A listing of such questions is appended.

Sincerely yours,

JOSEPH H. FITZGERALD,
Chairman.

I. LAND

A. Native villages:

1. How much and what kind of land is needed for Native villages?

2. By what population or other formula should each village's allotment be determined?

3. By whom should title to village land be held?

4. What, if any, fundamental disagreements exist on these issues among the Natives, the state, and various federal agencies?

B. Hunting and Fishing Camps and Food and Fuel Gathering Areas:

1. How much and what kind of land is required for each use?

2. On what principles should allotments for these purposes be based?

3. Where would these uses conflict with present federal uses?

4. What, if any, fundamental disagreements exist on these issues among the Natives, the state, and various federal agencies?

C. Security for Native Hunting and Fishing and Trapping Activity on Public Lands:

1. What provision, if any, should be provided for termination of special treatment?

2. What is the proper role of the federal government in providing this security?

3. What action does the state propose to take?

D. Selection of Large Blocks of Land:

1. Why are they requested?

2. Is transfer of land to Native control necesary to perpetuation of Native hunting, fishing, and trapping activities?

3. Would percentage participation in all royalties from claimed lands for a specific period of years accomplish the objectives of Native groups in seeking large blocks of land for income purposes?

4. How, if at all, would transfer of large parcels to Native control affect the pace and character of economic development?

II. COMPENSATION FOR RIGHTS EXTINGUISHED

A. On what bases are the various amounts of compensation calculated?

B. How do they relate to the claim for title in fee simple to 40 million acres?

C. How do they relate to the retention of historical-use patterns of hunting and fishing?

D. What relationship should there be between federal and state action in this area?

III. FUTURE PARTICIPATION IN REVENUES FROM LANDS AND LAND RESOURCES

A. What lands should be designated as a source for such revenues? Outer Continental Shelf? If so, what are the arguments for it? Withdrawn areas, such as Petroleum Reserve No. 4? All future leases of federal lands?

B. What upper and lower limits, if any, should be established on such revenues?

C. For what period of time should the rights be given, and should advance payments be made?

IV. MACHINERY

A. What kind of institutions (business corporations, nonprofit corporations, trusteeships) should be established to administer lands and funds granted under the legislation?

B. How should the rights of individual Natives be protected so that the institutions established are responsive to them, and how should the Natives be protected against mismanagement and fraud?

C. How should the interests of government in the wise use of funds for the advancement of Natives be secured?

D. How should control of lands and funds be transferred to Native groups or individuals and over what period of time?

E. Should a Native-claims commission be established? If so, what should be its functions? Adjudicatory or administrative? What should be its relations with particular federal agencies? Who should be represented on the commission (state, federal, Natives)?

F. To what extent should the detailed implementation of the settlement's objectives be spelled out in legislation, and to what extent should it be left to administrative action?

G. Should the transfer of land title, funds, and their control to Native groups and individuals be automatic unless it is demonstrated not to be in the public interest or in the interest of the Natives? Or should such transfers depend on petition to and constructive action by administrative agencies?

Senator JACKSON. As previously stated, the new bill submitted by the administration, S. 3586, and the report accompanying it will be printed at this point. Also the departmental report on S. 2906, which was not previously available, will be included.

(The data referred to follow:)

[S. 3586, 90th Cong., second sess.]

A BILL To provide for the settlement of certain land claims of Alaska Natives, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Alaska Native Claims Settlement Act of 1968".

DEFINITIONS

SEC. 2. For the purposes of this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means an Alaska Indian, Eskimo, or Aleut of at least one-fourth degree Alaska Indian, Eskimo, or Aleut blood, or a combination thereof; and

(c) "Native group" means any tribe, band, clan, village, community, or association in Alaska composed of twenty-five or more eligible Natives and approved by the Secretary.

DECLARATION OF POLICY

SEC. 3. Congress finds and declares that there is an immediate need for a fair and just settlement of all claims by Natives of Alaska by providing (a) a grant to each Native group of title to their village sites that are now being used by said group and to additional lands in the vicinity of the villages that will be needed for reasonable community expansion to fulfill future economic and social requirements, (b) a reasonable payment to Native groups for the purpose of enhancing the present and future welfare of the Natives in Alaska, and (c) provision for Native hunting, fishing, trapping, and berrypicking, within Federal lands not granted to the Native groups; and that it is the purpose of this Act to provide such a settlement.

DECLARATION OF SETTLEMENT

SEC. 4. The provisions of this Act shall be regarded as full and final settlement of any and all claims against the United States based upon aboriginal right, title, use, or occupancy of lands in Alaska by Natives or arising under the Act of May 17, 1884 (23 Stat. 24), or the Act of June 6, 1900 (31 Stat. 321), including claims pending before the Indian Claims Commission by previous authorization of Congress and not finalized by said Commission on the date of enactment of this Act.

GRANT OF LANDS

SEC. 5. (a) Subject to the provisions of this Act, the Secretary, upon his own initiative and without application, is authorized to grant, in trust, to each Native group, subject to valid existing rights and if not withdrawn for purposes unrelated to Native use or the administration of Native affairs, (1) title to the village site or sites now occupied by such group, and (2) title to such additional lands in the vicinity of such site or sites which, in his judgment, would contribute significantly to the reasonable community expansion to fulfill future economic and social requirements, taking into account such factors as population, economic resources of said group, traditional way of life of said group, and the nature and value of the land proposed to be granted: *Provided*, That, at any time during the term of the trust, the Secretary, upon application of the Native group and upon the approval by him of a land use plan submitted by said group, shall terminate the trust for all or any part of the lands granted under this subsection to said group. Such grant may include a grant of title to noncontiguous lands being used and occupied by such Natives for burial grounds, airfields, water supply, hunting and fishing camps, and dock or boat-launching sites that are not withdrawn for other purposes. In the case of Native villages in locations where there are not sufficient additional lands in Federal ownership to permit the Secretary to make the grant of additional lands contemplated by this subsection, the Secretary may convey other lands in lieu thereof but subject to the same conditions and limitations that apply to conveyances of land within the vicinity of a village.

(b) In no case may the grant of land to a Native group under this section exceed fifty thousand acres.

(c) The provisions of this section shall not apply to Native groups who are beneficiaries of the judgment recovered by the Tlingit and Haida Indians in Court of Claims docket numbered 47900.

RESERVATIONS AND RESERVES

SEC. 6. (a) The areas of lands and waters heretofore reserved and set aside by Executive or Secretarial order for the use of the Native groups of Akutan, Diomede, Karluk, Unalakleet, Venetie, and Wales shall be granted in trust to said groups. To the extent such areas are smaller than the areas of land that could be granted to each group under the terms of section 5 of this Act, additional lands may be granted to the group, in trust, by the Secretary: *Provided*, That the total grant shall not exceed fifty thousand acres.

(b) The various reserves set aside by Executive or Secretarial order for Native use or for administration of Native affairs, including those created under authority of the Act of May 31, 1938 (52 Stat. 593), shall be revoked, subject to any valid existing rights of any non-Natives, by the grant of title in trust by the Secretary of up to fifty thousand acres of land now covered by such order to the Native group using or occupying said lands on the date of enactment of this Act.

(c) At any time during the term of the trust covering lands granted under this section, the Secretary, upon application of a Native group and upon the approval by him of a land use plan submitted by said group, shall terminate the trust for all or any part of the lands granted to said groups.

(d) The grant of lands under this section now covered by an Executive or Secretarial order shall include the underlying mineral deposits.

INTERIM ADMINISTRATION UNDER PUBLIC LAND LAWS

SEC. 7. (a) As soon as possible after the effective date of this Act, the Secretary shall, subject to valid existing rights, withdraw from all forms of appropriation under any of the public land laws, including without limitation selection

by the State of Alaska under the Statehood Act of July 7, 1958 (72 Stat. 339), any lands which he believes may be subject to a grant to a Native group pursuant to this Act, but not to exceed a total of twenty million acres. Such withdrawals shall be revoked as rapidly as grants to Native groups permit. A State selection of lands that are withdrawn shall not be approved, regardless of whether the selection was initiated before or after the withdrawal, until the withdrawal is revoked.

(b) A Native claim based on use and occupancy of unwithdrawn land shall not be the basis for the rejection of State selections or other applications or claims under the public land laws.

(c) Either before withdrawal lands under this section or before granting a patent pursuant to this Act, the Secretary shall consult with the Secretary of Defense with respect to the effect of the withdrawal or grant on the security of the United States.

(d) Nothing in this Act shall affect the rights of Natives as citizens to acquire public lands of the United States under the Native Allotment Act of May 17, 1906 (34 Stat. 197), as amended (48 U.S.C. 357), or the provisions of other applicable statutes.

(e) Lands granted pursuant to this Act shall, so long as they remain not subject to State or local taxes on real estate, continue to be regarded as public lands for the purpose of computing the Federal share of any highway project pursuant to title 23 of the United States Code, as amended and supplemented.

(f) Any lands grants in fee or in trust under this Act shall be subject to the right of the Secretary to issue and enforce for the protection of migratory birds regulations in accordance with the provisions of the Migratory Bird Treaty Act, as amended.

(g) The Secretary is authorized to make any grant of land under this Act subject to easements for any public use, benefit, or purpose, including easements for the administration and utilization of any Federal lands.

(h) Prior to conveyance of land under this Act, the Secretary shall have its exterior boundaries surveyed. This requirement for survey shall be satisfied without continuous marking of the line, but by establishment of monuments along all the boundaries, except meander courses, by electronic measurement or other means, at intervals of not more than six thousand feet, or by extension of the rectangular system of surveys over the areas conveyed. Conveyances of surveyed lands shall be in accordance with the plats of survey, and those for unsurveyed lands shall, following survey, be so conformed.

TRUSTS

SEC. 8. (a) Title to land granted under this Act to a Native group in trust shall be held by the United States in trust, acting through the Secretary as trustee. The term of a trust established by, or pursuant to, this section shall not exceed twenty-five years from the date of any grant made under this Act, and when the trust terminates it shall be liquidated in accordance with the terms of the trust instrument or as prescribed by the Secretary, if there is no trust instrument, or as prescribed in sections 5 and 6 of this Act. Whenever a distribution of capital or income of the trust is made to the Native group, the finding of the Secretary as to the qualified recipients shall be final and conclusive.

(b) The Secretary, as trustee, under this Act shall have the powers and duties set forth in the deed of trust, including without limitation, subdivision, management, and disposal by sale, lease, or other method, of the lands or interests therein, except the mineral interests in lands granted under section 5 of this Act, investment and reinvestment of the proceeds, and distribution of income or capital of the trust to the Native group and he shall not be subject to the laws of Alaska governing the execution of trusts. In the disposal of any tract of land under the trust, the trustee shall give a right of first refusal to the occupant thereof. The title to land conveyed by the trustee to a Native shall be subject to the provisions of section 1 of the Act of May 25, 1926 (44 Stat. 692; 48 U.S.C. 355a), with respect to lands conveyed to Natives in townsites established under section 11 of the Act of March 3, 1891 (26 Stat. 1099; 58 U.S.C. 355), as supplemented by the Act of February 26, 1948 (62 Stat. 35; 48 U.S.C. 355e). The trustee may convey without compensation to private, religious, charitable, or educational institutions or organizations the land occupied by buildings or facilities owned by them on the date the trust is established, where such buildings or facilities are situated within the boundaries of the land to be granted pursuant to this Act.

MINERALS

SEC. 9. Subject to valid existing rights of any non-Native, the Secretary upon granting in trust or in fee any lands under section 5 of this Act to a Native group shall grant to the Corporation established by section 10 of this Act title to all mineral deposits in said lands together with the right to mine and remove the same under leases issued by said Corporation. Said Corporation shall hold such minerals in trust for the benefit of each Native group having the surface lands and shall administer the trust in accordance with the applicable provisions of this Act and the laws of Alaska governing the execution of trust. All revenues received by the Corporation in the administration of such trust shall be shared equally each year with the Native group that has title to the lands from which such receipts were derived. Whenever the trust terminates by reason of the dissolution of said Corporation or by subsequent Act of Congress, the Secretary shall convey title to such mineral deposits, subject to valid existing rights, to the Native group having title to surface lands.

NATIVE ECONOMIC IMPROVEMENT CORPORATION

SEC. 10. (a) There shall be established a single nonprofit statewide Native Economic Improvement Corporation, hereinafter referred to as the "Corporation," for the purpose of promoting economic opportunity for the benefit of the Natives and their descendants in Alaska. The Corporation shall be organized as approved by the Secretary under the laws of the State of Alaska. The Board of Directors of the Corporation shall be elected by the Natives in Alaska on a basis, determined by the Secretary, which will assure adequate representation of all such Natives and their descendants. The Board shall appoint a manager of the Corporation and such other officers as the Board deems desirable to serve at the Board's pleasure, and shall fix their compensation. It shall be the responsibility of the manager to carry out the Corporation's functions in a businesslike manner consistent with the provisions of this Act and the policies and directives of the Board. The manager shall select the Corporation's agents and employees, define their duties, and fix their compensation.

(b) The Corporation, in accordance with such standards as the Commission established by this Act may from time to time prescribe, may, among other things:

(1) Initiate and coordinate the preparation of long-range overall economic development programs for the Natives and their descendants;

(2) Foster surveys and studies to provide data required for the preparation of specific plans and programs of development;

(3) Promote private investment in enterprises or activities which will improve the economic status of Natives and their descendants;

(4) Develop, establish, operate, and maintain various business enterprises or invest in such enterprises to develop, improve, and utilize skills and capabilities of the Natives and their descendants;

(5) Make loans to Natives and their descendants in Alaska on reasonable terms and conditions to finance plant construction, reconstruction, conversion, or expansion, the acquisition of equipment, facilities, machinery, supplies, or materials, and for any other purpose that will promote effectively economic development for the Natives and their descendants in Alaska, where financial assistance applied for is not otherwise available on reasonable terms;

(6) Make grants to one or more Native groups for the development and operation and maintenance of projects which will promote the welfare of the Natives and their descendants; and

(7) Lease competitively, in accordance with sound conservation principles and practices, the minerals held in trust by the Corporation.

(c) The Corporation shall not be regarded as an instrumentality of the United States for any purpose and the United States shall not be responsible for the Corporation's actions or debts. The members of the Board, the manager, and the other officers, agents, and employees of the Corporation shall not be regarded as Federal employees for any purpose.

(d) The Corporation shall at all times maintain complete and accurate books of account and records which shall be reviewed by said Commission periodically. The Commission shall periodically report to the Congress, through the Secretary and the President, but at not less than three-year intervals on the activities and financial condition of the Corporation.

TAXATION

SEC. 11. So long as the lands granted to a Native group by this Act and the minerals granted to the Corporation are held by such group or by a Native or his descendants or by the Corporation in fee or in trust, such land and minerals shall not be subject to State or local taxes upon real estate. Rents, issues, profits, royalties, and other revenues or proceeds derived from such lands by a Native or his descendant or a non-Native shall be subject to Federal and State or local tax laws. Payments made under this Act or under any State statute to the Corporation shall not be taxed to the Corporation. Leasehold or other interests in such lands held by non-Natives may be taxed as provided by State law. No part of any per capita distribution made by a Native group of any or all of the funds granted to said group under section 14 of this Act or of any or all of the mineral revenues paid to said group by the Corporation under section 9 of this Act shall be subject to Federal or State income tax. The Corporation shall be organized and operated in a manner which will enable such Corporation to qualify for tax exemption under section 501 of the Internal Revenue Code of 1954.

ENROLLMENT

SEC. 12. The Secretary shall prepare a roll of Natives, and he shall prepare a roster of Native groups eligible to receive any grant under this Act. Such roll and roster shall be determined as of the date of this Act. Rolls of Natives and descendants eligible to vote in any election held pursuant to this Act may be prepared by the Secretary from time to time. Before any such roster or roll is finally approved by the Secretary, it shall be published in such manner as he shall find to be practical and effective, and an opportunity shall be given to lodge protests thereto. The Secretary's findings shall be conclusive. Each Native shall be afforded an opportunity to be enrolled in the city, town, or village in which or nearest which he resides or in the city, town, or village from which an ancestor came, under regulations issued by the Secretary.

ABORIGINAL USE

SEC. 13. The Secretary may permit the Natives of Alaska to use for fifty years or less from the date of this Act exclusively for hunting, fishing, trapping, and berrypicking purposes any land in Alaska that is owned by the United States, in accordance with applicable State and Federal laws and regulations and with the concurrence of the head of the agency administering such land. Any patents or leases hereafter issued for such lands pursuant to the Alaska Statehood Act, or the public land, mining, or mineral leasing laws, shall contain a reservation to the United States of the right to issue for nonexclusive hunting, fishing, trapping, and berrypicking purposes, permits for up to fifty years from the date of this Act.

GRANT

SEC. 14. (a) In lieu of according the Natives any right to recover compensation for the extinguishment of aboriginal title, there is authorized to be appropriated and deposited in a special account in the United States Treasury to the credit of the Natives such sums as may be necessary to make a grant to each Native group (1) in an amount computed on the basis of $3,000 for each Native in said group, except that, in the case of any Tlingit and Haida Natives in said group, there shall be deducted their pro rata share, after attorneys' fees and litigation expenses, of the money judgment awarded to them in Court of Claims docket numbered 47900, or (2) in the amount of $180,000,000, whichever is the lesser sum. One-third of the grant shall be deposited into the special account during fiscal year 1971 and the remainder deposited into the account in equal amounts in each of the succeeding four fiscal years and shall earn interest in the amount of 4 per centum per annum.

(b) Each year the Secretary shall apportion 90 per centum of the funds then in the special account among the Native groups in Alaska. The apportionment shall be in the ratio that the number of Natives in each Native group bears to all of the Natives. The funds apportioned among each Native group may be advanced, expended, invested, or reinvested for any purpose that is authorized by the governing organization of the Native group and that is approved by the Commission established by this Act. Each year the remaining funds then in the special account shall be credited to the Corporation and such funds, together with all other revenues available to the Corporation, may be expended by the

Corporation, in accordance with an annual budget prepared by the Corporation and approved by said Commission.

(c) Before apportioning any money under the provisions of subsection (b) of this section to the Native groups composed of Tlingit and Haida Natives who participated in or received benefits from, the judgment awarded to the Tlingit and Haida Natives in Court of Claims docket numbered 47900, the Secretary shall deduct the pro rata share, after the deduction of attorneys' fees and litigation expenses, of said money judgment.

METLAKAHTLA INDIANS

SEC. 15. The provisions of this Act shall not apply to the Native groups of Metlakahtla Indians in the Annette Island Reservation but such groups shall be eligible to receive any benefits the Corporation may provide.

ALASKA NATIVE COMMISSION

SEC. 16. In order to assist the Secretary in the administration of this Act, the President may appoint an Alaska Native Commission of not to exceed three members who shall serve at the pleasure of the President. A majority of the members shall have been residents of Alaska for one or more years preceding appointment. The Commission shall be located within the Department of the Interior and shall have the duties and powers prescribed in this Act and such other duties and powers as the Secretary may from time to time delegate. The Secretary shall also prescribe the compensation to be paid to the members and provide for payment of Commission expenses, including employment of necessary personnel. The Secretary may utilize, with or without reimbursement, personnel and facilities of the Department of the Interior to assist the Commission in carrying out its functions.

NATIONAL FOREST LANDS

SEC. 17. The Native groups shall qualify as communities within the meaning of section 6(a) of the Alaska Statehood Act.

APPROPRIATIONS

SEC. 18. (a) There are authorized to be appropriated to the Secretary such sums as may be necessary to defray the costs of the planning, subdivision, survey, management, and disposal of lands under this Act, either directly by the Secretary or by contract, and to pay the expenses of the Commission established by this Act, and to carry out other functions authorized by this Act. Such sums shall be available until expended.

(b) There is authorized to be appropriated to the Secretary such sums as may be necessary to pay all reasonable attorneys' fees and expenses actually incurred by any Native or Native group, as determined by the Secretary, in connection with any claims pending at the date of enactment of this Act before the Indian Claims Commission, which have been terminated by reason of section 4 of this Act.

(c) At the beginning of each Congress the Secretary shall report to the Speaker of the House and the President of the Senate the grants made under this Act and an estimate of the time needed to complete the grants. The reporting may be discontinued when the grants are substantially completed.

REPEAL

SEC. 19. Section 3 of the Act of May 25, 1926 (44 Stat. 630; 48 U.S.C. 355c) is hereby repealed.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 10, 1968.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on S. 2690, a bill "To settle the land claims of the Indians, Aleuts, and Eskimos of Alaska against the United States, and for other purposes."

We recommend that the bill not be enacted. On April 30, 1968, this Department submitted to your Committee a draft bill "To provide for the settlement of certain land claims of Alaska Natives, and for other purposes." We recommend that the draft bill be enacted in lieu of S. 2690.

S. 2690 recognizes the permissive occupation of lands guaranteed to Alaska Natives under an 1884 Act as legal rights that may be adjudicated, and gives the United States in the Court of Claims jurisdiction to hear and adjudicate the claims of any Alaska Native group. The claims must be filed within 3 years after enactment, except filing extensions may be granted for good cause for one additional year. If the Natives establish Indian title to lands that have been disposed of by the United States, the Natives will get a judgment for the fair market value of the lands. The date for determining value is not specified. If the lands are still owned by the United States, the Natives will get a judgment declaring them to be the owners of the land. The title will not be held in trust or be restricted against alienation or taxation.

Our draft bill, on the other hand, authorizes the Secretary to grant to each group of Natives, without litigation, a trust title to its village site or sites and to additional lands (not to exceed a total of 50,000 acres) in the vicinity that are needed by the community.

After considerable thought and study, we have come to the conclusion that the granting of jurisdiction to the United States Court of Claims to adjudicate land claims on behalf of the Natives of Alaska is not the best approach to the problem. Moreover, because of the length of time involved in judicial proceedings to determine the extent of Indian title and its value, and the difficulties attendant to obtaining the detailed factual information upon which to base such a determination with respect to the vast area of the State of Alaska, we cannot recommend judicial determination of such claims.

We believe that in line with the principles outlined by the President in his recent message to Congress on "The Forgotten American" that a settlement involving up to 50,000 acres per village that will total some 8 to 10 million acres, plus the payment of $3,000 per person or $180 million, whichever is the lesser, is an equitable and just settlement for these claims. In addition, we are aware that the State of Alaska has recently passed legislation providing for payment to the Natives annually of 5 percent of the revenues derived from lands selected by the State under the Alaska Statehood Act, up to a maximum of $50 million. While we are concerned that this action has been made contingent upon this Department's lifting the "freeze" on the patenting of State selections that conflict with Native claims, we are very pleased that the State has evidenced a desire to join with the Federal Government in contributing to an equitable resolution of this problem. It is our hope that the State will see fit to amend its legislation to provide that a larger portion of its annual contributions be channeled to the Native Economic Improvement Corporation proposed in our draft bill in order that it may be used for projects that will provide continuing income to Alaska's Natives.

Accordingly, we believe that our proposed draft bill would adequately provide an equitable settlement to the Natives.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 30, 1968.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Since transmitting legislation to the Congress last June to settle the claims of Alaska Natives which was introduced as S. 1964, a new bill (S. 2690) prepared by the Governor of Alaska's Task Force on Native Land Claims was introduced. That bill, in our opinion, represents significant progress toward reaching agreement among the interested parties on the principles for an equitable settlement of this long-standing problem.

The early resolution of this matter would be of inestimable significance not only to the Alaska Natives who make up about 25 percent of the State's civilian population, but also to all citizens of the State.

We believe that this issue is one of the most important Indian matters before the 90th Congress. President Johnson in his message "The Forgotten American" urged "prompt action on legislation to:

"Give the native people of Alaska title to the lands they occupy and need to sustain their villages.

"Give them rights to use additional lands and water for hunting, trapping and fishing to maintain their traditional way of life, if they so choose.

"Award them compensation commensurate with the value of any lands taken from them."

Enclosed is a proposed bill which carries out the three principles outlined by the President. We urge its early enactment in lieu of S. 1964 or S. 2690.

The Act of May 17, 1884 (23 Stat. 24), providing a civil government for the Territory of Alaska, declared that the Natives "shall not be disturbed in the possession of any lands actually in their use and occupation or now claimed by them, but the terms and conditions under which such persons may acquire title to such lands is reserved for future legislation by Congress." A similar provision is contained in the Act of June 6, 1900 (31 Stat. 321), which provided a civil government for Alaska.

In the absence of Congressional action, the Natives cannot be given full title to the lands they have traditionally used and occupied. Moreover, since the Natives have a Federal guarantee that they shall not be disturbed in their use and occupation of lands, we do not feel that we can allow lands to be patented to the State under the land selection provisions of the Alaska Statehood Act, July 7, 1958 (72 Stat. 339), in the face of the Natives' claims that they have traditionally been using and occupying such lands. To allow these lands to pass into other ownership would pre-empt from Congress the power to exercise its right and obligation to decide this issue, and would deny the Alaska Natives an opportunity to acquire title to lands which in many instances, it is generally admitted, they have openly and continuously used and occupied from a period that antedated the purchase of Alaska by the United States.

When Congress recognizes an aboriginal title, as it did in the Act of June 19, 1935 (49 Stat. 388), with respect to the claims of the Tlingit and Haida Indians to compensation for the expropriation by the United States of lands in southeastern Alaska, and for failure of the United States to protect their property rights from usurpation by non-Indians, the Natives acquire a compensable ownership interest in the land that is protected by the due-process clause of the Constitution.

The extent to which aboriginal or Indian title is to be recognized is exclusively a policy matter for Congressional determination. In the past, Congress has repeatedly shown great respect for aboriginal title and has dealt most generously with the Indian people. Once the Congress recognizes the Government's obligation to pay just compensation for Indian title, the courts have consistently held that the applicable standard of valuation, in the absence of a statutory provision to the contrary, is the same as if the Indians held the property in fee simple ownership.

We have long grappled with the problem of providing a fair and equitable settlement to the Natives' land claims. We have come to realize, however, that there is no easy solution that is equitable to all. A number of proposals have been made in the past. They have, however, met considerable opposition from the various interested parties.

While S. 1964 and S. 2690 generally adhere to the principles set out by the President, we believe that they have some basic shortcomings. Upon further consideration, we now believe that the proposal (S. 1964) to grant jurisdiction to the United States Court of Claims to adjudicate a general claim on behalf of all Natives of Alaska and to render judgment based on the market value of the Natives' aboriginal title as of March 30, 1867, the date of purchase of Alaska by the United States, does not now offer the best approach to the problem. Moreover, because of the length of time involved in judicial proceedings to determine the extent of Indian title and its value, and the difficulties attendant to obtaining the detailed factual information upon which to base such a determination with respect to the vast area of the State of Alaska, we no longer recommend judicial determination of Native claims. It is our position that after weighing the equities involved and the data available, the Congress can arrive at a just solution to this complex problem.

S. 2906, on the other hand, while providing for a more generous settlement, is objectionable in three major aspects.

First, in our opinion the grant of 40 million acres to the Natives is much greater than is required to give them title to the lands they need for village expansion. The purpose of a land settlement of this magnitude is clearly to allow the Natives to select land primarily for investment purposes. While we recognize the need of the Natives for resources that will provide continuing income to facilitate their transition to a wage-oriented society, we believe this need can be met far more equitably by providing ready cash.

Second, we believe that the land selection provisions of S. 2690 are far too cumbersome and complicated. The legislation should provide a workable, speedy, and simple mechanism for granting to each Native group a sufficient amount of land to meet its needs.

S. 2690 would not be speedy. On the contrary, it would let the selection process drag on for 25 years.

Also, we continue to advocate the basic land grant provisions contained in S. 1964. They would grant to the various groups the village sites they occupy, and additional lands within the environs of those sites that will contribute significantly to the livelihood of the Natives. The maximum acreage for any group would be 50,000 acres, which should be adequate to meet the Natives' needs, both present and future.

In addition, we do not believe that there is any need for an adjudication of Native claims by a Commission. While we support the need for a Commission, its role should be directed to monitoring the use of the funds available to the villages and Native corporation. Native representation on such a Commission would clearly be desirable, but we do not believe that the legislation should provide for its control by the Natives as in S. 2690. The President should be free to choose the best people available.

Further, we are opposed to the provision in S. 2690 which would require a Federal agency to justify to the Commission that its lands are needed for public purposes, and to any provisions authorizing a grant of various wildlife and recreational reservations. We also oppose the provision related to National forests. The needs of the Native groups bounded by National forest lands can be met from the 400,000 acres of such lands allowed the State under section 6(a) of the Alaska Statehood Act.

Third, we believe that an open-ended provision for utilizing Outer Continental Shelf revenues would not be in the best interest of the Natives or the Nation. If Alaskan OCS receipts do not live up to expectations, such a mechanism as outlined in S. 2690 might result in the Natives obtaining less than adequate compensation, leaving Congress with the possibility of facing the issue again in the future. On the other hand, if the Shelf proves to be a bountiful producer, the revenues to the Natives might far exceed any reasonable relationship to the Natives' claims. It is our opinion that a more definite and more equitable solution would be to grant the Natives a fixed cash settlement, based on the value of the lands taken from them as recommended in the President's message on Indains.

In the absence of lengthy and costly litigation it is impossible to determine the precise value of the Natives' claims.

The economic needs of Alaska's Natives are unquestioned. Native housing is generally considered to be the most primitive and dilapidated of any occupied by native people in the United States. Income is lower and unemployment higher than among Indians anywhere. Increased acculturation, the absence of employment opportunities, and the ever-decreasing availability of subsistence opportunities have contributed to a growing dependence on welfare. Exposure to the white man's way of life has generated in the Native needs he had never known, without adequate means for their satisfaction.

In the valuation process there are a number of variables:

(1) The extent of the Natives' aboriginal title.

(2) The date or dates as of which the valuation should be made.

(3) The actual value of the lands on those dates.

A rough approximation of value can be derived from the Tlingit and Haida award of the Court of Claims. The Court held that the Indians had established aboriginal Indian title to virtually the entire Alaskan archipelago by their exclusive use and occupancy of that area from time immemorial. Based on the standards adopted by the Court of Claims, it is possible that the various Indian, Eskimo, and Aleut groups could establish aboriginal title to practically all of the remaining area of Alaska, roughly 350 million acres. This land would be worth over $150 million at the Tlingit and Haida valuation which averaged 43 cents an acre.

We believe that in line with the principles outlined by the President that a settlement involving up to 50,000 acres per village that will total some 8 to 10 million acres, plus the payment of $3,000 per person or $180 million, whichever is the lesser, is an equitable and just settlement for these claims. In addition, we are aware that the State of Alaska has recently passed legislation providing for payment to the Natives annually of 5 percent of the revenues derived from lands selected by the State under the Alaska Statehood Act, up to a maximum of $50 million. While we are concerned that this action has been made contingent upon this Department's lifting the "freeze" on the patenting of State selections that conflict with Native claims, we are very pleased that the State has evidenced a desire to join with the Federal Government in contributing to an equitable resolution of this problem. It is our hope that the State will see fit to amend its legislation to provide that a larger portion of its annual contributions be channeled to the Native Economic Improvement Corporation proposed in our bill in order that it may be used for projects that will provide continuing income to Alaska's Natives.

Accordingly, the enclosed proposed bill, we believe, would adequately provide an equitable settlement to the Natives.

Also, enclosed is a brief explanation of its major provisions.

The Bureau of the Budget has advised that this legislative proposal is in accord with the President's program.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

[Enclosures]

(The draft bill enclosed is identical to S. 3586.)

BRIEF EXPLANATION OF MAJOR PROVISIONS OF PROPOSED "ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1968"

1. The proposal would provide that the benefits accruing under the legislation to the Native groups shall be in full and final settlement of any and all claims based on aboriginal use, etc., or arising under an 1884 and 1900 statute. This settlement would include claims now pending before the Indian Claims Commission under other Acts of Congress but not finalized by the Commission on the date of enactment. The proposal authorizes appropriations to pay reasonable attorney fees and expenses in connection with these claims.

2. The proposal would define Native groups to mean tribes, bands, clans, villages, communities, or associations in Alaska composed of 25 or more Natives and approved by the Secretary.

3. The proposal would authorize the making of a grant in trust to each Native group of unwithdrawn land or village sites and additional lands for future economic and social well-being. The maximum grant to any Native group would be 50,000 acres. At any time during the term of the trust the Secretary upon application of the group and approval by him of a land use plan shall terminate the trust for all or part of the lands granted for the benefit of the said group. The land grant may include title and trust to noncontiguous lands being used and occupied by the Natives for various purposes such as burial grounds, air fields, water supply, and hunting and fishing camps. In any case where the Native villages are located in an area where there are not sufficient additional Federal lands to permit the contemplated grant, the Secretary may convey other lands which would be subject to the same conditions.

4. The land grant proposal would not apply to Native groups who are beneficiaries of the Tlingit and Haida award in the Court of Claims.

5. Lands and waters previously reserved for the use of six named Native groups shall be held in trust by the United States for their benefit for a 25-year period at the end of which time the trust may be liquidated. In addition, at any time during the term of that trust, such groups may apply for the termination of the trust upon approval by the Secretary of a land use plan submitted by them. The 50,000-acre limitation does not apply to these six groups, except, to the extent that such areas are smaller than areas that could be conveyed generally by grant and lands in the immediate vicinity of these areas are available, additional lands may be granted up to the 50,000-acre limitation.

6. The various reservations set aside by Executive order or Secretarial order for Native use shall be revoked by the grant of title under section 6 of this proposal.

7. The proposal provides for withdrawal by the Secretary from all forms of authorization under public land laws any lands which he believes may be subject to a grant to a Native group under this proposal, but the total withdrawal shall not exceed 20 million acres. The withdrawal must be revoked as quickly as possible if the grants are made and the State selection of lands withdrawn shall not be approved until the withdrawal is finally revoked.

8. Lands granted under this proposal that continue to remain not subject to State or local taxes on real estate shall be regarded as public lands for the purposes of the Federal Aid Highway Act.

9. Land granted in trust, except the underlying minerals, to a Native group shall be held by the Secretary of the Interior as trustee. The maximum term of the trust shall be 25 years and when the trust terminates it shall be liquidated in accordance with a trust instrument or if there is not any, as prescribed by the Secretary or as prescribed in sections 5 and 6 of the proposal. The Secretary acting as trustee would have all the powers set forth in the deed of trust, including the right of disposal of the land except the mineral interest.

10. The proposal would grant the underlying mineral interest in lands granted under this legislation in trust or in fee to a Native group to the Native Economic Improvement Corporation established by this proposal, together with the right to mine and remove such minerals under lease. The Corporation would hold the minerals in trust for the benefit of each group and would administer and manage the trust in accordance with the applicable provisions of the proposal. If the trust is terminated by reason of dissolution of the Corporation or by subsequent Act of Congress, the Secretary shall convey the minerals in fee to the appropriate Native group.

11. The proposal would establish a single nonprofit statewide Native Economic Improvement Corporation designed to promote the economic opportunities of the Natives and their descendants in Alaska. The Corporation would be organized under the laws of Alaska and shall be composed of directors elected by the Natives in Alaska in a manner that would assure adequate representation of all of the Natives and their descendants. The directors would appoint a manager of the Corporation and he would be responsible to carry out the Corporation's functions in a business-like manner. The Corporation would, among other things, promote private investment, foster surveys and studies for programs of improvement and development, develop, establish, and operate various business enterprises, invest in business enterprises, make long-term, low-interest loans to Natives in Alaska or Native groups, make grants to the Native groups for publically sponsored projects which would benefit the entire group and lease on a competitive basis the minerals held in trust by the Corporation. In the case of mineral receipts, the Corporation would have available to it one-half of the total receipts and would distribute the other half to the Native groups having title to the surface lands in which the minerals were developed. The Corporation would not be a Federal instrumentality for any purpose. The Corporation must maintain complete and accurate books and records and would be generally supervised by the Alaska Native Commission established by this proposal.

12. The proposal provides for the establishment by the Secretary of a roster of Native groups and a roll of Natives and their descendants eligible to vote in any election held pursuant to this proposal.

13. The proposal would authorize the Secretary to permit, in accordance with applicable Federal and State laws and with the consent of the administering agency, Natives of Alaska to use public lands in Alaska for 50 years or less exclusively for hunting, fishing, trapping, and berrypicking. In the case of any lands that are patented or leased pursuant to the Alaska Statehood Act or any other public land laws such lands shall contain a reservation to the United States of the right to issue such a permit for nonexclusive hunting, fishing, trapping, and berrypicking purposes for up to 50 years from the date of enactment of this proposal.

14. The proposal would grant to the Natives a sum of money which would be established in one of two ways: (1) it could be computed on the basis of $3,000 for each Native in a Native group, except that, in the case of any Tlingit and Haida Natives in the group, their share of the money judgment would be deducted, or (2) the payment would be a lump sum not to exceed $180 million, whichever is the lesser. The payments would be made into a special account in the Treasury for the benefit of the Native groups and the $180 million is the maximum amount of the payment. Each year the Secretary would apportion 90 percent of the payment in the account to the Native groups to be used by them

in any manner that is authorized by their governing body and is approved by the Alaska Native Commission. The remaining sum in the account would be distributed to the Corporation. These payments would be made over a 5-year period beginning in fiscal year 1971.

15. The proposal would authorize the establishment of an Alaska Native Commission composed of 3 members appointed by the President and the majority of whom shall be residents of Alaska for one year or more preceding appointment. The Commission shall be located within the Department of the Interior and shall have duties as established by this proposal and other duties the Secretary may delegate.

16. The proposal provides for appropriations to carry out the provisions of this legislation.

Senator JACKSON. Before calling the distinguished Secretary of the Interior, the chair will ask Congressman Howard Pollock, the Congressman from Alaska, to make his statement at this time.

Congressman Pollock.

STATEMENT OF HON. HOWARD W. POLLOCK, U.S. REPRESENTATIVE AT LARGE FROM THE STATE OF ALASKA

Mr. POLLOCK. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the full Committee on Interior and Insular Affairs, I want to take the opportunity of thanking you on behalf of all of the Alaska group here for holding these hearings and also for the field committee hearings which you conducted in February in Anchorage, Alaska. I thought they were very fruitful and I am sure you will find today that the witnesses who have come from the native communities of Alaska are very excellent witnesses and will do a most commendable job.

Senator JACKSON. The Chair should note that the last hearing we held on this matter started at 6 a.m., in Anchorage. We are starting a little late this morning, but we are nevertheless deeply concerned about this problem and we shall go into it very thoroughly. Senator Gruening was there and he knows how early that meeting got underway.

Senator GRUENING. Did not that establish a new record in senatorial history, to have a committee meeting at 6 o'clock in the morning?

Senator JACKSON. Some may say senatorial insanity. We were determined to hear all the witnesses and I believe we did.

Mr. POLLOCK. Well, Mr. Chairman, I think if the hearing had gone on long enough we would have started at midnight because I believe the first day it commenced at 8 o'clock, the next day at 7 o'clock, and the next day at 6 o'clock in the morning. It was very well done, a very well run meeting and we appreciated it very much.

Senator JACKSON. Senator Metcalf undertook the main task of chairing that hearing and I want to thank him for his fine help.

Senator METCALF. I enjoyed Alaska very much.

Senator JACKSON. Especially the 6 a.m. part!

Mr. POLLOCK. Mr. Chairman, I am going to be very brief. I do have a prepared statement which I would ask to be placed in full in the record.

Senator JACKSON. It will be made a part of the record.

Mr. POLLOCK. I would like also to make a very brief comment to follow up that of the chairman about the work that Mr. Fitzgerald has done with the field committee. I think the report is an example

of the usual excellence of the work that Mr. Fitzgerald has done. I think he has made a very valuable contribution.

Senator JACKSON. I must say, in his letter to me one will find, I think, an excellent analysis of the problem. He does not pretend to give his own judgment about matters but provides an excellent factfinding preliminary report. I would suggest to my colleagues that when they have an opportunity to read that letter they do so very carefully. He has done an excellent job of analyzing the issues and I think this is the hardest task that we face in trying to come to a fair and just resolution of this all-important problem.

Mr. POLLOCK. Mr. Chairman, I have as part of my prepared statement a research document which was prepared by Julia Sayles, who is a legislative attorney from the Library of Congress. I asked her to go back into the history of Alaska for the purpose of establishing problems which I think we are going to face in reaching an equitable resolution of the entire native lands claims problem. The history of the native in Alaska, the Eskimo and Indian and Aleut, and how they were regarded by the Russians and then by the United States after the Treaty of Sessions and the purchase, is the basis for the native's strong feeling on land ownership in Alaska. It is an extremely well done document and contains much of the basic facts which will need consideration. I would ask that it be made part of the record with my statement, if it is possible, Mr. Chairman.

Senator JACKSON. I think that is going to be pretty difficult. I would suggest that we include it by reference, and it will be just as valuable and as usable. It is rather lengthy, and at least at this point in time, it will be received in that manner. We can decide later about printing it when we see what the total size of the record will be.

Mr. POLLOCK. Well, it is voluminous, but it is very valuable information, Mr. Chairman. I would only hope that it not be put aside as a bulky document, but that it be studied.

Senator JACKSON. It certainly will be studied. A preliminary look at it shows that it will be extremely helpful. My only concern is with trying to keep the basic record within reasonable size.

Mr. POLLOCK. Finally, Mr. Chairman, I would ask permission of the committee to file a supplementary statement, if the record will be kept open for a few days in order that I might make a summation of what the testimony is for the Alaska witnesses.

Senator JACKSON. That is certainly a very sensible request and the record will be kept open sufficiently long to receive your supplemental statement. I think after the hearing is over we can decide on how long we will keep the record open.

Mr. POLLOCK. Finally, Mr. Chairman, I would like to say this: I think we do have a very excellent group of witnesses here. I am in total accord with the position which they are espousing. I am most anxious to try to get the matter resolved. As you know, the Secretary will be speaking shortly, but we have had a land freeze on in Alaska for some time and it is a difficult thing for everyone. I do not think anyone wants to have it continue indefinitely. The native community certainly wants to have the problem resolved as all of us do so that this can then be put aside and all Alaskans can go about their normal business. But, I am most hopeful that this testimony and the testimony which was presented yesterday on the House side will serve to bring all

of the different groups together, groups that must be together if we are going to enact legislation. Obviously, the Department of the Interior and the State of Alaska and the native community will have to all be in accord.

Senator JACKSON. For the first time now we will have made a record at the conclusion of the hearing this morning that will give us the basis of working out some kind of a legislative solution.

Mr. POLLOCK. Yes, sir. The group that will be testifying have a number of proposed amendments to the suggestions by the Department, by the Secretary, and I am delighted that he is here so he will have an opportunity to hear those parts that are to be resolved. I will be happy to answer any questions.

Senator JACKSON. Any questions of the Congressman?

Senator ANDERSON. What happened to the Indian Claims Commission?

Mr. POLLOCK. The Indian Claims Commission? It is still in existence, but this will be brought out in some of the testimony of some of the other people. The situation covered by the Indian Claims Commission does not pertain for most of the problem which we face in Alaska at the present time. There is a question and it will come up in the discussions which follow. Whether or not the problem should be resolved through the Indian Claims Commission, or through the courts, or through the political means of legislation, is one of the things that Congress will have to decide. I would suggest that what we are seeking to do is resolve the entire problem now, not only for the past and the present but for all the future, so that there will not be continuing Alaskan claims coming up from time to time. I think that will be fully explored in the testimony which will follow, Senator. But, I would be glad to go into it further if you would like.

Senator ANDERSON. I just wondered what happened to the Claims Commission. It was supposed to have been set up for this purpose.

Senator JACKSON. Will the Senator yield? As the author of the Indian Claims Commission Act we had to face this question at the time. It was never clearly decided whether the Indian Claims Commission Act would be applicable to the Alaska native land claims problem. The Alaska problem, as the Senator knows, is totally unique.

The Alaska native claims are in whatever position they were with relation to the czarist Russian government at the time we purchased Alaska. The Indian Claims Commission Act on the other hand, relates, of course, to the treaties that had been entered into with the Federal Government and land taken from the Indians with reference to their rights at that time. So, this is a different legal situation. I believe I am correct in this.

Senator ANDERSON. Well, suppose the Navajos did not like what was being handed down to them. Can they——

Senator JACKSON. The point, I think, is that the Alaska natives were in an entirely different relationship vis-a-vis the sovereign than were the Navajos. The Navajos owned the land. They held it all. And treaties were entered into and land was taken from them, I do not know specifically, but the general claims is that they were taken by fraudulent means. The Alaska problem was considered at the time and it was decided that we could not get into that because it was a special problem based on a different legal position.

Senator ANDERSON. I thought the last administration was included and might be included today:

Determine the following claims against the United States on behalf of any Indian tribe, band or others regarding the territorial limits of the United States or Alaska.

Senator JACKSON. It is true, we did have a case involving the Tlingit-Haida Indians in southeastern Alaska, but that involved a special jurisdictional act which was passed in the 1930's.

Mr. POLLOCK. Mr. Chairman, if I might add a thought here, I think there was a time limit on the Indian—under the Indian claims procedure which has long since passed and these Alaskan problems are more current than that, and the——

Senator JACKSON. They were aware of the act, of course, but they could not come in under the act because there had not been a taking of the property the natives claim title to.

Mr. POLLOCK. I would only quarrel with the one statement, Mr. Chairman, and that is that I think many of the natives—the Eskimos, Indians, and Aleuts—were not aware, whether they should have been or not, of the act, but I think that is an aside. I do not think that is an important consideration in what we are seeking here.

Senator JACKSON. Well, I think their lawyers were familiar with it. If they were not, they should have been, because that issue was pretty well debated and discussed. That is another matter, but I did want to make that point.

Any further questions? Thank you, Congressman.

Mr. POLLOCK. May I make one closing remark, Mr. Chairman? Senator Metcalf will recall, and Senator Gruening, very vividly a statement that one of the old patriarchs who testified in Anchorage made when he said in very broken English, "Perhaps you have never considered this but did it ever occur to you that maybe you were buying some stolen property when you bought the lands from the Russians, because it belonged to us?"

Thank you very much, Mr. Chairman.

Senator JACKSON. Thank you, Congressman Pollock.

(The full statement of Congressman Pollock follows:)

STATEMENT OF HON. HOWARD W. POLLOCK, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. Chairman and members of the Senate Interior and Insular Affairs Committee, I want to express my sincere appreciation for all your efforts to hold this special hearing so that Alaskans may state their views on the pending bills to resolve the complex Alaska native land claims issue.

With your permission, I would like to only briefly highlight the genesis of the Alaska natives land ownership problem we are considering today and then file for the record a detailed review of the history of Alaska with specific reference to the nature of the Alaska natives claims which was prepared at my request by Miss Julia Sayles of the Library of Congress. I also ask that I be permitted to file a more detailed statement on the specifics of the pending bills for the record at a later date.

The original issue of native land ownership can be traced back to documents as early as 1766, relating to the Russian administration of what is now Alaska. In general, early occupation by the Russians was limited only to the extent necessary to carry on trade with the natives. Most of this activity was concentrated in the Aleutian chain and some of the coastal areas of North American settlement. Land ownership was never recognized as a problem at that time, since occupation by the traders was considered to be of a temporary nature.

In the treaty of cession of Russian America, now Alaska, to the United States, ratified by the U.S. Senate on 20 May 1867, the question of the status and rights of the Alaskan native was handled in the following manner:

"The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but, if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the employment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country."

The next point in which native land ownership was considered is found in the act of 1884 which created a civil government for Alaska (23 Stat. 24). That law stated in part:

"The Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such is reserved for future legislation by Congress."

Congress has never come any closer to identifying or solving the question than this brief and totally unsatisfactory sentence. The next real opportunity was also lost at the time the statehood enabling legislation was enacted. The Alaska Statehood Act of 1958 provided that the new State and its people:

"Agreed and declared that they forever disclaimed all right and title to any lands or other property—the right or title to which may be held by any Indians, Eskimos or Aleuts, or is held by the United States in trust for said Natives; That all such lands or other property belonging to the United States or which may belong to said Natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed, or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation."

The specific rights were not then nor since defined, and their status remained in limbo. Thus, until now Congress has really avoided a confrontation with the complex and difficult issue.

Laws providing for native allotments and townsites have not met the problem head-on. Court decisions have left much confusion. Nevertheless, it seems to be generally agreed, that without special enabling legislation by Congress, the Alaska natives cannot sue and recover in the courts for lands taken from them, nor can they enforce claims for possession and control of the land against the Government or third parties. Specific enabling legislation in this regard was passed in 1935 for the Tlingit and Haida Indian claims in southeastern Alaska. Just two days ago—33 years after passage of this law—the President signed a bill to pay this claim.

I'll never forget the poignant statement one of our venerable old native chiefs delivered during the Senate hearings on these native land claims held in Anchorage, Alaska, last February. In his broken English, the eloquence of his message came through dramatically clear and unmistakable. He asked: "Has it ever occurred to you that maybe when you bought Alaska from the Russians, you bought stolen property?"

This brief narration of aboriginal claims in Alaska is enough, I believe, to show the tremendous failure on the part of the Government thus far to resolve this most difficult problem involving the Alaska natives. For 92 years the Federal Government was the sole authority in this great State, yet nothing was done. Even at statehood the Congress retained, as it always has, the prime responsibility for dealing with the American Indian and the Alaskan native; yet to this date that responsibility has not been met, and nothing has been accomplished. Now, something must be done. Congress must act. This would seem to be an obvious statement, yet it was just as pressing and obvious in the year 1958, and in 1884, and in all the other years, but nothing was done.

Having now agreed after a century that some solution must be found, it is certain that finding the optimum answer will not be easy. Since the aboriginal claims began to be pressed in earnest in 1966, great progress has been made. Fortunately too, we have strewn behind us the myriad solutions to similar problems in other areas, including mistakes I trust we will not repeat here.

In closing, I would like to say that without question this is one of the most difficult problems to face the people of the State of Alaska in many years, and

perhaps the most difficult of the entire century of our existence. First as a district, then as a territory, and now as a State under the American flag. It because all the more complicated when the Secretary of Interior elected to impose a freeze on all public land transactions about the time Governor Hickel took office as chief executive of Alaska. It seems incredible that so much time has passed without a solution to this basic and unresolved conflict. We all knew that such things take time, but a century is really far too long for any logical rationalization. It devolves upon us to finally resolve this complex issue somehow.

SUPPLEMENTAL STATEMENT OF HON. HOWARD W. POLLOCK, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

The excellent testimony today delivered by the Governor, by the Alaska native leaders and their legal counsel, illustrates the complex issues confronting the Congress on this vital issue of resolving the aboriginal native land claims in Alaska.

As a result of this hearing, several issues yet to be resolved came into clearer focus, which is preliminary and basic as a foundation upon which to build an equitable and just settlement.

First, the Alaskan natives—Aleuts, Eskimo, and Indian alike—claim an "Indian Title" by reason of original aboriginal occupancy and use. The extent of that title has never been determined, but the courts have given credence and validity to its existence.

Second, Congress has historically reserved to itself the prerogative and right to determine the exact extent of the aboriginal title to lands in Alaska, and the means to legally define, recognize, record, and convey this title.

Third, the area occupied by Alaskan natives under aboriginal title encompasses almost all of Alaska, an area about ⅙ of the total land mass of the United States. A court of claims or Indian claims court solution is inadequate because traditionally it gives only money judgments for confiscated lands, whereas, in much of the area in dispute there has not been a taking, as such. The native community seeks not money alone, but land also, some in fee simple title, some in surface rights to use and occupy. They seek clarification and definition of their rights and title, and are willing to support an equitable resolution to bring this complex situation to a close at the earliest possible time, even though this involves a compromise of their position and a waiver of any further aboriginal land claims in Alaska. This is in no manner a withdrawal from the firm conviction that the land belonged exclusively to them originally; that except for some limited coastal areas which were occupied by the Russian fur traders, there was no use and occupancy or actual sovereign taking by the Russians; and there was no exercise of dominion and control of the vast interior or northern coastal areas by the Russians. It is their further belief that whatever rights in land the natives had one hundred years ago, they still have, because the Treaty of Sessions (purchase of Alaska by the United States from Imperial Russia) preserved and protected their rights and interest in the land mass of the subcontinent of Alaska, and no act of Congress has since extinguished any such rights and interests. It only awaits definition.

Further, it is the firm conviction of the natives that a political (legislative) resolution will be accomplished much sooner, and will result in a much more equitable solution than could be accomplished by generations of litigation.

Fourth, the land freeze or moratorium on state land selection under the terms of the 1958 statehood enabling legislation has created serious financial problems for the state and its citizens. The financial problem will become more severe as the land freeze continues. At the same time, the freeze is probably the only equitable way to assure that Alaskan natives will be afforded an opportunity to acquire title to whatever lands are deemed appropriate by Congress. In this connection, it would be fair to point out that many of the larger federal land withdrawals have been made without consideration of the fact that the Alaskan natives do now—and have historically—occupied areas within these federal withdrawals. It would seem that the ultimate settlement must consider conveyance of title to some land areas contiguous to their villages, the same as landownership which might be appropriate for other Alaskan natives in and around their villages.

Fifth, the Alaska natives have several varying and distinguished characteristics which will need consideration in any overall legislation or adjudication. The situation we are confronted with would be similar to that which would have resulted if the Congress originally had decided to settle all Indian rights west

of the Mississippi River in one treaty. It is not hard to envision the difficulty in reaching terms which would equally satisfy the Sioux, Zuni, Utes, Yakima, Cheyennes, Mandan, and Paiute. This, to a very large degree, is the problem we face in resolving the Alaskan native land claims.

Sixth, the right of self-determination in handling any monies and land as a result of settling the Alaskan native land claims should be vested with the Alaskan natives. If it is deemed necessary by Congress to have oversight responsibilities vested with the Department of the Interior, it would appear appropriate to have that responsibility reside with the Secretary rather than the Bureau of Indian Affairs.

The eloquence of presentation before the Interior and Insular Affairs Committee by the native leaders was a tribute to the dynamic and capable new leadership which is emerging within the entire native community in Alaska. Every Alaskan should be proud of the performance of these dedicated individuals at this the first hearing of its kind ever held in Washington on the resolution of the Alaska native land claims problem.

Senator JACKSON. Our next witness is the Honorable Stewart Udall, Secretary of the Interior. I might say at the outset that I am most appreciative of the dedicated efforts on the part of the Secretary to try to resolve this problem. I know that he has given it the highest priority and there is nothing more that he would like to see accomplished than a settlement of this issue before he leaves the Office of Secretary of the Interior.

Mr. Secretary, we are delighted to welcome you back to the committee this morning.

STATEMENT OF HON. STEWART L. UDALL, SECRETARY OF THE INTERIOR; ACCOMPANIED BY ROBERT VAUGHAN, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR

Mr. UDALL. Thank you very much, Mr. Chairman. I have a prepared statement and I shall read most of it. I should like to have it appear in the record in its entirety. I would like to make a few preliminary comments, too, if I may, Mr. Chairman.

In the first place, I want to make it plain to the committee, for reasons which will become apparent as the proceedings go forward, I do not think there is any piece of Indian legislation that is more urgent that is pending before the Congress today than this legislation. I know we are all well aware of the fact that Congress is going to quit 3 weeks from now and that it is unlikely that you are going to finish this legislation this year but I would certainly like to express the hope that this issue will receive the highest priority attention next year and that legislation can be enacted.

Considering the long history of this issue, Mr. Chairman, I think it is well to take note of what I consider the very statesmanlike and vigorous action and leadership that we have had in the past year. The truth of the matter is, as I read the record, that the claims of the Alaska natives were almost literally swept under the rug in the past. The Congress and the country never did really address themselves to this problem. When the Alaska territorial government was created in 1884, a proviso was put in saying nothing shall derogate from the rights of the native. When we passed the statehood bill 10 years ago and gave the State of Alaska the right to select nearly a third of the lands of the State, again there was merely a proviso that said nothing in the act derogated to the rights of the natives. But what the Congress did at that time was to create an inevitable head-on confrontation between the

State and the natives and this is what brought this matter to a head about 2 years ago. As the State moved forward with its selection process, each time the State filed a selection on certain lands, the native filed their claims to the same lands, thereby creating a conflict.

This confronted me with a very excruciating decision. I had to decide whether to process the State selections or whether to respect the native claims, and I chose to take the position—I still take the position, and I think it is correct—that this issue should be resolved by legislation and that it would be hostile and adverse to the native interests if we were to allow the selection process to move forward.

Nevertheless, as a result of this conflict and confrontation, I want to say to the committee, I think we have had developed in the last year since we first proposed legislation in June of 1967 a very high order of leadership in the State of Alaska. I do not know whether Governor Hickel is here today but I can tell you I worked very closely with him. He has provided very fine leadership on this issue and all the members of the congressional delegation, Congressman Pollock, Senator Gruening, Senator Bartlett, have shown very vigorous leadership in the solution of this problem. They have spent a lot of time on it.

The native leadership that is here today—and I think you are going to find them an impressive group of people—that is one of the encouraging things to me, the quality of leadership developing among the younger native leaders. They have become expert on many aspects of it. But, I would like to say I think that the State of Alaska, instead of getting panicky as it looked they might a year or so ago, did not precipitate a big dispute with the natives. After all, the natives are 25 percent roughly, of the population of the State: Instead of having a big fight and a conflict, they essentially said let us sit down and see what we can work out. The State has already passed legislation which is designed to encourage compromise and encourage settlement. But there is no question that this is a burning issue and an important issue to the future of Alaska, and this is the reason I underscore the comment I made in the beginning.

I do hope that the Congress next year can give this a very high priority and can resolve the issue.

I would like to say one other thing, and this is in part responsive to the issue Senator Anderson raised a moment ago, because we have shifted our own position from the bill that we originally submitted in June of 1967 in which we proposed a grant of land to the villages—and then proposed to send the natives to the Court of Claims for adjudication of the remaining issues. We now have the new legislation that we submitted to the committee in April. This, by the way, represented a lot of work with the Bureau of the Budget and others. We now propose that, in effect, the committees of the Congress sit as a court and determine these issues.

I know this is going to be a little burdensome, but we have ignored the rights of these natives. We left them out of the Indian Claims Commission Act. They have lost 22 years already.

The Indian Claims Commission, I am afraid, and the Court of Claims, too, are not noted for the speed with which they handle matters of this kind. These people are the poorest of the poor. If you want to find poverty in the United States of America, you can go to these villages. These people are living at subsistence level. They are a very

hardy people, but in terms of housing, in terms of jobs, in terms of income, in terms of food and other needs, I say to you without fear of anyone contradicting me that these people are the neediest people in our entire country.

I think this sets the stage for two things or two considerations that I would hope would govern the committee's action.

No. 1 is that we should act expeditiously and not send the natives off to the Court of Claims or the Indian Claims Commission for 20 or 30 years. We should resolve the issue now.

The second consideration that I would like to submit as a general proposition is that I think Congress should be liberal and generous with the native people of Alaska and their claims, in part, as I said a moment ago, because of their need, in part also because we have ignored their rights and we have been slow in giving them a forum where they could be heard. I think really the difference between the position that the native people will present to you today and that of the Department, when you get down to the two basic issues of how much land and how much money, is a difference that represents a judgment as to what is fair and equitable. This is where this committee and its sister committee on the House side are going to have to sit and make a judgment on this matter.

You would be interested in knowing how we came in our negotiations with the Bureau of the Budget to a determination of $3,000 per person, which is the figure on which the $180 million provision is based. As a yardstick, indeed, it was practically picked out of the air. The argument that I made, and that my people made, to the Bureau of the Budget, when we decided to go this route rather than the route of the Court of Claims, was that the Congress certainly should be no less liberal with the natives of Alaska than it had been in the instance of the most liberal treatment it had given to any Indian group in the United States. The most liberal treatment that we could find was the treatment given the Seneca Indians a few years ago in the settlement of the Kinzua Dam issue. That settlement averages about $3,000 per person.

Now, a case can be made, and we attempted to make that case, that a higher figure is warranted because the cost of living in Alaska is higher. There is a differential that is severe. But we finally recommended a settlement of 50,000 acres per village and up to $180 million in cash. It would seem to me, however, that the Congress, in its judgment of what it considers to be equitable, may want to be a bit more liberal. On the other hand, it may feel, and I hope it does not, that this is too liberal. In any event, these are the issues: How much land? How much money? I think these are certainly the major issues that confront you here.

But, I would like to say again, Mr. Chairman, as a preface to my prepared statement that I think we have made a tremendous amount of progress in the last year. This issue sat on my desk, in my Department, and was considered for many years an insoluble one. We talked about it, but we could not resolve it. My former Undersecretary, Charles Luce, finally took it as a major project. He produced the legislation last year. We then moved on to discussions with the native leaders and the State and I think commendation to everyone involved is in order here today I hope, as the current saying goes, we are able

to just keep our cool and keep working and keep talking. Then, I think we can produce legislation next year.

After that long-winded preface, I will proceed to my statement.

Senator JACKSON. First, let me say, Mr. Secretary, that I agree with your basic comments. In our concern about the urban ghetto, I think it is rather tragic that national attention is not focused on the problems that we have with the American Indians and with the natives in Alaska. Certainly the natives in Alaska are long-suffering. It is high time we come to a fair and just settlement of their claims. One thing we have learned about claims is that you condemn a whole generation to nonparticipation when you turn it over to a commission or a court of claims for adjudication. It is simply not realistic to say that those claims are going to be adjudicated within a reasonable period of time. If the people who are now living are to have some recompense for their claims, I think it will have to be done by the Congress rather than through a long, detailed adjudicatory process. I agree with you completely on the points that you made.

Mr. UDALL. I am going to begin at the middle of page 2 of my statement, Mr. Chairman.

Congress and the executive branch have largely sidestepped this issue. In a sense this is understandable. Until recently, there appeared to be no urgent need to deal with the problem. Except in southeast Alaska there were few competing demands for the land. The natives were largely undisturbed in their use of it. For the most part, they were also generally opposed to being placed on reservations established for their exclusive use and occupancy.

However, the discovery of oil and gas and the steady encroachment of civilization have changed this picture in recent years. Moreover, the Statehood Act of 1958, granting the State the right to select in excess of 103 million acres, but leaving the matter of native rights in status quo, unwittingly precipitated a conflict that has made the prompt resolution of the native claims issue a matter of great urgency.

The State's land selection activities made the natives aware that lands they had been using as their own might soon pass to State ownership and then be offered for public sale or lease. The protests which the natives, quite rightly, lodged against many State selections prompted me to refuse to act on the State's request for patent and to impose a "freeze" on any and all land actions in Alaska which might prejudice the rights of the natives.

I have sought to enforce the congressional commitment that the natives shall not be disturbed in the use and occupation of lands traditionally used and occupied by them. To allow these lands to pass into other ownership in the face of the natives claims would, in my opinion, preempt from Congress the power and obligation to decide this issue. Furthermore, it would deny the natives of Alaska the opportunity to acquire title to lands which they admittedly have used and occupied for centuries. I intend to maintain this "freeze" as long as I am in office and I will urge my successor to continue to do so—until Congress acts to resolve this troublesome matter.

Over the years, much time and effort have been expended in trying to determine the legal rights of the natives, despite the failure to enact legislation spelling them out. Many attempts have been made to dispose of the native claims issue in the courts. Some have contended that

the natives had no legal rights. Others have proposed that Congress pass the controversy to the courts or to a special claims commission.

One very hopeful sign, to me at least, is that the people of Alaska are no longer engaging in futile controversy over the legality of the claims. The moral and historical rights of Alaska's natives and the need for a prompt and generous settlement are generally acknowledged by all interested parties. The native people, the State and the executive branch of the Federal Government have presented recommendations to the Congress. Although we are not in complete agreement on the terms of a settlement, we are in agreement on the basic approach and in the hope that Congress, after studying the matter, will balance the equities and exercise its legislative judgment to provide in the near future a simple, workable and just solution to this longstanding problem.

Our thinking in the Department of the Interior has changed appreciably since we submitted our initial proposal last year. We realize that our present proposal is not the last word. We know that there is no single perfect solution to an issue of this complexity. We feel strongly, however, that any solution that is fair and equitable must incorporate the principles set forth by the President in his message to the Congress on "The Forgotten American" last March. It must:

Give the native people of Alaska title to the lands they occupy and need to sustain their villages.

Give them rights to use additional lands and water for hunting, trapping and fishing to maintain their traditional way of life, if they so choose.

Award them compensation commensurate with the value of any lands taken from them.

While the natives claims arise from the land, and doubtless must be satisfied in part with land, the settlement should be one that is primarily designed to provide lasting benefit to the people involved. It should provide a vehicle that will enable the natives of Alaska to attain their fullest potential. In so doing we shall be making a contribution of immeasurable value to their well-being, to the future of Alaska and to the Nation.

I do not have to belabor the conditions of poverty that plague Alaska's native people. Their plight is worse than that of Indians anywhere in the United States. Their longstanding claims present us with a golden opportunity to devise a solution that will enable them to translate their means for making a living in a society that is fast disappearing into the means for economic self-sufficiency in today's world.

We believe that this can be done under the terms of S. 3586, which provides for the granting of up to 50,000 acres per native village, for the continuation of aboriginal uses on other lands for 50 years, for the payment based on a formula of $3,000 per person up to a maximum of $180 million, and for the creation of an economic improvement corporation to be managed by the natives themselves.

One point I would like to stress is that our proposal would not create additional, what we think of as Indian reservations. Although the village lands are to be granted in trust status, any native group with an acceptable land use plan will be granted the lands in fee upon application.

Based on the standards adopted by the Court of Claims in the *Tlingit-Haida* case, the natives could possibly establish aboriginal title

to practically all of the State of Alaska. No one knows, in fact, I think it would be wise not to litigate that issue, probably. If the Congress agrees, then the settlement should give appropriate consideration to the fair value of the native lands at the time of their taking.

We have concluded that the package settlement embodied in S. 3586 is a just one. That judgment is certainly one with which reasonable man can disagree. However, I think that all parties concerned agree on the principles of settlement enunciated by the President. Moreover, all are agreed on the need for the establishment of a statewide corporation to provide a continuing vehicle for native economic opportunity. This would be not dissimilar at all, Mr. Chairman, to the regional development corporations that are already operating in many parts of the United States today.

The State has evidenced its desire to share with the Federal Government in solving the problem by providing for payment of up to $50 million to the natives from revenues derived from lands selected under the Statehood Act. Governor Hickel and the legislature provided this leadership as their gesture toward a more liberal settlement that might be acceptable to the natives, and I commend them for it.

While we are concerned that this action has been made contingent on the Department's lifting of the "freeze" on conveying State selections that conflict with native claims, we accept it as tangible evidence of the State's willingness to contribute to an equitable resolution of the problem.

We all recognize that action on the part of the Federal Government is long overdue. I am hopeful that after weighing all of the evidence that this committee will exercise its considered judgment at an early date so that this problem may be resolved to the benefit of the natives, the State and the Nation.

I thank you, Mr. Chairman.

Senator METCALF (presiding). Mr. Secretary, we are very pleased that you have been here to give us your ideas. Of course, as the chairman of the committee said, several of us participated in the field hearings in February. With the introduction of S. 3586 the rules have changed and some of your ideas have changed. I will go into some of this in a little while, but I think the first questions should come from our colleague from Alaska, Senator Gruening.

Senator GRUENING. Thank you, Mr. Chairman.

Mr. Secretary, I wish you would clarify the passages in your statement dealing with the board of directors of the corporation who are to be elected by the natives on the basis determined by the Secretary, and also you say: "The Commission shall be located within the Department of the Interior."

Now, just how much freedom will that Commission have as you visualize it?

Mr. UDALL. Well, this is a subject that has been discussed at considerable length, and it seems to me that we are not in a position today where any of us thinks for a moment that we should have a highly paternalistic control in Washington. These people, as the Senator well knows, and as the committee will observe, are highly capable. I think one of the most encouraging things that I see in this country generally is the quality of young leadership that is developing among the native people. I would think that the more authority that we

give and delegate, the better. The Department will have to retain some minimal control probably, but I think it should be minimal.

Senator GRUENING. In other words, there is a very substantial feeling among the native groups that they wish to get out from under the control of the Department of the Interior, and, it seems to me, there is a good deal of justification for that feeling. The Department has been in control of the destinies of the native people for 100 years and this group has certainly made less progress under that control than any other ethnic group, and this is not said in criticism. I think it is a fact that is pretty generally recognized. Other ethnic groups of the United States have come and in a generation, these minorities have risen to the top economically, socially, and politically, but that has not been true of the natives. A good many of them feel, and it is a feeling that I share, that there has been too much paternalism and too much restriction and not enough independence and freedom of action given to the native people themselves under this control.

Now, how do you react to that?

Mr. UDALL. I react by saying that you have a point and that I think this economic improvement corporation should be native-run and the decisions should be made by the natives. We have recent experiences to point to in Alaska—I refer to the Tyonek Indians who fortunately had a small reservation and struck oil. They are investing their money very wisely. They are not squandering their resources. They are husbanding them and I have no doubt in my mind, and I want to make the record clear, that the native people in Alaska today have the judgment and capacity to run an economic development corporation of this kind.

Senator GRUENING. Well, I just want to throw out this idea because I think this will be discussed by some of the witnesses and I feel that this is one part of the legislation that we would like to have properly resolved in such a way that it will be satisfactory and that in the future the natives will have the authority to manage their own affairs as they see fit. I believe that is one of the basic issues that we have to try and resolve as we pass on this legislation. That is all.

Senator METCALF. Senator Jordan?

Senator JORDAN. Thank you, Mr. Chairman. I am just breaking into this proposition, Mr. Secretary, and I hope you will bear with me if I try to get a little better understanding of it than I presently have.

You have suggested what I take to be a four-point solution to the problem as delineated in S. 3586. First, providing the granting of up to 50,000 acres per native village. How many native villages are there and how many acres are involved in this?

Mr. UDALL. Bob Vaughan, would you come up here please?

There are many native villages of all sizes in all the different sections of Alaska. The determination of which groups are in existence, and so on, will be made by the taking of a roll of the natives, which will be one of the tasks that we would undertake. We have been using the rough figure of about 200. There are 200 villages of different sizes. Some are large, some are small.

Senator JORDAN. Not all of them would qualify for the maximum 50,000 acres.

Mr. UDALL. That is correct. We would envision a procedure whereby you would determine, depending upon the size of the group and the nature of its economic activities, and so on, what the figure would be. The natives naturally feel this is too small, that the 50,000 acre limitation is too rigorous.

Senator JORDAN. The second point: every settlement would be the continuation of the aboriginal uses on other lands for 50 years. This is not a moot question now, is it? They are presently using these lands?

Mr. UDALL. That is correct. This would in effect confirm present uses, and contemplated uses, it would be in the same pattern as at the present.

Senator JORDAN. Why do you put a limitation of 50 years on it?

Mr. UDALL. Well, I think there is a realization that change is going to occur. In the next 50 years the way of life of the native may be quite different than it is today. Many of the native groups today, as you know, have a subsistence economy. I mean they, in effect, live off the land in a way that is largely unknown in other parts of the United States.

Senator JORDAN. Would the land so set aside for this 50-year period be available for exploration for oil or other minerals?

Mr. UDALL. Yes.

Senator JORDAN. There would be no prohibition against the ordinary exploration that takes places on public domain lands elsewhere?

Mr. UDALL. There would be none. We are talking about the surface uses, of course, that the natives have traditionally made of the land.

Senator JORDAN. The natives then would receive a surface use. They would not get any mineral rights to this land over which you would give them aboriginal use, only surface rights?

Mr. UDALL. They will get mineral rights to the lands which will be given to the village but not to the——

Senator JORDAN. Not to the wider area upon which they would hunt and fish.

Mr. UDALL. That is correct.

Senator JORDAN. The third point you make is the payment based on a formula of $3,000 per person up to a maximum of $180 million. I think the bill says that $1,000 of this will be made available the first year and $500 of it in each of 4 successive years. But, it will not be paid all in a cash sum.

Mr. UDALL. That is correct.

Senator JORDAN. All right. Then, explain to me how the residual balances will be put to work at interest for them? Or will it? How do you calculate it?

Mr. UDALL. I think it is envisioned that we would ask, as we do in the normal Indian claims settlements that have been processed through the Claims Commission that the money would not all be appropriated at the outset but that we would request one-fifth of the total in five different appropriation bills so that there would not be any money on deposit in the Treasury.

Senator JORDAN. The bill calls for a $1,000 apportionment in 1971 and $500 in 1972, $500 in 1973, $500 in 1974, and $500 in 1975.

Mr. UDALL. I think that is correct.

Senator JORDAN. All right. Explain to me what you mean by the creation of an Economic Improvement Corporation to be managed by the natives. How would it be funded? How would the revenues be invested, and just what do you have in mind there?

Mr. UDALL. Well, Senator, we have some guidelines spelled out in the bill on pages 10, 11, 12. And I think you would be particularly interested in hearing from both the natives and from Mr. Fitzgerald on how they feel this might work. There are any number of opportunities for economic development. Of course, what the natives are interested in doing is proceeding with various resource development projects, perhaps industrial plant-type projects. The very sort of things that we are doing in cooperation with EDA, the Economic Development Administration; that your various regional commissions are undertaking. They would make decisions on the basis of their needs and the potential that they feel there is for economic growth and development in their regions. So, it is a rather broad charter.

Senator JORDAN. Have the natives given you an idea of how much capital might be required initially for such an economic improvement corporation?

Mr. UDALL. Well, what about it, Bob? Would they get half?

Senator METCALF. Mr. Secretary, will you at this time identify your companion at the table?

Mr. UDALL. My associate is Bob Vaughan, who is the Deputy Assistant Secretary for Public Lands.

Ten percent of the $180 million would go into the fund and half of the money received from mineral development of various types will go into the fund as the bill is written.

Senator JORDAN. The mineral development from what lands, from the 50,000 acres per village?

Mr. UDALL. Yes; that is correct. Those lands which the natives will own.

Senator JORDAN. And they would be owners of the land set aside for the use of that particular village. In whom would that ownership vest?

Mr. UDALL. It would vest, I would assume, in the village as an entity.

Senator JORDAN. Not in the individuals prorated among the individuals of that village, but the village itself would be the owner of the 50,000 acres or thereabouts?

Mr. UDALL. That is correct. It would be what we would call unallotted. The land would not be allotted to individuals. It would be held by the village as a group.

Senator JORDAN. Do you anticipate any trouble in how that land would be administered and the earnings from it would be apportioned among the residents of the village?

Mr. UDALL. No. This would be—this would follow the same pattern. Most of our Indian groups today have their land in unallotted holdings. This would be done in the normal way.

Senator JORDAN. Suppose a resident of one village moves to another village. Does he then become a claimant in the village to which he moves or does he take some residual ownership with him from the village from which he moved?

Mr. UDALL. Well, the first act that we would undertake once this legislation is passed would be to set up a roll for each village and

determine who the members of that village were and, therefore, attempt very specifically to determine rights. I would judge that a person would have rights in his village and if he moved to some other place, he would continue to have his rights there and he could not take them with him.

Senator JORDAN. Leave the rights in the village from which he moved, and acquire new rights in the village——

Mr. UDALL. No, he would not. It would not be dissimilar at all to many Indian groups today. They have a vested interest in the lands of their reservation. If they move somewhere else, maybe they intermarry and move to another Indian reservation, they have no rights there.

Senator JORDAN. It raises some interesting problems. I will think about it some more. Thank you.

Senator METCALF. The Senator from New Mexico.

Senator ANDERSON. You have a $3,000 per person limit?

Mr. UDALL. This is the formula we used, Senator, yes.

Senator ANDERSON. We developed in a hearing not long ago the story of a family in North Dakota that had 14 children and got an annual check of about $10,000 for relief. This would give about a half million dollars—would it give anything like that? I am just trying to see if you think this is reasonable.

Mr. UDALL. Well, if you are using the per person yardstick.

Senator ANDERSON. You used it, did you not?

Mr. UDALL. Yes. You know, the Bureau of the Budget is noted for looking hard at things of this kind, and the way essentially that we persuaded them to go along with the $3,000 was to argue that we should not be less liberal with these natives that we have neglected so long than we were with the Senecas which were the group that had been treated most liberally in recent years. This is really the basic argument we made. I think the Alaska natives could probably make out a claim that we ought to be more liberal than we were with the Senecas, but I was not able to persuade the Bureau of the Budget of that.

Senator ANDERSON. Would you want any change in the proposed law as to what monetary limits might be available? Some people have had some money that did not do them too much good.

Mr. UDALL. Well, Senator, one of the reasons I am in favor of this economic development corporation approach, is that as Secretary for 7½ years, generally I have favored Indian tribes spending money for development and discourage per capita payments. I have not always won these arguments. When judgments are made by the Indian Claims Commission and the moneys appropriated, what a lot of the Indians want to do is to divide the money up, so much apiece. I usually have resisted that approach. As Senator Metcalf well knows, the first case I had involved the Crows of Montana. I made them set aside a million dollars for scholarships and set aside money for development. They have made some very fine progress with these funds. We did, however, let them divide up part of it.

That is the reason I think the committee may very well want to look closely at how this money is to be used. I think maybe the money that they invest rather than the money that goes to them as individuals will probably in the long run be the most valuable money they receive.

Senator ANDERSON. We have had several families that had problems where they have six and eight children. You would not feel that a limitation of $100,000 would be enough? You would take the full $250,000?

Mr. UDALL. Well, the committee could certainly consider that. Whether you should—the problem would be whether that would be penalizing the larger families. Certainly the human need is as great per individual, I suppose.

Senator ANDERSON. What about these matters that go into court? In your statement you say:

> The provisions of this section shall not apply to native groups who are beneficiaries of the judgment recovered by the Tlingit and Haida Indians in Court of Claims Docket Number 47900.

That takes that group of people out from under your bill, does it not?

Mr. UDALL. This is the—the Tlingit and Haida Indians, which are a group of about 8,000, as I recall. They did go into the Court of Claims. They filed a lawsuit, about 30 years ago, incidentally, and judgment was entered just 2 or 3 months ago. It was felt, therefore, that they had had their day in court and had their rights recognized and that this act should not apply to them, at least with respect to a land settlement. They would participate otherwise.

Senator ANDERSON. But you do see an instance where they take themselves out from under the jurisdiction of this special act.

Mr. UDALL. I think what we are essentially saying, as Senator Jackson indicated earlier, is that we have a very unique situation here and that if we want to do justice to these people, we ought to, in effect, ask the committees to sit as a court of claims. You really are, almost. You are sitting in judgment here and you are going to decide this one. At least I hope you do. I know it is going to be difficult and burdensome, but I think you can make a fair and equitable determination. I would hate to have to turn to these native leaders and say we are going to send you to the Court of Claims. When you are old men maybe you will get some money and some land at that time.

Senator ANDERSON. Well, the Indian Claims Commission decision allowed the Aleuts to stay before the Commission. They rejected a motion by the Justice Department to dismiss, which contended the Aleuts were not covered by the Indian Claims Commission Act. The court says they are. How come you say they are not?

Mr. UDALL. Well, I think this is a legal matter that the committee will want to have your counsel look at. I do not know whether there were provisions in the 1946 act setting up the Indian Claims Commission or any earlier acts giving an Indian or native groups the right to go to the Court of Claims, which said they did not apply to the natives of Alaska or whether the act was written in such a way that it was difficult for Alaskan natives to file a claim. The truth of the matter is that they never did file claims and that the statute of limitations on filing apparently did not apply to them. Everyone considered this to be a very difficult problem that would be resolved later. So, we waited until later and when the statehood came along, again we did not resolve it. We swept it under the rug and now we have lifted up the rug and here it is.

Senator ANDERSON. After you lifted up the rug you found an attorney, did you not?

Mr. UDALL. Well, I will be quite frank with you, Senator, and I have had my own—I made my own criticisms, both public and private, of the Indian Claims Commission and the whole process, but you are going to see here today these native leaders and their attorneys. They are attorneys who have been working very hard on this. But if we go this route, if the Congress will sit and decide this issue, the attorneys are effectively eliminated from the contingent fee arrangements. This will not be necessary. The attorneys will get paid. They have been working hard. I hope they will get paid well, but you are not going to have the type of attorney role that you have had before the Indian Claims Commission. I think this is good, myself.

Senator ANDERSON. Well, Roger Connor is going to be here to testify, I believe, but he is now, as I understand it, a legal representative for the Aleuts.

Mr. UDALL. Yes, There are——

Senator ANDERSON. How do you paint him out of the picture?

Mr. UDALL. I do not think we want to dissolve him out. I think we want, if possible, to get a quick solution here so that he does not have to do 20 years of work before the Indians Claims Commission. In other words, the proposal we make, I think, is what you want.

Senator ANDERSON. What I want may not succeed at all. I am trying to say that when I go into court and I make arrangements for a lawyer, you cannot take that case away from him until that lawyer agrees. Mr. Connor has his rights. Can you just automatically or can this bill just automatically untie him from the Aleuts?

Mr. UDALL. Well, we have to approve all your Indian attorney contracts. There are no contracts for other than simply regular services. There have been some very complicated problems and lawyers have done a lot of hard work on this, but they are going to get paid relatively modest fees for the work that they have done rather than getting a percentage of the total, which is what happens with most of the Indian claims cases.

Senator ANDERSON. In the Ute case, which ran about $32 million, the legal fee was well over a million dollars; was it not?

Mr. UDALL. It was more than that.

Senator ANDERSON. I said well over. Three million.

Mr. UDALL. Well, this approach, if the Congress will decide to follow it will minimize the legal fees. That is the main point I would make. I am not trying to do lawyers out of business, being a lawyer myself, but I think this is a good, clear-cut way to solve the problem. It is the best way for the natives.

Senator ANDERSON. I have some reservations about this, Mr. Chairman. I am not trying to pick on the witness, as he well knows. It is hard to settle some of these cases where the legal matters have already been presented and the court has held that the Indians are properly there in court.

That is all, Mr. Chairman.

Senator METCALF. The Senator from Wyoming.

Senator HANSEN. Mr. Secretary, I find myself very much in the position as the Senator from Idaho, who has already stated the position he is in. I know little about this, but I would like to learn more. How many people are we talking about in the first place? Would you know, roughly?

Mr. UDALL. About 55,000, Senator, except 8 years have elapsed since the last census and these natives have one of the highest birth rates, population increase rates in the Nation, so we do not have an exact figure. But we think it is about 55,000.

Senator HANSEN. Apparently it was on that basis that you computed the $180 million—60,000 times $3,000 would be $180 million.

Mr. UDALL. That is correct.

Senator HANSEN. How many acres per person, roughly, are you contemplating making available to these natives? You have spoken about 50,000 acres per village, and, I believe, about 200 villages? Is this right?

Mr. UDALL. Well, Senator, we calculate roughly, according to our bill that we are talking about 8 to 10 million acres. We do not know exactly because the determinations would have to be made. The natives feel what would be right would be something closer to 40 million acres. It is somewhere between those two points that the Congress presumably will have to make a decision.

Senator HANSEN. Presently what use or what uses specifically are being made of these lands by the natives? Are they primarily hunting lands and nothing raised on them?

Mr. UDALL. Hunting and fishing. There is not too much agriculture.

Senator HANSEN. And no mineral or relatively little mineral development?

Mr. UDALL. Relatively little mineral development, that is correct.

Senator HANSEN. Would it be your prediction that the mineral wealth underlying these lands which you propose to turn over to the villages might be their richest and most valuable use?

Mr. UDALL. Well, it would vary, of course, Senator. You might give some of them land that would have gold or uranium and others would receive land that might be worthless as far as minerals are concerned. The natives are spread all over the State. But, I would say generally, oil and gas have been coming on strong in Alaska. They have really saved the day in Alaska the last few years. The military has been decreasing in relative importance, and oil and gas have been coming on. And, I would say the general outlook is that there probably are some valuable mineral rights. I certainly hope there are.

Senator HANSEN. Would the Department propose any study or would it include any provision—I have not read the bill—or give thought to an inclusion which might contemplate the presence of valuable minerals under some of the lands given to certain villages and not to others?

Mr. UDALL. Senator, you raise a very good point and this is the reason that we put in a provision that 50 percent of the minerals of these lands would go into this statewide economic development corporation.

Senator HANSEN. The other 50 percent would go to that particular village at the time?

Mr. UDALL. Local village, that is right. This was an attempt to address ourselves to that problem.

Senator HANSEN. I have no further questions, Mr. Chairman.

Senator METCALF. The Senator from Utah.

Senator MOSS. Mr. Secretary, to what extent have these people organized any kind of economic units like co-ops or credit banks or enterprises such as these?

Mr. UDALL. Senator, I wish you would ask them the question. I do know that there are REA type co-ops in some areas. They are beginning to move on this front, but I am not familiar enough to give you an answer except to say they are starting to do this type of cooperative development.

Senator Moss. I wondered about this in connection with the suggestion that we have an economic development corporation. I am sure that a great deal has to be done on their own initiatives in the field of organizing themselves. I was wondering if they had made beginnings in this area already.

Mr. UDALL. Well, they have made sufficient beginnings and they show such talents, in my judgment, that I have great confidence they can succeed in it. I would point to the Tyonek Indians and what they have done with their oil revenues. I think they have really made every dollar of it count. They take a great deal of pride in it and so do we.

Senator Moss. Do these villages have a regular corporate organization or do they have a tribal organization? What sort of social organizations do they have?

Mr. UDALL. Very few have corporate organizations, I am told. Most of them are just a loose association of some kind for local purposes.

Senator Moss. Thank you. Thank you, Mr. Chairman.

Senator METCALF. The Senator from Alaska has another question.

Senator GRUENING. Mr. Secretary, I would like to make a comment on this situation and ask you to comment on it. We have a situation in western Alaska of extreme poverty. The closest parallel elsewhere in the Union is in Appalachia. There are villages in which the housing is of the lowest possible standards—no plumbing, no sewage disposal, no running water, no economy.

Now, I visualize that if this program is to work, an economy would be built up, there would be better housing, there would be better community facilities. I do not see how that can be done on the basis of $3,000 per person. If in the lands given under this act any oil and minerals are found that community would have its problems pretty well solved, but what about other communities in which there is no such finding? I think this is a very serious problem.

I visualize this program as reconstructing the entire area, raising the standard of living, establishing good community facilities, good housing, good educational facilities, and creating an adequate economy.

Now, unless oil or minerals are found on this land, this is not going to work, and it seems to me, we ought to have a much more generous proposal in the case of communities where that situation would not be found.

How do you feel about that?

Mr. UDALL. Well, I would agree with you generally that the economic plight of these people is very unfavorable and in light of it, neither the $3,000 per person or the $180 million is going to solve all their problems. It is not a big sum in that regard because to build homes, for example, to build a shelter, costs substantially more than it does anywhere else in the United States, as you well know. And, I would envision that this is not any panacea that is going to solve all of the economic problems of these people. We are going to probably have to have the application of housing programs and economic development programs and other programs in the future, but it would

give the natives, through their own economic development corporation, something where they could show what they can do and in the long run who knows? They may be so successful that they will achieve part of their own economic emancipation by the bootstrap method. But, it is going to take a lot of educational, social, and poverty programs, and everything else to get the job done. You are quite right.

Senator GRUENING. That is all. Thank you.

Senator METCALF. Mr. Secretary, I have a few questions. I want to say that since you have become Secretary of the Interior, we have worked together on various Indian matters and, of course, you and I sat on the House Interior Committee together. I remember that many times both of us have worked out new and different and innovative programs that were not hidebound by statutory construction or precedent. We often tried to make things fit the pattern that each Indian reservation or each group had presented to us. I remember the Yellowtail settlement, which was over and above, I think, strict application of law and the Secretary was——

Mr. UDALL. It was odd ball, but very good as a workable solution.

Senator METCALF. And today the Crow Indian Tribe, with that Indian claims reservation that you required them to keep, are developing recreational areas that will bring in income for Senator Hansen's and my State for many, many years.

When we held hearings in Alaska, there was bitter and vehement opposition to the land freeze. Now, Mr. Secretary, I am convinced that we do have to protect the interests of these natives in the State selection of land. Is there not some way that that freeze can be modified, because the testimony certainly showed that it is holding back the economic development of Alaska?

Mr. UDALL. Well, Senator, this is a serious question. I have attempted in the past to have my people see if there was some way that we could do it. It has not been a complete freeze. We have had some instances where an airport was needed, where other things were needed, and they were granted.

Personally, though, since I made it plain about a year ago that we were going to protect the natives, the freeze has been on. At that point the Governor and the State people had to make a basic decision and they could have decided to attack me on the grounds that I was holding back the development of Alaska and just make me the whipping boy, and I say this to Governor Hickel's credit, he did not do that. He may have toyed with the idea in the beginning, but he came to the conclusion that the best thing to do, because the natives after all are 25 percent of the people of this State, was to sit down and work it out. As long as I hold the line, this holds everybody's feet to the fire and we tend toward a solution. I know it may be restricting some of the activities the State might have in mind, but I think if we hold to this, that it will build the pressure for quick action, I hope, at the next session of the next Congress.

Senator METCALF. Well, I hope we are laying a foundation here and in our field hearings in Alaska so that there will be early action. I want to say now to some of my colleagues who did not participate in the field hearings, and I know that you will see them later today, that there is leadership in Alaska that is superb. It is articulate, it is intelligent, and it is imaginative. I am sure that you will find among the

Alaskan natives the kind of leaders needed for the economic development corporation you envisage.

I want to congratulate you on abandoning that Outer Continental Shelf program. As you pointed out, it might have been too little or it might have made some of these natives the most affluent members of our society. A definite and determined amount of a claim is what I think this committee will want to work toward. We are very interested in this program, which is brand new, and, of course, was not the subject of previous hearings. I and my colleagues are going to be concerned with what our friends in Alaska suggest. As you pointed out, the natives said they should have at least 40 million acres and I was persuaded by some of the arguments that were made.

Mr. UDALL. Senator, allow me to say, and I am a little bit embarrassed that I have not been out to the native villages more myself, as Senator Gruening and Senator Bartlett have urged me to in the past. I have, however, seen much of Alaska. I think if the Members of Congress who have to make these decisions went out to these villages and actually saw these people, you would probably be more liberal and more generous than even we have proposed.

Senator METCALF. Of course, Mr. Secretary, I have been with you on the Papago Reservation and you have been down on the Northern Cheyenne Reservation, and when you tell me there is poverty far and above and beyond what we have among the American Indians, I am very much impressed.

I have no more questions. I want to compliment you for coming up with a better and more imaginative proposal and something, I believe, that this Congress can handle. Thank you very much, Mr. Secretary.

(The prepared statement referred to follows:)

STATEMENT OF HON. STEWART L. UDALL, SECRETARY OF THE INTERIOR

Mr. Chairman, Members of the Committee, during my seven and a half years as Secretary of the Interior I have dealt with many problems. None has been of such longstanding duration as the issue before you today—the land claims of Alaska's Natives.

This is the last major problem confronting our Nation in its attempt to do justice to the aboriginal peoples who first inhabited this land.

I believe we all recognize that our efforts to compensate for the unfair treatment accorded the Indians of the lower 48 have fallen far short of expectations. I would hope that we have learned from the past and can resolve the issue before us in a manner that will be of lasting benefit to the Native people of Alaska. The recent course of events and the actions of all interested parties that have led to these hearings represent solid progress in our common search for an equitable solution.

Since most of the members of the Committee are familiar with the history of this problem there is no reason for me to dwell on it at length. It traces back to the Act of May 17, 1884, providing a civil government for the Territory of Alaska, which protected Native land rights by providing that Natives "shall not be disturbed in the possession of any lands actually in their use and occupation or now claimed by them." However, it reserved "the terms and conditions" under which the Natives could acquire title to such lands "for future legislation by Congress."

Congress and the Executive Branch have largely sidestepped this issue. In a sense this is understandable. Until recently, there appeared to be no urgent need to deal with the problem. Except in southeast Alaska there were few competing demands for the land. The Natives were largely undisturbed in their use of it. For the most part, they were also generally opposed to being placed on reservations established for their exclusive use and occupancy.

However, the discovery of oil and gas and the steady encroachment of civilization have radically changed this picture. Moreover, the Statehood Act of 1958, granting the State the right to select in excess of 103 million acres, but leaving the matter of Native rights in status quo, unwittingly precipitated a conflict that has made the prompt resolution of the Native claims issue a matter of great urgency.

The State's land selection activities made the Natives aware that lands they had been using as their own might soon pass to State ownership and then be offered for public sale or lease. The protests which the Natives lodged against many State selections prompted me to refuse to act on the State's request for patent and to impose a "freeze" on any and all land actions in Alaska which might prejudice the rights of the Natives.

I have sought to enforce the Congressional commitment that the Natives shall not be disturbed in the use and occupation of lands traditionally used and occupied by them. To allow these lands to pass into other ownership in the face of the Natives' claims would, in my opinion, preempt from Congress the power and obligation to decide this issue. Furthermore, it would deny the Natives of Alaska the opportunity to acquire title to lands which they admittedly have used and occupied for centuries. I intend to maintain this "freeze" as long as I am in office and I will urge my successor to continue to do so—until Congress acts to resolve this troublesome matter.

Over the years, much time and effort have been expended in trying to determine the legal rights of the Natives, despite the failure to enact legislation spelling them out. Many attempts have been made to dispose of the Native claims issue in the courts. Some have contended that the Natives had no legal rights. Others have proposed that Congress pass the controversy to the courts or to a special claims commission.

One very hopeful sign, to me at least, is that the people of Alaska are no longer engaging in futile controversy over the legality of the claims.

The moral and historical rights of Alaska's Natives and the need for a prompt and generous settlement are generally acknowledged by all interested parties. The Native people, the State and the Executive Branch of the Federal Government have presented recommendations to the Congress. Although we are not in complete agreement on the terms of a settlement, we are in agreement on the basic approach and in the hope that Congress, after studying the matter will, balance the equities and exercise its legislative judgment to provide in the near future a simple, workable and just solution to this longstanding problem.

Our thinking in the Department of the Interior has changed appreciably since we submitted our initial proposal last year. We realize that our present proposal is not the last word. We know that there is no single perfect solution to an issue of this complexity. We feel strongly, however, that any solution that is fair and equitable must incorporate the principles set forth by the President in his message to the Congress on "The Forgotten American." It must—

Give the native people of Alaska title to the lands they occupy and need to sustain their villages.

Give them rights to use additional lands and water for hunting, trapping and fishing to maintain their traditional way of life, if they so choose.

Award them compensation commensurate with the value of any lands taken from them.

While the Natives' claims arise from the land, and doubtless must be satisfied in part with land, the settlement should be one that is primarily designed to provide lasting benefit to the people involved. It should provide a vehicle that will enable the Natives of Alaska to attain their fullest potential. In so doing we shall be making a contribution of immeasurable value to their well-being, to the future of Alaska and to the Nation.

I don't have to belabor the conditions of poverty that plague Alaska's Native people. Their plight is worse than that of Indians anywhere in the United States. Their longstanding claims present us with a golden opportunity to devise a solution that will enable them to translate their means for making a living in a society that is fast disappearing into the means for economic self-sufficiency in today's world.

We believe that this can be done under the terms of S. 3586, which provides for the granting of up to 50,000 acres per Native village, for the continuation of aboriginal uses on other lands for 50 years, for the payment based on a formula of $3,000 per person up to a maximum of $180 million, and for the creation of an Economic Improvement Corporation to be managed by the Natives.

One point Iwould like to stress is that our proposal would not create additional reservations. Although the village lands are to be granted in trust status, any Native group with an acceptable land use plan will be granted the lands in fee upon application.

Based on the standards adopted by the Court of Claims in the Tlingit-Haida case, the Natives could possibly establish aboriginal title to practically all of the State of Alaska. If the Congress agrees, then the settlement should give appropriate consideration to the fair value of the Native lands at the time of their taking.

We have concluded that the package settlement embodied in S. 3586 is a just one. That judgment is certainly one with whch reasonable men can disagree. However, I think that all parties concerned agree on the principles of settlement enunciated by the President. Moreover, all are agreed on the need for the establishment of a statewide corporation to provide a continuing vehicle for Native economic opportunity. The State has evidenced its desire to share with the Federal Government in solving the problem by providing for payment of up to $50 million to the Natives from revenues derived from lands selected under the Statehood Act. While we are concerned that this action has been made contingent on the Department's lifting of the "freeze" on conveying State selections that conflict with Native claims, we accept it as tangible evidence of the State's willingness to contribute to an equitable resolution of the problem.

We all recognize that action on the part of the Federal Government is long overdue. I am hopeful that after weighing all of the evidence that this Committee will exercise its considered judgment at an early date so that this problem may be resolved to the benefit of the Natives, the State and the Nation.

Senator METCALF. Our next witness is supposed to be Governor Hickel. Is there a representative for the Governor here to testify? If not, we will hear Mr. Notti, who is representing the Alaska Federation of Natives.

Mr. Notti, as I understand it, you are going to bring Mr. Wright, Mr. Hensley, Mr. Borbridge, and Mr. Jackson up with you as a panel.

Mr. NOTTI. Yes, sir. With your permission, we would like to do that.

Senator METCALF. Will you all come forward, please? After you get settled, will you identify yourself for the reporter?

STATEMENT OF EMIL NOTTI, PRESIDENT, ALASKA FEDERATION OF NATIVES; ACCOMPANIED BY DONALD WRIGHT, VICE PRESIDENT, ALASKA FEDERATION OF NATIVES; WILLIE HENSLEY, CHAIRMAN, GOVERNOR'S TASK FORCE; JOHN BORBRIDGE, CHAIRMAN, TLINGIT-HAIDA CENTRAL COUNCIL; CLIFFORD GROH; AND BARRY JACKSON, LEGAL COUNSEL FOR ALASKA FEDERATION OF NATIVES AND OTHER NATIVE GROUPS

Mr. NOTTI. Before we get started, may I ask how much time we have?

Senator METCALF. You have as much time as you need. If this hearing has to go over until the afternoon, we will get permission to sit and we will give you just as much time as you need. If necessary, we will come in at 6 o'clock tomorrow morning and finish it up.

Mr. NOTTI. We appreciate that.

Senator METCALF. Will you identify your colleagues?

Mr. NOTTI. Donald Wright, John Borbridge, Willie Hensley, Clifford Groh, and Barry Jackson.

Senator METCALF. Thank you very much.

Mr. NOTTI. Before I start I was requested to read a letter to the chairman and I ask that it be inserted in the record. It is from Senator Bartlett.

Senator METCALF. Without objection, so ordered. Before we start on that in view of some of the questions about oil and gas production, I would like a statement of the Western Oil and Gasoline Association inserted in the record.

(The statement referred to follows:)

STATEMENT OF THE WESTERN OIL AND GAS ASSOCIATION

ALASKAN NATIVE CLAIMS LEGISLATION

Pursuant to the announcement of a hearing to be held on July 12 on the pending bills for settlement of the Alaskan native claims, at which only witnesses from Alaska will be heard, we submit this statement for the record.

We are interested in the pending legislation because various member companies of this Association have extensive interests and operations in Alaska under oil and gas leases issued by the United States and by the State of Alaska. We believe that the Alaskan native claims should be settled on a fair and equitable basis, and we favor the enactment of legislation to that end as soon as practical. Legislative resolution of these claims, and the lifting of the administrative land freeze imposed by the Department of the Interior, are clearly in the interest of all concerned—the natives, whose needs and moral claims should be equitably dealt with; the State of Alaska, whose revenues, land grants, and general economic development are being adversely affected; persons who have homestead, mineral, and other rights and interests under the public land laws and who have applied for such rights and interests, but are subjected to some uncertainties and delays because of the claims; and the public generally.

This statement is limited to matters in the legislation which particularly concern us and our members. We do not presume to speak on the many other matters covered by the pending bills on which we have no particular information or competence and which primarily concern others. These matters include such things as the amount of compensation which should be granted to the natives in extinguishment of their claims, and the extent to which the United States should exercise trust or other controls over grants made to the natives.[1]

We are concerned with four matters of particular interest to us which do not appear to be adequately covered by any of the pending bills. We believe that these matters should be appropriately included in the legislation in order to achieve the objective, which seems generally desired and in everyone's interest, of having a complete and definitive legislative solution of the problem of the Alaskan native claims—a solution which will leave no uncertainties or loose ends for future resolution.[2]

These matters of particular concern to us, and our suggestions for handling them in the legislation, are generally as follows:

1. There needs to be a more comprehensive statement of the native claims which are being settled. Some of the Alaskan native claims purport to embrace water as well as land areas, but the pending bills would only settle claims to lands. Accordingly, the legislation should be expanded to extinguish native claims to waters as well as lands, particularly since there appears to be no

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[1] For example, the question of compensation primarily concerns the natives, the United States, and the State of Alaska; we could offer nothing on the point other than the general principle that settlement should be fair and equitable, having in mind, of course, that Congress has complete power to award as much or as little compensation as it sees fit, since Congress is dealing with moral claims rather than legal rights, *United States* v. *Santa Fe Pacific R. Co.*, 314 U.S. 339, 347 (1941), and *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272, 278–82 (1955), and that there is a split of authority over whether these aboriginal claims of the natives of Alaska survived the Treaty of Cession. The Ninth Circuit held in *Miller* v. *United States*, 159 F.2d 997, 1001–02 (1947), that Russia extinguished aboriginal title as part of the consideration for the Treaty. However, the Court of Claims reached a contrary conclusion in *The Tlingit and Haida Indians*, 147 Ct. Cl. 315, 333–34 (1959), holding that the aboriginal title of those particular Indians had not been extinguished by the Treaty.

[2] As the Secretary of the Interior indicated in his letter of April 30, 1968, transmitting the latest legislative proposal of the Department which has been introduced by request as H.R. 17129 (with certain technical changes) and as S. 3586: the extent to which the Alaskan native claims are to be recognized is exclusively a policy matter for Congressional determination, and a solution of the problem by Congress, after weighing the equities involved and the data available, is preferable to authorizing judicial proceedings because of the delays and difficulties attendant upon litigtion.

basis for asserting native claims to waters;[3] exception could, of course, be made for any water areas included in existing reserves which might be granted as provided in Section 6 of S. 3586. It would also seem that all native claims which have not been heretofore resolved should be covered by the settlement, regardless of whether they are based on aboriginal use or occupancy, or are asserted under the Organic Acts of 1884 and 1900, or otherwise.

2. The various provisions of the pending bills which make native grants "subject to valid existing rights" are all right so far as they go in protecting the State of Alaska and others to whom the United States has transferred public lands or granted interests in such lands. However they need supplementation and clarification, particularly in the case of mineral leases issued by the United States. Such leases are "valid existing rights," and no doubt should be left on that score, particularly in view of the millions which have been invested in developing them and the production which has been obtained with resultant benefit to Alaska and its inhabitants.

In addition, the words "subject to" are of uncertain meaning in the case of leases which are traditionally regarded as not disposing of the land covered by them. For example, those words can be read as barring the grant to natives of lands covered by Federal mineral leases. It may also be possible to read them as permitting the grants to be made burdened with the leases, but then there are further questions as to how the leases, and particularly the rights reserved therein to the United States, are to be handled thereafter.[4] There are also additional questions as to what happens if only part of the lands covered by a lease are granted. These matters have not been left hanging in making grants to the States of lands covered by Federal mineral leases.[5] They should likewise be appropriately resolved here. We accordingly suggest that provisions should be included in the legislation which:

(a) would recognize that the validity of Federal mineral leases is not affected by the native claims;

(b) would state that the existence of a Federal mineral lease does not bar a grant to natives of all or part of the lands covered thereby;

(c) would provide that the Secretary would continue to administer such a lease for its duration notwithstanding the grant; and

(d) would give the natives such share of the lease revenues reserved to the United States as Congress may deem appropriate.

Appropriate recognition should also be given to the rights of the State of Alaska under its land grants. Under familiar principles a state selection is complete and the rights of a state vest when a proper application to select is filed in accordance with all legal requirements, *Payne* v. *New Mexico*, 255 U.S. 367 (1921); *Wyoming* v. *United States*, 255 U.S. 489 (1921). In Alaska's case, Section 6(g) of the Statehood Act (72 Stat. 341) authorizes the State to make conditional leases and conditional sales of selected lands following the selection and the tentative approval of the selection by the Secretary of the Interior. These selections and tentative approvals, unlike mineral leases, involve disposal of the land itself and cannot be accommodated with a grant of the same land to natives; in this context, it should accordingly be recognized that the rights of the State bar a grant to the natives and that this is the necessary effect of providing that grants may be made "subject to valid existing rights."

3. The imposition of the administrative land freeze in early 1967 stopped the issuance of Federal mineral leases for public lands in Alaska. Numerous applications filed before and subsequent to the freeze have been pending without action, and substantial amounts of advance rentals tendered therewith have been tied

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[3] The Court of Claims refused to award compensation to the Tlingits and Haidas for fisheries, stating *inter alia* that "Navigable waterways are not subject to private possession." *The Tlingit and Haida Indians of Alaska et al.* v. *The United States*, No. 47900, decided January 19, 1968 (Slip opinion, pp. 7–14).

[4] The Solicitor of the Department of the Interior has held that, without legislative authorization, the Secretary cannot transfer his jurisdiction over leases or the interests of the United States as lessor and must, therefore, retain title to oil and gas in the United States when he conveys lands covered by leases. Opinion M–36254 (December 28, 1954), *Authority To Issue Patent Without Reservation of Oil and Gas Where Subsequent to a Consent by the Entryman to Such a Reservation the United States Has Issued an Oil and Gas Lease and Thereafter Has Classified the Land as Not Prospectively Valuable for Oil and Gas*; Opinion M–36436 (May 9, 1957), *Mineral Reservations in Exchanges of Indian Trust Patent Allotments Under the Act of March 3, 1921*, and Supplement to M–36436 (April 14, 1958), *Authority of the Secretary of the Interior To Assign His Jurisdiction Over an Oil and Gas Lease or the Lessor's Interest Therein.*

[5] See, for example, 43 U.S.C. 852(a), and Section 6(h) of the Alaska Statehood Act as amended (72 Stat. 842, 73 Stat. 395, 74 Stat. 1025, 788 Stat. 168).

up in the meantime. We believe that there should be provisions in the legislation which would: (a) lift the land freeze as soon as possible, (b) provide for resumption of the processing of mineral and other applications for the public lands in Alaska, and (c) give appropriate consideration to the equities of those who have had applications delayed by the freeze. Section 7 of S. 3586 would help considerably in these respects, but would apparently permit the present situation to continue for an indeterminate time with respect to the 20 million acres which may be withdrawn under it. We question whether this result is necessary or desirable in the case of mineral leasing, since mineral leasing can be handled in ways which will not prejudice the objectives of the withdrawal. Inasmuch as mineral leasing does not constitute a disposal of the land, it is possible to permit leasing of any withdrawn lands under escrow or other appropriate provisions which will safeguard the interests of the natives in the event that the withdrawn lands should eventually be granted to them. We believe that provisions along these lines should be included in the legislation.

4. The legislation should contain clear authority for the creation of easements over lands granted to the natives which are needed for the administration and utilization of Federal lands. We note the authority contained in Section 7(g) of S. 3586 to make grants subject to such easements. We wonder, however, if this authority is broad enough to reserve easements, the need for which may not be apparent at the time of grant but which subsequently become necessary in order to administer otherwise landlocked Federal holdings. We suggest that consideration be given to this point.

In conclusion, we agree that the proper solution of the Alaskan native claims is a difficult and complex task which requires careful study. We assume that there will be further hearings and consideration before a definitive legislative solution emerges. We will accordingly be glad at the appropriate time to elaborate on the general views expressed herein and to submit specific language to carry out our suggestions. We may also have additional suggestions to make after further study. Meanwhile, we appreciate the opportunity to submit this statement and to acquaint the Committee generally with our views and our support for legislative resolution of the Alaskan native claims which is urgently needed. We hope it will be helpful to the Committee to have this statement from us as it concerns its work on the matter.

Senator METCALF. Now, Mr. Notti, you may proceed.

Mr. NOTTI. The letter is addressed to Senator Henry M. Jackson, chairman, Committee on Interior and Insular Affairs:

DEAR MR. CHAIRMAN: The Alaska native people have waited 100 years for action by the Federal Government on their just claims. This is too long to wait.

Alaskans are a patient people but patience wears thin.

I am pleased, therefore, and thankful that your Committee, even at this late date in the session, has agreed to conduct hearings and to receive the testimony of the representatives of the native people. I know full well it is too late for final congressional action this year, but I know that it is a good thing to make a record and that evidence received this Congress will be valuable in the next.

I do wish that it were possible for me to be present to introduce the native leaders who are coming to Washington to testify before your Committee. My illness, unfortunately, precludes that. I would like also to participate in the hearings, for I would like to discuss with your Committee the urgency and importance which I assign the resolution of the native land problem.

The hearings you are holding will be an important step toward solution of the native land claims. They should help to define issues, identify areas of agreement, and hopefully, assist in bringing about a meeting of the minds. For soon, the Congress, the Administration, the state and the native people must resolve their differences. For soon, there must be action.

I know that the people of Alaska join me in thanking you for this opportunity to come before your Committee and discuss native land claims. We are indeed delighted that you are conducting these hearings.

With best wishes, I am,

Sincerely yours,

E. L. BARTLETT.

Mr. NOTTI. My statement today is very brief. In the interests of time, I will just hit some of the high points and we will probably submit more written testimony before the record closes.

I would like to comment as a layman on the Indian Claims Commission. Maybe some of the attorneys can expand on it. I think the main reason the Indian Claims Commission does not apply to Alaska is that there has been no taking of a major portion of lands in Alaska and the value determined by the Indian Claims Commission is set on native taking, and, therefore, the Commission does not apply to the situation in Alaska. I am sure that other technical details can be expanded.

Second, we would like to say that we feel that Secretary Udall's action of installing the land freeze has been in our best interest. I think this put the problem into focus after 100 years and we feel that until action is taken to protect our interests, either legislatively or some other way, that we feel it has been the best thing to date.

My name is Emil Notti, president of the Alaska Federation of Natives. Our organization represents Alaska's 55,000 Eskimos, Aleuts, and Indians. I wish to thank the committee on behalf of Alaska's native peoples for the opportunity to appear here. We hope that our testimony will contribute to the orderly development of Alaska by solving the land-rights problem. Today we intend to be brief. We intend to submit written testimony later. In the interest of saving time, I wish to state only three major points of our position. These will be enlarged upon by those who follow me.

(1) We feel that 40 million acres of land for the native people is a fair base for native peoples' development. Forty million acres represents only about 11 percent of the land mass in Alaska and is a reasonable figure considering the population in Alaska.

(2) Considering the other areas of Alaska that Indian land title will be extinguished on, we feel that $500 million is fair value for compensation. This represents about $1.40–$1.50 per acre which, if anything, is on the low side for valuation of land in Alaska.

(3) We would like to see the Commission proposed in the bill, S. 3586, made autonomous from the Interior Department. We feel the Commission should be either Presidential appointees confirmed by the Senate, or an independent agency reporting to Congress. We feel we have the capability of determining our own destiny and want the opportunity to do so.

Technical means of implementing our ideas are covered in written testimony by our attorneys and in our proposed amendments to the bill.

Again, I wish to say we appreciate appearing here.

Thank you.

Senator METCALF. Mr. Notti, do you want your whole panel to testify before there is any interrogation, or would it be all right to break in? We want to conduct this hearing in such a way as to elicit the most possible information.

Mr. NOTTI. I think it is agreeable to us any time you have a question that——

Senator METCALF. Then, are there any questions for Mr. Notti? Why not have your panel testify and then if we wish to ask a question we will interrupt.

Did you have a suggestion, Mr. Jackson?

Mr. JACKSON. Yes, Mr. Chairman. I would suggest that if you wish to interrupt, fine, but otherwise, it would be preferable to make the full panel presentation and then have interrogation.

Senator METCALF. Fine. We will proceed in that way unless there is some point on which a member of the committee wishes to interrupt.

Who is your next witness?

Mr. NOTTI. The next person is the president of the Cook Inlet Native Association, Anchorage, Donald Wright. He will make the presentation on maps.

Senator METCALF. Mr. Wright, we are glad to have you before the committee again, and welcome you to Washington.

Mr. WRIGHT. Thank you, Mr. Chairman. My name is Donald R. Wright. I am the first vice president of the Alaska Federation of Natives. I am also president of the Cook Inlet Native Association. My purpose here today is to present testimony concerning the status of the lands in Alaska from the native viewpoint. Another purpose is to bring to you gentlemen an overview and comparison of the lands, villages, and population in Alaska.

I will not read from my statement. It is rather brief and it is a guide to the presentation I would like to make with maps, so with your permission, I would like to proceed with the map presentation.

Senator METCALF. You desire the statement to be put in the record?

Mr. WRIGHT. I do desire that the statement be put in the record.

Senator METCALF. Unless there is objection, so ordered. You go right ahead.

(Due to problems of reproduction, the maps Mr. Wright presented to the committee have not been reproduced in the hearing record. The maps are in the committee files and are available for inspection. The maps have been reproduced as a part of the report, "The Alaska Native and the Land," which was prepared by the Federal Field Committee for Development Planning.)

Mr. WRIGHT. First, I would like to point out to you the map of Alaska and I would like to show the major mountain ranges in Alaska. This is the Brooks Range, the Alaska Range. There are other smaller ranges.

The native population of Alaska is concentrated on the north slope in the Seward Peninsula area, the Bethel-Kuskokwim-Yukon regions, along the Alaska Peninsula, the Aleutian Chain, south central Alaska near Anchorage, the largest city, and southeastern Alaska where the Tlingit and Haidas reside and the capital of Alaska is in the southeast, Juneau. The southwest region is the Tongass National Forest and it is the area that recently was litigated through the court of claims and took 30 years.

Chugach National Forest is in this area, so with the map in mind, realizing that the Alaskan Railroad goes from Cook Inlet, Anchorage, Alaska, Fairbanks, actually from Seward to Fairbanks, and the major highway systems are all in this, what we call the rail-belt area, the concentration of nonnative population is in this area. The major native concentration, as a matter of fact, approximately 15,000 Indians, Eskimos, and Aleuts, also reside in the urban portions of the major cities of Alaska. The balance of the 55,000 estimated population reside in these rural areas.

Now, this map shows the distribution——

Senator METCALF. Would you identify the map, Mr. Jackson? You know how difficult it is to read a record.

Mr. JACKSON. Exhibit 2.

Senator METCALF. Make this exhibit 2.

Mr. WRIGHT. This map illustrates the location of the village based on 500 acres per person in these various areas. You can see Point Barrow, one of the larger villages, north of the Seward Peninsula, large village, south of Seward, and lower Yukon Kuskokwim area is a major population area, some 14,000 to 16,000 native people residing in this area. Southeastern, and this map I want to note does not include an amount of land for the urban native around the population centers because we do not know just which villages they would refer back to historically. That would have to be determined at a later date. So, each one of these would have to be expanded a little bit. But, this by and large, would be the distribution of the 40-million-acre amount of land if the natives were granted that much.

Now, this overlay shows the distribution of populations of less than 100, between 100 and 200 and more than 200, and also designates whether the land is patented, closed, surveyed or unpartitioned. In other words, the status of the land in these various communities. You can see the number of communities that are predominantly nonnative as a comparison to the number of communities that are native.

Senator HANSEN. Mr. Chairman, could I ask a question at this point?

Senator METCALF. Go right ahead.

Senator HANSEN. I understand that there are around 55,000 natives, possibly a few more as the Secretary indicated. What is the total population of Alaska?

Mr. WRIGHT. Roughly 240,000. Something like that. We are not sure after the last census. It is quite far back.

Now, realizing that the native people exist on a subsistence economy, you can appreciate a map like this showing waterfowl resting and nesting areas, cold water fish areas, and streams that carry fish, and if you will note, the major population areas are in available fish areas.

Now, southeastern Alaska is very heavy on salmon, the heaviest in the world, but salmon are not shown on this map. But you can see the reason for the native villages being in the areas that they are, using fish as part of their subsistence.

Now, this map shows the areas of big game animals in Alaska—goat, sheep, brown original bear, black bear, moose, caribou herds, the calving areas in these types of lines, and winter ranges in the horizontal lines. Again you can see that many of the native villages are in areas where there was abundant big game. Many of these people in this part of Alaska, northern Alaska, and as western Alaska, still survive on a subsistence type of economy.

Now, this map shows the commercial timber distribution in Alaska. The major river drainages, Yukon, Tanana, Kuskokwim, carry heavy spruce and birch and other species of commercial and potentially commercial timber. Southeastern Alaska and the Chugach area are in national forests.

Now, the estimated timber potential available in southeast Alaska on 20 million acres of land exceeds 100 billion board feet, and on a sustained yield basis, you could reap a billion board feet annually and maintain this resource in perpetuity. The value of that timber at today's prices could range from $2 a 1,000 board feet stumpage up to maybe $15. So we are talking in literally hundreds of millions of dollars in value of timber resource alone.

Now, this particular area, approximately 20 million acres, was withdrawn from a forest reserve and that is the area that the Tlingit-Haidas litigated. The courts awarded them 43 cents an acre.

Now, we do not feel that that was a fair evaluation by any stretch of the imagination and I want to point it out so that you understand a major comparison.

This map represents the locatable minerals, base minerals, of a nonmetallic substance, and also the known oil and gas areas and potential areas. The known oil and gas areas are shown in the outline and they are very small. Cook Inlet and the north slope of Pet-Four, a little bit down on this side and over here. These in general could be potentially oil-producing areas. The locatable type minerals are in these dark red shapes and would include coal and other things. So, you can see again where the known mineral locations are and how the native population is pretty well distributed in fairly reasonable mineral lands.

Now, I would like to point out that sometime ago there were over 500 villages in the State. The villages were farther apart because it was a strictly subsistence type of economy, but in recent years they have moved into more concentrated areas for purposes of health, attempting to acculturate, and one thing and other, so the historic villages were widely scattered in comparison to the way these are today.

This map shows the Federal withdrawals through 1964. Petroleum reserve up here, wildlife refuge, the Rampart Dam flood area, islands which are wildlife refuges, Indian reservations, military or national park, wildlife and forest areas, here and here. You can see where the Federal withdrawals were made in relation to the native villages, and you can see why we are requesting that at least the village areas come from those reserves.

We do not feel that they should have withdrawn the village sites because there was no real reason for the withdrawal outside of economic reasons that we can see. And, we do hope that we can get into these reserves in and around our villages.

I will superimpose this other one over the Federal withdrawals and it shows the State withdrawals. The dark-shaded blue areas are areas that patent has been issued to the State of Alaska. The other hatched areas are areas where patent has not yet been issued to the State. And you will note that any land that was available outside of Federal withdrawals in the major areas where there are transportation facilities, railroad or highway system, or good access by ship, open ports, the State has made the selections and this is why the natives finally realized that something had to be done to protect their interests.

Now, this map would show representatively the amount of land——

Senator METCALF. That will be exhibit 3 and those overlays will be numbered A, B, C, consecutively, so we will know in what order they were presented. They will be placed in the files of the committee.

Mr. WRIGHT. These red areas are the same locations of our villages representing the amount of land that would be the formula of 50,000 acres maximum for a village, and as you can see, it is very insignificant.

Now, at this stage I would like to point out some significant points. For example, we talk about $500 million representing approximately $8,000 per capita. The Federation of Natives proposal would be on a 10-year disbursing basis, approximately $800 per year. I want you to realize that over 100 villages in Alaska have no airfield, road access, or

any means of entry outside of walking or flying in in the winter time or flying in in the summer time and landing on the lakes with float planes. The cost of chartering a four-place float plane is $55 an hour and we are talking about traveling literally hundreds and hundreds of miles. The best means of air transportation in Alaska today, the Hercules, for hauling heavy equipment, cost $2,000 every time they take off the ground.

So, you can see how difficult it would be for the people to get materials in or to do any development when you talk about this amount of money. The amount of money that we are talking about for developing lands from scratch, realizing that there is nothing there, is very insignificant.

I think these maps will help you keep in mind the various things that we talked about, and then will be compatible with further testimony that is coming to you.

Thank you.

Senator HANSEN. Mr. Chairman—will someone be testifying about the game and fish and ownership, or whatever contention there may be about its ownership? Is someone prepared on the panel to answer a question like that?

Mr. WRIGHT. Would you repeat the question?

Senator HANSEN. What about the ownership of game and fish? What is contended up there? Is there agreement on where ownership vests?

Mr. WRIGHT. The way the bill is presently written we ask for continued use of the surface rights to hunt and fish in all areas that are not conveyed to third parties, and as they are conveyed to third parties, of course, they would be excluded. But we ask for exclusive hunting and fishing privileges in all of the vast areas to help the transition between the subsistence type living and a cash economy.

Senator HANSEN. Thank you.

(The statement referred to follows:)

STATEMENT OF DONALD R. WRIGHT, ALASKA FEDERATION OF NATIVES

My name is Donald R. Wright. I am First Vice President of the Alaska Federation of Natives. I am also President of the Cook Inlet Native Association. My purpose here today is to present testimony concerning the status of the lands in Alaska from the Native view point. Another purpose is to bring to you gentlemen an overview and comparison of the lands, villages, and population in Alaska. I have here for the Committee's information various maps and overlays that will aid in furthering your understanding of the land question.

My first map illustrates the distribution of Native villages and population as they exist today. This map was prepared from information developed by the Federal Field Committee for development planning in Alaska in cooperation with the Bureau of Indian Affairs. It shows the estimated land area in and around each village based on a grant of 500 acres for each person residing in those villages today. It does not include an allocation of lands for the urban Native who at one time or another resided in these villages or those that have been extinguished for one reason or another. However, these Native people must be included.

Although the Field Committee study now shows only 178 Native villages, there were at one time more than 500 villages. Movement of Native population to centers of trade and commerce and employment and limited educational opportunities account for the decimation of the village structure.

The first overlay shows all Federal withdrawals up to July 1964. You note that the reasons for the withdrawals appear to be economic in character and they did not bring any direct benefit to the Native people. As a matter of fact, in all instances, they were made without consulting the aboriginal inhabitants. The total wealth extracted from and as a result of these withdrawals is well

documented. For example, it is estimated that more than six billion dollars in fish, furs, and minerals have been extracted from Alaska since 1867. The estimated timber potential in withdrawn forest reserves in Southeastern Alaska alone will exceed 100 billion board feet. The timber potential on the river drainages will exceed 800 million board feet. The coal and oil reserves have not been fully explored but all indications are that these two minerals alone will return hundreds of billions of dollars when fully developed. Potential hydroelectric sites explored to date exceeds 68 in number with a prime power potential of 13 million kilowatts.

The next overlay shows the land selections made by the State of Alaska since statehood, including lands tentatively selected and for which patent has not been issued. Note that these selections are mostly contiguous to the Federally withdrawn areas, follow the present transportation routes and population concentrations. It is significant to note that neither the Native people nor the State of Alaska has been able to make any dent in the Federally withdrawn areas, especially in Southeastern Alaska.

For example, the Federally withdrawn areas on the Kenai Peninsula, Alaska Peninsula, Kodiak Island, Southeastern generally, Bering Sea, North Slope, and Aleutian Chain have effectively worked to bar economic development because private risk capital is prevented from entering these areas. This has also denied any land base to Alaskan Native villages located in these areas and prohibited State selection as well.

An evaluation of the rural Alaskan areas in abject poverty today can be traced to cumulative deterioration of the normal subsistence economy and Federal requirements prevented the Native people from making the transition from subsistence to cash economy. In general, the remaining lands outside Federal or State withdrawn areas are mountainous, glacial, and barren tundra and have no known resource for the people. The only potential we can see at this time is for development of mineral exploration which as you know is highly expensive and difficult.

We also have overlays showing timber locations by species, game animals, fisheries resource, and lode and placer minerals. These are all self explanatory and are provided for the Committees use and information.

We have prepared for the Committees benefit a map showing the comparison of land distribution using Secretary Udall's proposal, as outlined in H.R. 17129. You will note that based on his formula there would be no significant land base from which villages could develop an economic base. We believe that the villages of Alaska have Native leadership capable of managing and developing on a regional basis and at the local level. In order to accomplish this goal we believe that a minimum of 40 million acres of land is necessary to provide the economic and land base for both rural and urban Native people.

In order to develop the lands we are seeking for the benefit of our Native people, sufficient funds need to be provided. For example, we note that since statehood, the oil industry alone has expended 1.3 billion dollars in overall industry development. In 1967 alone, the oil companies invested more than 380 million dollars, with allied industries investing nearly 77 million dollars. That's for one resource.

We believe that $500 million for village and regional development, an investment by the Congress, is not asking too much. Not when one considers that the basic investment is being made in people—a commodity we can ill-afford to treat in the future as badly as we have in the past.

Senator METCALF. Who is next?

Mr. NOTTI. I think Representative Willie Hensley.

Mr. HENSLEY. Mr. Chairman——

Senator METCALF. Have you a prepared statement?

Mr. HENSLEY. I do have a prepared statement, and I have some other remarks.

Senator METCALF. Go right ahead in your own way, Mr. Hensley.

Mr. HENSLEY. Thank you. To answer Senator Hansen's question about the ownership of fish and game, I believe the State has jurisdiction. We are supposed to obey the State fish and game laws. We are also, I think, supposed to be bound by international treaties regarding migratory fowl. However, it is awfully difficult for us to obey these

regulations when most—in many cases the game is gone when the season is opened, and I am sure that many of these regulations were not created for our benefit particularly.

Therefore, the law makes us lawbreakers just so we can obtain our food.

I made some remarks yesterday before the House Subcommittee on Indian Affairs. We felt that they were more unfamiliar with the land issue in Alaska and the Alaskan Indian, Eskimo and Aleut, and I, therefore, made a few statements which I thought would clarify to them our distinction as opposed to some of the Indian groups in the lower States. I think that since there are new members of the Senate committee here, that I would go through these again. They are quite short.

The Alaskan natives are not recognized as a single group or tribe by the Congress or the Interior Department. I think the Interior Department recognizes only villages as representative groups. Therefore, some groups have organized under the Indian Reorganization Act as individual villages and are, therefore, corporately organized.

We have only recently organized regional associations and a statewide federation. These associations grew as a result of the land issue and a desire by the native people to improve their economic and social condition. But, these organizations are not recognized in law. We have only a very small percentage of natives residing on a very few reservations. We have only one true reservation, I believe, in southeastern Alaska. And these were actually foreigners coming over from Canada, but they are now Alaskan natives.

We have three major Alaskan native groups, the Eskimo, Indian, and Aleut, and they are culturally and linguistically distinct.

We have about 55,000 natives in Alaska who live in scattered villages through Alaska's 586,400 square miles. About 70 percent of the native population live in about 178 villages. We have a subsistence economy of hunting and fishing supplemented by cash incomes earned on various jobs during the short summer season. Seven out of 10 adult natives have only an elementary education. We have a rapid rate of increase, 29 per 1,000, which is twice that of the United States. The median native age is 16.3 and 80 percent are less than 35 years of age. The median family size is 5.3. One-half the native work force of 16,000 to 17,000 is jobless most of the year. The death rate is twice that of white Alaskans; 9.6 deaths per 1,000. The cost of goods in remote parts of Alaska is 74 percent above Seattle costs. Most Alaskan native families earn less than $2,000 annually, cash.

We had a task force which was created last year in the State which attempted to work out an agreeable solution to this land problem between the natives, the State and the Interior Department. We had quite a few sessions. There were 40 members on the task force and I believe there were nine on the drafting committee. We met with the State's representative, Attorney General Boyko, and the Interior Department. And we had some major basic objectives with regard to this land settlement.

We feel that lengthy litigation should be prevented in the courts. We feel that the entire State will suffer if compensation for land taking is not soon paid to the native groups.

We also desire simplification of the administrative process, diminution of the Secretary of the Interior's power and control over the land and the people. We felt that the benefits of the land settlement should be spread among all the natives very broadly and we wanted assurance of surface use of land because we could not change to a cash economy very quickly.

Since the February hearings—I am going into my prepared statement now—another piece of legislation has been submitted by the Secretary of the Interior. This legislation was never reviewed by the native groups in Alaska—nor do I believe the State was informed of its provisions before its submission. We were, therefore, quite shocked to learn of its introduction.

We were, as you know, attempting to work out a settlement acceptable to all three major native groups, the State, and Federal Government. We now have S. 3586 before the Senate.

The near unanimity between the three major groups that was created through the task force labors has been, unfortunately, destroyed.

I cannot support S. 3586 as written. The Alaska Federation of Natives, which is representative of all the major native groups in Alaska also opposes the bill and proposes major amendments.

My opposition to S. 3586 stems from disagreement with the following provisions:

1. The inadequate monetary compensation granted to Alaska's natives,
2. The meager land granted to native groups,
3. The extensive powers of the Secretary of the Interior,
4. The lack of representation of Alaska natives on the Alaska Native Commission, and
5. The extinguishment of Alaska native claims pending before the Indian Claims Commission without an option to carry on the litigation.

The single most serious objection I have against the bill besides the inadequate monetary and land grant provisions, is the abundant powers the Secretary reserves to himself. He must, of course, delegate these powers to his employees in the Bureau of Indian Affairs. Unfortunately, in this particular issue in Alaska, the BIA has, over the years, not been in the forefront as our protectors. The Secretary of the Interior, as our guardian, came only recently to our rescue by instituting the so-called land freeze and giving Congress the opportunity to settle the issue without further takings occurring in the meantime.

I feel that in the long run, within the next 10 to 15 years, we must begin dissolution of the Indian Bureau in Alaska and allow the native people to begin shouldering the burden of guiding their own lives into the uncertain future. I believe that within a short time, it will be possible for the native people in Alaska to assume the responsibilities now carried on by career BIA officials. The Government may want to contract with the native groups—and I believe we could do it with great vigor and at less cost.

I fear that if the Indian Bureau is given another decade of responsibilities over the land resources of the natives through this legislation, we shall never assume control of our own destiny.

We have and will have more competent leaders who are quite capable of selecting qualified lawyers, engineers, geologists, teachers, and other professionals.

I ask this committee to keep in mind the fact that you are determining the future course of many lives with this legislation. The difficulties in cultural transition we face are great—and only with substantial assistance through a generous settlement can we help our people step into the world of America.

I do not know exactly why the Outer Continental Shelf proposal was abandoned, but I do feel that an alternative to large chunks of cash out of the U.S. Treasury could be a combination of OCS revenues and reasonable Treasury appropriations to Alaska natives.

The Alaskan public and the State of Alaska desires a solution to the land issue. The State legislature attempted to come to grips with the land freeze by passing H.B. 672—finance committee—which would have provided $50 million to the native groups if the freeze were lifted my mid-October. Unfortunately, this legislation may become a dead letter as it appears that the native groups within the area of State selection may not be able to acquire their village lands from the State prior to, or after the lifting of, the freeze—if indeed the Secretary of Interior sees fit to do so. At this point in time we feel that the freeze, although a stopgap measure to protect the Alaskan native, is necessary, at least until someone comes up with a plan that will afford us protection—while allowing the disposition of land and development to continue.

We had a little discussion earlier about minerals and the land resources of Alaska and their use. I would like to point out that along with the other Indians in the United States, we officially became citizens of the United States in 1924 with the general legislation that was passed. Prior to that time, I believe there was a rather difficult process which was created under the territory to become a citizen. So, therefore, during the great gold rush period we were all mainly, technically not citizens of the United States. Therefore, if any native wanted to involve himself with acquisition of property and wealth through mining, he could not. He could not hold mining leases. The prospectors who came up and pretty well devoured the gold that was obviously there to be taken pretty well pushed out the natives and said you could not hold this land because you are not a citizen of the United States.

A great deal of wealth has been taken out of Alaska. I do not know how much alone only in gold, but much in fisheries, and we feel that it is now time for us to particiapte in the taking of resources and development. After all, this is our only home and undoubtedly most of us will die there, which is quite unlike most other businessmen who usually go to Florida to spend their waning years or to Mexico, maybe.

Also, I do not see why there should not be provisions in whatever legislation is passed so that a certain amount of mineral wealth will go to the native groups. If we had approached this problem of land claims 20 or 30 years ago and when there was not a great knowledge about the mineral wealth of Alaska, we would perhaps have not had any difficulty in getting large acreages of land. In fact, through the Interior Department process, much larger parcels of land have been allowed some native groups purely by secretarial order. We have one for a village that is over a million and a half acres. That is a sec-

retarial reservation. We have others that are 144,000 acres in size for 400 or 500 people.

So, we feel that the legislation that is being proposed by the Interior Department is very niggardly in the land grant situation.

Of course, to a degree, there will be opposition to land grants to natives in Alaska by Alaskans. But we feel that back in the villages we have representatives of the various regions, those of us who try to lead in this area, the people actually feel that they own the land and they know every stream, every hill, every lake. They have names for every area up there. They know it like the back of their hand. And for the United States even to say that it owned it, though the Russians did not conquer most of Alaska, they never even visited most of it, and then overnight it was reverted to the United States, and I think we have the absence of action here that would show that the United States actually took possession and actually owns it since I believe that the Russians sold only what they had and that was not very much. They had only a few settlements.

So, we feel very strongly about this. We feel that we have pretty much intact what the legal people call Indian title and it has not been taken, which I think adds to the complexity of this particular situation. We hope that within a short time, a few years, couple of years, two sessions, we hope we can get something worked up whereby we can begin resolving this land problem and start development of the people which is, as you know, very bad.

Thank you.

Senator METCALF. Senator Gruening?

Senator GRUENING. I note that the testimony of Mr. Notti and Mr. Hensley is similar in its objections to this legislation, and I share their feeling. As I tried to develop in my comments to the Secretary, if we are going to really develop this vast region of backwardness and poverty and give the native people an economic base for economic and social development, the provisions in this latest bill are not adequate.

Now, we face a very practical problem here in the Congress. When the administration sends down a bill, if we enlarge the provisions in that bill, we face two obstacles.

First of all, is the danger of a veto following disapproval by the Department, which is usually sufficient to kill the bill. And also, the objection of our colleagues who may feel that the present provisions are adequate.

Now, one of the things that I would like to see developed in the coming testimony of both the native witnesses and of the attorneys is this: I think it would be easier to secure an increase in the acreage from the Congress than to secure an increase in money. That is a practical problem. I think the Congress—this is my own conjecture—would be more willing to go from 20 million to 40 million acres than to increase the amounts of money from $180 to $500 million. If we can get an increase in the acreage, we increase the probability of finding mineral resources in that land, and I would like to have that made the subject of comment by the members of this panel and learn what they think.

We have a practical problem here. I completely share their criticism, and I consider the amount of money provided inadequate. I consider the amount of land proposed is insufficient, and I feel that the control

of the Department of the Interior is very properly objected to. I have made that point before in relation to an earlier bill. The time has come now that the native people have good leadership, that they can hire the necessary engineering economic planning, and legal and other talent to fend for themselves. The record during many past decades appears to be that the Bureau of Indian Affairs has exercised a retarding influence on the development and progress of the native people in Alaska. This is no criticism of individuals—but of overall policy. So, I share these criticisms and to the extent that my voice and vote in the committee will prevail, I will try to get those changes made. But we do confront this practical problem of how much the Congress will go for and how much the Department will approve, and this is one of the things I would like very much to have the witnesses give attention to in their future comments.

Thank you.

Senator METCALF. Your next witness, Mr. Notti.

Mr. NOTTI. It will be Mr. John Borbridge, president of the Tlingit and Haida Association.

Senator METCALF. We are pleased to have you again before the committee. Go right ahead.

Mr. BORBRIDGE. Thank you. My name is John Borbridge, Jr.

First, may I express my thanks for the opportunity to appear today before this committee.

The hearings which this committee held in Anchorage, Alaska, in February of this year and the present hearings manifest that the committee has a sincere interest in the formulation and enactment of legislation which will deal equitably and fairly with the land rights of over 55,000 citizens of the United States who are natives of Alaska—persons of Indian, Eskimo, and Aleut descent.

I am president of the Central Council of the Tlingit and Haida Indians of Alaska. I am also a director of the Alaska Federation of Natives. I, along with other leaders of Alaska natives, appear before this committee to petition Congress in accordance with our rights under the Constitution and laws of our land.

I am proud to state my belief that there is no nation on the earth which has, during its history, set so high standards of dealing with native aboriginal peoples as the United States and no nation which has been more willing to rectify situations when it has fallen from those high standards.

I believe that the record will show that if Congress adheres to the same high standards and its own past actions in conformity with those standards, it will undertake to seek and obtain a consensus of the native groups of Alaska before approving any acquisition or other disposition of the ancestral lands belonging to the native groups.

When the European and American ships visited Alaska during the second half of the 18th century, they found the natives of Alaska of Indian, Eskimo, and Aleut descent were in occupancy of the several parts comprising all of Alaska.

Today, descendants of these native groups still continue to hold, by "rights of aboriginal occupancy," the great bulk of the same territory.

Today, Alaska, the last great frontier of our Nation, is the sole remaining part of the United States which includes extensive areas,

comprising several hundred millions of acres, still held by native inhabitants based on rights of aboriginal occupancy. Aside, possibly, from small tracts which may have been missed, the "original" Indian or native "title" to all lands in all parts of the country has, over the years, been extinguished by the Federal Government, except in Alaska.

Now, there are a number of bills pending before Congress which propose to deal with the extensive occupancy rights of the native groups of Alaska.

We, the natives of Alaska, have trust and confidence that Congress will adhere to the same honorable national policy and just principles which have uniformly guided it in dealing with aboriginal occupancy rights in all other parts of the country, ever since the founding of our Nation.

The keynotes of our Federal policy from the beginning have been honor and protection of the aboriginal occupancy rights of the native groups.

The underlying principles have been that native occupied lands should be acquired by the United States only with the voluntary consent of the native groups and for a fairly negotiated price.

These keynotes and principles are embodied in a consistent course of legislative acts of Congress, treaties made with the Indian tribes, executive agreements made with Indian tribes and approved by both Houses of Congress, Executive proclamations, and in a long series of decisions of the Supreme Court.

It is not suggested that our country's dealings with native groups are without blots. However, the record shows that when Congress has been apprised of mistakes or unfair or inequitable transactions, it has sought to provide appropriate restitution or other remedies, including the vesting of jurisdiction in tribunals, such as the U.S. Court of Claims and the Indian Claims Commission, to hear and determine the claims of injured native tribes or groups.

In considering the current legislative proposals to deal with the land occupancy rights of the Alaska native groups, it is worthwhile to remind ourselves of certain basic historical facts.

During our early history, the rapid population growth gave impetus to drives to acquire additional lands for purpose of increasing the resources and wealth of our Nation and for the use of our pioneering settlers, who, in ever-rising numbers, were migrating westward. Conflicts broke out between the settlers and the Indians. These were periods of great stress.

The Federal Government was denounced for trying to protect Indian lands.

Complaints were made that Indian occupancy of lands was hindering the progress of the Nation.

It was asserted that a policy of honoring tribal occupancy rights and purchasing Indian lands would impose vast liabilities on the Federal Government.

It was argued that Indian occupancy of lands created no valid rights; and proposals were advanced to expropriate the Indian lands against the will of the Indians and without payment of any compensation.

However, Congress firmly stood by its policy of respect for the land occupancy rights of the Indians. In acquiring lands for the expansion

of the Nation and the use of the settlers, Congress recognized the just principle of voluntary purchase and sale for a negotiated price in its dealings with the Indian tribes.

Thus, up to 1871 the Federal Government pursued a program of negotiating and making treaties with the Indian tribes, whereby portions of ancestral tribal lands were retained by the tribes as "reservations," and the Indian title to the balance of the lands was "extinguished" by voluntary cessions by the tribes and upon payment by the United States of agreed prices.

After 1871, the Federal Government acquired Indian lands by executive agreements which were subject to ratification by both houses of Congress.

By such treaties and agreements made with Indian consent, the United States purchased the great bulk of the lands of the Indian tribes of the first 48 States at prices which, in the aggregate, have conservatively been estimated to exceed $800 million—indeed, a vast sum considering the national budgets of those early years of our Nation's history.

Further, despite the loss of many millions of acres during the years 1880–1934, by reason of improvident governmental policies, it has been estimated that more than 50 million acres of lands of these States have been retained to this day in tribal or individual Indian trust ownership.

Once again, now, in this sixth decade of the 20th century, when the matter of dealing with the existing land occupancy rights of the native groups of Alaska has come to the fore, we are hearing from some quarters the same inequitable arguments and the same discredited assertions and complaints which were advanced during earlier periods of our Nation's history and which Congress has repeatedly rejected.

Some argue that the claims by the native groups of Alaska of land occupancy rights are invalid.

Our answer is that our land occupancy rights are the same as the occupancy rights of the Indian tribes of the first 48 States. Our occupancy rights are entitled to the same respect, honor, and protection that have been uniformly accorded to such rights under Federal policy and laws.

Further, we answer that if there is any serious doubt about the validity of our occupancy rights, we ask only that Congress give us our day in court so that we may have a judicial determination of the validity, scope, and extent of our existing occupancy rights, and then afford to us full Federal protection of such rights as are judicially established.

From some lips fall the familiar complaints that native occupancy of lands is impeding the economic development and progress of the State of Alaska.

Our answer is that though we have the right of complete beneficial use of our aboriginally occupied lands and all the resources of such lands, we have been prevented and restrained from exercising our rights to deal with and develop such lands and resources. We say that only after we have been permitted the reasonable opportunity to exercise such rights a judgment may fairly be made as to whether our occupancy is hampering the economic development and progress of Alaska.

We believe that we have sufficient leadership ability to direct the development of our lands and resources.

We believe that we have the capacity—at least equal to the Federal and State bureaucracies—to make wise selection of experts and technicians to assist us, including engineers, geologists, foresters, managers, investment advisers, accountants, economists, and lawyers.

Some argue that since the discoveries of valuable oil and gas resources on the native lands have been recent and since the natives in their aboriginal way of life did not exploit their lands for oil and gas, the natives have no basis for complaint if the Federal Government permits the natives to continue to use the lands solely for hunting, trapping, and fishing purposes, or if the Federal Government appropriates the lands and compensates the natives only for the value of the lands for such aboriginal uses without regard to the oil and gas values.

This is an argument which has been repeatedly rejected by the Supreme Court and the Court of Claims in cases involving Indian tribal lands.

By a parity of poor reasoning, it may be suggested that if Senator Jackson owned a 5,000-acre tract of mountain lands in his home State of Washington which he used exclusively for hunting and for enjoying its beauty, and then valuable mineral deposits were discovered on the land, the Federal Government could, lawfully and in good conscience, appropriate the tract and pay Senator Jackson only for its value for hunting purposes and for its beauty.

Many have suggested that since the Alaska Statehood Act gave to the State of Alaska the right of selection of some 103 million acres of land, a serious dilemma has been created in that the exercise of such right by the State would necessarily require the selection of much land presently held by the Alaska natives.

Our answer is that Congress was fully aware of this problem when the statehood act was passed. In accordance with the uniform Federal policy to honor and protect lands held by aboriginal occupancy rights, Congress explicitly required the State of Alaska in the statehood act to "forever disclaim" all right or title to any lands held by Indian, Eskimo, and Aleut groups.

We say that any State selection of lands which are held by native aboriginal title is violative of the terms, intent, and spirit of the statehood act and contrary to other acts of Congress as well as Federal policy.

History shows that on the occasions when other States were earlier admitted to the Union, the acts of admission included provisions substantially identical to the "disclaimer" clause of the Alaska Statehood Act. Following the admission of such States, the Federal Government by agreement with the Indian tribes acquired such Indian title lands as were committed to the newly admitted State. The same procedure is applicable to Alaska.

During the debates on the bill that became the Alaska Statehood Act a number of distinguished statesmen advocated amendments to the bill so as to provide a mechanism for resolving the problem of any State selection of lands which might conflict with native occupancy rights. However, Congress in its wisdom, decided to postpone the final resolution of this problem to a later day. We trust that the day is now

and that in its resolution of the problem the Congress will act fairly and honorably as it has in the past.

Some complain that for the Congress to deal with the native groups to acquire the native lands in order to fulfill the commitment to the State of some 103 million acres would result in a great drain on the Federal Treasury, considering the oil, gas and other valuable resources of the lands. It is further argued that since lands held by native title are not constitutionally protected against a taking by the United States, and for purpose of avoiding such a drain on the Treasury, Congress should expropriate the native lands or pay a unilaterally fixed amount far below the value of the lands.

These are akin to the arguments of our earlier history which sought to place a dollar sign on national honor and integrity and which Congress rejected when it purchased the lands of the Indian tribes of the first 48 States.

The natives of Alaska are aware that efforts to work out fair and equitable solutions of their occupancy rights are fraught with great complexities and conflicting pressures. We understand that accommodations must be made in the national interest and in the interests of the State of Alaska.

I believe that the natives of Alaska are prepared to make reasonable accommodations. This is evidenced by the substantive proposals which were drafted with the participation of the native leaders and have been incorporated in S. 2906. This bill was drafted under great pressure of time. We recognize the need for technical amendments.

We reject the so-called administration bill, S. 3568, as illiberal and as misconceived in many important respects.

Finally, may I say again that we trust and believe that, in accordance with the Federal policy which has prevailed throughout the history of our Nation, and as a matter of fairness and equity, this committee will seek and obtain a consensus of the native groups of Alaska before approving any acquisition or disposition of the native lands.

I would like to ask the permission of the chairman to interpolate a few comments which are not a part of the statement.

Senator METCALF. Without objection.

Mr. BORBRIDGE. Thank you, Mr. Chairman. The comment has been made and question has been raised as to the status of the Tlingit and Haida Indians. For purposes of clarification, for the understanding of the committee, I would like to point out that under the 1935 jurisdictional act the Tlingits and Haidas were allowed their day in court, receiving in 1959 a unanimous decision which substantiated their claims to Indian title. However, in 1968 on the matter of the evaluation in a decision issued this past January the court held that not only would the Tlingit and Haida Indians receive $7½ million as compensation for those lands to which Indian title had been extinguished but further that the Tlingits and Haidas still held judicially affirmed Indian title to 2.6 million acres.

Further, when the language under Executive order created the Tongass National Forest, it was within the context that the Tlingits and Haidas were claiming Indian title to the entire area. The language creating the national forest specifically indicated that the lands set aside and thus taken would be from the mean high tide to the

uplands. This leaves a residual area from the mean high tide to the adjacent submerged lands.

We feel that this combination of circumstances clearly indicates that while in fact the Tlingits and the Haidas have had their day in court, the full issue of the matter of native land rights pertaining to this group of the aboriginal population of the State of Alaska justifies its inclusion in the final settlement of all land claims for the State of Alaska.

We are in complete accord with the proposed amendments which have been suggested by our fellow spokesmen.

I would like to add another comment relative to the figures which have been advanced as they have pertained to the issue of evaluation relative to the lands taken from the Tlingits and Haidas. It has been pointed out that the Tlingits and Haidas received land the value of which was fixed at 43 cents an acre and in some of the proposed settlements it has been proposed that this would be an equitable method of determining the valuation which we might have attached to the lands that we would receive today.

I would like to point out that these valuations of the Tlingit lands were dated as of the dates of 1891, 1902, 1907, 1909, and 1925. Thus, it would be inequitable to take as a basis for settlement of those lands which are claimed by the native peoples of Alaska today a taking date and evaluations fixed as of a much earlier time.

We believe essentially that what we are trying to establish today before the Commission is that not only do we have native land rights which national policy has consistently honored but that policy has further dictated that in some methods the final settlement has always been a matter of negotiations, whether it be through treaties, agreements or even judicial determination where we have always been able to have attorneys representing us in a judicial process. We feel, therefore, that the terms of this settlement should likewise be a matter of negotiation.

I would like to add my final comment. I sincerely believe that the native leaders of Alaska have assumed a very statesmanlike posture. They have indicated a willingness to accommodate the interested parties. We have demonstrated a concern far beyond the sole concern for the settlement of land claims. We have demonstrated a concern for the well-being both of our country and of our State, because we are inseparably a part of each.

We further feel that the settlement of this problem is not only a challenge but a rate opportunity for the United States. You have before you representatives who firmly believe and are dedicated to the principle that these can be settled and justice and equity can be achieved by the channels which are afforded us under the Constitution and which Congress has provided us in the past. We feel, therefore, that such equitable settlement where there have been other blots perhaps in dealing with Indian tribes in the past will furnish a fine opportunity for justice to prevail.

Thank you very much, Mr. Chairman.

Senator METCALF. I would like to finish the panel this morning, but if there are any question there will be opportunity to interrogate when we are through.

Mr. Notti, your next witness.

Mr. NOTTI. Mr. Cliff Groh, attorney for the federation, also attorney for other groups of Indians, will be our next witness.

Mr. GROH. Mr. Chairman, my name is Clifford Groh. I have appeared before you before.

Senator METCALF. Delighted to have you again before the committee.

Mr. GROH. Thank you, sir. I think in response to Senator Gruening's question, and I will not testify from my statement——

Senator METCALF. It will be incorporated in the record.

Mr. GROH. We, of course, are in favor of a legislative settlement of this matter and I think it is important that the committee recognize the two maps that Mr. Wright put up on the board.

Now, this map that is up there now represents a settlement of 500 acres per person to the native people of Alaska and that is how the land would be distributed.

Now, those are the provisions of Senate bill 2906. The other map that he put up there which had an occasional red dot on it would be the settlement proposal under Senate bill 3586 which is the Secretary's, the administration's proposal. We do not think that by any stretch of the imagination the 40 million acres that would be represented there is too much land for the native people of Alaska. The offer in Senate bill 3586, the Secretary's proposal, is completely inadequate and it would not provide the land base that these people need.

I think it is also important that the committee realize that we must be able to get into the withdrawn areas because the villages are there and, Senator Metcalf, you will recall the testimony of George King from Unimak Island during the Anchorage field hearings. Unimak Island is about 200,000 acres, as I recall. It is set aside for reindeer and musk ox. There is a village there and those people cannot get the capital to build up their village because they cannot get at the land and, of course, this is completely unreasonable. The same thing is true in many other areas in the Cordova area, Chugach National Forest. The villages there cannot get any land and this 40 million acres is going to have to include some kind of a provision so that these people can get the land in the withdrawn areas.

In the moose reserve, for example, they cannot get any——

Senator GRUENING. I would like to say for the benefit of our colleagues who were not at these hearings that this was a shocking example of arbitrary action, in my view, by the Department of the Interior. The Department of the Interior merely declared entire Unimak Island to be a wildlife refuge without consulting the natives living there. They just took it right away from them and now they are subject to dual control both from the Fish and Wildlife Service and Bureau of Indian Affairs, and they have no right to utilize their resources. They are strictly limited.

This is the kind of action that is very properly protested. I was shocked to hear it, that this was done without any compensation to the people who lived there. Just as if they moved into your home and took it away from you and established new rules of conduct for you on land that you had always lived on.

Mr. GROH. And I think that in connection with the settlement of the 40 million acres, the broad settlement, of course, there was extensive use by these people of these lands for hunting purposes. That use, of course, and occupancy has gone on for thousands of years.

I would like to direct one additional specific comment to Senate bill 3586 and point out another substantial difference between it and the Governor's land claims task force bill, which is 2906. And that involves the issue of how the native people are going to take this land.

It was our feeling that we should take this land, the native groups, the villages themselves should take this land in fee and try to develop it, try to build themselves an economic base. The Secretary's bill provides a two-step procedure where they can eventually get the land. In other words, it goes in trust, first up to 50,000 acres and then if the land use plan is presented to the Department of the Interior, then they can get the fee title to it.

It is our belief or our slight fear that we may never get the title to it, that the Department may hang on to it or may establish some kind of regulations which would make it very difficult for us to ultimately get fee title to that land. We think that an amendment should be made so that title can be obtained and this two-step procedure eliminated.

Thank you, Mr. Chairman.

(The statement referred to follows:)

STATEMENT OF CLIFFORD J. GROH, ATTORNEY, ALASKA FEDERATION OF NATIVES

Mr. Chairman, my name is Clifford J. Groh. I have practiced law in Anchorage for sixteen years and am a partner in the firm of McCutcheon, Groh, and Benkert. I was formerly an assistant U.S. attorney and have served on the Anchorage city council for four years, the Anchorage Borough Assembly for three years, and the Anchorage school board for four years. I am also a past president of the Alaska Bar Association.

Since January 1966 I have been active in representing various native groups. Our firm now represents the following native associations and villages:

(1) Native Village of Tyonek.
(2) Native Village of Eklutna.
(3) Kenai Native Association.
(4) Seward Peninsula Native Association (Nome).
(5) Bristol Bay Native Association (Dillingham).
(6) Village Council President's Association (Bethel).
(7) Chugach Native Association (Cordova).
(8) Copper River Native Association.
(9) Alaska Peninsula Native Association.
(10) St. Lawrence Island Eskimos.
(11) Village of Unalakleet.

I have attended and participated in all of the statewide meetings of the Alaska Federation of Natives and all of the Governor's land claims task force meetings.

The native people have inhabited Alaska, as one court stated, "From time whereof the memory of man runneth not to the contrary." The first northern Europeans arrived in 1741, and from then until 1867, treated Alaska as a hunting ground for valuable furs. The Russians never attempted to exercise any dominion over ninety nine per cent of Alaska's three hundred sixty five million acres. The native people were not conquered and most of them never knew that the Russians purported to "own" Alaska and subsequently "sell" it to someone else.

The treaty of cession, dated March 30, 1867 and ratified by Congress, affords some insight into the status of Alaska's natives at that time. Article III provides: "The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. *The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.*"

The term "uncivilized tribes" mentioned in article III refers to those natives who are "independent" or "not wholly dependent" as those terms are defined in

the third chapter of the Russian American Company. I will not attempt to make a classification as to all the particular native groups in Alaska but will merely say that the "civilized tribes" are limited to the Aleutian Chain, Lower Alaska Peninsula, and Lower Cook Inlet. In ratifying the treaty, it was the obvious intention of Congress to grant the "civilized" natives the same property rights as all other American citizens and to treat the "uncivilized tribes" the same as all other aboriginal tribes of the United States. This equal treatment should also apply to their rights in the land.

One other brief comment on the Treaty of Cession. Some persons have contended that because of article VI, which provided for the payment of an additional $200,000 to the Russians, Indian title to lands in Alaska has been extinguished. That position is not valid because the actual reason for the additional $200,000 payment, as discussed in *Kincead* vs. *U.S.* 150 U.S. 483 (1893), was to compensate the Russian American Company for its possible vested property rights.

It is undisputed that the Alaska natives have used and occupied certain lands to the exclusion of other people for many years. That continuous and exclusive use, unless extinguished, is sufficient to establish aboriginal title. It is also undisputed that Congress has never extinguished the aboriginal rights of the natives, Indian title, when proved, must be accorded proper respect.

There has been no extinguishment, to quote the Supreme Court in *United States* vs. *Santa Fe Pacific RR* 314 U.S. 339 at 347, either ". . . by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise."

We do not believe that Indian title depends upon recognition or approval. It is based on aboriginal possession. Once established, it endures until extinguished or abandoned. See *Lipan Apache Tribe* vs. *The United States*, U.S. Court of Claims 15 Ind. Cl. Comm. 532.

Legislatively and judicially, Indian title in Alaska has been preserved. Let us first look at the legislative history.

The act of May 17, 1884, in section 8, provides in part: "That the Indians or other persons in said district (Alaska) shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress . . ." (matter in parenthesis supplied)

The act of June 6, 1900, 31 Stat. 321, in section 27 has a similar provision. The Alaska Statehood Act, P.L. 85–508, (1958) in section 4 states: "As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivision by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, that nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto: and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: And provided further, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation."

Article XII, section 12, of the constitution for the State of Alaska has within it a disclaimer by the State of Alaska and its people which conforms to section 4 of the Statehood Act. All of the above acts consistently reiterate our position on Indian title.

From a judicial standpoint, there have been a number of decisions supporting our stand. The cases usually cited in opposition to our view are *Miller* vs. *U.S.* 159 F 2d 997 (1947) and *Tee-Hit-Ton Indians* vs. *U.S.* 348 U.S. 272. We believe both of those cases have been impliedly overruled. However, the ultimate and final answer to the question of whether Indian title exists in Alaska is the case of the *Tlingit-Haida Indians* vs. *the U.S.*, docket No. 47900, U.S. Court of Claims decided January 1968. There the court held that the Tlingit-Haidas *have* Indian title to two million six hundred thousand acres of land, which has not been extinguished. If that group has Indian title, why do not the rest of the Alaskan natives have Indian title? No one can demonstrate that the natives of western Alaska should be treated in some manner different from that afforded to their southeastern brothers and all other aboriginal people.

Everyone in Alaska knows of the problems confronting our native people. Others will go into more detail but they involve (1) lack of employment (2) grossly poor housing (3) poor education in quantity and quality (4) complete absence of public facilities such as water, sewer, electricity, etc. We also know that many of our native people have never had an opportunity to escape the poverty that engulfs them. This has not been the result of anyone's campaign. If given an opportunity, I am confident that they can and will develop Alaska. Their leadership is here and you have observed them. I am proud to represent them and know that after this legislation passes, they will maintain the faith that you have placed in them.

Senator METCALF. Mr. Notti.

Mr. NOTTI. Our next witness is Mr. Barry Jackson, also an attorney for the federation, and he will go into the technical amendments that we propose to the bill.

Senator METCALF. Mr. Jackson, we are pleased to have you again before the committee and I remember the fine testimony that you gave in our field hearings and I am looking forward to the presentation you have today.

Mr. JACKSON. Thank you very much, Mr. Chairman. I do not have a formal written statement as such. My statement is essentially a summary of the document now being placed before you which is our proposal for amendments to the Secretary's most recent proposal, Senate bill 3586, together with a commentary on those amendments.

For the members of the committee who were not at the field hearings, I am appearing here not only as an attorney for the Alaska Federation of Natives, but also for a number of Indian groups in the interior of Alaska where there are relatively few of them.

I did much of the drafting of the task force proposal which is before you as S. 2906 as well as these amendments. I am prepared to answer questions on either of those and also on the State bill which the legislature passed this past session.

While we were deeply distressed by Secretary Udall's latest proposal, we felt that it was incumbent upon us to respond positively to it by preparing amendments to the administration bill rather than insisting on our proposal S. 2906. We feel that with appropriate amendments and with future modifications also to the State law which was passed by the last session, the best and most important features of the task force proposal can be melded with the administration bill to produce a compromise that would be acceptable to the great majority of Alaska's natives as well as to the State.

The draft which I am submitting at this time has underlined appropriate new amendments as we propose and at the same time we have struck through the language which we feel to be inappropriate. This will facilitate following my commentary on the amendments.

Turning to page 1 of the proposal, the bill itself, in section 2(b), two changes are suggested. First, the task force, Governor Hickel's task force, desired to extend benefits of the settlement to Alaska natives who were adopted by whites or other persons not natives and we have added some additional language to take care of this problem.

Second, we have a problem because there are many natives who are uncertain of their bloodlines and may be less than a quarter blood. We have added language to take care of this problem and it is very critical in the Aleut area, and you will hear later from the attorney for the Aleuts on this problem as the Alaska Federation of Natives has no strong position on the matter of blood count. In both our proposal and Governor Hickel's task force proposal we put in quarter blood, but this was largely a result of our feeling that the Department of the Interior desired this. Third, because we do have to have some kind of cutoff point, otherwise, we have the danger of inflating the roles.

In section 2(c) you will see that we have a change in line 22, we have substituted the Commission, that is to say, the Alaska Native Commission, for the Secretary. The Alaska Federation of Natives proposes increasing responsibilities for the Alaska Native Commission and includes transferring a number of functions from the Secretary of the Interior to the Commission, including the one function found here.

We also refer in subsection 2 to incorporated or unincorporated tribes, et cetera, including those incorporated under the laws of Alaska. I think some members of the committee may be interested in the unusual features that we have adopted in handling the land and the money. The land and the money will not be given to villages as municipal cities and will not be given to the village as tribal entities. Instead, business corporations will be formed by the village members and the land and the money will go to these business corporations. This is very important because it separates the municipal corporation or the native group as a municipal corporation from the native group as a tribal entity. Otherwise, there is a very real danger that it will freeze the natives to the land and to the villages and make it difficult or impossible for them to be mobile in American society today.

Now the Alaska law provides that all native groups will incorporate under Alaska law or under the IRA provisions, the reorganization act provisions, even though there may not be any State royalty, $50 million State royalty, because of the failure of the freeze to be lifted. These provisions on incorporation of native groups are still effective and this portion of the State law will still be in effect, therefore, the congressional settlement of this problem needs to be tied to the State law in this respect. We feel it is important to have recognition of this fact included in the bill. That is why we have referred to incorporated or unincorporated groups including those incorporated under the laws of Alaska.

In section 4, on page 2, the Secretary's bill proposes canceling out all claims currently before the Indian Claims Commission. We propose to leave these claims pending. That is what the Governor's task force proposed to do. We do feel, of course, as the task force proposal provides, that any moneys awarded through the Court of Claims or Indian Claims Commission should be set off before a group receives any money under this proposed settlement.

Section 5, under the Secretary's bill, provides that lands which are withdrawn cannot be granted to the native villages. As we have shown you, many villages of Alaska are within withdrawn lands and it is absolutely necessary if they are to be given any kind of land base that these lands be made available to them. Therefore, we have provided that the Secretary grant lands within withdrawn areas provided, with this exception, he cannot grant lands to native villages in national parks or national monuments and generally speaking, national forest lands will not be available either.

Under section 17 there is a limited amount of national forest lands which are made available. I will get to that when I come to it.

Next in section 5, we have broadened the area opened to be granted to native groups. As the language now is, it strongly suggests that only lands immediately contiguous to the village may be granted to the village. We urge that the Secretary be permitted to grant lands anywhere within that village's area of occupancy, within the area claimed by Indian title. On our map which is now before you, we have shown the lands as being the lands immediately contiguous to the villages in order to give you a picture of the area or total amount of lands that would be involved, but we would propose that a particular village would be permitted to select lands not only immediately around the village site but also at some distance so long as it is still within the area they owned by Indian title.

Further, we think that it is important that the land base in each community is not just land immediately around it, but that the Secretary be permitted to grant lands which have some economic use in the future. And so we have provided on the next page, on page 3, that the land may include lands that may be suitable for the use as well as used for village sites, for agriculture, grazing, recreation, mining, oil and gas, industry, as well as what is already in there which is burial grounds, water supply, and hunting and fishing camps.

We have also included in this section an amendment to reverse the procedure that the Secretary proposed on land use plans. He proposed that the lands go initially in trust to the Secretary and then when a suitable land use plan is prepared, fee title may be granted to the village.

We object to this. We admit that there might be some need for some control on land disposal and we propose instead that the land be granted in fee to the village corporation, but that the village corporation is not permitted to dispose of any lands until they have submitted a land use plan to the Alaska Native Commission and had it approved by the Alaska Native Commission.

In section 5(b), as you know, we have objected to the limitation that grants may not exceed 50,000 acres. Assuming a village with 1,000 people were to receive the maximum grants of 50,000 acres and smaller villages were to receive proportionately less, the natives of Alaska would receive only about 2½ to 3 million acres. Even if we give more land to smaller villages than that portion formally suggested, we are still talking about far less than 10 million acres. As the map prepared by Don Wright shows, such a small grant would be indefensible and Governor Hickel's task force felt we should get about 80 million acres initially. In the spirit of compromise we reduced that to 40 million acres, hoping to secure the consent of the Department of the Interior at the same time.

The State has agreed to this, although the State is concerned because they want to make sure they do not in the process lose their right to select 103 million acres.

Now, as you can see from the map, because of the location of the natives in Alaska, if we go to 40 million acres, we suggest that the land which will be selected by the natives will not be the land that the State regards as the most valuable. There should be relatively little conflict in my opinion, at least, between the State and the natives even though the natives are given 40 million acres, because the great proportion of it will be outside of the area where the State has already indicated its interest, the so-called "rail-belt" area or between Anchorage and Fairbanks primarily.

Now, under the task force bill we were able to select lands in the same manner that the State selects lands under the State Act.

Senator HANSEN. Mr. Chairman, could I interrupt just a moment?

Mr. Jackson, looking at page 3, number (b) under section 5, do I interpret your amendment to propose that—do I read it correctly? As I read it it says: "In no case may the grants of land to a native group under this section exceed 3,200 acres."

Mr. JACKSON. I should have inserted "per person" after that.

Senator JACKSON. That is what I was wondering. That makes sense. I could not follow you.

Senator GRUENING. The words "per person" appear in the next line.

Mr. JACKSON. But I should insert it both ways. Otherwise, it does not read well.

Senator HANSEN. Thank you.

Mr. JACKSON. We have here in this particular subsection given the Secretary considerable discretion over the amount of land granted to each village so that he can apportion it according to need. However, each village is guaranteed at least 320 acres per person. Under this formula a village of 150 people, therefore, would be assured of receiving at least 48,000 acres. It might receive more if the Secretary feels more is required.

Under the task force proposal we propose to select land the way the State selects land from the Federal Government. The Secretary instead proposes to exercise his discretion in determining how much land and where it shall be. If we must take the Secretary's approach, rather than our bill, we would at least ask that the Secretary be required to consult with the native groups concerned before making a grant. And so, subsection (d) has been added to provide for this.

Now, subsection (c), beginning on line 26, we have deleted the language which eliminates the Tlingit and Haida Indians from sharing in the land grant. As has been explained, they still own by Indian title 2.6 million acres in southeast Alaska for which they have not received compensation.

Furthermore, since the compensation they do receive is set off against the money provisions of this bill, there is no justification for denying these people the benefits of the land grant provisions. And, therefore, we have simply struck through this section entirely.

Finally, we substituted for it a requirement that the Secretary shall grant in the aggregate 40 million acres.

In subsection 6, on page 4, which deals with Indian reservations, the existing Indian reservations, we have added some additional language

to coordinate with the other amendments which we have made earlier on land use provisions and getting title in fee.

In addition to this, I would like to call to your attention that I am not certain that this section adequately disposes of the problem of existing Indian reservations in Alaska. For example, there are Indian reservations which are not even mentioned. As a matter of principle we believe each village should receive title to its reservation lands and in appropriate cases it should be permitted to receive additional lands.

Turning to section 7, the first word of the title, "Interim," is struck as being inappropriate to the text even as written. In subsection (c) we have required the Secretary to consult with others on the effect of granting withdrawn lands to villages.

Turning to subsection (e) under section 7 on page 6, there is a significant problem of fire protection. The State of Alaska currently pays the Federal Government for fire protection services furnished by the Bureau of Land Management on lands selected by the State and patented or even where title is improved, as I understand it. This is a rather significant expense and if the native groups must assume this expense, it will be a very burdensome one. I can see requiring them to do it if there are revenues being obtained from the land. So long as they do not have revenues from the lands, we suggest that the Bureau could continue to provide fire protection services at no cost, and we have offered an amendment to subsection (e) of section 7.

Now, I would like to go back a moment to a prior page because I overlooked something, because we had no amendment. That is section 7(a) which effectively is a legislative land freeze. It permits the Secretary to withdraw up to 20 million acres and in effect it creates a partial freeze of 20 million acres.

Now, at the time of the adoption of the State act this past spring in the Alaska State Legislature, the House Finance Committee which drafted the final legislation anticipated that the State of Alaska would enter into agreement with the native villages south of 66° north, which is approximately a little north of Fairbanks, and generally in the Cook Inlet and portions of the State east of the Cook Inlet. That is to say, south of 66° north and east of 150° west.

During the summer of 1968 these agreements will be made and the agreements will be on a case-by-case basis between a State and a village and will determine which State lands will be made available to the villages on the part of overall land claims settlement and which lands might be selected by a State at the request of the villages in order to protect them from third-party interest after the Secretary lifts the land freeze which the bill provides him to do by October 10.

Then, in the State law the State also agreed not to select any lands outside of this area for 18 months, and I think the State will be willing to extend that even further in order to get the bill through this Congress.

Now, only about 1 dozen villages are involved in this area. Approximately this area. [Pointing.]

Senator GRUENING. Would you describe just for the purpose of the record—the words "this area" does not translate itself for the record.

Mr. JACKSON. Very well. I will describe it more precisely. It is that area of the State——

Senator HANSEN. Was this area referred to earlier as the transportation belt area?

Mr. JACKSON. It is sometimes called the rail-belt area. It is the area south of 66° north and east of 152° west, but also excluded are all of southeast Alaska.

Now, these urban villages we assume will have agreements reached by the State. We have had—by this pattern, we had hoped that the natives throughout Alaska would then be able to join in a request with the State to the Secretary to lift the land freeze. We have had no fear that most people would be wanting as private individuals to make entries on the public land laws outside of the rail-belt area. So, the simple refusal of the State to select lands outside of the rail-belt area would be sufficient protection, assuming Congress is moving along.

Unfortunately, these agreements have not been concluded and negotiations have not even been begun. At this time, therefore, we do not have any substitute for section 7(a) of the Secretary's bill.

Now, I have had some correspondence with the State on this attempting to get the first of these agreements made with the village of Minto, and I would like to submit it at least for the file so that you have it before you, if the chairman has no objection.

Senator METCALF. It will be received and placed in the files of the committee.

Mr. JACKSON. Turning next to section 8 which begins on page 6, the Secretary's language requires that the land be held in trust by the Secretary of the Interior. We have substituted language drawn essentially from S. 2906 which permits a trust to be established at the option of the native group. Generally speaking, we are opposed to trusts being established, but it may be some groups will desire to have the lands held in trust. Moreover, under our language the trustee may be the statewide native corporation or a regional statewide native corporation and this may provide an advantageous way to handle the land.

On page 8, at about line 12 through about line 15, instead of requiring the land conveyed to an individual native, such as a town site lot, to be held subject to certain restrictive provisions of existing law, we suggest one of two alternate amendments, either that they shall not be subject to these restrictive provisions or that they are subject to the restrictive provisions only at the option of the native. In other words, he could elect to receive title on a restrictive basis.

Turning to section 9, minerals, the Alaska Federation of Natives is opposed to granting the statewide corporation a one-half interest in the mineral rights even though the federation may become that corporation under the terms of the Alaska State Native Settlement Act. Rather, we submit that these interests should be granted to the regional corporations.

However, we do believe that there should be some limit on this and the statewide corporation should be required to approve leases made by the regional corporation.

This gets into the problem of the regional corporation which I will discuss a little bit later on. But as to the distribution of the revenues, we urge following a formula of 75 percent of the mineral revenues going to the local village, 20 percent to the regional corporation, and 5 percent to the statewide corporation. Such a formula was at one time considered by Governor Hickel's task force but was rejected in favor of giving all of the mineral proceeds to the village level corporation. This formula which we are now submitting, therefore, represents

a compromise between the task force provisions in 2906 and the present language of section 9.

We very strongly endorse the regional corporation concept which has been excluded from the Secretary's bill. Furthermore, following the task force approach, the corporations are business corporations and not nonprofit corporations. While initially few, if any, will be able to pay dividends, eventually most or all will be able to and there is no good reason why this form of organization should not be used and there are many sound reasons for it.

For example, use of a membership nonprofit corporation tends to encourage and perpetuate tribalism and separation of races. The ownership of property inherent in a business corporation form through stock ownership tends to promote pride and independence. Of course, there is a danger that some natives may foolishly sell their stock to other natives. The Alaska State law does not permit the first holder of stock to sell his shares and subsequent holders of shares must be held as for natives or for their decendants for a period of 50 years. If the Congress feels that these alienation provisions are too restrictive, the Alaska Federation of Natives will be willing to have them modified.

Now, further, these business corporations being business corporations, constantly hand out the money to their stockholders. The Alaska Federation of Natives is opposed to per capita distribution. The State law requires that at least 80 percent of the money and the land received by these corporations must be held intact as the capital of the corporation. Limited amounts of distributions are permitted initially so that we can have what we call family plan distributions, scholarships and such matters as that, but the great bulk of the capital will be required to be held intact for economic development because of the way the people are located economically.

Again, it will not be restricted to this. It is up to the business judgment of the people in the corporations as to how the money can best be used.

Now, while some people have objected to both the village corporation and regional corporation concept on the ground it would freeze the people to the land, we have been very concerned that this not happen and our formulas are designed to avoid freezing the villages into history. There was a factor behind the adoption of the business corporation form because the stockholder can move anywhere and still retains ownership, ownership interest in his corporation.

Benefits obviously, therefore, are not going to be restricted on the basis of residency. If you wish to have a lot or campsite given to you, you are going to have to live there to get it initially, but this is about the only residence requirement that we have. Other than this, you will be able to share in the benefits of your corporation, say, the Minto Corp., whether you still live in Minto or whether you work in Fairbanks or whether you are working outside of Alaska even.

Now, I would say that there is this restriction. While these corporations are permitted to conduct enterprises outside of their own area, they cannot go outside of Alaska without the specific permission of the Alaska Native Commission. Since these articles of incorporation under section 11, we have excluded the provision which says or struck the provision which says they will be nonprofit corporations under the Internal Revenue Code.

In section 12, in lines 30 and 31, we have struck the reference to city or town. In other words, each native shall be afforded an opportunity to even be enrolled in the city, town, or village. We say simply here the native group or village. The reason for this is that under the State law which was adopted, we anticipate an enrollment based upon the existing or historic native villages. The Secretary's proposal is ambiguous as to whether it is following this approach. If the Secretary intends to recognize urban native groups, it would seem difficult to extend to these groups the land grant provisions of the act. Governor Hickel's task force referred to requiring the urban leader to keep the rolls of his village, where they came from. We are taking this approach at this time.

In section 13 we have no amendments but I would like to explain because some question was raised on aboriginal use. Under this provision as the Secretary has submitted, the Secretary may permit natives exclusive hunting and fishing privileges and trapping privileges for a period of up to 50 years on land owned by the United States. This will not prevent public entries on these lands. People will be able to go out, homestead it or otherwise get title to it. At that time the Secretary may give nonexclusive permits for 50 years. May, but not required to.

The key point here is this, that in any event, the natives are going to be required to use these privileges in accordance with State law and we have always anticipated this. We have always expected this. But there is some problem in Alaska today because existing trap laws, for example, are frequently being encroached upon by what amount to be frespassers or others who have no right to them, and without exclusive, the right to have some kind of exclusive privileges, this problem will continue to occur.

I know of instances very near Fairbanks, for example, where this provision will be of significant help in preventing too much hunting pressure, too much trapping pressure upon groups today who are still living off the land.

Senator METCALF. We are not going to get into some difficulties such as occasioned the picketing of the Supreme Court the other day by conflict between Indian or native claims as to hunting and fishing and the State law.

Mr. JACKSON. I do not think so. We have never felt that we would. The specific example I can give you is that I know of a native in the village of Minto who has an existing trapline and a year or so ago a white man came in, built a cabin, right smack in the middle of it, and when the native went out to check his trapline, he was met by the white man who was a trespasser, had not made a formal entry of any kind, who said you get off my property, and backed it up because he had a long gun. Effectively the native today has no relief. True, the white man is a trespasser, but what do you do? You do not have a right to sue and eject although some people say you do. In any event, this native has a cash income of $200 and how is he going to get along? These recommendations are for the benefit of this kind of situation.

Turning to section 14—and this is where we are really going to have some difficulties with the Secretary of the Interior—under section 14 we have changed the $3,000 per person formula to $10,000 per person and a maximum amount of $500 million. Other witnesses have or will

give the justification for the amount of money we are asking for. We recognize that $500 million is a rather large sum and would represent a significant impact on the Treasury of the United States. So, we have also proposed that instead of following the Secretary's formula of one-third down and then one-sixth a year for 4 years, we are providing only one-tenth down and then one-twentieth a year. This would reduce the impact actually for the first 5 fiscal years to below that of the Secretary's proposal. He proposes, I believe, $60 million the first year and then $30 million a year. We propose $50 million the first year and $25 million a year, but we want that to go on for 18 years.

Now, we are not bound to this. We are simply trying to point out that there are ways of easing the impact on the Federal Treasury of a substantial grant once we find out what is the fair value of the lands in Alaska. What formula you come up with, of course, in the last analysis, will be up to the Congress. We recognize that. We are asking for $500 million and 40 million acres. We recognize that in the last analysis it will be the determination of this committee and the corresponding committee on the House side and the Congress as a whole as to what we will receive, but this is what we ask. This is what we believe is justified.

Now, on subsection (b), page 14, we have changed the apportionment. He proposes to give 90 percent of the money to the villages. We propose only 75 percent. And, we are going to give 20 percent to the Regional Native Economic Improvement Corp. and 5 percent to the statewide Economic Improvement Corp. Furthermore, we have made a change in lines 17 and 18. He requires that the budget must be approved by the Alaskan Native Commission. We say simply that the Commission must not disapprove it. We will submit the budget and if it is not disapproved, then the money may be spent in accordance with the budget.

In section 16 on page 15, we have strengthened the Alaskan Native Commission. While the Secretary's bill merely permits the Commission to be established, we will require it to be established, that it be five members instead of three, that at least two members shall be descended from Alaskan members. We prefer to have a majority because we believe this group is supervising the disposition of private property of the Alaskan natives and ought to be controlled by the Alaskan natives, but if we cannot get a majority, we will settle for two out of the five.

Senator GRUENING. Mr. Jackson, I have a question. You say the Commission shall be located within the Department of the Interior and directly under the Secretary. Well, is not that in conflict with the general view that we do not want it in the Department of the Interior?

Mr. JACKSON. That is correct, Senator. I want to point out that these are amendments which we hope to be able to get as a minimum. In our proposal, the task force proposal which we still endorse, the Commission would be an independent body, independent of the Secretary entirely. If I could draft it up, I would put it in here this way. However, I was faced with a drafting problem partly, also the problem of realistic changes. So I said, well, if we have to have it in the Department, which we do not want, then at least it should be directly under the Secretary and not under the BIA or any other office of the Department. We would still prefer to have it as an independent commission.

Senator GRUENING. I do not see why you cannot achieve that.

Mr. JACKSON. If we can, we would like it.

On lines 21 through 24 we have provided that the seat, meeting place and principal offices shall be in Alaska and we have added a clause providing for judicial review of the decisions of the Commission.

Senator METCALF. That would be under the Administrative Procedures Act or something of that sort.

Mr. JACKSON. Unless we otherwise provide.

In section 17 the Secretary, recognizing that there is a need for native communities in national forest areas to get some lands, has taken the device which is in the Alaska Statehood Act, which provides 400,000 acres of national forest lands for community expansion and under the Secretary's proposal it says the native groups will qualify as such communities for the purposes of this. We have gone beyond that and said that he shall—that the Secretary of Agriculture in this case, shall grant 100,000 acres. We would really prefer 200,000 acres and one of our witnesses, Mr. Borbridge, has, I believe, said so in his prepared statement. But the Alaska—the task force of Governor Hickel and its proposal in S. 2906 only provides 100,000 acres and we have simply used that figure here. If we can get 200,000 we would much prefer it. We think the native groups certainly should get at least this much. However I would point out that under this language we now have, with even only 100,000 acres, the Village of Kake would be able to receive national forest lands under two classifications. First, as a municipal corporation under Alaska Statehood, and secondly, the natives of Kake as a business corporation, would be able to obtain it under the provisions of this section. So, I think we can probably live with 100,000 acres.

Of course, I recognize in any event we are still likely to have problems with the Secretary of Agriculture, because at least in the past it has been extremely difficult for the communities in southeast Alaska where there are national forests to obtain any of these lands even though the statehood bill so provided for over 10 years. Not quite.

Finally, on page 16, we have had as attorneys, some problem with the Department of the Interior. In my case I have not succeeded in getting any of my contracts approved yet and while I may be able to, there seems to be even in that case some question as to whether or not there is any statutory authority for the attorneys being paid for the work we are doing right now. Lobbying, it seems, is not considered to be legal work and there does not seem to be any question on the part of the Secretary that we should be paid but there may be some problem as to providing for it. The attorneys would like to have fair compensation but we are certainly not asking for 10 percent.

In the proposed additional language in subsection (b) on page 16 we put in a recognition of this problem and provided that the attorneys can be paid. While this language on its face says it shall be by special appropriation, we are not bound to that particular approach. I think the Alaska Federation of Natives only want to make certain that the attorneys get fair compensation for the work they have done.

That completes my commentary on the amendments we have proposed.

Senator METCALF. Senator Gruening?

Senator GRUENING. Mr. Jackson, I think it would be very helpful if you could give us a clean bill which would contain these amendments and we will introduce it in the Senate. It will be a little easier to work from than taking these revisions as you have just recommended and I will be very glad to introduce it as soon as a copy is available.

Mr. JACKSON. I think that can be provided in very short order.

Senator GRUENING. I beg your pardon?

Mr. JACKSON. I think we can provide that very quickly.

Senator GRUENING. Very good. I have nothing further.

Senator JORDAN. I have no questions. It becomes apparent as we get into this thing there is a wide difference between the—what the natives want and the Secretary's bill. I have tried to keep track of it as we go along. The Secretary mentioned a maximum of 8 to 10 million acres, which as you have indicated, Mr. Jackson, might be reduced to as much as 2 or 3 million acres to the villages. I understand that the native position is that they want 40 million acres. The Secretary mentioned the maximum of $3,000 per capita per native, for a maximum of $180 million. Your bill calls for $10,000 per capita, $500 million. These are the essential differences as I see it, in the two proposals. There is a wide difference between what the Secretary proposes and what you propose. I, too, would like to see your bill, a clean bill, as Senator Gruening has suggested, so that we could take a good look at it and I hope that you will not leave open ended in there the amount of money that you expect to be appropriated for administration because this committee does not like to deal with open-ended money requests. Try to put a figure on it of some kind.

Senator METCALF. The Senator from Wyoming.

Senator HANSEN. I have no questions.

Senator METCALF. Earlier, I believe it was Mr. Borbridge, you said that you reject the so-called administration bill as illiberal and misconceived in many important respects. However, I think that Mr. Jackson has, by going through the bill and making some suggestions, clarified the administration bill to me as well as developed some of the changes that can be made. Would you approve the administration bill with the suggested amendments that Mr. Jackson has put in?

Mr. BORBRIDGE. Yes, Mr. Chairman. This would be our position. I have omitted and should have added that we were very much appreciative that the Secretary had imposed the freeze for the protection of the native rights to the lands and that we did have a bill on which we could work, and our position is that we can with equitable amendments which would take into consideration the points which Mr. Jackson has alluded to, it would be an acceptable bill.

Senator METCALF. So, we now have with Mr. Jackson's amendments and the administration bill, a framework upon which we can proceed to consider and develop this legislation, I hope, early in the next session of Congress. Is that correct? There are nods from several of the members if the reporter will so show.

Mr. GROH. We will let the president talk.

Mr. NOTTI. I was going to say just one thing. You say Mr. Jackson's amendments. However, his amendments came from working with us, and he has embodied our wishes.

Senator METCALF. The amendments presented to the committee by Mr. Jackson.

Mr. NOTTI. Yes.

Senator METCALF. Thank you. I have no questions. I want to compliment this panel for coming in with a careful and close analysis of the bill. I want to compliment the people who testified and developed the maps so that we have a picture of where this land would be. I think that we had some very helpful testimony presented here today, and I think it will be helpful as we develop it and go forward. Unless you have anything more, I propose to recess the hearing at this time. Again, as Senator Jackson said, after the hearings are over, we will keep the record open for any further ideas that you might have, but unless there is anything more from this panel, at this time, you are to be excused and the hearing will resume at 2:30 this afternoon at which time we will hear the balance of the testimony of Roger G. Connor, Charles Edwardsen, Jr., Mrs. Laura Bergt, and William Lewis Paul.

Senator GRUENING. Before you adjourn, the suggestion has been made that some of the present withdrawals should be made available to native claims, and I think it would be very useful if some specific recommendations could come from this panel.

Mr. GROH. Yes. Mr. Chairman, we can give you a list, Senator Gruening, of the villages that are located in the withdrawn areas and the approximate populations of these villages.

Senator GRUENING. Thank you very much.

(Whereupon, at 1:15 p.m., the hearing was recessed, to reconvene at 2:30 p.m., this day.)

AFTERNOON SESSION

Senator METCALF. The committee will be in order.

Before we proceed to the testimony of the witnesses on this, we are going to recall Mr. Jackson, who has a brief statement for corrections.

STATEMENT OF BARRY JACKSON, LEGAL COUNSEL FOR ALASKA FEDERATION OF NATIVES AND OTHER NATIVE GROUPS—Resumed

Mr. JACKSON. Yes, sir.

Mr. Chairman, I was unable to attend two of the last meetings of the last confederation of natives. As I gave my testimony, it developed that I failed to reflect in my draft amendments three policy decisions the confederation recently made.

First, they met with the Governor recently and made an agreement under which they would endeavor to get, or at least request, lands for villages which are in or adjacent to national forests. Therefore, my amendment which limits the amount of land to 100,000 acres of national forest is not appropriate.

Secondly, they decided that they would rather not give the Secretary of Interior any discretion in the amount of land awarded to each village, but rather go for a flat formula of 500 acres per person.

Finally, that the $500 million we request, not be paid over 18 years, but rather over 10 years at the rate of $50 million a year.

The clean copy which we will later submit to Senator Gruening, and perhaps also to the committee, will reflect these changes, and the record should be corrected accordingly.

Senator METCALF. Thank you very much, Mr. Jackson. Others will have an opportunity to correct technical errors in their testimony by working with the staff. We are glad to have that material. I wondered when you said 18 years if that was not just an oversight. I was sure that you were going to correct that.

It would seem that since these villages are in the national forest, a limitation should not go in, particularly if we are going to permit them to have the same benefits and the same rights as villages outside the national forests. I am glad to have that correction.

Mr. JACKSON. Yes, Mr. Chairman. For the benefit of the committee, that it may get some idea of the areas involved, the red marks on the map in southeast Alaska are where most of these villages are located. It gives some idea of the amount of land involved.

Thank you.

Senator METCALF. Thank you very much, Mr. Jackson.

The next witness is Flore Lekanof. You will correct my pronunciation.

We are ready to hear you, sir.

STATEMENT OF FLORE LEKANOF, PRESIDENT, ALEUT LEAGUE, ACCOMPANIED BY ROGER G. CONNOR, ATTORNEY FOR THE ALEUT LEAGUE

Mr. LEKANOF. That is correct.

Senator METCALF. We are delighted to have you again before the committee. I recall that you testified previously.

Mr. LEKANOF. Yes. There is with me, we are appearing with your permission as a panel, Mr. Connor, our attorney.

Senator METCALF. Oh, yes; Mr. Connor.

Mr. LEKANOF, Yes; Mr. Roger Connor.

Senator METCALF. We are pleased to have you, too.

Mr. LEKANOF. I will ask him to speak first and I would like to comet on the two separate testimonies that I am submitting.

Senator METCALF. Mr. Connor, go right ahead.

Mr. CONNOR. Yes, Mr. Chairman. Before starting, I would like to include in the record reference to the presence in the room of a very distinguished Alaskan, Dr. Walter Sobolef, who is presently the president of the Alaskan Native Brotherhood, which is a very comprehensive organization in southeastern Alaska as well as through other parts, and who has participated in this claims problem to a large extent.

Senator JORDAN. He will identify himself, please. Thank you.

Senator METCALF. Glad to have you.

Mr. CONNOR. Mr. Chairman, in order to augment the testimony we gave before, we would like to say a few words about the blood quantum problem. The draft of the AFN provides that lacking evidence of precise blood quantum, then a test will be employed by a person who is regarded as a native by the community from which he came, and whose parents were regarded as natives shall be enrollable.

We would like this expanded just a little more to include persons where the blood quantum is known to be less than one-quarter, but nevertheless he otherwise satisfied the test that I just mentioned.

Our reasons for this we gave in part at our last testimony in Anchorage, and I won't go through that again. But the gist of it is that we have had 200 years of contact there with Europeans and Americans. In many cases it is an impossibility to ascertain from the records just where people fall, but in other cases it can be determined.

We find from our experience in the field, as did Dr. Lekanof and I in going to the Aleutians, that there are persons who, because of their isolation have lived a completely native way of life. They speak the language, they have the customs and folk ways, all of the cultural attributes, and they are truly regarded as native by the community.

Additionally, in the negative sense, these people have been regarded as natives in certain concerns which I would rather not go into here. In other words, by the white community you might say they have been regarded as natives, as being on the other side of the fence. This concerns past times in Alaska which no longer obtain; that is, conditions which no longer obtain.

Senator Gruening can tell you that we had discrimination practiced there until approximately 1944. Then, as Governor, he and others secured the passage of an act outlawing public discrimination.

Private discrimination continued for some time thereafter, and this is what I am referring to. And this accounts for why these people should be considered native, because they were disadvantaged to the same extent as those who have more than the one-quarter blood requirement.

We do not think we are talking about a large number. We think it is extremely important, in order to do justice here, that these people be enrollable.

We would provide that these cases be determined by the Alaskan Native Commission if there were any conflict or difficulty.

Senator GRUENING. May I ask you a question at this point, please?

Mr. CONNOR. Yes.

Senator GRUENING. Of course I feel very definitely that no one who is entitled to be considered a native should be excluded. I did have some question as to this blood count, and I wondered whether it was your thought that if you go down to one-eighth or some lesser fraction, whether that should apply to all the natives or merely just to the Aleuts? What is your thinking about that?

Mr. CONNOR. No, it should not apply only to the Aleuts. I think it should apply across the board. I might point out also that it is my understanding that the Central Tribal Council of the Tlingit-Haida Indians, which consists of some 18,000 people on the rolls, a very large group, went on the record as opposing blood quantum tests for the purposes of this legislation. So you might say that nearly half, almost half of the natives in Alaska, have already taken a position that they want a more liberal test. That much we know is true.

Senator GRUENING. I had the point raised in certain cases that there would be open sessions to making the fraction smaller and smaller, on the ground that there would be far more participants. It seems to me that there should be consensus between the various native groups as to just what formula they would like to have. As far as I am concerned, I would be glad to abide by the decision of the various groups, but I think there should be a meeting of mind between them if possible.

Mr. CONNOR. Perhaps that is something that can be worked on in the interim.

Senator GRUENING. I must say, I wish there was some better method than the blood quantum. I think that anybody who has lived as a native, is considered a native, considers himself a native, and is so considered by his community should be included. Then you would not have to go through elaborate research and ancestry.

Senator METCALF. I do not know whether a quarter is the proper amount or not, but the natives would want some cutoff point, wouldn't they? Otherwise there would be too big a proliferation of enrollment.

Mr. CONNOR. Perhaps that is the danger. We certainly recognize that as a problem. Undoubtedly there should be some cutoff.

Of course, the benefits that go to the descendents of the persons who get on the rolls will not be affected in anyway by this.

Senator METCALF. Could you give an estimate of how many people would be involved with either your change, or this idea of others who cannot prove the quantum of blood, but that are recognized as natives and regarded as natives by the communities in which they live?

Mr. CONNOR. Well, in the case of the Aleuts, I would say that it could range anywhere from perhaps 100 to maybe 400 or 500 out of a group of roughly 5,000, let us say.

Senator METCALF. As we lawyers say, de minimis.

Mr. CONNOR. Yes.

Senator METCALF. Thank you.

Mr. CONNOR. That is not a large enough group that I think it would dilute the benefits going to natives with lower quantum.

I would like to touch on some of the other points that came up this morning in the questioning by the committee.

Senator METCALF. We hope you will.

Mr. CONNOR. All right. I am trying to conserve time here and I will get right to these points. The AFN proposal price that the cases in the Indian Claims Commission should go on and reach a final decision there, if the groups who have sued in the Indian Claims Commission so desire. The same thing is true with the *Tlingit-Haida* judgment, That is the theory here is they will be permitted to collect the judgment and then there is an offset. They do not receive benefits until the benefits that accrue exceed the amount of the judgment. This would have perhaps a slight effect in swelling the total amount of money that ultimately flows to the natives. Again I do not think it will be substantial. I do not think it will affect the overall dollar amount significantly.

But it is a rather important consideration, because in the case of some of these groups, it is possible that they might obtain a judgment in the Indian Claims Commission, and receive moneys sooner than through the step method which has been proposed by the AFN bill. That is if Congress does not pay a lump sum in 1 year there may be advantages to these groups. After all they were permitted by Congress to sue in the Indian Claims Commission. Congress should think very carefully before wiping out that right, or forcing these groups to elect between one or the other.

I would like to speak briefly about the application to the Indian Claims Commission.

Senator METCALF. Would you yield a minute?

Mr. CONNOR. Yes.

Senator JORDAN. At that point, what is the dimension of this obligation? How many claims are presently before the Indian Claims Commission?

Mr. CONNOR. I was going to get into that, sir.

Senator JORDAN. All right. Perhaps you can get into a cutoff date to prevent the filing of any more claims.

Mr. CONNOR. Well, sir, let me explain. The Indian Claims Commission Act did include Alaska. Only 11 groups filed up there. For the most part these are small villages, and the claims involve rather modest areas of land.

However, the Aleut Tribe suit was on what was basically a land claim for the entire Aleutian chain and the Alaska Peninsula. That case has gone very slowly on the docket of the Commission.

I got involved in it a few years ago. Before that they were without counsel for a period of nearly 10 years, the case merely languished on the docket of the Commission. I might say that after 17 years, during which case has been pending, the Government has secured one extension of time after another to file an answer in the case, so the pleadings are not enclosed.

The Government recently got another extension of time to answer. This is illustrative of where the Alaska cases are in the Indian Claims Commission.

Our belief is that many groups in Alaska were not aware of their right to sue. We do not believe they were made aware as Congress directed in the act, and that even if they were, they did not sufficiently understand the nature of their rights.

Secondly, between 1946 and 1951, when they had to file or were forever barred, many of these groups had suffered no taking or threat of taking of their land, whereas now we have statehood, we have the 103-million-acre grant by Congress in the State, and various other encroachments which accrue. I think that is what people are talking about when they say the act really never applied to Alaska. It applied legally, but in fact it did not, you know, for the most part.

Senator METCALF. It did not apply until the State started to come out in selecting some of the land that you had been occupying and using.

Mr. CONNOR. That is correct.

Senator METCALF. Since what we call time immemorial?

Mr. CONNOR. Yes, and if we talk about the intention of Congress in 1951 to bar Indian claims forever after that, we have to look at the Statehood Act, and the specific reservation there as to property rights from the granting of the statehood which we indicate the Congress did not think that it had in the past canceled any Indian claims in Alaska.

Senator METCALF. My attention has been called to the enumeration of the claims pending in the Fitzgerald report; there are 17 or so I think. As you know, the Fitzgerald report, "The Alaska Natives and the Land" will be published in the near future. The table enumerating the claims and other relevant data from the report will be incorporated by reference.

Mr. CONNOR. In the *Aleut* case, the Government filed a motion for summary judgment on the grounds that the Aleuts were not Alaskan Indians. They based this upon ethnological considerations, and the alleged intent of Congress.

We litigated this question. We received the decision in April of 1968, wherein the Indian Claims Commission ruled in our favor and

said that the Aleuts were Indians for the purposes of the act. That is as far as we have gone with that case.

I might point out another problem about the Indian Claims Commission cases, As you will recall, there are five clauses in the Indian Claims Commission Act, and only one of those concerns the taking of aboriginal occupation rights. The *Aleut* cases concern fair and honorable dealings as well as land problems. What we are saying is we want a chance to think over this whole problem very carefully before we are forced to do any electing between those claims and this act. And if there is going to be any election, then we want to make clear that we are free to pursue the balance of any claims that we have there, that were not terminated. Otherwise I fear another legal wrangle for 2 years by the Government, consumed in arguments and briefs, before we even go forward with the case.

I would like to say a brief word about the source of the native claims in Alaska, because there seemed to be some confusion yesterday in the House committee on that subject. The question raised there was whether the treaty of sessions canceled the claims. We have all researched this and we are satisfied that it did not; that the Russians have never handed out any land titles in Alaska. They have never dispossessed natives and the Russians said this at the time of the treaty. This is all historical material that is available to this committee if the staff wishes to pursue it. I think they will satisfy themselves that these claims are valid under any traditional concepts of Indian law.

That brings up the question well, if that is so, why aren't these just given to a judicial tribunal, and here we come to the crux of the problem, and that is the futility of the claims process as applied to this situation.

First of all we are at present in a crisis in Alaska and this will become worse as time goes on. It is not just a matter of land freeze. It is a matter of deep and grave dissatisfaction, and this will only get worse as time goes on. If the natives are remitted to traditional process, I fear for the situation on many other fronts, and I also fear that the natives themselves will become severely disillusioned and disappointed. I can foresee all kinds of other bad effects which will flow from this.

Worst of all is that there are many takings which have not yet occurred. We have clear takings of the national forest reserves and all of the other withdrawals. We have a lot of encroachment on the native way of life which goes on, and that is very difficult to reduce to a classic claims case approach, because each taking is too small to justify the legal effort to protect against the encroachment.

Next we have the State selections, which will go on for a long time. If you are going to talk about a claims process, in fairness you have to leave the door open, which potentially could be another century. You would have to provide a tribunal which from time to time could hear Indian claims as they arise, as their lands are taken. And I am sure nobody wants this kind of result. This is almost worse than usual judicial claim process in terms of justice for the natives, and worse than that, the overall effects on Alaska would be disastrous, I fear.

Lastly we have the simple unjustness of the long delays which are encountered in Indian claims litigation, the fact that they are paid off usually with inflated dollars, they do not receive interest between the

time of taking and the time of judgment, and this effectively sometimes reduces the award to a quarter of 20 percent of its real value.

I cite the *Tlingit-Haida* case as an example. The $7 million there if it had drawn 6 percent simple interest, would be approximately $28 million today, when in fact, of course, money of that type, if invested back in those days, would have compounded itself much more rapidly as a matter of capital growth, because our whole national economy has expanded on this basis.

That is one reason why we think the entire settlement of Alaska land cases should be on a generous land basis. That leads to the next problem of whether Congress should attempt to increase the amount of money or land over that which has been suggested by the administration.

It seems to me that we have at this time an excellent chance of securing a substantial agreement of the affected native groups and of the State to the proposed settlement, if it goes along the lines that the AFN has proposed. This in itself would be a rather miraculous result because we would have a legislative settlement short of litigation, as to which there is substantial satisfaction.

The native leaders have exercised great statesmanship in securing general consensus in Alaska already, and they have made a number of concessions, hoping that these would be matched by local concessions elsewhere. This would avoid the entire problem of valuing lands in particularity and by precise measurement and breakdown as to acreage, location, and so on.

The native leaders recognize that justice can be done now when it is not as important to get down to the finite details of how much each acre is presently worth. Justice will be done.

It seems to me that the administration probably represents the best that the Interior Department could sell to the Bureau of the Budget apparently; that is what we have been told, and it also seems to me that the Bureau of the Budget, in its anonymity, should not necessarily control the ultimate disposition of this matter, because it is fundamentally a matter of justice. It concerns human beings. It concerns the entire life plan of these people. It goes to the core of their life, as we have all seen from the testimony here.

It is not a routine matter. It is not a question of how many times the mailman ought to deliver the mail each week and how this affects the national budget. This is a very rare and different type of legislation, and it represents a chance to do something innovative and different, and for the first time in our Nation's history for Congress to achieve a settlement of a fantastically broad and enormous problem which is still an adequate settlement and to do it without all these attendant delays, judicial considerations, stopping the whole process to spend 5 years valuing land in Alaska or anything like that. I do not see why Congress has to advocate to the Bureau of the Budget in this instance.

Senator METCALF. As a part of the Constitution, the President is part of the legislative process.

Mr. CONNOR. Yes.

Senator METCALF. And if we go too far afield from the recommendations of the Bureau of the Budget, we spin our wheels in the House and the Senate and get a veto out. So that too must be important.

Mr. CONNOR. Yes, Senator; you are much more aware of the workings of the checks and balances than I would be.

Senator METCALF. Yes.

Mr. CONNOR. And I am sure you have a much finer and keener sense of the art of the possible, but I merely suggest that this committee perhaps and the Senate and the House of Representatives has the power.

Senator METCALF. I think you are talking to three men who are very unimpressed many of the times with the Bureau of the Budget, and we have overridden them. But if you go a little bit too far, and they try to go to the President, well, then the overriding is of no importance whatsoever.

Mr. CONNOR. Yes; perhaps that is true. It might also be true that the Interior Department will not object to a bill which was more favorable or generous in its terms.

Senator METCALF. Or might not recommend a veto.

Mr. CONNOR. That is true.

Senator METCALF. Those are calculated risks that we all have to take.

Mr. CONNOR. Yes; and the personnel in the Bureau of the Budget might have a different position a year or two from now. We do not know. We are suggesting that this not be a cloud on our reasoning processes in the meantime.

Senator METCALF. I will refrain from commenting because of my Republican friend.

Mr. CONNOR. Next I would like to talk about the attorneys' contracts and the problem of payment which was raised earlier.

First of all, in my own case I have a claims' attorney contract, not a general counsel contract, which concerns the Indian Claims Commission cases. One is on behalf of the Aleut Tribe in its entirety. The other is the Aleut community of St. Paul Island in the Pribilof Islands, which is a one village type claim.

The contract covers appearances before all three branches of government. I mean it kind of covers the field. But we have learned that some persons in the Interior Department have said that none of these claims' contracts can possibly cover our efforts on this legislation, because it constitutes lobbying of some kind, and that in any event those claims' contracts relate only to the Indian Claims Commission proceedings and not anything else.

What happened here was that some of us started out as claims' attorneys on those cases, and then found that we had to convert over into this legislative process to protect our clients and see that they got a fair shake. It got even worse than that.

We had to jump in and do substantial work, a variety of conventional legal chores to try to get this thing in shape, and we have all made considerable sacrifices.

We have had to chop off other parts of our law practice. We have had to act on an emergency basis throughout the last year and a half, and none of us want to be overcompensated. We just want reasonable compensation according to ordinary criteria which govern legal fees.

Now, in the case of my contract, it says that if the case is settled short of judgment in the Indian Claims Commission, then the Secretary of the Interior would determine the proper fee. It is entirely in his discretion, and I just hope that it will be adequate when it is determined, if it is determined.

I think that is the position of all of the lawyers who have worked on this thing, and it kind of frightens us that apparent technicalities are already being invoked, you know, which act as something of a damper on one's enthusiasm and efforts, when you are doing a tremendous amount of work.

I know the other two attorneys who testified here today have put in a tremendous amount of time. I do not know how many hundreds of hours I have put in, but it is quite substantial. I am aware that some people think that attorneys are vultures who wait around, waiting for Indian claims to happen, you know. The fact of the matter is that many Indian claimant attorneys get a large fee, but by the time they get it, it is shared with scores of other lawyers that have been brought in on the process, and sometimes it does not represent even a modest hourly compensation, by the time you are done. So I think there is a misimpression about lawyers for Indians becoming unduly affluent. That is all I would like to say on that subject.

Next as to the regional corporations. These, I think, are definitely needed, and it will be a severe disappointment if we are not able to obtain the regional corporations as part of this legislation.

First of all, Alaska is so diverse geographically, linguistically, ethnically, and economically, that we feel that the natural regions of Alaska should be allowed to group together in an effort toward economic development when the proceeds of this legislation become available.

For example, in the Aleut area, we have people who all speak the same tongue. They have a particular type of climate. They have economic development there that is feasible and not elsewhere in Alaska. It is a vast region in itself. It extends for something like 1,500 miles from Anchorage out to the end of the chain, and to cope with that area as a matter of economic development is a major task, which would be quite a challenge to just one regional corporation.

We fear that the statewide corporation may not have the flexibility or the ability to minister the needs of each area adequately. For the same reason, we do not think that the Aleuts should be telling the people on the north slope how to develop their resources nor vice versa.

These regional corporations will probably represent roughly the areas that are now represented by the regional native association. These associations have grown up naturally, because of the community of interest between groups of villages, and this is what we are seeking through the regional corporations, to make effective. I think, gentlemen, that that has covered the specific points I wanted to make.

Thank you very much.

Senator METCALF. Senator Gruening.

Senator GRUENING. Well, the condition of the Aleuts is quite different from those in other parts of Alaska. Now you have the Pribilof Indians, you have some people living on Atka, you have some people living on the peninsula. How, for instance, would you take care of the claims of the people on the Pribilof Islands? They have a very special status. Land on the mainland is obviously not appropriate for them. How would you handle that, for instance, or the people on Atka?

Mr. CONNOR. The people on the Pribilofs probably would have to take in lieu lands elsewhere. Then the question would arise, Should

they merely take the benefits under this act and forget their claims case, or pursue their claims case? They have a claims case based on the fair and honorable dealings of the Claims Commission Act, which concerns in large part the virtual servitude in which they were forced to live by the United States over a period of 85 years, and I might say it concerns the lack of pay for work done by this community over those years, which greatly enriched the U.S. Treasury. We think it is quite a claim, Senator.

You see, it is different from the land claim. And the settlement of the land claim should not affect that claim on the Pribilofs, in our opinion, because it is a special case.

We think the Pribilofians will be satisfied otherwise with the terms of the settlement, however. Also, any funds they receive might be considered an offset in the Indian Claims Commission. We would have to litigate that question, you see. But we do not see any difficulty about applying this legislation to the Pribilofs or the rest of the people on the chain.

I might point out, however, when we are talking about regional corporations, many of the villages on the chain, as far as we can tell, would like to band together in a region. They could do more with one regional corporation, putting everything into it, than if each village gets a quantity of money. The money can only stretch so far. It may not be enough to locate any kind of a substantial industry, in each village, but it might be enough to put in a major processing plant for seafood at one locality, and it may be that the wave of the future requires that some villages in fact be abandoned. I mean they may find it in their economic self-interest to move.

This regional corporation would give them that flexibility. You know, as it is we have fire problems out there. Atka is completely cut off now from air and sea transportation on any regular basis. We have other villages where there is no cash economy. It is perhaps just a question of time as to how long those villages can survive.

What I am saying is we do not really know, and that is why we need the regional corporation. We want to preserve the village life, if it has anything which is viable in it. But we just do not know for sure.

Senator GRUENING. Well, this does pose a lot of special problems presently.

Mr. CONNOR. Yes.

Senator GRUENING. In carrying out the purposes of this legislation because of the special conditions?

Mr. CONNOR. Yes.

Senator GRUENING. Under which the Aleuts live, and of course they do not all live under the same conditions. Some are on islands and some on the mainland.

Mr. CONNOR. Yes.

Senator GRUENING. Of course, the Pribilofians do have a special status.

Mr. CONNOR. Yes.

Senator GRUENING. I think their condition has been improved from the days when they were in servitude.

Mr. CONNOR. That is correct. However, the Indian Claims Commission Act permits us to recover for harms done before 1946, and not thereafter, and any benefits later would not be an offset for those earlier

harms, unless they come in the offset provisions of the act, which are very technical, and which would be a matter of judicial determination of the Commission.

Senator METCALF. Would you yield a moment?

Senator GRUENING. Yes.

Senator METCALF. As I understand it then, what you are saying is that you feel that land claims should be offset by legislating settlement, but that these other claims under the other provisions of the Indian Claims Act, the servitude that you talked about——

Mr. CONNOR. Yes.

Senator METCALF (continuing). Should not be offset?

Mr. CONNOR. That is correct. As I said, it is not made clear in this legislation that the other types of claims in the ICC are preserved, we will probably have another legal problem, you know.

Senator METCALF. Yes, you will.

Mr. CONNOR. Because legal problems are only limited by the ingenuity of a lawyer's imagination.

Senator METCALF. Which is boundless.

Mr. CONNOR. Yes, naturally, The great German juristic thinker Thering referred to it as a heaven of juristic conceptions. That is what it is like to be on the Indian Claims Commission.

Senator METCALF. Do you have anything to add, Mr. Lekanof?

Mr. LEKANOF. Yes, Mr. Chairman. I do want to commend Mr. Connor, who is representing the Aleut interests, for giving a picture which we feel is our feeling.

I do want to submit to the committee the written testimony which I would like to comment on, and I also have for the reference of the staff a study which I recently made on behalf of the Alaskan Federation of Natives on the educational programs now in existence for the native people of Alaska, which is referred to in the testimony.

Senator METCALF. Your statement will be submitted and received and printed as part of the record, and as part of your remarks, and the other material will also be received and we welcome your comments.

(The statements referred to follow:)

STATEMENT OF FLORE LEKANOF, MEMBER OF THE STEERING COMMITTEE, ALASKA FEDERATION OF NATIVES

RELATIONSHIP TO HOUSING

Mr. Chairman and members of the Committee, we, the members of the steering committee of the Alaska Federation of Natives, are here to review with you some of the reasons why we feel that a bill for the settlement of the Alaska Native Land Claims should be passed with the proper amendments suggested. At this time I would like to present some information on the Native Housing situation that are relative to this subject.

NATIVE DWELLING PRIOR TO THE INTRODUCTION OF THE WESTERN EUROPEAN CULTURE

To use as example one of the ethnic groups in Alaska, the Aleutian natives constructed several varieties of structures. One of these, the "barabra," peculiar to the Aleuts was a large communal dwelling, resembling that of the Iroquois, which received considerable attention from various observers. The most important information on these structures are found in the Russian accounts. The most detailed and reliable report on the Aleut dwellings comes to us from the writings of Bishop Veniaminov:[1]

[1] Ales Hrdlicka. *The Aleutian and Commander Islands and Their Inhabitants*, the Lisler Institute of Anatomy, 1945, p. 46.

"The former dwellings of the Aluets, known by them as "Uliagamakh," were never separated as now, i.e., for each family apart; but always communal, in which lived a number of families (10–40), mostly related. . . . These communal dwellings were from 10 to 30 sazen (70 to 210 ft) and more in length, and from 4 to 7 sazen (28 to over 49 ft) in breadth; they say that in some of the settlements there used to be such dwellings over 280 feet in length. As far as I had the chance to see the traces of these former dwellings, it appeared that they nearly all ran in length from east to the west, and not always along the direction of the stronger winds."

"Well-to-do families made sometimes in addition special little rooms from the side of their subdivision, digging through the wall, where they preserved their property and food; and with parents having grown children of both sexes, they served for their bedrooms. The entrances into these little rooms were always tight, it is said that some of them were so ably disguised that it was impossible to see them; and in case of unexpected attacks by enemies the people hid in them; and awaited the enemy's departure.

"Besides his compartment in the communal house every man of a family had a special 'barabra' where he kept his hunting outfit and in which he usually stayed in the summer with his family living in the communal house only in the winter." [2]

CULTURAL TRANSITION AND NATIVE HOUSING

We are attempting to show that the Native people of Alaska lived in dwellings that were satisfactory to them and to their environment before the "white man" set foot on the native country. Same can be said in regards to the Indian people before the white man invasion of his country. With this introduction of the Judaic-Christian philosophy way of life the problem of housing began. This was first of all started with the family concept of the new philosophy—one man, one wife, one house idea. I am not saying that the idea is wrong but that the means to achieving it is wrong. The new philosophy did not provide the adequate means. As the result of this conflict we have the housing problem of the Native people of Alaska.

Abrams [3] writes about this condition:

"The snow igloos still seen in the Canadian Arctic and the Aleut's barabra (a sod house with driftwood timber supporting the roof) which had been the traditional shelter of these natives had long ago given way to the small frame houses one now sees in most of the villages; so, too, the summer tupek of skins has been replaced by the canvas tent used as a temporary shelter in areas where the game and fish are present. Vilhjalmur Stefansson, writing shortly after the turn of the century of an expedition into the Arctic, records that up to about 30 years before his journey, the beaches around Point Barrow had been thickly strewn with driftwood which was harnessed by the Eskimo into the construction of his shelter. The houses were crude but were built so that not much fuel was needed to keep them warm. When the frames were put together, they were covered with earth to a thickness that made the shelters practically cold proof. They were entered through a long alleyway by a door that was never closed even during the winter, and the ventilating hole in the roof was always open so that a current of air circulated through the house at all times. For this kind of a house two or three seal oil lamps would keep the temperature at a uniform 60 to 70 degrees fahrenheit throughout the winter. But contact with another culture also induces emulation—for better or worse—and the contact with the white man according to Stefansson was for the worse—at least as far as his home was concerned.

"With the white men of the last half century there came to the Arctic the white men's lofty and commodious frame dwellings. Although these are thoroughly ill-adapted to the country, they soon became the fashion, and the Eskimo began to build their poor hovels in the best imitation they could make of the pretentious homes of the foreigners. The flimsy walls of these new dwellings admitted cold by conduction so that the seal-oil lamps were no longer sufficient for keeping them warm, and even the sheet-iron stoves in which driftwood could be burned had diffculty in keeping them at a comfortable temperature. Driftwood lay in apparently inexhaustible wind rows along the seashore, but these were the accumulations of centuries, which the Eskimo, having no use for wood

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[2] Ibid., p. 47.

[3] Charles Abrams, *Housing the Alaska Native*, published by the Alaska State Housing Authority, February 1967, Anchorage, p. 10.

as fuel, had allowed to grow. Now instead of being used as formerly only in the construction of the house frames and in the making of sleds and implements, the driftwood was used for fuel in an attempt to keep the flimsy new style house warm. The result was that the driftwood disappeared so rapidly that in thirty years, by the use of stoves, all of it is gone, from Point Hope to thirty miles east of Point Barrow. With the increasing scarcity of fuel the ventilation of the houses had to be curtailed gradually, so that the modern Eskimo house is practically sealed against fresh air. If there is a keyhole on the door you will find it stuffed with chewing gum." [4]

As the result of the un-vented dwelling of the present day Native people we have record breaking statistics in ill-health with the pulmonary ailments leading the way.

It must be said that not only the coming of the white man as such prompted the Natives to adopt the new house but that the Educational philosophy directed from Washington played a very vital role in accomplishing this folly. The idea was that a house that was not vertical is either "vulgar or degrading."

According to studies made by the Federal Field Committee of some 7,500 dwellings about 7,100 need replacement according to the Bureau of Indian Affairs an additional 344 new dwellings are dwellings that are needed annually because of population increases.[5]

On a regional basis, housing conditions vary somewhat as reported by the Bureau of Indian Affairs to Congressional Committee in 1966, but the uniformity of their reports is more pronounced than their variety!

"Southeastern: Except in one village the housing situation is most deplorable. All but a few homes in each locale are dilapidated and substandard.

"Bristol Bay: Housing is the most pressing and serious problem for natives in the remote villages. Generally speaking, housing is substandard. It is inadequate on terms of rooms, condition and cleanliness.

Southwestern: In general natives live in one-room houses made of those materials which are typically available—driftwood, lumber, plywood and logs.

Northwestern: Most houses are one room construction without insulation and sanitation facilities."

According to the Federal Field Committee, in southwestern Alaska Surveys of ten villages (1961–1963) show 348 homes containing 524 rooms, an average of 1.5 rooms per house. With a surveyed population of 1,978 persons, the average per room is 3.8 persons—a somewhat larger number of persons per room than exists for average households (3.5) across the United States. Among the ten villages the extent of overcrowding ranges from 2.3 persons per room in Tanunuk to 5.2 persons per room in Chevak.

The director of the U.S. O.E.O. after visiting Nome in 1967 described its housing, "most of the houses are ramshackle, falling-down places. But even this city has a slum that is worse than the rest of the town (King Island Village) where 500 Natives live on the most abject poverty that I've seen anywhere—including Africa, Latin America, India, or anywhere else."

"WHAT TO DO?"

The attached statement of Alaska Remote Housing Committee along with the brief of the implementations plan is the type of a program that we support for Alaska Natives. This includes the so called "Bartlett's Bill" for native Act of 1966 (S. 1915).

Given the opportunity through the Native Land Claims settlement the Native people would help themselves in solving their own housing problems. This is why the title to 40 million acres and the 500 million dollar settlement is so important. This is a moral issue. We must be given the opportunity to adjust decently to the dominant culture that has imposed itself upon us.

We submit to your staff a copy of *The Testimony Regarding Alaska Remote Housing Program* by Edwin B. Crittenden, Executive Director, Alaska State Housing Authority and *Housing The Alaska Native* by Charles Abrams.

Your prompt action toward the settlement of the Alaska Native Land Claims is necessary for the attitude of *self-respect* for the Native people of Alaska.

Mr. Chairman, members of the Committee, I thank you for the opportunity of appearing before you.

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[4] Vilhjalmur Stefansson. *My Life With the Eskimo,* the Macmillan Company, 1913. P. 91.

[5] Federal Field Committee for Development Planning on Alaska, Report, Anch.

STATEMENT OF FLORE LEKANOF, MEMBER OF THE STEERING COMMITTEE, ALASKA FEDERATION OF NATIVES

RELATIONSHIP TO EDUCATION

Mr. Chairman and members of the Committee we the members of the steering committee of the Alaska Federation of Natives are here to review with you some of the reasons why we feel that a bill for the settlement of the Alaska Native Land Claims should be passed with our suggested amendments. I would like to present some information on education that are related to this subject.

The history of the Indian Education programs has been less than desirable ever since its inception. The pendulum has been swinging back and forth between two philosophies—"get the Indian off of the reservation" "keep the Indian on the reservation," these philosophies have not been little felt in Alaska although we have only one reservation.

The present trend if not halted will drain all aggressive and talented young Natives from the Native country. This is caused by the distant high schools and vocational training programs not to mention the relocation concept.

I don't think that it is the intent of the Federal government to destroy a "way of life." As President Johnson recently stated that we must encourage some of our people to live on the farm—in rural America. He said also that he intends to go back to the farm himself. We must stop moving people to where the industrial development is and start moving the industry to the people. This is part of the answer to our problem in Alaska.

One of the serious problems on the Native education is the separation that has been demanded between the child, the family and the community. If this practice is permitted to continue we will negate the whole educational progress. We must adhere to the concept of the community school.

We must demand and allow participation from the Native people in all aspects of the educational process. The community must feel that it too is educating the child and to accept this transmission there must be both bilingualism and cultural pluralism.

When we mute a child's first language we are destroying the system by which the Native child thinks and expresses his concepts and intelligence. The Native child and the white child are supposed to compete in learning. The white child churns ahead in an undisturbed cognitive linguistic system. The Native child must hold up significant cognition until he learns the master communications system, English. This is one of the main reasons why our Native students are having a major dropout problem on the University level.

The schools in Greenland faced this problem many years ago. They taught the Eskimo in his own language for the primary grades of his school career then the Danish language was introduced in the fourth year.

There is still a further value in the Native tongue and that is that it keeps the personality in a functioning whole and allows for an improved self identity. One other minor contribution of the Native tongue would be that it contributes towards more internalization and educational reasoning. In this case language is considered as culture.

As we examine the record more and more evidence turns up that quite functionally the child with a whole culture has a greater chance of retaining a whole personality than a child from a lost or fractured culture and an effective person operates out of a highly organized sense of self.

Given the opportunity through a generous Native Land Claims settlement, we the Native people of Alaska will support the following kinds of programs:

(1) That early childhood educational programs be made available to all communities in Alaska desiring such a program. Head Start classes have been operated successfully for two years in 52 Native villages. There are over 200 villages desiring same. We recommend that the local Native language be fully utilized in the pre-school program.

(2) That priority be given to the local people to teach on the pre-school level. This has been proven successful in the Head Start Program. The local person more fully understands and appreciates the linguistic and cultural heritage of the village.

(3) That there be a continued operation of the teacher-aid training program by the Anchorage Community College to prepare helpers in the elementary classroom. This program has been co-sponsored by the B.I.A. and Manpower Development Training Agency. Head Start Teacher Training Program was also conducted by the same administration with funds provided by O.E.O.

(4) Immediate consideration should be given a plan to expand the program by including, in addition to the "Aide" training as offered previously, two additional steps for teachers' "Assistants" and teachers' "Associates."

More advanced training for them would meet the expressed needs of a number of Alaskan teacher aides. It would represent a realistic beginning for some who wish to become teachers but who could not now enroll in a continuous baccalaureate program.

Among educational institutions in the United States which have responded to a similar aide-inspired need is St. Petersburg, Junior College in Florida, which offers a one-year terminal career program for teachers' "Aids."

(5) That changes be made in the educational curiculum so that a youngster on the village level may be offered formal education through the tenth grade. This will allow the child to be with his parents for a longer period during his educational career. Many children and parents are psychologically upset by having to separate nine months out of the year. Many family units are disturbed to the point of "non-return" during these absent periods.

(6) That regional high schools with two years of past high school years be made available in the following areas: Aleutian Islands, Bristol Bay, Bethel, Kotzebue, Barrow, Galena, Fort Yukon, Southeastern (Mt. Edgecumbe) and Tok. This will allow students to go home for occasional visits or parents to visit at the school. This will make a secondary education more obtainable for those who would ordinarily drop out because of family and geographic problems. The two years beyond the high school will permit those students who are not college bound to train in the fields appropriate to the regional area such as electronics, heavy equipment operation and maintenance, building skills, fisheries, etc. This would also permit those who are college bound to receive credits transferable to the college of their choice.

With this program we will see less and less academic failures among our Native people.

(7) All available funds, State, Federal or private, should be concentrated in the rural Alaska for adult education. We have seen some programs such as M.D.T.A., O.E.O., B.I.A., and O.J.T., but there needs to be more of the same. We feel that there must be industrial development in the rural areas of Alaska and the adult education programs be directly related to such development. We see this as a means of providing a more productive worker and also a means of a more enlightened citizen.

(8) That the federal funds now available for the education of Native children be turned over to the State Department of Education for the purpose of having one administrator in education for all Native children in Alaska. This move will save administrative costs by eliminating duplications in job positions. This would also put all rural Alaskan teachers on the same footing as far as salary, retirement, travel allowance, academic requirements and vacations are concerned. This will also do away with the segregated educational system in Alaska. We feel that the state is just as much to blame for this problem as the federal government. This move must be "immediate" not "gradual".

(9) We propose a regional school board for the areas which will be served by a regional high school. This is not just an advisory concept. This move will give the rural people the notion that the schools are their schools. There will be more responsibility, concern and interest.

(10) That the Native leaders be involved fully in the conception of an over-all educational plan for rural Alaska. In the past the Native people have not been consulted in the development of an educational plan for them. Demonstration in Navajo education at Rough Rock, Arizona has proven that given the opportunity even the academically deprived people will make the right choice.[1] The Native people have a right to make a few mistakes too. "After all" is not this the way of democracy?

Finally, education for educations sake is not enough. Economic and industrial development must go hand in hand with the education process. At one time in history the Native people of Alaska enjoyed a meaningful livelihood in their own Native culture. Since the coming of the Russian fur traders and later the United States Government the Native people have been exposed and educated in the Western European culture or what we might refer to today as the dominant American culture which is very much influenced by the Judaic-Christian philosophy. We must provide some means whereby a decent adjustment may

[1] Estelle Fuchs, "Innovation at Rough Rock," *Saturday Review*, September 16, 1967.

be made to this new culture which the Native people of Alaska have adopted without the psychological damage to the personality of the Native people.

There must be not only the formal and informal education but the means, through economic and industrial development in the Native country, for a *new meaningful livelihood.*

This is our hope through the generous settlement of the Alaska Native Land Claims bill.

Mr. Chairman, members of the Committee, I thank you for the opportunity of appearing before this committee.

Senator METCALF. I notice you talked about that Saturday Review article. I was very much interested and concerned about that as far as the American Indian is concerned.

Mr. LEKANOF. Yes. I think the idea there is the concept of self-determination, which we feel is very important.

Senator METCALF. I can see some very desirable transfer possibilities from what was down there in Alaska as I have learned about it from your two distinguished Senators and from the hearings. Go right ahead.

Mr. LEKANOF. Thank you. Having said what I did in the written testimony on education, I would like to say this. That education for education's sake is not enough. Economic and industrial development must go hand in hand with the education process.

At one time in history, the native people of Alaska enjoyed a meaningful livelihood in their own native culture. Since the coming of the Russian fur traders, and later the U.S. Government, the native people have been exposed and educated in the Western European culture, or what we might refer today as the dominant American culture, which is very much influenced by the Judaic-Christian philosophy of life.

I might add here that the native people of Alaska have adopted this way of life. We must provide some means whereby a decent adjustment may be made to this new culture, which the native people of Alaska, as I say, have adopted, without the psychological damage to the personality of the native people.

There must not only be the formal and informal education, but the means through economic and industrial development in the native country for a new, meaningful livelihood. This is our hope, through the generous settlement of the Alaska Native Land Claims Bill.

To add to this comment just a bit on the housing. There is a statement here on the native dwellings. In the past, as indicated by Bishop Veniaminov, which we quote, and also Stefansson, who lived among the Eskimo in the North, the Eskimo and the Aleut people at one time lived in adequate dwellings. Stefansson referred to the temperature of the Eskimo-dwelling, saying that it was well ventilated. They were able to heat their dwellings with three oil lamps, and I think this is something to think about. And the Aleuts, on the other hand, also had these long communal houses. This was their way of living, which was, as I suggested, changed when the new culture was introduced, and they were forced to have to build single dwellings for single families. The concept of large relatives living together was discouraged.

But they had adequate dwelling again. They were well ventilated. They were healthy people. They did not have the type of diseases that we know about today, in those days. These were introduced along with the new culture.

The important thing here is that we would like to say that through the Land Claims Settlement, these people again will be able to make de-

cisions, which will allow them to decide on their own future, which they have done in the past, and which has been taken away from them to a large degree by bureaucracies.

I think we are against wardship. We are against trusteeship. We would like to make our own decisions, and I think this is the all-important thing that we see through a fair settlement on the native land.

Thank you very much.

Senator METCALF. Senator Gruening.

Senator GRUENING. I have no questions. I think we are getting a better and better comprehension of the urgency as well as the complexity of the problem, and the fact that there will have to be as the problem is worked out regional differentiation to take care of the different physical and geographic circumstances, and I think that the Aleut situation is particularly pertinent. It does not apply particularly to the Aleuts as it applies for instance to the Eskimo on St. Lawrence Island whose conditions would be different than those on the mainland but this makes the problem all the more interesting and more challenging, and I think your testimony has been most helpful.

Mr. LEKANOF. Thank you, Senator.

Senator METCALF. I, too, want to concur with Senator Gruening. I know that when he reintroduces this bill, and I have every confidence that he will at the beginning of the next session of the Congress, that these concerns that you are talking about, education, housing, and rehabilitation are going to be part of the concerns that this committee is faced with in arriving at an equitable decision as to what these land claims and land settlements should be. I appreciate, as the former advocate on various committees of education, your bringing up this very important and significant subject.

Mr. LEKANOF. Thank you.

Senator GRUENING. I would like to ask Mr. Connor a question. You were present this morning when Mr. Barry Jackson referred to the bill. Would that in its revised form take care of the needs of the Aleuts, too, or should there be some additional provisions or modifications?

Mr. CONNOR. Only as to the blood quantum problem.

Senator GRUENING. Only that?

Mr. CONNOR. Yes, sir.

Senator METCALF. You are satisfied with the provision he has for attorneys' fees?

Mr. CONNOR. Yes, indeed.

Senator METCALF. I want you to know many of the members of this committee are attorneys, and we do not know when we will be plunged back suddenly and properly into private practice, and so we have some sympathy, too, about the question.

Mr. CONNOR. Senator Metcalf, I would like to say I am the immediate past president of the Alaska Bar Association, and we are very proud of the Alaska bar. We are a small bar. We are only about 300 strong. But we do a lot of things up there, and we are in the vanguard of a lot of good legislation. We try to adapt things specially to Alaska, just like the AFN is trying to adapt an Indian claims problem to Alaska. You know, we do a lot of good work up there, and there are many lawyers in Alaska who have fought for the native

people for a long time, without compensation or with inadequate compensation, and on the other hand we all have terrific problems, because we are small practitioners, and we can only give so much time to these matters without going broke.

Thank you.

Senator METCALF. Thank you very much. I thank you both.

The next witness is Mr. Charles Edwardsen, Jr.

STATEMENT OF CHARLES EDWARDSEN, JR., POINT BARROW, ALASKA

Mr. EDWARDSEN. I would like that name corrected. I am Charles Edwardsen, Jr.

Senator METCALF. We are delighted to have you here. Point Barrow is a long way off.

Mr. EDWARDSEN. I was one of the founding persons of the Arctic Slope Native Association, and at the time of the Alaskan hearings I was a student at Western Washington. Since I have a lengthy statement, I wish to make a few observations.

Senator METCALF. Go right ahead. Your statement will be incorporated in the record at the end of your remarks.

Mr. EDWARDSEN. What I would like to observe is the total social-political-economic community of America as it reflects the difficult problems of Alaska. Most of these laws and 95 percent of our laws are made here in Washington. We have a few outside hearings, and all of us have certain ecological problems, and also sociological problems. By the very framework of our political institution, that is 99 percent of the time it was advantageous to the politicians of America to suppress and oppress the American Indian. This was the climate, and at that time my people were new to the institutional value structure of America. They were kept out, and these past few years we have changed otherwise. I hope to show a faith in our form of Government that I still think that if our Senators and Congress work a little bit harder, I think that we can get this legislation passed.

I know that the Congressmen and Senators have had a long year, and I wish for speedy recovery of this legislation, and I also feel in Alaska, being a young State, that we can examine new social-political ideas where they will not work elsewhere.

We have a small population, and we can work with new ideas, but in the past we have had a value system that American Indians are going to have to be taken care of by the Department of Interior and the Department of Interior is, as we all know, a stepchild of our legislative process, and under that tail then, our people and many other Indians have suffered the consequences. And now, as our people gain more articulateness in the institutions of the United States, I feel that we can find answers to our problems as they stand now. I want to thank you.

Senator GRUENING. I have no questions. I think your statement is excellent. We are glad to have it, and I think we have had pretty good representation now from all parts of Alaska. We certainly do not want to exclude the farthest north.

Senator METCALF. Mr. Edwardsen, the Political Science Department of Western Washington State College must be quite a remark-

able place in view of the statement you have made and the statement you have incorporated. Thank you very much.

Mr. EDWARDSEN. Thank you.

(The statement referred to follows:)

STATEMENT OF CHARLES EDWARDSEN, JR.

I am Charles Edwardsen, Jr., Eskimo born and raised at Barrow, Alaska, and now a student at Western Washington State College at Bellingham, Washington, majoring in the fields of political science, economics and sociology.

It was very essential for the colonists to have cooperation and friendship with the Indian at the time of European colonization. This was a necessary condition for colonists to gain a foothold in America.

As one historian put it, "The Indians were pressed remorselessly when their friendship became of less value than their land." The forms of taking were many, i.e., by cajolery, trade, and force. With the new European community came its institutions, social, economic, military and the technology which has been developed by Western man. This was the beginning of the destructive campaign against the primitive Indian. The most lethal weapon of the Europeans and their greatest ally was their diseases.

The historical development of European colonists was always at the expense of the American Indian. There was a period of tranquillity, as reported by Captain Arthur Barlow to Sir Arthur Raleig, "We were entertained with all love and kindness and with as much bounty as they could possibly devise. We found the people most gentle, loving and faithful, void of all guile and treason, and such as life after the Golden Age." The Indians not only schooled the Pilgrims in the culture of maize and squashes, but taught them how to fertilize the hills with alewives from the tidal creeks.

Most people do not believe that the Indians had developed title to their land or ties with the land. This is completely misconceived because land and the Indians were bound together by ties of kinship and nature rather than by an understanding of property ownership. This conception is the very essence of Indian life.

The American policy toward the Indian was formalized by a Committee of the Continental Congress in October 1783: "Indian Claims upon such lands, it has become necessary by the increase of domestic population and emigrations from abroad to make speedy provisions for extending the settlement of the territories of the U.S. and because the public creditors have been led to believe and have a right to expect that those territories will be speedily improved into a fund towards that security and payment of the National debt."

This Committee consisted of Mr. James Duane, Mr. Richard Peter, Mr. Daniel Carroll, Mr. Benjamin Hawkins and Mr. Arthur Lee. Although Thomas Jefferson felt that "No land shall be appropriated until purchased of the Indian native proprietors", yet that committee of Congress came out with "do not pay for lands."

This became a policy of the U.S. expansion program for the Northwest movement. This policy was altered by Chief Justice Marshall in the Cherokee case: "The title of the Cherokee people to their lands is the most ancient proof and absolute unknown to Man, its date is beyond the reach of human recall its validity is confirmed by possession and enjoyment antecedent to all pretense of claim by any portion of the human race. . . . The Cherokee people have existed as a distinct national community . . . for a period extending into antiquity beyond the date and records and memory of man. . . . These attributes have never relinquished by Cherokee people . . . and cannot . . . be dissolved by the expulsion of the nation from its own territory by the power of the United States Government."

A nation which was founded on the principles of freedom and justice has violated its own principles. The point of violation is in the national structure of its own representation—that it was good to point a finger at the American savages. With its instructions of law, economics and the social adaptations, this very nation has violated its own principles. Because the national economy is based on appropriations from the land.

With this type of economic base and the existing political order it was advantageous to the United States to gain all lands possible at the cost of the American Indian. This is and was the National policy of our social, economic and political history. Although the Chief Justice of the United States of America ruled that social, economic and political justice towards the American Indian

was necessary, he was ridiculed and laughed at by Americans and also by the President, and his rules were not enforced. With no appropriations for enforcement, Congress itself has and will have the responsibillity for enforcement and authorization of expenditures. It was advantageous to the Congress regardless of the ruling of the Supreme Court to go on with what we now know as the American policy to the savages. So much for the historical development.

A question, why do we have the land problem in Alaska? As we all know the contract between the United States and Russia was approved by both nations at the cost of the aborigines of Alaska which were neither approached nor consulted at the time of the transaction.

A question, what have we done to protect the natives? The Organic Act of 1884 was passed by Congress with certain characteristics which involved the social, economic and political well-being of native Alaskans. Have we achieved the mandate of Congress of 1884? The answer to that is no. Today is 1968. The works and the international image and the prestige of the United States is at stake. The Organic Act stated that the lands of the Alaskan natives shall not be disturbed, and the Congress shall decide at a later day upon these lands and the rights of the Alaskan Eskimo, Indian and Aleut

To brief the Congress on the social, economic and political development of Alaskan Natives: the first policy was military control. The policy of the military is to suppress the American Indian. This has been documented throughout American history. The second period was territorial government, which gave civil government to the white community of Alaska to suppress and oppress the native. Along with this government came the American institutions of churches, economic enterprise and political leadership. There was another mandate by Act of Congress on the passage of the Statehood bill. Alaska then became a full-fledged State, inheriting problems of its past, present and future policy on the American Indians.

What have we done in Alaska? Let us examine the side effects of our own social, economic and political institutions, with respect to the natives of Alaska. In the area of education, Congress appropriated $25,000 and at the very beginning a principle was established: The education to be provided for the natives of Alaska shall fit them for the social industrial life of the white American population of the United States and promote their not-so-distant assimilation. As reported by the Department of the Interior, the children shall be taught in the English language, reading, writing, arithmetic, geography, history, physiology, temperance and hygiene.

What did they accomplish with this $25,000? The general agent for education was Dr. Sheldon Jackson who was a prominent secretary of the Presbyterian missions. In the formulation of schools in Alaska the churches played a definite role. Alaska was divided into regions and certain responsibilities were given to the churches. The Carmel Mission along with Bethel was operated by the Moravian Church; the interior of Alaska was appropriated to the Roman Catholic Church schools based at Holy Cross and Nulato; the Seward Peninsula at Cape Prince of Wales was operated by the Congregational Church; Point Hope by the Episcopal Church; Point Barrow by the Presbyterian Church. Along with educational emphasis came the conversion of the savages of Alaska. This campaign was not easy because of the competition between the Shaumons and the missionaries. We must congratulate the churches, because they have christianized the Alaskan Native.

This was the first campaign of introducing the institutions of America at the cost of cultural losses to Alaskan natives. The churches have fully pacified the innocent savages of Alaska.

What is wrong with native education? Dr. Charles K. Ray, Professor of Education at the University of Alaska, had this to say: "Let us now end this survey of Eskimo education between the two World Wars by analyzing the defects which made it so inferior to elementary and secondary school education in the U.S. and militated so strongly against the Eskimo's attainment of social and economic equality with Alaskans."

We can discern four serious weaknesses:

A. Poorly qualified teachers
B. Poor teaching methods and unsuitable textbooks
C. Excessive load on the teachers and inadequate supervision
D. Inadequate school facilities

YEARS OF FORMAL SCHOOLING COMPLETED, 1960 [1]

[In percent]

	White	Nonwhite
Less than 5 years	1.5	38.6
12 years or more	63.2	17.4
4 or more years of college	11.4	1.1

[1] Roger & Cooley, Alaska's Population & Economy, vol. II, pp. 174–187.

Although now the State of Alaska has the responsibility of educating the Alaskan native, the BIA is operating 67 day schools and two boarding institutions in Southeastern Alaska. What has the State done to accomplish the taking over of the BIA schools? We have the Johnson-O'Malley program which gives the authority to the State of Alaska for the transfer of the schools.

What measures have been taken for acculturation of the Alaska Natives? One measure is the COPAN program under the leadership of Prof. Saulsbury. The goals of the program are as follows:

1. To orientate the student to college life.
2. To afford the student a deeper appreciation of his original culture and to better understanding of his adopted one, by helping him to objectively compare them.
3. To improve the student's ability to express his thoughts and feelings to others, to encourage individuality and assist each student to develop a sense of economy and self-respect.
4. To improve the student's perception of himself and his abilities.
5. To help him to choose realistic goals.
6. To enable each student to recognize his work as an individual and as a contributing member of the larger society.

At the first, fourteen students volunteered to participate under this program. As examples of some of the social, economic and political problems of their native communities, one student writing of prison noted "Jail was certainly better than the conditions at the place that was supposed to be my home." Another student stated "The Caucasians were more intelligent and had many opportunities but then they were also more greedy and selfish." One student talks of his home town: "Everything seems to be suffocating in the embrace of a season that lasts too long." Another student stated "you have to choose whether you are going to be white or native."

It has been a slow process of acculturation which Congress does not hear or feel—the social and political adjustments of one world to the other. I would like to quote a scholar from the COPAN project: "The ideas and experiences that will enable other traditional students to create the synthesis of their own culture and Western culture by enabling them to understand the strengths and weaknesses of both ways of life while at the same time increasing their own personal sense of confidence and self-worth."

This has been a radical revolution from the old orientation of the United States of America policy that we are going to help the Indians. The American policy was and is "we have to do it for them." This policy has not worked nor will it work. This has been the policy since the creation of the BIA in March of 1849.

Has the BIA failed? Or has America failed? The BIA has been a microcosm of American commitment to help or enable the American Indian. I cannot blame the Bureau officials but only the American citizens at large who have had this type of policy toward the American Indian. But BIA is its own creation and its commitment and answer to the social, economic and political development of the American Indian under the auspices of Congress.

Historically the Federal government has maintained a responsibility by act of law for the welfare of the American Indians. It was not until 1924 that the Indian citizenship bill was passed. It was not until 1934 that the Indian Reorganization Act was passed. This legislation provided for development of tribal self-government and extended the Federal trusteeship over Indian lands.

Another milestone was the Indian Claims Commission Act of 1946 which set up a special commission to hear Indian tribal claims, primarily land claims against the Federal government.

What was the role of BIA with respect to the Indian Claims Commission Act of 1946? The BIA had only one resource person, Mr. Charles Jones. Mr. Jones did not travel within Alaska to explain the Claims Act. As a result, the Native people in Alaska were unaware of the Act and very few claims were filed. Those that were filed are the result of individual teachers initiating the claims.

What was its effect on the Native communities? As a consequence of this fact few Alaskan native groups now have cases pending before the Indian Claims Commission. In fact, only the following filed claims prior to the deadline in 1951:

Docket No:	*Group*
171 (5 claims)	Tee Hit Ton Indians
187	Natives of Chitina
199	Athapascan Indians of Stevens Village
200	Natives of Tatitlek
278	Tlingit-Haida Indians
284	Gambell and St. Lawrence Island Eskimos
285	Unalakleet & Unaligmut-Malemut Eskimos
286	Shugnak and Kowagmiut Eskimos
287	Nisgah Tribe
352 (3 claims)	Aleut Community of St. Paul Island
369	Aleut Tribe et al.
370	Natives of Palmer, Alaska

Source: Report to the Secretary of the Interior by the Task Force on Alaskan Native Affairs, p. 65.

How has this legislation affected Alaska? Let us examine the Indian Reorganization Act and its effects on Alaska. There are thirty-three community stores that are Eskimo, Indian or Aleut owned and operated. In 1958 a congressional committee was appointed to investigate the Howard-Wheeler Revolving funds in Alaska. The findings were:

1. It has failed to establish any program in the schools, on the job or otherwise to train Indians or Eskimos to assume top managerial positions in what was supposed to be their own business undertaking.
2. It had failed to carry out the Howard-Wheeler Act objectives of fostering the broadening and diversification of the Indian and the Eskimo economic base.

These were criticisms of a senior economist, Dr. George Rodgers, which arose because of the remoteness from the scene and the limited first hand experience of personnel of the Washington office of the BIA, the retention by the office of control over many details of Native owned programs, and conflicts with sound administrative practices. These were the analysis of Dr. Rodgers, a senior research economist at the University of Alaska. But does this mean that the natives cannot manage their own affairs? I simply will state the recent developments of the new social and economic institutions created by the native people of Alaska. (Analysis in a publication called "The Eskimo Administration in Alaska"). "This sudden awareness on the part of the non-native Alaskan of the Eskimo and other native people, and the outburst of activities attempting to deal with their problems was no accident, but the culmination of a longer development process which raised the Eskimo from political importance to political power."

Traditionally living and functioning in small isolated groups, the Eskimo began to learn from the more politically experienced Southeastern Indians the importance of union. Regional Native organizations began to multiply around the rim of Alaska from the Northslope to the Gulf of Alaska and in the upper reaches of the Yukon and Tanana rivers for the purpose of protecting Native rights in land matters, protesting the adverse effects of the proposed two billion dollar Rampart hydro-electric project and demanding greater self determination for the residents of the Pribilof Islands.

But the land was a cause common to all and in October 1966 eight separate associations formed, consisting of Eskimos, Aleuts and Indians, joined together in a united front of the Alaska Federation of Natives. The self-determination of Alaska Natives has had recognition from the non-native community as a political force to reckon with. They are not only fully aware that they have a right to vote and otherwise participate in the political process, but they have found their political voice and an economic weapon which could prove more effective in advancing their causes than the economic boycott and violence used by the Negro minorities elsewhere.

The political and economic impact of the land freeze and the delay in the determination of the native land claims was immediate and farreaching. The intent of the Alaska Statehood Act to provide the new State with income from the land resources during its critical period of initial development was thwarted. This is the answer to the problem "can the Native people manage themselves?"

WAR EFFORT AND JOBS

Let us examine the war effort and the role of Alaskan natives. We have experienced World War I and World War II and the Korean War and the War in Vietnam. The roll of the Native has had national significance. I would like to quote a letter from Defense Secretary Charles Wilson, to the Department of Health and Welfare in 1954. "Two battalions of Natives were organized for use as scouts throughout sparsely settled portions of the Territory of Alaska. The first battalion consisted of Eskimos from the Coastal plains between Barrow and Unalakleet and Dillingham. They are obviously the only military personnel who could in time of emergency live off the land and exist in this barren frozen territory. They have had considerable military training in camps and are considered the most valuable adjunct to the security of this entire area." Along with the war there was creation of service centers. These centers were at Barrow, Kotzebue, Unalakleet and Bethel. These centers were accessible by both land and air and in addition became hospital locations. This has had adverse effects on the Alaskan native. These adverse effects were a loss of traplines and a loss of 173,377 reindeer, which meant loss of livelihood. This was from 1941 to 1948. Other adverse effects were the introduction of liquor to the larger Native community and family breakdown of marriages because the Alaskan women were readily available to the white man. The war effort also had some positive effects, these effects were introduction of the native to the wage economy. In terms of manpower shortage during the war efforts, new skills were achieved by the Alaska native. I would like to quote *Eskimo Administration*, Volume I, by Dimond Jenness. "The Eskimo proved themselves steady laborers, cheerful in the face of hardships and willing to brave coldness and the stormiest weather. Some of them acquired new skills, they became proficient carpenters or they learned to operate diesel engines and heavy and light machinery." Native manpower was used in the establishment of military bases throughout Alaska.

Now let us come to 1968 and the role of Alaska Natives in our wage economy. What has happened to the cheerful hardworking native? I would like to quote from a publication called *Alaska Natives and Federal Hire*. "Their unemployment rate based on labor force estimates at about 16,500 is a staggering 60%. Being jobless these native Alaskans live in poverty and suffer its consequences."

Why did this happen? At the same time one good end would be served by increase of employment of Alaskan Natives. Another end would also be served by reduction of the enormous cost of transporting new employees and their families and household goods from other states to Alaska at an average of $2,500 for new employees and another $2,500 to return the departing employee to his point of hire in another state. Another cost of outside recruitment is about one million dollars spent each year for those who continue on duty in Alaska but receive reemployment leave, and travel benefits popularly known as home leave.

HEALTH

What are the conditions of native health and how do they compare with the National average? What is the significance of Alaska's native heatlh conditions to the National image? "There seems little doubt that the principal health problem is the high morbidity and morality from acute infecious disease among infants and preschool children. Galstroenteritis, pneumonia and meningitis are the principal killers, accounting for twenty-nine out of sixty known deaths among children less than five years of age during 1965. The previous year, 22 percent of all hospital admissions were in this age group, an estimated ninety percent of which were for acute infectious diseases. After the three diseases listed above, chickenpox, bronchitis, otitis media, infectious hepatitis, impetigo, streptococcal sore throat, and upper respiratory illness are the most important causes of morbidity." (*Health Conditions among the Eskimos of the Yukon Kuskokwim Delta, Alaska* by Robert Fortune, M.D.)

Based on the best figures available for 1965 the infant mortality in the area was 118 per 1000 live births, compared with a U.S. Indian average of 42.9 (both for 1963). More significant, perhaps, is the fact that the Delta area has an

infant mortality over twice that of Alaska natives as a whole. The postneonatal death rate (28 days through 11 months) for the area is a striking 96 per 1000, live births, about fourteen times the national average and nearly four times the Indian or Alaskan native rate. This figure portrays clearly the extraordinary role of infectious disease as a cause of infant deaths. Indeed over two-thirds of all deaths in the 0–4 year group in 1965 were known to be due to infectious diseases.

The next most significant health problem is the excessively high incidence of non-tuberculous respiratory disease. Lobar pneumonia, bronchopneumonia, acute and chronic bronchitis, bronchiectasis, and upper respiratory infections account for more hospital admissions and hospital-patient days than any other type of illness. During 1964, 17% of admissions to the hospital were for a primary diagnosis of respiratory disease other than tuberculosis. Many other illnesses treated in the outpatient clinic or on village trips are respiratory.

Of these diseases, lobar pneumonia and bronchiectasis deserve special emphasis. Lobar consolidation of the lung is exceedingly common, especially in preschoolers. Although most cases respond well to antibiotic treatment, a significant number go on to complications such as empyema and bronchiectasis. This latter disease has only fairly recently been recognized to be widespread among Eskimo children. As yet the basic pathogenesis is unclear and further study of this interesting condition is warranted.

Tuberculosis called the "Alaskan scourge" by the Parran Committee, has perhaps declined in relative importance as a health problem but still ranks a strong third. In 1947, Dr. Langsam of Bethel estimated that 50% of all cases seen at the hospital were complicated by tuberculosis. The average annual infection rate among children 0–3 years in 1949–51 was estimated at an astounding 24.6%, a situation virtually unparalleled in the medical literature. The Parran Report (1954) strongly recommended a crash attack on tuberculosis based principally on a program of ambulatory chemotherapy at home, utilizing isonized and PAS. This program was administered in the Bethel Area by the Arctic Health Research Center. By 1957, the average annual infection rate in 0–3 year-olds had dropped to 8.5%. From 1957–59, the Arctic Health Research Center carried on a controlled trial of isoniazid prophylaxis in twenty-eight villages in the Delta region. By 1960 the annual infection rate was a mere 1%, a striking tribute to the effectiveness of these control measures.

The tuberculosis epidemic has continued to abate until the present, although the disease still causes great economic hardship in the region. A reorganized and intensified attack on the problem in recent years promises to reduce its incidence even further. During the first nine months of 1965 twenty-one new sputum-positive cases were found, for an annual incidence rate of 262 per 100,000. Many other patients are screened for activity because of a suspicious chest film. Extrapulmonary tuberculosis is still seen but is becoming more uncommon. New cases of tuberculous meningitis, military tuberculosis, tuberculous pericarditis and Pott's disease have all been diagnosed during the past year.

A quote from the speech of Dr. Muschenheim, M.D. delivered before the Fourth National Conference on Indian Health, November 30, 1966: "Public Health Service which has worked so effectively in the past decade to improve the health conditions of American Indians, and which has so very much more still to do. Even among physicians and among medical educators there is as yet little appreciation of the magnitude and the scope of the assignment which the Public Health Service was given by the Congress, or of the manner in which the task is being performed and how it is supported. Medical colleges have not been as active as they might well be in seeking affiliations with this branch of the Public Health Service for joint programs of many kinds."

How will the Native Land Claims enable the native health conditions in Alaska? "As a nation, therefore, we have not only to support the Public Health Services by providing it with adequate appropriations to perform its part of the task. We have also to recognize that the Indian Tribes have particular and specific claims on the national government. They hold such cummunal assets as they still possess as, for instance, reservation land by virtue of direct dealings in the form of treaties with the government of the United States. Some of the Native peoples who have little or nothing (as the Alaska Native villagers) are without property because they have been unable up to now to obtain any settlement of rights and claims which have been recognized in principle by the United States for a hundred years. Inasmuch as this conference is a health

conference, rather than simply a medical conference, I make no apology for speaking on these matters which are sociological, economic and political, but which have such an important bearing on the health situation. While the American Indians are citizens of particular states, as well as of the United States, and are entitled to equal rights and services in the states in which they reside, as are other citizens, there is in addition a special relationship to the Federal government which is the consequence of history, and not just of the circumstance that the several tribes and Native groups constitute impoverished minorities in their respective regions of habitation. These problems are therefore necessarily complicated because, while the individual states have responsibilities for the welfare of their Indian communities which some of them, however, do not recognize, so also does the nation have a special direct responsibility to them morally and legally. This is well known of course, to legislators and to probably most of the citizens of States in which there are sizeable organized Indian communities. It is not well understood however, by most people elsewhere or by average citizens, even in some of the states like New York state, in which there are some Indian reservations. A fair settlement of Alaskan Native Land Claims is not, though few people outside of Alaska appreciate this, a matter for Alaskans (Native and white) to settle among themselves. The territory of Alaska before it became a state, belonged by purchase to the United States, and the Federal government still holds most of the land.

The ceding, under the Statehood Act, of something like 20 per cent of the land to the State of Alaska without having made any similar definite commitment of land to the Native inhabitants, leaves those no better off than they were before statehood. When the territory was purchased there was recognition that the indigenous population had claims and rights to land they used and required for their subsistence but these rights and claims were never defined. To my considerable surprise, I found in talking to several young Public Service officers in Alaska that they believed the Indians and Eskimos to possess large reservations in various parts of the state. As a matter of fact, however, there is only one very small true reservation in the whole state, settled by a group who came over to Annette Island from Canada. There are in addition two larger reserves, withdrawn from the public domain for their use, but to which the natives do not have title. As I understand it, aside from small parcels in villages, few Alaskan Natives own any land, individually or collectively. One of the difficulties of Native Alaskans is that they do not hold titles of sufficient validity to enable them to obtain loans from the Federal Housing Authority for housing construction. The question of Alaskan Native land claims, and all that this involves with respect to housing and health, is a National question but it receives little national attention. Were people more fully informed I have little doubt that a decent and generous settlement would be made. Land problems and housing problems confront Indians of other states too with great difficulties. That their collective land holdings in many areas have dwindled largely through allotments and multiple heirships is, of course, well known. But the shrinking land base is of course not the only cause of economic depression. The absence of suitable alternatives to a hunting and limited farming economy and the difficulties in developing sources of money income are also well known.

I am never surprised but always dismayed when well-meaning but poorly informed people ask why do not the Indians integrate themselves more effectively into the general society. This question, so frequently asked, is disarming because to answer it appropriately requires a considerably longer explanation that most inquirers have the patience to hear. To reply simply that probably they'd rather not, or, contrariwise, that they do not have the opportunity to integrate would not, either way, properly answer the question. Nor would it be very informative to reply that for the most part they do not have the opportunity and that, in any case, they have strong attachment to their own cultural heritage and are understandably ambivalent in their reactions to the alien society which has engulfed them. This is, it seems to me, a reasonable statement of the case, but it is quite meaningless to anyone who is unfamiliar with the values on the one side of the equation, namely the character and equality of the cultural heritage to which Indians are attached. Therefore, if *we* wish to preserve the National image in which *we* see ourselves, namely of fairness, of beneficient interest in the powerless and the underprivilegd and value in defining the specific character of mental health problems in Indian life, and the origins of the problems will be evident to anyone who reads the transcript of that conference.

THE ROLL OF THE STATE OF ALASKA'S EXPENDITURES BY TYPE AND FUNCTION, 1965

Type/function	Expenditure	Percent of total
Total expenditure	$196.3	
Educations	47.8	24
Highways	78.1	39
Public welfare	6.6	3
Hospitals	6.6	3
Correction	4.5	2
Natural resources	6.5	3
Employment security administration	2.1	1
General control	6.7	3
Housing and urban renewal	9.7	4
Airports	8.7	4
Water transport and terminals	.6	
Interest on general debt	3.0	1
Insurance trust expenditure	5.9	3
Miscellaneous	7.8	3

Source: Compendium of State Government Finance in 1965, U.S. Department of Commerce, Bureau of the Census, table 9.

What is the role of the Federal Government in Alaska in terms of fiscal appropriations of 1967?

Aggregate expenditure of Federal programs for Alaska by agency, fiscal year 1967

Defense Department	$320,734,500
Air Force	185,791,500
Army	104,755,000
Navy	30,188,000
Commerce Department	58,940,572
Health, Education, and Welfare	50,628,932
Independent agencies	49,416,841
Interior Department	46,921,576
Treasury Department	15,364,000
All others	23,972,185
Grand total	565,978,606

Source: News letter, "Report From Washington," from the office of Senator E. L. Bartlett, Feb. 4, 1966.

A BRIEF HISTORY OF RESOURCE EXTRACTION IN ALASKA

The native populace of Alaska was exploited by both European and American businessmen without establishing Native industries or leaving resources for use by the Natives. The economic activities were extraction of furs, minerals, and fish. This left a diseased native population, driven almost to the point of extinction for lack of subsistence. In the Arctic at the peak of the whaling years the total extraction of whales was appraised at $14 million, but as the supply of whales was cut off by the whites, the population data reflected the loss to the Natives of this needed resource:

POPULATION

Place	1823	1863	1890
Point Barrow	1,000	309	100
Point Franklin	[1]	(?)	None
Point Hope	2,000	(?)	350
Shishmaref Inlet	1,000–2,000	(?)	[2] 3

[1] Large.
[2] Houses.

This is a classic example of past economic development policy of the European powers without consideration of the Natives of Alaska. The extraction of mineral wealth was the same. At that time the Native populace had no legal authority to

secure mineral claims. Therefore, they were excluded from mineral activities because the Native Alaskans were not citizens of the United States. This was the policy of the United States until 1924 when the Native Citizenship Act was passed for Alaska. At that time all the enterprises were owned by the greater American community whose offices were at Seattle, Washington and San Francisco. The same is true of our fishery extractions at the present time. I would like to quote Alaska Development Corporation's Annual Report; it can speak for itself:

GROWTH IN COMMODITY INDUSTRIES BY VALUE OF PRODUCT

[In millions of dollars]

Industry	1960	1961	1962	1963	1964	1965	1966
Fisheries	$96.5	$128.7	$126.5	$104.7	$125.0	$166.5	$185.0
Forest products	47.3	44.7	49.7	50.1	58.0	57.5	67.8
Minerals	20.6	17.8	18.8	35.2	35.5	[1] 47.6	34.7
Oil and gas	1.3	17.0	18.8	35.2	35.5	35.6	50.2
Agriculture	5.4	5.5	5.8	5.5	5.6	5.2	5.5
Furs	4.8	4.2	4.3	4.4	4.4	5.8	[2] 7.0
Total	175.9	217.9	233.7	232.6	264.0	318.2	350.2

[1] Reflects postearthquake construction.
[2] Largely an increase in unit prices.

Source: Alaska Development Corporation Annual Report.

As you can see the five hundred million dollars is completely justifiable, along with 40 million acres of land which the Alaska Federation of Natives is demanding. The Congress is going to ask how are you going to spend the money? What will you do with the land if you get it? I would like to ask the Congress how they have developed such an enterprising nation? The development of America has come about by having a sufficient land base. This formula of paying public debt was devised by Alexander Hamilton and his expertise. Social and political resources have not been made readily available to the Alaska Natives. This five hundred million dollars and 40 million acres will suffice for ordinary development among the Alaska Natives. The Federal government under the auspices of the Federal Insurance System has allotted the necessary legal business consultants and the available technological expertise to insure the proper social, economic and political development of those businesses which receive loans from the Federal government, thus making the Federal government the sole underwriter of our great industrial organizations. This form of expertise had not been readily available to the Alaska Native. The Federal government provided necessary services such as electrical power, subsidizing high cost transportation and water resources, to existing American enterprises. With this social, economic and political aid of the Federal government, proper development came about in the lower 48 states. It has now become necessary to allow financial assistance and sufficient land base for the necessary development of Alaska Natives.

Where does the larger business community receive their services and expertise? Like any proper development it is planned and organized to insure the necessary human resources which the larger American community has. If Congress has further doubts of proper development of Alaska the two living and historical experiences are Metlakatla and the Tyoneks. Their development is based on ownership of land, minerals and sufficient financial resources. The rest of the Native community has been left behind because the Congress of the United States of America has been dormant. We have waited a long time. We have had a lot of promises from the great white chiefs resting in Washington. We want this chance to enable the invisible people of Alaska to become full-fledged American citizens with rights to their land which is rightfully theirs.

Now with our existing technological economic expertise, we will develop our rightful resources.

Senator METCALF. Mrs. Laura Bergt. We are happy to have you before the committee again. I am happy to see you down here after having seen you in Alaska.

Go right ahead in your own way.

STATEMENT OF MRS. LAURA BERGT, MEMBER OF THE GOVERNOR'S TASK FORCE

Mrs. BERGT. Thank you. I would like to submit my statement for the record. My name is Laura Bergt.

Senator METCALF. The statement will be incorporated in the record at the end of your remarks.

Mrs. BERGT. Thank you. I am a member of the Native Land Claims Task Force. I am also a member of the State Remote Housing Committee and the State Tourism Advisory Board, and the State Committee on Children and Youth Health and Welfare.

I was raised in Nome and Kotzebue and I have lived in southeastern Alaska, Fairbanks, and in Barrow. Presently, I am living in Anchorage. My statement briefly covers extreme poverty, poor housing conditions, and the lack of sanitation facilities of the Alaskan native. Native housing in Alaska is very inadequate, with severe overcrowding, and no sanitation facilities, and is closely related to adverse health conditions.

We have a high death rate from respiratory diseases which is a direct result of overcrowding in the native home, which is about 12 by 24 feet. Usually there are 10 to 12 persons, usually children, living in this one room.

The Alaskan native's average age at death is 34 in contrast to the national average of 70, and those cured of disease return home to conditions favoring contamination, reinfection, and contagion.

There are only seven USPHS hospitals in the State for the Alaska native, which has daily radio contact with the remote villages. There are no sanitational facilities. Water is scarce. Generally the source is from rivers and ponds, which is usually contaminated. This is why we strongly believe that a generous settlement of the native land claims would help improve health problems of the natives through better housing along with economic development. That is all I have to say.

Senator METCALF. Senator Gruening.

Senator GRUENING. I thank you very much, Mrs. Bergt, for an excellent statement. The hearings at Anchorage really give us a very fine and very good picture, though a very depressive picture, of the condition of most native communities. And as you point out here, they are conditions that are just not fit for human beings to live in, and they have just got to be changed. That is why I feel the proposals in the Interior Department bill are completely inadequate, because this is not a bill for the relief of individuals. This is a bill for changing the entire way of life by way of improving housing conditions, water supply, and all the other things that we would like to associate with American communities, and I think you have pointed that out very well.

Mrs. BERGT. Thank you.

Senator METCALF. I think you have added to the very startling statement that Secretary Udall made that poverty in Alaska is beyond the conception of poverty among the American Indians in the lower 48. And so you have been very helpful, and thank you for your statement. It will be seriously considered as a part of a real effort we have been making toward these settlements, as Senator Gruening has pointed out. I am glad you are here.

Mrs. BERGT. Thank you.

(The statement referred to follows:)

STATEMENT OF MRS. LAURA BERGT

Mr. Chairman, my name is Laura Bergt. I am a member of the Native Land Claims Task Force. I am also a member of the State Remote Housing Committee, State Tourism Advisory Board, and the State Committee on Children and Youth—Health and Welfare.

I was raised in Nome and Kotzebue and have lived in Southeastern Alaska, Fairbanks, and in Barrow where I worked as a secretary in the hospital. I have traveled extensively throughout the State of Alaska, to the Arctic, interior southeastern and the Kuskokwim areas. Through this, I have become very well acquainted with the extreme poverty, poor housing, and health conditions of the Natives throughout the State.

There are approximately 50,000 Natives in Alaska. Approximately one-half of the Native population is below 15 years of age. In 1955, Congress delegated health care for the Alaskan Native to the Division of Indian Health, U.S. PHS, which is provided either directly through seven PHS hospitals in Alaska or by contract with private physicians in Kodiak, Wrangell, Nome, and Fairbanks. Preventive health services are jointly provided by the U.S. PHS and the public health nurses of the State Division of Health through a contract.

The doctors at the U.S. PHS Barrow, Tanana, Kotzebue, Bethel, and Kanakanak field hospitals make periodic visits to the various villages in their area in order to carry out case findings, health supervision, chronic disease follow-up, and health education. The hospitals maintain daily radio contact with the remote villages of their areas, communicating with the Native health aide who is trained to report symptoms and to dispense medication and first aid under medical advise.

Native housing in Alaska is totally inadequate, with severe overcrowding and no sanitation facilities, and is closely related to adverse health conditions.

The typical Alaskan Native home is small—about 12 x 24 feet on the average. It is dark, cold, and poorly ventilated during the long winter. There are often ten to twelve persons, mostly children, living in that one room. Fuel is costly, water is scarce and usually hard to come by. Except in a few villages where wells have recently been dug by U.S. PHS, the people must go great distances for water, which is too often contaminated from rivers, sloughs, and ponds. During the winter, ice and snow are melted and consumed without prior boiling or chlorination.

In most of the homes, a "honey bucket", as it is generally known, is used for human waste disposal. Garbage and other refuse are often deposited just outside the homes, to be strewn about by children and dogs.

The high death rate due to respiratory disease is a direct result of overcrowding. Many of those recovering from severe respiratory infections have been left with very severe damage that will handicap them for the rest of their lives, according to Dr. Martha Wilson, Service Director of Alaska's Public Health Service. Too frequently, those cured of respiratory diseases return home to conditions favoring re-infection or some other disease.

The Alaskan Native's average age at death is 34.7 years in contrast to the National average of about 70. The high incidence of infant mortality—more than twice the rate than in the United States—is one of the contributing causes, and of all deaths of Alaskan Natives in 1964, 25 percent were infants in contrast to 6 percent for the nation. Contamination, infection, and contagion are a constant problem for the Alaskan Native; it is little wonder that the Native's life-span is half that of other American citizens.

The preceding is only a brief sketch of the health problems facing the Alaskan Native. A generous settlement of the Alaskan Native land claims would have a side effect of relieving many of the Native health problems, since the basic living environment would be improved. This is an example of how the benefits under this legislation compliment numerous government programs which have already been in operation for the betterment of Alaskan Natives, the goals of which have not been reached.

Through title to our land and a cash settlement received, the Native people will be able to participate more fully in health programs and through the same settlement, the health of the Native people will be improved along with economic development.

Senator METCALF. The last witness I have on my list is Mr. Paul, who testified also in Alaska, and we are glad to have you here.

Do you have a prepared statement?

STATEMENT OF WILLIAM LEWIS PAUL, STATE OF ALASKA

Mr. PAUL. I do not have. You know the person who talks last in these hearings, you know you cannot use a prepared statement.

Senator METCALF. I think all of us sympathize with you. Many of us talk last at political meetings and so forth, and gradually all of your speech gets drained away.

Mr. PAUL. So many of them.

Senator METCALF. It is all part of the record, so if you will just contribute the new material.

Mr. PAUL. I will contribute new material, but I will deal with those matters which are brought to my mind from listening to the others.

My name, by the way, is William Lewis Paul.

I am an Alaskan native, born in Alaska, and a graduate of the famous Carlisle Indian School with a degree of BJT, Before Jim Thorpe. And since that time I graduated from business college, and from college, seminary and law.

The problem, I think, is approached in the wrong manner.

My first proposition is this. We do not need any law. Why doesn't the Nation treat us like they treat white people?

For instance, we have the Naval Research No. 4 up there by Barrow. That is quite a large reservation, and the title is distinctly by Executive order in the United States. Suppose this were the King Ranch, of Texas, an area of 1 million acres owned by one corporation. Suppose the United States wanted that entire thing for some good public purpose. How would they reach it? Would they come to Congress and ask the Congress to extinguish the title of the King Ranch and just take it? No.

They would demonstrate first that they were doing this for a public purpose, for a public benefit, and go through the road of eminent domain and take it and pay for it.

Now, according to the decisions of our Supreme Court in several instances, notably *Mitchell* v. *The United States*, they say that the Indian title and paper title stand on an equal foundation, and there is no difference between the two as it relates to people. The only difference comes when their relation reaches the United States. Indian title is not good with the United States, that is the United States can extinguish it, whereas the other is they have to go through the process defined as a result of the fifth amendment.

The question was asked, Do you mean to say that our forest reservation is not a legal entity? No, I do not mean that. I mean this. As in the case of 103 million acres given to the State of Alaska, there was no 103 million acres given to Alaska. One hundred three million acres, the naked title, yes, but not the equitable title, and in numbers of cases in our courts, the courts have ruled that there is such a thing as an equitable title, and I refer you particularly to the case of *Beecher* v. *Weatherby*, in which it involved the fourth section 15 which you will remember relates to the grant of section 16 to the various States when they came in for the purpose of public schools.

In the one particular 16th section in the State of Wisconsin, the Indians went in there and they appropriated all of the timber, and the State of Wisconsin sued them for the value of the timber, and the U.S. court held that while the title was in Wisconsin and followed the

grants, the equitable title belonged to the Indians and the Indians recovered.

Now, I have a number of statements here which I have boiled down to conserve time, and I will read them. It just amounts to about one sentence to each principle involved. The first one I have noted is this. The court will take judicial notice of the "Indian Title" of the Inuits, and I refer you to the *Tlingit-Haida* case, Fed. 197 F. Supp. 452, in which the court dealt with this matter of Indian title distinctly, and said "We have heard all the evidence therein and we have decided that the plaintiffs have proven their Indian title." And that is the basis of that judgment of $7.5 million which we finally got out of it.

In the absence of recorded adverse claim, I will repeat that sentence, absence of a recorded adverse claim does not impair the Indian title. And there was another case in which the State of Washington, as a new State, bought title to every section 16, and the State of Washington sold its school grant to a homesteader. But there was an Indian, not attached to a tribe, and without any title whatever on there, and after they say the land was sold, he filed for an allotment.

Now you can see that the line of title had gone to the State of Washington and to other grantees, and now it is against the Indian who never had filed. But when it went before the land office in hearing, the Indian prevailed.

The same situation is blessed by the decision of the U.S. Supreme Court in the case of *Hualapai Indians* v. *The Santa Fe Railroad* and in that case there was a grant to the Santa Fe Railroad's predecessor, and the railroad stayed on the land for 61 years before it came to issue. The Supreme Court said—by the way that was also a nontreaty case, and the Supreme Court gave title, decision, to the Hualapai Indians and it is quite a famous case. The date of that decision was December 8, 1941.

Now, a case came before the Supreme Court in this wise. A grant by the sovereign does not extinguish any title in the absence of Indian consent. And so that runs underneath the foundation, everything that is being done, and that you will find in the case of *Shito* v. *Mahoney*, 15 Howard 205.

Then a case that touches a little more deeply you will find in *Holden* v. *Joy*, 17 Wall. 211. The theme there was that the Indian title is senior to claims laid based on public lands. That reminds me of this.

There is no public lands, if there is an Indian claim senior to it, and that is what has happened all over Alaska. The Indians own the land. The title is given under public land laws, and the title is subject to the Indian ownership, and that may be extinguished in two ways. The U.S. Congress can do it or some other person, body, third parties can buy it.

You are astounded by the request that this bill here appropriates $500 million, and that seems like a lot of money. But you know, when the railroads were being constructed across the United States, Congress did not give those railroad exploiters money. They gave them land. And they did it that way because the Congress did not want to dig out money out of the Treasury. Well, in the same instance, if you would just take the Indian Department off our backs, so that we could exercise the initiative by such men as were before you today, we could develop Alaska without any cost to the U.S. Government.

Now, all of these leases that are being sold, it is our land that is being sold. It runs to maybe $150 million by now. Once the leasehold is sold by the State, then your revenues stop and you begin to use your capital, and of course in time you have got no money.

But if they would take it in the manner that I am advocating, in the absence of any of this legislation that we are having today, let the laws operate which are already on the books, that applies to everybody apparently but Indians, and let us work our own salvation, we could sell leases or we could make leaseholds up there, for instance, in the Arctic Slope area. I happen to be attorney for the group up there. We could get, I will bet you, five big billion-dollar corporations in there within 1 to 3 months, and the oil would begin to pour, and then Mr. Hickel's legislation could tax them up to 50 percent if they want to because they have the right to tax but the right to tax is the right to destroy.

So, I have another item here. Indian title survives even in congressional grants, and that I referred to briefly—a little while before—but I did not give the citation. It is found in *Cramer* v. *United States*, 261 U.S. 219.

Another case, *Buttz* v. *Northern Pacific Railroad*, 119 U.S. 55, *Beecher* v. *Weatherby*, which I referred to a little while ago and I will not dwell any more on it.

Now, the next name I have is *Indian Title* v. *Fee Simple*, regarding Indian possession or occupation, and this is what the Supreme Court says:

> It is enough to consider it as a settled principle that their right of occupancy is considered as sacred as the fee simple of the whites and just as much respect.

What better title can you have than the fee simple title of the whites, and that is our relation and that is our principle, found in *Mitchell* v. *United States*.

Indian occupation or possession was considered with reference to their habits and modes of life. Their hunting grounds were as much in their actual possession as the cleared fields of the whites and as much respected. You will find it in the same case.

Indian title does not depend on treaty, statute or Executive order. You will find that in *Cramer* v. *United States*, the *Hualapai Indians* v. *The Santa Fe*. But I like the way that the British court described the rights and the privileges of the aboriginal inhabitants.

In a case where three Indians went hunting there by Vancouver, on Vancouver Island, they went hunting for deer and they were arrested for violating the game laws. It finally went to the Supreme Court in the Dominion of Canada and this is what the court said:

> Indian and Eskimo are not dependent on Indian Treaty or even on Royal Proclamation. The Eskimos are in a stronger position than Indians, because they have no treaty.

Now, we are frightened somewhat because if we go through the process of the courts, it will take so long, and they refer time and again to the *Tlingit-Haida* case which they say began in 1935 and was not decided until 1968, so we have some 30 years, which we are afraid of. But actually the statute passed in 1935, but we were not able to get the Bureau of Indian Affairs to approve an attorney until 1947. I was the one that was active. I am the one that lobbied that law through the

Congress, and it was a good law up to the last month, when the Indian office came there, and they put the tribal stamp upon it. They made us submit to the jurisdiction of the Interior.

I approached it from the standpoint of full American citizenship. We did not learn about it until after the act was passed by the legislature.

Now, in 1947 then nothing was done until 1954. Our attorney, who was a department lawyer, good in his field, but had never tried a case, and so he tried to get Congress to settle it like they are trying to do it here. And we labored and labored along. The Alaska Native Brotherhood was the agency that was doing the work and I was active in the whole thing, and each time we were brought face to face with the law something like what we are being presented with now, and each one failed, until we got the present lawyer, who brought our case to a successful conclusion. But that did not happen until 1954.

Then he got a judgment for us in 1959. When you consider the amount of money involved in our claims of 4 or 5 years, it is not a long time.

Now then, that was on the judgment on liability. There was no judgment on quantum for about 7 years. When you stop and figure how big a proposition it was, evaluating, appraising the value of the land and the minerals and all of that in the southeastern portion of southeastern Alaska, you know it is a tremendous job, and I do not think that 7 years was too long. In the long run, it only amounted to about 15 years and it was done.

Now, it can go faster than that, if we have a mind to. We can go into court on an action of ejectment or an action of injunction and get the thing through, a typical case, in 3 months. We can get it in the superior court in 6 months, we can get it to the Alaska Supreme Court in 1 year. Then if they want to take it to the U.S. Supreme Court, that is another thing. But if we go through the constitutional courts, we can go fast. I think we could get such a case done in about 3 months, and if we can raise enough money and if people will listen to my advice about it, I am going to ask them why not try it that way, and relieve this committee and the other committees and Congress of the responsibility of passing legislation which seems to me is nothing but a Pandora's box.

When I looked at the provisions, for instance, just the one department, here is a man in the locality where he is a member, and we have it in the Indian Reorganization Act, commonly called the Wheeler-Howard Act. When an Indian passes from one area where he is on the role and goes into another area where he is not on the role, he has no right in the new one. And yet he may be in an area where it would pay him to go. He cannot get in. So when it comes down to how are you going to do this, if you do not follow advice of that kind, how are you ever going to determine it?

For instance, in the problem of quantum of blood, why do we have to go to an administrative body, who exercises judicial functions, in order to determine whether I belong to a tribe or do not belong to a tribe or my children or my grandchildren. Why do they have to be excluded from participating in enjoyment of the property, which under our law descends from one generation to another, and why does it result in complications? Nevertheless, it has worked for thousands of years. Why not let the common law do it?

When you come right down to it, the Indians have their own common law, too. We are the ones who decide who is a member of the tribe, and we have Supreme Court decisions to that effect. But the Secretary of the Interior is taking it away from us. Why do they keep on taking, taking, and taking? Let common law do it, which is the best system of laws invented by the Anglo-Saxon ways.

I think I have about covered everything now. I want to add one thing more, which will highlight why I feel the way I do, for I am now going on my 84th birthday, and I have been through all of it. I have seen the time when the Indians had their own culture and their own government and they had their own respect, and I have seen things taken from us. I have seen the time it would take two or more Indians in court to convict one white man.

I was back to the westward at Copper River. I was talking to a man concerned with the problems of these people and was their spokesman. Now, he has gone to his happy hunting ground, and this is what he said to me:

> Paul, the American Nation will fight harder for one white man than it will for 100 Indians.

I am a little bit conscious about the fact that time is passing, but here is finding 104 by the Court of Claims. We have this paragraph, and with that I will take my hands off your list. I find another paragraph. It comes from the Supreme Court case found in *Stoddard* v. *The United States:*

> Property may not be taken by government by implication, and Indian title lands are property.

That has oftentimes come before people like on this committee wondering just what the legal definition of property is. Indian title land property. The Supreme Court said yes.

Now what I am bothered about, and what I have done during my lifetime, and I remember my mother talking to me about it too, and other statesmen of my age:

> The territorial governments as well as other officials do not feel that the policies of the United States with respect to the Indian tribes in the states or as regards rights to areas arising out of aboriginal use and occupancy should be extended to the Tlingits and Haidas and for the most part no such provision was afforded. The policy of the government official was to ignore the tribal claims of the Tlingits and Haida Indians arising from the aboriginal use and occupancy, and to attempt to bring them under the assimilation of the Tlingit and Haida Indians into the white man's society and system of property ownership.

That has been the evidence. They want to make white men out of us before we are ready. So I recommend that we forget all of this legislation and let us work out our own salvation, and let the State tax the production of our oilfields as high as they want to. That is their province, that is their privilege, but they have no right to take the land from us without paying us for it.

Thank you.

(The letter referred to follows:)

> Re Original Indian title in the Arctic Slope of the Brooks Range.
>
> DEAR SIR: You no doubt know that the original "Indian title" of the natives on the Arctic Slope of the Brooks Range, Alaska, has never been extinguished and that this creates a real and serious flaw on the title of anybody who would invest their money in exploiting the natural resources of that area even if under the guise of a lease from the United States or the State of Alaska.

One of the operators in that area wrote my clients: "If such claims are acknowledged by the Unted States government which now claims to be the owner of such areas by virtue of the leasing activity, we * * *"

This indicates a lack of study of what the books call "Indian title" and so before we take other means of impressing on some of the operators that my clients stand on firm legal ground, we submit our case and invite an appropriate response.

(1) The court will take judicial notice of the "Indian title" of the Inuits, commonly called Eskimos. (Tlingit and Haida Indians v. USA 177 F. Supp. 452, 460).

(2) Absence of a recorded adverse claim does not impair the Indian title:

Schumacher v. State of Wash. 33 L.D. 454, 456; Ma-Gee-See v. Johnson 30 L.D. 125; Hualapai v. Santa Fe RR. 314 U.S. 339.

A grant by the sovereign does not extinguish Indian title in the absence of Indian consent;

Choteau v. Molony 16 How. 203.

(3) Indian title versus fee-simple: Regarding Indian possession or occupation, it is enough to consider it as a settled principle, that their right of occupancy is considered as sacred as the fee-simple of the whites, Mitchell vs. USA 9 Pet. 711, 745–747.

(4) Indian title is senior to claims based on public laws. Holden v. Joy 17 Wall. 211.

(5) Indian title survives even a congressional grant: Cramer v. USA 261 US 219; Buttz v. Northern Pac. R.R. 119 US 55; Beecher v. Weatherby 95 US 517, 525; State of Wisconsin 19 L.D. 518.

(6) "Indian occupation or possession was considered with reference to their habits and modes of life; their hunting grounds were as much in their actual possession as the cleared fields of the whites * * * (and) as much respected". 745–747 Mitchell case.

(7) Indian title does not depend on treaty, statute or executive orders: Hualapai v. Santa Fe, supra; Cramer v. US, supra.

The English expresses it best in *Regina* v. *Koonungnut* (1936), 45 W.W.R.—N.S. 262, interpreting the Royal Proclamation of 1763 which is a part of the common law of the United States too: "Indian and Eskimo are not dependent on Indian treaty or even on royal proclamation * * *. The Eskimos are in a stronger position than Indians because they have no treaty."

We suggest that my clients could validate your position although they would not care to hold this offer open indefinitely.

Yours very truly,

WILLIAM L. PAUL, Sr.,
Attorney of the Arctic Slope Native Association.

Laws which are not applicable for extinguishing Indian title (for instance, the act of March 3, 1891, which gives the President of the United States power to create National Forest Reservations out of *public lands* are too often applied to Indian title lands by implication which of course requires leaping over a definition of "public lands" as defined by law and thus applying a legality to such a proclamation as the one creating the Tongass National Forest wrongfully). To assist those who do so, I would quote the following:

> "The long settled rule of construction is that general laws for the disposition of public lands or the public domain do not apply to lands which have been set aside or reserved for particular public use, unless the contrary clearly appears from the context or the circumstances attending the legislation. * * * Concerning Indian reservations, Indian lands and Indian affairs generally, Congress habitually acts only by legislation expressly and specifically applicable thereto." 34 Op. Atty. Gen. 171, 172.
>
> Property may not be taken by government by implication and Indian title lands are property. Soulard v. United States, 4 Peters 511–513.
>
> The term "property" as applied to lands, comprehends every species of title inchoate or complete, * * * executory (or) * * * executed. In this respect the relation of the inhabitants to their government is not changed. Soulard supra; Mitchell v. USA, 9 Peters 711, 731, "retain * * * property".

Senator METCALF. Senator Gruening.

Senator GRUENING. Do I understand from what you say that you do not want this legislation to be enacted?

Mr. PAUL. No, I think you are better off without it. I think you have just got a Pandora's box.

Senator GRUENING. I am surprised.

Senator METCALF. Mr. Paul, I think you will have an opportunity. I have every hope, and I think the leadership on both sides of the Congress hope, that we will be able to adjourn this session of Congress by August 3, so you will have August, September, October, November, and December to bring this issue to the courts where you say it can be determined in 3 months. Then, when Senator Gruening reintroduces his bill, and as I say, I have every confidence he will be here to reintroduce that bill next year, we will have the decision of the courts to guide us. So I would suggest that if you have the confidence in your theory, you go right to work, file that complaint forthwith, and get that case through the Supreme Court of the State of Alaska as fast as you say it can go. I sat upon the Supreme Court of the State of Montana, and it has been my experience in a very frontier State, without much greater population than Alaska, that that is pretty fast.

Mr. PAUL. Not in Alaska.

Senator METCALF. OK. This is the last witness.

The record will be kept open, since there is not any immediate urgency to get the record out, the record will be kept open for corrections, revisions, or additions, until the first of next month, and anyone who wants to make additions will submit it to the staff. After that, the members who have testified here will automatically receive copies of the hearing and others who want copies of the hearing will communicate with our staff.

This has been a most illuminating hearing. I want to congratulate all the witnesses on very well prepared, most important testimony, laying the foundation for legislation, with all due deference to Mr. Paul, if such legislation is needed. I want to thank my two Republican colleagues especially for their participation this morning and this afternoon. They have been most helpful.

And with those comments the hearings will be closed subject to additional material.

(Whereupon, at 4 p.m. the committee was adjourned, to reconvene subject to the call of the Chair.)

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