

Donald Mitchell oral histories, Archives and Special Collections, Consortium Library, University of Alaska Anchorage. Richard Baenen interview, 1999 March 4. Transcript completed by Andrea Atkins.
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MR. MITCHELL: Today is -- today is March --

MR. BAENEN: 4th.

MR. MITCHELL: -- 4th, 1999. And I'm at the Downtown Deli owned by Tony Knowles and Dave Rose, talking with Richard Baenen, who for many years was counsel -- and I guess still is in a way -- to the NANA Regional Corporation. And we were talking about the early years of the implementation cycle of ANCSA and what happened when that got passed and the people had to start trying to make some sense out of it. And Richard was just going to tell me about -- tell me about the early years of trying to get it up and running in the Kotzebue region, which is when I turned the tape recorder on.

MR. BAENEN: Well, you had mentioned the merger legislation and need for it, it had brought to mind an act that actually caused us to seek legislation. NANA -- because none of the 11 villages, including Kotzebue, which is the largest of the villages, had any idea as to how to approach all this. So NANA took it upon itself to work with each of the villages, put together corporations. And John Schaeffer and myself and Robert Muelin (phonetic) went to each of the villages on at least one and usually two or three times, collecting the shareholders, organizing the -- the initial boards. Explaining the entire process. And we put together 11 corporations, one for each of the 11 villages in the NANA region. And we gave them all, except Kotzebue, because of its size, three-member boards because that was the smallest board you could have under the state law. And I believe Kotzebue had a five- or seven-member board. I can't remember now. I believe seven. And we then organized a seminar to be held in Kotzebue, and we brought all of the 11 boards in -- well, 10 of the 11 boards in because Kotzebue was there. And Ron Anderson, who was with Pete Marrick, and (indiscernible) had still -- I believe, with Pete Marrick at the time, myself and -- yes, please -- and I believe John Schaeffer. I believe the three of us were the ones. And we may have had a fourth member and an associate that worked with me, a man named Foster Wright may have been there, I don't remember. But in any event, three or four of us, we divided the groups into smaller -- we divided the whole group. First we had a session with everybody, and then we divided the groups and had training seminars as to what a board was, how a board operated, how it functioned, and we had some dry runs. And we explained how you would -- you would view resolutions and minutes and all the rest of it. And then we brought the board back together in -- in a room and went over everything with them, and then we ran the examples, and then we had them go back on their own, into another room, and work one through. And without mentioning the name of the village, three persons were (indiscernible) person was a nice, intelligent lady. But of course, the corporation is totally an alien, not even an entity to her. I mean, it was an alien abstraction. And we were being assisted in our presentation by NANA board member -- well, it wasn't Reggie Jewel. I can't remember who it was now. I'll think of it eventually. In any event, we were explaining how you go through the process of adopting a resolution. And this NANA man was helping me with the presentation. And he said, "No." He explained, "Now what you need to do is make a motion. Ask" -- "the chairperson will ask if there's a motion." So we put them on their own. And she had said during this presentation beforehand, the training seminar, she turned to the employee -- let's call him X because I can't think of his name -- and said, "X, what do I do now?" And he said, "Well, now what you do as a

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chairperson is you ask, 'Is there a resolution? Is there a motion to adopt this resolution?'" So we set up this hypothetical situation, and we started -- and she faltered some, but got through calling the meeting to order and taking the role and announcing that there was a quorum, greeting the hypothetical, non-existent minutes from the previous meeting, and then announcing the agenda. And some of this we had written out before because there's no need for these people to memorize it.

MR. MITCHELL: Right.

MR. BAENEN: And then the issue came up, and I was acting somewhat as a moderator, so I was raising the questions but not giving any answers. So I was saying, you know, "Well, I'd like to do so and so with the (indiscernible)." And she paused for a while. And I said, finally, "Well, what do you do now?" And she said, "Well, I turn to X and ask him what I'm supposed to do." She assumed that in all the meetings this gentleman would be there to help her. And we all had similar experiences. In a couple of cases, some of the people in the building just had eight persons on the board who -- because they had been involved in some other activity, had some -- you know, could -- and some background. But for almost all of them, it was an abstraction that was as difficult for them to understand as the black hole is difficult for me to understand. I mean, it just doesn't make any sense to me. I don't know what it is. The physicists tell me, but a black hole is a black hole. You know, and so we got on an airplane. We started flying back to Anchorage, and I had John Schaeffer sitting next to me, and I turned to John and said, "John, it will never work. These people will spend every penny. We'll all have to have an accountant. And even if we use NANA's accountant to give them a discount, they're all going to have to have some kind of legal (indiscernible). They are all going to have some type of office. You know, they're going to have some type of record keeping." And I said, "And you" -- (indiscernible). Everybody that had been involved in that seminar agreed. And the one exception, of course, was with Kotzebue, for sure, because there was enough people on their board who had been involved in (indiscernible), whether it was A, B, C, or whatever entity it was. And so we spent a year or two putting them all together and immediately, when we got there, realized that there was absolutely no -- I may be wrong in this, and I shouldn't have said, and I -- and you can correct me. But I believe that a number of the villages in Calista were -- were ripped off because they didn't know what they were doing -- and the lawyers and accountants, the consultants, the advisors, the financial people, whoever was involved, and they lost everything.

MR. MITCHELL: Well, I don't know if you know or used to know Hal Horton or Bruce Horton. I mean, Hal does (indiscernible) to --

MR. BAENEN: Pardon?

MR. MITCHELL: Hal just (indiscernible) into the beach and -- over at Saint Paul and killed himself, like, about six months ago.

MR. BAENEN: Airplane?

MR. MITCHELL: Yeah. Airplane crash. But -- which is unfortunate, because I never had a chance to put him on tape about it because he told me that -- speaking of Calista -- that -- that -- you know, which is -- Calista has obviously been a -- been a disaster on these very issues, both at the regional

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and the village corporation level. Hal told me that he was at the first Calista board meeting ever held, and what he did at that board meeting was to spend an entire afternoon explaining what a checkbook was and how checkbooks work. And this all had to go into (indiscernible) and come back. And, you know, here was the original corporation that was behind -- the Tlingit's had gotten the biggest hunk of dough here. I mean, they got whatever they got. I mean, they got 100 million bucks, 90 million bucks, whatever it was they got out there. And -- and they were cut (indiscernible) you know, not like people are bad people or anything. It -- it was a totally -- you know, you could have been talking about a bunch of astrophysicists started talking to us about moons of Mars. You know, it's not that you and I are idiots, but we don't know anything about any of that stuff.

MR. BAENEN: Well, I -- you know, NANA's been very -- was very lucky for two reasons. And -- and I'm talking in terms of getting themselves organized and -- and -- and that the reasons -- two reasons -- one involves, basically, two people. That's reason number one and that's probably the most important reason. That was Robert Mullin and John Schaeffer. Because John, you know, is one of the most intelligent, quickest studies and a trained leader, but he's an innate leader. I mean, I don't -- I've been in the Army and a few other places, and you know, leadership can be trained to an extent, but you've got to have something to build on, and John is just a natural born leader. And he and Robert was just the absolutely perfect combination. Robert held it all together. And he was using an expression that might be taken the wrong way, the Godfather as it were. And John was the -- was the engine. And the other fortunate thing was that NANA is relatively -- compared to a lot of other places, it is a relatively cohesive -- there's only 11 villages. And the farthest one is -- depending on what size plane you're flying on -- 45 minutes to an hour and a half way. So it was possible for us. When we had the first group of village meetings, so they'd get the first elected board, John Schaeffer fostered the rights with my associate. Lance Anderson and I, the four of us, went out on a Saturday and a Sunday and did all 11 villages.

MR. MITCHELL: In two days?

MR. BAENEN: In two days, with -- 10 villages.

MR. MITCHELL: Right.

MR. BAENEN: We -- we saved Kotzebue for the -- for the Monday, to have it Monday evening. So we did 10 villages in two days between the four of us. Some of us did two a day, and a couple one, or two of us, did three, and that did it. And I don't know -- you know, that made it so easy to -- and -- and Robert and John understood the need for communication. So they went to the villages on a regular basis, or were going out to the villages to discuss things.

MR. MITCHELL: What was your perception when you guys first went out there as to how much, sort of, regular people actually understood about what had happened and what all this was about and what the deal was with --

MR. BAENEN: Hardly any. And that's because we didn't have a -- we (indiscernible) like we did then. Kotzebue didn't have a radio station in those days. Radio station came up there, I -- you can look it up, I'm not sure. But we were doing all this without it going to the radio station. We had what

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was called the Mukluk telegraph.

MR. MITCHELL: Right.

MR. BAENEN: And -- and that was where whoever got in the airplane going to Kiana carried all the messages that would come in, and they would -- they would take them out. Eventually, when the radio came in, then the messages were sent by radio. So most of these people were not getting any particularly -- getting any information at all to speak of, except, you know, there's always one or two people, even in the smallest villages, who does some traveling in and out, at least to Kotzebue, and they would come back with some information, and there was always an effort. And --

MR. MITCHELL: Did you see the Tundra Times out there at all?

MR. BAENEN: I don't believe so at that time. But the -- the Northwest Alaska Native Association, which is, as you know, one of the nonprofits that was established, that was a template for how we organized the first NANA board. Because the Northwest Alaska Native Association had 11 board members, one from each village, they served as the communication conduit. So they would meet -- you know, I'm (indiscernible) check it, but I'm almost positive that -- that there were 11, one from each village. If not, it was close enough. So maybe they'd have two villages close together, there would be somebody, so that there was always somebody who was in the loop as the Settlement Act was going on. Of course, this individual himself or herself is coming back and trying to explain verbally something that's incredibly complicated, and as you well know, a yo-yo going up and down in terms of what was happening. And then after the act passed, you know how much money was spent on a bunch of lawyers trying to figure out exactly some of the more, not necessarily arcane provisions, but actually what was intended. So we set up the NANA board the same way, that there would be -- every village had a guaranteed board seat, and then we had two at-large members because -- for a variety of reasons, not the least of which was political. We had Willie and -- and Frank Ferguson down in the state legislature, and we certainly wanted to have an opportunity for them to be on the board, but we also recognized that there were people that -- and I must say, too, there -- there was a -- it was a nod also to Kotzebue, because it was -- it is so much larger in terms of shareholders and any of the other village corporations, that by having two at-large members, we gave an opportunity for Kotzebue to have a couple more members on the board. And of course, Willie and Frank were both Kotzebue residents. And when we merged -- unfortunately, when we merged, one of the tradeoffs was to give each village another board member, which is why the NANA board is now 23 as opposed to 11. And in retrospect, that was probably a mistake because the board is big, and it's expensive to maintain. And frankly, we, me, myself, John Schaeffer, Robert -- of course, I relied on John and Robert more than anybody else. But we've all thought, stupidly I think I should say, that within a couple of years, the board would -- on our recommendations, would downsize. But, of course, you can imagine a lot of -- well, you -- you will be the board member that's downsized, and I will be the board member that stays. We never quite -- so this has been a topic for some -- some discussion, but we've never made it -- they've never made it. However, it hasn't been all negative by any means because -- having board members out in the village would have been very, very helpful.

MR. MITCHELL: Did -- so just to be -- to be clear about it, then -- because I haven't talked to

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Shively or anybody about it -- that the idea of AFN going to Congress to get the merger authorization actually came out of -- NANA was the driving force behind that, do you think?

MR. BAENEN: Oh, absolutely. We did it all. We put it all together, we wrote the legislation, we got Don Young. We got -- we had to get AFN.

MR. MITCHELL: Right.

MR. BAENEN: But as you well know, the rule of four, the -- the state, the feds, the AFN, and then the person that was pushing it. And if -- if it was just -- just the AFN, then it was a rule of three, but it was a rule of four. And we drafted the legislation. And -- well, let me back up. What happened was, we -- we figured we could merge without legislation, these group corporations. We got everything according to state law. There wasn't any reason they couldn't merge. And when -- one other thing you might ask me about, so in case I forget it, profit and non-profit and deciding what to do. What we did was put together a merger, and Foster Wright, an associate working with me, had come down from New York. He'd been a lawyer for five or six years after he'd gotten out of law school. But the firm in New York, 40, 50 person firm, did nothing but corporate work. And they were -- did a lot of mergers and acquisitions. And we retained a young, well, contemporary boss whose boss was very good. And Dennis Pinkernel (phonetic) was the fellow's name. And he spent his time on mergers. We put the merger together. We put all the proxy material together. We did a thousand things, working closely with the SEC because we had to go through the SEC to do it. And the SEC had a lot of trouble with what we were doing, and the trouble they had was that they couldn't imagine what was going on. And we had to educate the SEC people about what the Settlement Act was; we had to educate the villagers. And of course, the more we educated them about the villages, the more concerned they got, feeling that the villagers might not exactly know what was going on. On the other hand, the SEC demanded -- when I went back up, and in all of the writing that we did, we would try to explain in terms that villagers hopefully could understand. And I say "hopefully" not as a disparagement upon the intelligence of the village person. I mean, this stuff is -- half the merger crap I read, I can't understand. I'm a lawyer. So we were trying to put this in something that approximated English. And with the final moment -- and we had proxy material printed up. What we had to do was have a proxy package for each of the 11 villages and then one for the four (indiscernible), so we had (indiscernible) proxy. These are full-blown SEC proxy, 80 or 90 pages. Had to show all the various financials. I mean, it was incredible. It was 8 and a half by 11. Had it done by a firm in Washington that specializes in printing the proxy material and all this. Votes were -- meetings were to be scheduled to take place, and proxy material was going on. SEC had the material in front of them, assigned law firm. And then we had to go through problems like there was somebody in the SEC who had been in Alaska back when Kotzebue was a village of 500, and he couldn't understand anything at all that we would say about Kotzebue. He didn't realize, he had been back there during the war in '44; this was '73 or -- then, and now it's 2500 people. And at the last moment, the village corporation for Kotzebue did a transaction, which was innocent, but under SEC rules it would be considered self-dealing. They bought a building from one of the board members without bringing in outside people to make a determination that this was due diligence and blah, blah, blah.

MR. MITCHELL: Right.

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MR. BAENEN: We get a telephone call, and we come in and say, "You can't go forward. You violated the law because we've got this self-dealing situation that we just found out about." We brought it to their attention because we figured they would understand, and we didn't want -- you know, we pulled our hair. I wasn't a merger person -- I knew who was involved and the thought of self-dealing never passed my mind. And then this Pinkernel said, "Oh, God, we've got a problem. SEC sees that as self-dealing, and you've got to go through these steps." So, normally, we had to go do this. We figured, well, if we go -- like I said, you know, if we go through this merger and we don't point that out and something happens and somebody gets upset, some lawyer comes -- you know, we can have real problems. How are we going -- you know, we're talking about a zillion dollars (indiscernible) do something with it. So we go trooping off to the SEC folks, stupidly figuring, because we're coming in voluntarily -- the odds of it being found out are pretty damn non-existent. But on the other hand, you can't take a chance with what we're doing -- and they pulled the plug on us and (indiscernible), Christ, I don't know how many proxies. And I remember, I spent Easter Sunday, John Schaeffer says, "Okay. You got to come out here. We're going to have a session." I remember I spent Easter Sunday out in Kotzebue. And a board meeting on Monday or Tuesday, the people came in. I flew out on the Friday or Saturday. And I got out there Saturday, and the board meeting was scheduled for Monday, so the people would fly in Monday morning, the NANA board. And they said, "Okay." You know, "The villages have indicated" -- because the village boards had all said, "We want to merge." We'd all gotten their resolutions. I said, "Okay. We're going to get federal legislation," typical John Schaeffer. "Okay. This is what we're going to do, Richard. We're going to get federal legislation in so the SEC can't get involved." And we go back and do it, and that's -- you know, he gives you orders, and that's it, we go do it. So we went back, and we went back -- and he went back and we -- we went back and then started to work on it. What saved our bacon -- saved our bacon, was that the -- of course, it went over to the two Interior committees.

MR. MITCHELL: Right.

MR. BAENEN: The SEC didn't find out about it until the 55th hour. And about a day before it was going to go to a vote on the House side or some place, I can't remember now, the SEC sent a letter over and said, "Oh, we think this is real bad, you know," blah, blah, blah. The report had been issued, the hearings had been closed. I don't even think the SEC's letter made it into the hearing record.

MR. MITCHELL: Yeah. I don't think I've seen it.

MR. BAENEN: And had they been -- had they -- had they been alert, they would have come in and -- and they would have used our situation and saying, "Well, look, self-dealing and" -- and we would have then had to justify it on the record, which we could have done.

MR. MITCHELL: Actually, for the purposes of this tape, if somebody is actually listening to this years from now and you're interested in this stuff, that probably one of the great characteristics of the implementation of the Claims act was that -- was that for years, all kinds of legislation relating to ANCSA that had nothing to do with ANCSA got run through the House Interior and Senate Energy

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and Natural Resources Committee without other committees in Congress or the agencies that they oversaw knowing what was going on.

MR. BAENEN: Tax legislation.

MR. MITCHELL: Right. And that if -- if you're doing research on this, that it was -- it was the folks at SIRI --

MR. BAENEN: Screwed the whole process --

MR. MITCHELL: -- screwed the whole system up.

MR. BAENEN: -- (indiscernible).

MR. MITCHELL: -- and erect all that. And you'll have to go find out for yourself when that happened and how. But that's, I think, a really important point about how all this worked, don't you think?

MR. BAENEN: What they did was they ran something by that was an (indiscernible) --

MR. MITCHELL: Well, they overloaded this -- they -- they abused our collective privileges is what they did.

MR. BAENEN: Right. And -- and they upset the congressman from Chicago who used to run Ways and Means, Rostenkowski.

MR. MITCHELL: Right.

MR. BAENEN: And Rostenkowski just said, "That's it."

MR. MITCHELL: Right.

MR. BAENEN: And I'm going with pieces of legislation now when you go talk to a staff person. And the first thing they do is say, "Well, this looks like it might -- "

MR. MITCHELL: Right.

MR. BAENEN: -- "it just might possibly involve Ways and Means" or something, and they run it by the other committees.

MR. MITCHELL: Right.

MR. BAENEN: And these committees know nothing about what's involved. So we -- our -- our pipeline for legislation got clogged. But in any event, we got the legislation through, and -- and then we went and -- and had our merger. And Kotzebue voted not to merge. And in fact, Kotzebue -- I

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have to back this up. I was wrong. Kotzebue -- Kotzebue voted not to merge, so it was never presented to them. We did not have -- when I said we had 11 approximately, we had 10, we had -- we had 11. We had the 10 villages and NANA, we didn't have 12. And -- and we needed two-thirds vote of the shareholders to merge, and there was -- there was always a question about whether you needed two thirds from each village or two thirds totally. And whether you needed two thirds from all shareholders or -- or two thirds separately from at-large and village shareholders. Those were -- were technical issues. We had one village that -- that voted by a majority but not by two thirds to merge, and all the others voted well up into the 70 percent or more to merge. It's hard to say in terms of the actual people that were voting, whether they understood merger any better than they had originally understood what a corporation was. And, again, it was pretty -- pretty arcane and pretty abstract to expect -- I suspect you and I could walk out and get the average man on the street who's got business experience in Anchorage and start talking about mergers and (indiscernible), they're not going to know. So --

MR. MITCHELL: Right. What -- you were going to mention something about the profit, non-profit corporation thing? Because I've always, you know, it -- it seemed to me -- you look at ANCSA, and it's -- it gives the villages the options. But on the other hand, they would have to organize a non-profit corporation but issue some shares of stock. And everybody knew at the time that's not how the Alaska non-profit corporation code worked. And -- how did --

MR. BAENEN: Well, that -- let me -- I'll address that, but that raises another question which was, how to make the ANCSA jive with the Alaska Code. And we did deal with that. And that's a question I'll come back to, but you'll have to remind me. Without getting into -- and I don't even remember sitting down and -- and taking a look -- actually, since Foster Wright, who was a corporate attorney and I wasn't, he was the one that looked after the corporate side, from a legal sense, if you will, what was or wasn't permissible and all the rest. And I don't even remember us getting that far along when the question of, "Should these corporations be profit or non-profit for the villages in terms of what we will go out and recommend to them? We will certainly tell them the difference." But from a practical standpoint, none of us could see any advantage whatsoever in a non-profit corporation for the villages. For starters, of course, none of us could see the villages making a profit. I mean, from a -- from an economic standpoint -- and this, again, has nothing to do with -- with who's in the village. I mean, what is the village of Kobuk, with 83 residents, 130, 40, 60 miles, I don't know, due east to Kotzebue in Kobuk Valley, how is it going to make a profit? Doing what? And you can do every village in the NANA region with the exception of -- of -- but for Kotzebue. It had enough money because of its size. And Kotzebue itself was a large enough commercial -- not commercial -- but communication center. We could see absolutely no advantage in non-profit. And so when we went out, we explained the profit and non-profit to them, but we could see no advantage. So there were no --

MR. MITCHELL: I guess the -- the only thing I could see is -- is the idea of being a profit corporation, I think, puts stuff in people's head about how they were supposed to behave, that maybe they would have behaved differently. I mean, you know, Lee Gore, when he was still with whatever that --

MR. BAENEN: Nathan and --

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MR. MITCHELL: Nathan, right. He did -- I don't know if you remember the old Alaska Native management report that --

MR. BAENEN: Right.

MR. MITCHELL: -- I stumbled on an old article that he had written about the same time for the management report, in which he had analyzed exactly this issue and had said, look, you know, if -- if a village like that takes the money it's given and then just puts it in the bank, doesn't do anything, just puts it in the bank, and goes off and buys Coca Cola stock with it, and you let it sit there, that -- that -- you know, in ten years, you'll have a corpus -- assuming X percent of growth, you'll have a corpus that will -- I forget what you said -- but would produce, like, 50,000 bucks a year in 1970s money, and that allows you to give 500 bucks a piece to every shareholder every year, and it all just sits there. But if you do anything, if a village that size does anything at all, you know, you put a telephone line, you hire a guy part time, you rent some space in the village assembly hall that you got to heat, you do any of that, and you ran the numbers out, it says you'll be -- you'll be broke in eight years. And -- and -- but people thought they were supposed to do something. I mean, at least that's been my experience.

MR. BAENEN: Well, we -- I'll -- I'll pick up on that. What we did -- a bit of personal history -- professional history that you may -- you probably know. I'm sure you know about it. Starting after three years defending criminals in the Army, I went out and joined a law firm in Washington that did Indian work, among other things. And I got involved -- I spent most of my professional career representing Indians in the Lower 48. And then when I started up here, I represented NANA and eventually representing, also, Indians down in the Southeast, one of the corporations in the Southeast. One of the clients that I had worked for was in Montana. And we were doing not only their general counsel work, but their claims work, Indian claims in the Court of Claims. And they had a major Court of Claims lawsuit over the fact that they were forced to take allotments and the unallotted land was sold. And all of the -- they lost was against their will, and they lost all sorts of acreage. The act that was done was the 1904 act was sales took place between 1910 and 1915, on that timeline. They also had lost a lot of money, because in those days, money in the treasury that was tribal money -- this, fortunately, was money that wasn't lost. It would earn simple interest, not compound interest, which violates all the rules of fiduciary that way, all the rules of commonsense, but it violates all fiduciary. And we had a lawsuit based on that, and there was precedent that we would recover on that because the (indiscernible) panel had already ruled on the (indiscernible) case that that was a violation of trust. The tribe also had a hydroelectric site on at least two Montana power companies. And under the settlement -- under the license, 20 years after commercial operation, the annual charge that was paid to the tribes for use of the hydroelectric site was subject to readjustment. And I was -- I was a (indiscernible) lead attorney on that case, lawsuit. And we succeeded. When you added interest on to what Montana Power Company had to pay us -- eventually we had to take it all the way to the Supreme Court -- it came out to be a check for \$11 million. When you took the land case, after you deducted attorneys' fees, the check came out to just over \$20 million. And then you took the accounting case, and after you took out attorney fees, the check came to just over \$6 million. So there was 20 and 11 is 31 and 6; there were 37. There were a couple smaller cases. We were basically at \$38 million. It was to arrive within the space of 18

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months. We knew this now because the claims had -- those judgments had to be incorporated by Congress, so that took a period of time. Incorporation was automatic. But -- although it's automatic, or I should say routine, it just takes time. Federal Power Commission judgment was a matter of we -- a couple of the tribal leaders and myself sat down and we did some numbers on our own. And then we got a couple of investment-types to do the same for us. We didn't talk about stock market because there was a concern about if you took the money and put it any place other than the Treasury, might it be taxable? Especially by the feds. So we said to avoid the issue of taxation, our assumption would be -- and in those days, Treasury was paying 6 percent. Our assumption would be that it is in a trust account in the Treasury earning 6 percent compounded, 6 percent compounded and not taxed. We ran the numbers, and we said if you take the \$38 million, put it in the treasury of 6 percent, don't touch it for X years -- and it was only, like, six or eight years, ten years, whatever it is -- you'll have -- enough money will have accumulated that at that point, you can start making a perpetual dividend payment and never touch the \$38 million. It will always be producing it and what --

MR. MITCHELL: Right.

MR. BAENEN: It will be producing enough money, as if you paid out the whole \$38 million. Everybody on the tribal council will (indiscernible) fantastic, fantastic, fantastic. I think it was all paid out within eight, ten months of -- of when the checks came in. The same thing would have happened with (indiscernible). The people would have sat around and the first time they had trouble paying their heating and oil bill -- and you can't blame them. I mean, they said, "Well, this money is sitting there and I'm cold today and I've got bills today. I can't stay cold and I can't stay," you know -- so the money wouldn't be put away. There's one exception. I explained to the NANA board the situation I'm just talking about, and they set up, long before the State did, a permanent fund. And it, today, has, like, 60 -- 40, \$50 million. And they've dipped into it once or twice grudgingly. I don't know that they were grudging (indiscernible) complained about. But they've had a permanent fund since day one.

MR. MITCHELL: Well, it's interesting. I have -- one of the things in this epilogue that probably people are not going to be very pleased with is I actually went through my clip files that I've kept for 15 years, and when you get past the rhetoric, the actual practice from Hydaburg to Arctic Slope at the rank and filed shareholder level has been, "Give us the money."

MR. BAENEN: Oh, I know that. Oh, yeah. I'm not surprised.

MR. MITCHELL: I mean, it has been relentless. And what you're seeing now, probably the -- the thing that Shively and I are the most irritated about is -- I don't know if you've been following this EXXON Valdez trustee thing.

MR. BAENEN: No, I -- I don't -- you don't get enough news back in Washington.

MR. MITCHELL: Well, they put together this -- this honey pot of 900 million bucks that -- that EXXON gave the state and the feds that's run by the six trustees. And the Enviros got to them, and they put together this scam where one of the major things to the extent of the money is to purchase

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habitat in the (indiscernible) region. And since this happened -- which is basically Kodiak and Prince Williams Sound. And village and regional corporation, Chugach, (indiscernible), all the villages, have been throwing themselves at the trustee council to basically sell all their land for fairly -- you know, fairly decent money, 40, 50, 60 million bucks a whack.

MR. BAENEN: (Indiscernible.)

MR. MITCHELL: You all have --

MR. BAENEN: Oh, sure. And you can take that and you can take this. And -- and that's for -- for historical purposes, we're just cleaning the table here.

MR. MITCHELL: But anyway, and then what's happened is that, notwithstanding all this talk about permanent funds and the rest of it, they're divvying up all the dough right now. Ralph Eluska just got thrown off the Akhiok -- board because they didn't want to do that, and they're the most recent guys where the -- the (indiscernible) came in and cleaned out the board and -- and the (indiscernible) board slate was elected, was elected on give us the money now.

MR. BAENEN: I'm amazed -- to interject, I'm amazed that as many of the corporations that -- that have been able to resist the pressure, because that pressure is -- is -- is not new, but it certainly is gaining in terms of intensity, and it has been over the years, but it was present very early on. Now, I -- I have to speak, basically, for the NANA region. Although we used to -- I used to live up here in a sense. I used to commute up here for six, seven years, until Mr. Shively finally came on board and I was able to go back to a normal life. They -- in -- in -- so I know, you know, we were constantly meeting with other lawyers, other accountants. We were constantly meeting with other chairmen. And there was a great amount of interaction. So what I was about to say is not only NANA, but basically, in the first flush, there wasn't that pressure. In part, I think, because there was a great amount of optimism that people -- mistaken optimism that suddenly we're all going to be getting big dividend checks. More importantly, there was -- there was -- I think, more importantly for why NANA was, because there was a still a lack of understanding exactly what was involved. What did happen, however, with -- and it happened up in NANA, and I don't say this -- I mean, it's a fact of life, and we knew it was going to happen. I urged NANA and I urged the board to be very careful about it, and I think the board exercised about as much restraint as we could from a political standpoint. I said, you know, you're going to have people come at you with wanting money for enterprises that aren't going to go anyplace, most of them aren't. And you can't be the lender of first or last resort. I said, you know, if you want to do this, I think you ought to set up, like, a subsidiary business, small business administration or something. And they were -- they were quite good about it. But I know that there was pressure, and now and then they would -- they would do something, which, from a business standpoint, probably wasn't the best thing to do. But then, I've done things in my own life from a business standpoint that weren't -- wasn't the best thing to do. So this wasn't any -- you know, this is -- I'm not -- it's not a black mark. But they managed to withstand a lot of that. A lot of the villages and other corporations, based on what I understand, based on hearsay, didn't. I mean, they were more inclined to -- and, of course, there's always a problem, because in -- in your villages, as you well know, everybody's related to everybody else. It's not by blood, by marriage. And that's a tangled scheme, tangled scheme.

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MR. MITCHELL: Right. Well, to sort of shift gears in all this, one of the things that we haven't talked about that I wanted to ask you about was sort of the Interior Department implementation side of all this, because while you guys are up in NANA trying -- (Brief interruption.)

MR. MITCHELL: And -- and all the rest of it. And I was curious if you had any observations about that side.

MR. BAENEN: Oh, I do, indeed. First, let me back up one step.

MR. MITCHELL: Right.

MR. BAENEN: We had mentioned integrating the state law.

MR. MITCHELL: Right.

MR. BAENEN: And this, well, kind of fits in with the Interior thing, also. There were, as you know, a couple outstanding lawyers in Washington that were doing Settlement Act, representing corporations. Of course, one name that -- that was Art Lazarus.

MR. MITCHELL: Right.

MR. BAENEN: And not only a fine person, but an excellent lawyer. An excellent, excellent lawyer. And -- and this was not said pejoratively. Well, Bill Van Ness was a -- was an excellent counselor. And Art and Bill and myself, a couple other lawyers and also, his name immediately escapes me, but a very, very good lawyer that worked with Ramsey Clark, and they used to represent the AFN.

MR. MITCHELL: Ken Bass?

MR. BAENEN: Ken Bass. He was, again, an excellent lawyer. A very good lawyer-lawyer. A lot of people find lawyer, lawyers, but they're important. And we sat down, somebody sat down. It may have been Ken for the AFN, and put together a laundry list of all the areas where ANCSA collided with state law and where changes had to be made. And then working through the AFN, working with the State and the State Legislature, those changes were made in the state law so that ANCSA could work without these collisions. That happened in '72, '73. I suspect that today you wouldn't find that taking place in the state.

MR. MITCHELL: Right.

MR. BAENEN: In any event, that's how we were able to make the two mesh, because the feds paid no -- the congress paid no attention to state law, which was not unusual. That's not only in relation to ANCSA, but anything else. They tend to twiddle off in the room. When -- because we did -- as the law firm did a lot of work -- and I did almost all of my work involving Indians in the Lower 48 before we started -- the firm started representing NANA. I can't think of the gentleman's name right now, which is all right. The Solicitor for Indian Affairs in 1970, '71, '72, came from Pennsylvania

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and had a --

MR. MITCHELL: Reid Chambers?

MR. BAENEN: No. No. Reid was after. He came from Pennsylvania, had a background in coal. Yeah, he was the associate (indiscernible). And I invited him out to lunch to discuss -- won him over. It may even have been before the Settlement Act was actually passed or right after it was passed. Sat down and said, "Look, here is this piece of legislation, here is what it is. This is what's going to be happening." And you can imagine, nobody knows what's involved. All the questions that are going to come up, he was not even aware of the legislation. And I had urged him -- I said, "Well, if you need to find -- you should take somebody right now. Far be it for me to tell you what to do, but I am. You should take somebody right now, give them the Settlement Act." I mean, obviously, I'm paraphrasing.

MR. MITCHELL: Right.

MR. BAENEN: But give them the Settlement Act. I said, "Sit down, you read it and understand that you're going to be the person that will be our" -- now, Settlement Act, basically, like any other piece of legislation, once it passes, it becomes legal. And, yes, there are a zillion policy questions about how you implement it. But, you know, everything ends up getting run past lawyers.

MR. MITCHELL: Right.

MR. BAENEN: And they didn't do that. And I think the feeling was, well, the regional Solicitor's Office in Anchorage could handle it. There was a lot of -- of time and -- and effort that probably could have been avoided had those steps been taken. But, again, you know, it's easy to sit here and second-guess the (indiscernible). He's probably sitting there, and his staff is overworked now, and he says, "When the hell am I going to get somebody to sit down and (indiscernible) this when I can't take care of the problems I've got over here?"

MR. MITCHELL: Of course, that left them -- the BLM corridor in (indiscernible) a free hand, right?

MR. BAENEN: But -- oh, absolutely. And that was a problem, except there wasn't one person in the BLM whose name I cannot remember. A gentleman who was -- wasn't a lawyer. He worked out --

MR. MITCHELL: Ted Bangerner (phonetic)?

MR. BAENEN: Ted Bangerner, no. He did as much as anybody to work out a rational method of land selection, who got what, how you figure out the allocations. Because the allocations are not easy.

MR. MITCHELL: Right.

MR. BAENEN: As you know. Between who gets what based upon how many people and all the rest. And he did a marvelous job. And there was another gentleman that worked before him or after

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him who was very good. His name, I can't remember. They were technicians, and they were damn good, and they -- they worked hard. I think the gentleman I'm thinking of actually started ahead of Ted. I think Ted was number -- was the second one, while the other gentleman -- he was telling me that he -- his son, apparently, was very mathematically -- his son was in high school. And this guy said, "This is so fast, how did you work this out?" He gave it to his son as a problem to help -- so the son could -- because he was working on it, and he thought it was a great exercise for his kid who was going to be a mathematician. And -- and -- and that helped a lot. And then we had, of course, all the -- all the problems with what's Navajo and what's not Navajo and, of course, that brings in the state and -- and the one thing we didn't have, fortunately, we didn't have the big active aggression Enviro group in Alaska at the time, mucking up the Native's efforts. Had we had that -- now, they had it down in the Southeast.

MR. MITCHELL: Right. I mean, Jack Keeshan was actually -- was obviously here at that point.

MR. BAENEN: But they weren't -- they weren't -- they really got galvanized and organized as they looked towards D2.

MR. MITCHELL: Right.

MR. BAENEN: Because otherwise we would have found, trying to implement regulations and everything else -- and -- and I'm not picking on the Enviros, although I can if you want me to. I'm not -- I'm not picking on them. Because, as I said, I certainly could if you wanted me to. They do good things, and they do bad things.

MR. MITCHELL: Yeah.

MR. BAENEN: But so do lawyers and so do doctors and -- and historians. I do respect Mr. Mitchell, here. We would have had -- it would -- just would have complicated things incredibly because there would have been one more legal, political factor in there.

MR. MITCHELL: Well, if you look at -- if you look at the aggravation that went into this (indiscernible) lands fix, I mean, I was involved with that, and that went on for six or seven years with members of Congress saying, "The Native community is right." You know, "Here's this technical problem, and here's the fair way to fix it. But no, we're not going to fix it because of -- of the politics with the environmental community." You know, and it was -- it was preposterous, the delay and money that was involved in a very arcane, you know, public land issue that should have been taken care of -- first of all, it never should have become an issue, and it should have been taken care of in about five minutes but for -- for that intrusion of the process.

MR. BAENEN: And the Enviros are more organized, too, down in the Southeast, but that was because they had their own -- they had been active for -- for -- more active for a period of time. Also, in terms of getting away from the implementation of ANCSA as ANCSA. Up in NANA area, of course, there weren't environmental -- I mean, it was too isolated in those days. They didn't -- as long as we're on tape, I'll tell you my favorite Jack Keeshan story?

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MR. MITCHELL: Sure.

MR. BAENEN: As you well know, because you were involved -- so heavily involved in the D2 legislation with your efforts and Mr. Shively's efforts, NANA was able to select -- get some legislation on the D2 bill, would allow them to select (indiscernible) zinc deposit north -- northeast of Kivalina, due north of Noatak. And to get the ore body -- well, after we selected it, eventually a deal was worked with Cominco, but they were (indiscernible) get the ore to the coast. There were two ways. And one was to come through the Krusenstern Monument. The other was to go west, away from the monument, and the two were hardly comparable. But way west was much more environmentally -- contained greater environmental damage potential, because it crossed several more streams and was much more costly because it was longer and surface and all the rest of it would be (indiscernible). And third, when you got out to the coast, it wasn't a good place to be, because it was on the (indiscernible) sort of more exposed to winds and currents and all the rest and the ice flows. The better route was to come down through the monument. And of course, this was considered to be anathema to the environmentalists. And up in the middle of the monument, there was a little lake called the Mud Lake. I think it was Mud Lake. And you may recall back in the late '60s, I believe it was, there was a Supreme Court case, in which the Supreme Court threw out an environmentalists lawsuit and -- maybe it was a Sierra Club -- and the Secretary of Interior -- that was Rogers C.B. Morton at the time. I believe the lawsuit --

MR. MITCHELL: On the standing issue?

MR. BAENEN: Right.

MR. MITCHELL: Right.

MR. BAENEN: I mean, by the time it got up to the Supreme Court with Morton -- so it's something versus Morton.

MR. MITCHELL: Right. The Sierra Club.

MR. BAENEN: Yeah. And I said, you know, the only way you can bring this lawsuit is if you use it.

MR. MITCHELL: I think one last cup, and then cut me off even if I beg you. Good, that will solve the problem.

MR. BAENEN: So that you have to actually use it. You can't -- somebody in this lawsuit has to have actually said, "It's going to harm it."

MR. MITCHELL: Right.

MR. BAENEN: So -- so -- so Mr. Keeshan, in anticipating that they're going to probably file a lawsuit, gets himself up to Mud Lake with his collapsible kayak. And he paddles around the lake. He can't get back to civilization. Cominco has to go out with a helicopter and bring him back. He won't

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-- he won't mention that story. You forget about things like that, right? It was my favorite story when I found out about it.

MR. MITCHELL: Well, unfortunately, I only brought one tape with me, and I'm sure you've got other stuff to do, as well. But one of the things that I did want to get on tape before it runs out is if -- if you had -- say your two or three things that you thought was the best thing about the Claims act, and the couple things you think that after having worked with it for a quarter of a century, were probably the biggest, sort of, policy mistakes or -- or what we -- what we should have done differently with the benefit of hindsight?

MR. BAENEN: You know, those are questions that probably would like to have a little more time to think about. But let me give you --

MR. MITCHELL: Well, we can do this again, too, sometime.

MR. BAENEN: Okay. Well, let me give you my first response, and I'll go to the negative side first. I -- the Settlement Act as -- before it finally got passed -- and I understand all of the politics, but it should have been vetted, as it were. I should have given the act, a final version, to a couple top-notch lawyers who knew corporate -- a couple top-notch lawyers who knew -- with no -- people who had no interest in the Settlement Act. And a couple of accountants and maybe an engineer, not lock them in a room together, but put them down and say, "From a technical standpoint -- we're not talking about policy -- where are we going to have problems?" And the reason I mention that is here's section 7(i), God knows what -- and one sentence could have eliminated all of that. One sentence in section 7(i) could -- could have wiped out how many millions -- millions of dollars spent on lawyers, spent on accountants, administrative expenses because of the CEO over there, administrative expenses to fly here and there, acrimony, hard feelings, bitterness. And there are other provisions in the act where if people had sat down, technicians had sat down, they had the background and -- and worked it through.

MR. MITCHELL: Well, look, sand and gravel. Look --

MR. BAENEN: Sand and gravel.

MR. MITCHELL: -- 14(f) was my favorite.

MR. BAENEN: We've all got -- we've all got our favorites. So -- excuse me. So --

MR. MITCHELL: Yeah.

MR. BAENEN: That's -- that's one of the -- one of the things from a negative side. And I guess a realization -- and, again, this is a political problem. But there was no -- and I don't know how you would have -- I guess you shouldn't pick out a fault if you don't have some way to suggest it ought to be corrected. But like I said, in many ways, it was a disastrous mistake to deal with the villages the way we did. We escaped that in NANA because of merger. I mean, if we hadn't had merger, all the villages except Kotzebue would be -- if not gone today, financially they might -- they wouldn't

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be (indiscernible). They would still be there to collect their distributions or 7(i) --

MR. MITCHELL: Right. 7(i) --

MR. BAENEN: -- and came down to distribute out. But they would -- they would not exist as a -- as a village corporation. They would have no say in -- the way they have now in NANA because they're tied in. And that, you know, just to sit down and say that here is 248 villages and now there's -- you know, they're all created equal. And I don't know the answer, but there is an answer out there, I'm sure, and I'm sure you can craft one. But, of course, as you know, the pressure was building to get it done and get it done because we had to get the oil, you know, had to make all this big bucks up there for the companies. And -- and I question Native's (indiscernible), understandably so. I mean, they only -- they only been denied how many centuries? You know, they could -- you -- you can -- you can fault the Natives if you want by -- by -- by maybe taking less than they could have gotten if they waited a little longer, but, you know, there's -- my God, there's a point in time where you say enough is enough. And I think a lot -- and there -- also, there's a point in time where you get scared. You say, "Well, Jesus," you know, "I don't know. Who knows what might happen next year," you know?

MR. MITCHELL: What about -- how is your judgment, particularly after you've worked with tribes in the Lower 48? You know, Paul Kirton told me that early on in the implementation phase in the Interior Department, that he was in meetings where at the time -- you know Martin Seneca, of course?

MR. BAENEN: Uh-huh.

MR. MITCHELL: Martin Seneca would stand up in front of these implementation meetings in the Interior Department and basically say, according to Kirton, almost literally, that we've got to make this thing fail because if, in fact, they, the Congress, gets away with what they've done to Alaska Natives, they're going to impose the same kind of termination system on us. And -- and Kirton alleged, you know, to the extent Paul's a trustworthy informant on this, that there was a lot of resistance on the BIA corridor because of how radically ANCSA departed from -- from, you know, tribal sovereignty and trust land and all of the rest of the stuff that --

MR. BAENEN: I -- I -- I would have to -- well, I mean, I -- I have no idea what went on internally. But based upon all of my experience and -- you know, I continued to be very active in the Lower 48. I was -- I was constantly working basically on the (indiscernible) office for the tribes I did in Montana and Wyoming. But I had exposure to a lot of other areas. California, aerial office out in Sacramento. Portland aerial office I did a lot of work. And -- and -- again, most of my work was -- was with the BIA or the aerial office solicitors who did not only BIA work, but other work. And I don't ever remember anybody questioning the wisdom from a standpoint of reservations versus non-reservation. You know, Seneca, Martin would be speaking from the point of view of somebody who was an Indian. But I don't have any recollection of any of the Indians that I've dealt with. And, of course, they weren't -- the Settlement Act, basically, they understood it to be a lot of money and a lot of land given to the -- and there weren't going to be reservations. You know, you -- you -- the Indians -- reservation Indians are schizophrenic about being reservation Indians. And they -- it's a

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love/hate relationship. They love being wards, and they hate being wards.

MR. MITCHELL: Right.

MR. BAENEN: They don't know how to deal with it. You know, they want freedom, but they don't want freedom, and I've been there with them. I mean, I've walked that walk with them, and they never know how to get to the -- and I -- I'm not blaming them, you know. This isn't -- this is an explanation. I'm explaining, I'm not judging.

MR. MITCHELL: Right.

MR. BAENEN: I -- I never saw anything indicate any -- I saw -- I -- I -- you know, I saw them -- I saw the snafu on enrollment. That was caused by the fact that they were going to enroll based upon the Lower 48 template, and this wasn't the Lower 48. And this was a question of -- of bureaucratic tunnel vision. Tunnel vision is not limited to bureaucrats, but in any event, that's -- that's what was caused by that as much as anything. They didn't have -- they should have brought somebody in who said that enrollment really doesn't mean enrollment as you people talk about. We're going to bring in Joe Smith from the Census Bureau. And they say, "Okay. We want to identify everybody who has these qualifications and then have a process. And here's what we're going to do." And I know how you figure out the (indiscernible) and get it done. And that was what -- in the timeframe we're (indiscernible) they -- they -- you know, bureaucracy is a behemoth that doesn't move very rapidly. And, unfortunately, when it does, it sometimes steps on you and squashes you. Some of the good things gave an opportunity to a lot of talented people to become the leaders that they had -- you know, they developed their own leadership and -- and, you know, their allegiant of -- sure, a few bad apples were -- were the bad apples. And I could point to a couple of partners of mine that I thought were -- I'm not telling what year or where, but -- you know, it allowed -- I think it gave the people a real -- a lot of them, a real sense of self-worth, whatever word you want to describe. When they were doing the 60-Minute show on NANA, I was asked by somebody to compare the difference between the reservations and -- and the situation up in Alaska with the Settlement Act. And -- and I want to preface this by saying that a lot has changed now on the reservations. The -- the -- a lot of what I -- what I'm about to say I said is no longer true. But my response was, "Well, the difference is that reservation Indians have been mascavated by the system. And these people haven't been (indiscernible) the system. "Sure. There's a lot of problems and they got fights to fight and the rest. But, by God, it's their fight, and they're doing it on their own and their own level, and that's what's important. "Somebody else is not doing it for them. Somebody else is not telling them. Sure they're being told, just like you and I are being told by the IRS. But they're not being told that you can't do this." I think that was really important. And I think it's important today that for all of the ups and downs -- of course, one of the major problems has been taken care of, and that was the -- the extending -- you know, having the -- extending the trust --

MR. MITCHELL: The stock alienation?

MR. BAENEN: The stock alienation. And that was a major problem, which got -- which got taken care of. And I think, you know, we -- we all have our views about any given congressman and senator at any given point in time, but I think that the Natives have been exceedingly well served by

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Ted Stevens. I mean, when push comes to shove, Ted knows who is out in the Bush and who ain't and who needs help and the corporations. And I just think he's been -- and I'm not suggesting that -- that Senator Murkowski isn't. But, you know, Ted was (indiscernible) at the birth, so he has -- he has a different feel than Senator Murkowski does. But that doesn't mean that Senator Murkowski isn't -- isn't -- you know, doesn't have the same. Ted's got this lengthy history. And (indiscernible) is very good. I mean, again, these are not in comparisons or (indiscernible). I just picked Ted because he's been the one who has always been there, if you will.

MR. MITCHELL: All right. Well, I don't -- I don't want to chew my tape on (indiscernible) --

MR. BAENEN: Sure.

MR. MITCHELL: But -- but -- you know, I've changed on Ted quite a bit over the years from -- from my early opinions. And particularly, having been involved in this research project that -- that, you know, as early -- you know, Ernest Gruening in 1962, Peter John asked him to use Minto as a template for land claims and Ernest Gruening said, "Well, why on earth would I give you 300,000 acres of land? All you people would do would be to let it sit there and let moose graze on it." And if I gave you 300,000 acres of land of Minto, it would retard the development of Alaska." Stevens, on the other hand, in his -- his -- his Anchorage Chamber of Commerce Republicanism was really very non-racist about it, in that he viewed, quite correctly, as we've seen, that when you cut through the bullshit, is that all Natives are, are people like everybody else. And Stevens says to himself, you know, "If we give these folks land that has economic value in the marketplace, they're going to be as eager as anybody else to participate in that marketplace. And, obviously, they don't have the skills, internally, to do it, so they're going to have to come to my forensic Anchorage chamber, you know, to help them do this. And not only will it not thwart the development of Alaska from a Republican point of view, it will dramatically accelerate it. And, of course, she's -- these -- you know, hung up on the yardarm by Bob Atwood and the rest of his -- his folks. But, you know, I -- and I've seen stuff, memos from Stevens as early as 1960 when he was still in the Solicitor's Office throughout this. I mean, it's -- it's pretty amazing.

MR. BAENEN: Isn't it? It's -- it's always so easy to -- to jump on Ted because he has an irascible personality. But when he -- we were in a meeting the other day, his office, with some staff people on an unrelated -- it had to do with the Cominco Deep Water report, and John Schaeffer was there and the Cominco people. And Jeff Stasler (phonetic) is about the -- or is the federal court Chair there for the Denali --

MR. MITCHELL: Yeah.

MR. BAENEN: -- Commission, and Jeff was there. And the guy that was going to take Jeff's place on these core engineer issues -- and when John was talking about -- something about Ted and -- and I can't remember what it was. And, you know, he said, you know, while Ted and I were working on this and -- and this -- Stasler says something, like, "Well, you know, Ted threw me (indiscernible) in the impeachment hearing, so we couldn't (indiscernible)."

MR. MITCHELL: Right.

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MR. BAENEN: (Indiscernible) listening to all this stuff and do it while they were, quote, "debating," in closed sessions. And I know the (indiscernible) didn't have a chance to see you folks. And John said, "Oh, you know, I'll be (indiscernible)." And I said, "Yeah." I said, "You know, John, it was nice to hear about you and Ted." But I said, "I can remember one session where I literally started to get up because I thought I was going to have to stand between the two of you." I said, "I can't have my client assault a senator." And I said, "You know, you're" -- "you're this parachuting National Guardsman, and Ted's not all that big." And I said, "I thought the staff was going to come in. And, I mean, the crescendo of your voices." We walked out of there and shaking my head, saying, "Jesus Christ, there goes NANA's relationship with the one" -- a couple three months later, we're having another meeting. And John said, "You know what happened?" I said, "What?" He said, "Well, about two months after that, I ran into Ted at Captain Kirk, and he complains, 'John, how come I never hear from you?'" And John said, "Well, you don't listen to me." He said, "I listen to you." He said, "I just don't like, sometimes, what you say." So I said -- you know, the next minute, I go back and, you know, it's an issue where Ted's not going to blow his stack. And I've been in places where Ted blows his stack on Monday, and then on Tuesday, you know, it comes out --

MR. MITCHELL: Right.

MR. BAENEN: -- just the way you thought about it. You know, he goes back and thinks about it. So --

MR. MITCHELL: Anyway, yeah. I -- I guess the point of all that is that I -- I fully agree that he's -- his involvement in all this thing has been not only putting the deal together to begin -- you know, technically, if Bartlett had not died, if Bartlett had lived another three or four years --

MR. BAENEN: See, I wasn't aware of any of that because I didn't get involved until it was --

MR. MITCHELL: Well, I mean, that's how Stevens stole --

MR. BAENEN: Yeah.

MR. MITCHELL: -- stole -- stole the seat, basically. And I've got -- I've gone a great -- I've got the only 40-page political biography of Ted Stevens that exists. And it's very interesting to see what kind of shit storm that was.

MR. BAENEN: I could imagine.

MR. MITCHELL: But -- yeah. But it would be quite different but for -- but for him, for that happening, you know?

MR. BAENEN: Well --

MR. MITCHELL: Okay. Well, I appreciate the time, and I'll think of some other stuff and let me do this again sometime, I think the more of this -- before all the rest of us start going face first into the

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concrete the better, in terms of --

MR. BAENEN: Well, what's interesting is that -- is that, you know, most of this I haven't thought about for any particular reason. So sitting here and talking to you is -- you may recall I told you on the telephone, I said, "I can't remember any of that." But once you get talking, and once you get somebody asking you a few questions, and then all these things come flooding back. You have to laugh a lot. You know, at the time, you were tearing your hair or gnashing your teeth. And in retrospect, of course, it's not nearly as -- as bad as you thought. And sometimes they weren't nearly as good as you thought, things that you were -- leave rubbing your heads about, you now shake your head over. And I think that's kind of a reflection about just how that act got implemented and what was involved. I mean, nobody really knew. And I -- I -- I have to -- I'll put this on the record. If I had to fault one group, I think the lawyers, as a general (indiscernible) great amount of disservice done by the lawyers, and that's because the lawyers couldn't, as they can't -- people will say, "Well, they can't from a professional standpoint," to which I respond, "Bullshit." Most of the lawyers couldn't or wouldn't step outside of being a lawyer and saying, you know, from a policy standpoint for these Natives, so that what you had was the lawyers for X demanding (indiscernible) as opposed to sitting down and saying -- or telling their CEO, "This is what you got to do" or "If you do this, you get a leg up over somebody else." Instead of sitting down and saying, you know, "Here's what's involved. And, yes, you could possibly do this. And there is the possibility. And do you fully understand, however, there are implications that go beyond legal?" And you don't have to face any liability because we can show a due diligence, and this can be an intelligent decision that we're not going to take this step because we feel..." And there were -- there were billable hours out there.

MR. MITCHELL: Yeah. Well, it would be interesting to know how much --

MR. BAENEN: Never.

MR. MITCHELL: -- how much of the dough went to lawyers and accountants. You know, particularly with all those village audits and all that stuff. And --

MR. BAENEN: You'll never know. And, you know, all you have to do is take a look at the -- at the -- after we got the 7(i) thing settled, and take a look at the reporting on what was spent where they have to report. Think of all the stuff that wasn't reported. Now, also, let's be honest, I'm sure there was some non-7(i) fees and expenses shoveled in the 7(i) to increase the corporations deductions. But, basically, I suspect that's kind of the tip of an iceberg.

MR. MITCHELL: Yep.

MR. BAENEN: Well, it's been fun.

MR. MITCHELL: Okay. Well, great. I'll turn this tape off then. (Brief interruption.)

MR. MITCHELL: This is Tape Number 2 from whatever today is, the 4th of March, 1999, talking to Richard Baenen, although we've now moved our (indiscernible) from Tape Number 1. And I was just asking about the participation and influence both for the good and the ill of Paul Kirton, which

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is K-I-R-T-O-N, who was the attorney in the Solicitor's Office in the Department of Interior, who probably had more influence as a lawyer over the development of the initial regulations dealing with incoming ANCSA. I guess, is that a fair statement, probably?

MR. BAENEN: Certainly, as -- as it involved the land aspect. Which -- which basically makes up, well, one half of the settlement as you -- as you might say. I don't know what you have on other tapes, so I don't know what type of background might be available, so I'll give --

MR. MITCHELL: On Kirton?

MR. BAENEN: On Kirton.

MR. MITCHELL: Yeah. I don't have anything.

MR. BAENEN: So I will -- I will give a little background. I met Paul shortly after ANCSA started. He's from Texas, Texan lawyer, and he's blind. And when I met him, he had been at the Department for a number of years. I have no idea if he -- if his handicap was from -- from birth or where --

MR. MITCHELL: Actually, I've talked to him about that. It actually -- I think it came when he was a kid, like, eight or nine years old. So I think he saw at one point, but he knew something about what was going on.

MR. BAENEN: So, professionally, he -- he -- he is somebody who went through -- probably through law school blind, and I -- I'm pretty sure based upon just (indiscernible) conversations I had with him, that he practiced law -- private practiced law because he had, on more than one occasion, referred to divorce cases he handled or things (indiscernible). Paul had been involved in the mineral aspect and land aspect of the Department in the Solicitor's Office before ANCSA. When I first heard about him, NANA, (indiscernible) had -- had been working with Chevron on the potential of oil and gas. And we asked the Chevron people if they'd gone (indiscernible) they gone (indiscernible) we were going (indiscernible) give us some advice on -- not land management in terms of managing land, but land management in terms of establishing records and how we would go about this because NANA is there about to pick up 2 million, plus, acres of -- of subsurface (indiscernible), I don't know how many acres of surface. This was before merger. Of course, after merger, they got all that -- they ended up with over 2 million acres of surface and subsurface, and they gave us the name of a retired Chevron person that lived in the Washington area -- by the way, just died about a year and a half ago, after (indiscernible) been in the newspaper. And now, since we're talking, I can't think of his name. And we -- we -- he was happy to go to work. And he came up to Kotzebue once or twice and even went out to one of the villages with us when we were having a meeting out in the (indiscernible). And -- and a couple of different times, when NANA (indiscernible) he and his wife headed out to his house in Virginia. And he said that he always found that when working with Chevron, SoCal, I guess, it was called in those days, that there was this attorney over in the Solicitor's Office called Kirton who was blind and who was very helpful. And that was the first time we heard the name. And he said the fellow had a lot of experience in -- in oil and gas and in (indiscernible) and (indiscernible) federal land. This is where Chevron (indiscernible). And I assume that as we had talked earlier today, since the Solicitor's Office didn't have the foggiest idea

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of what was going on, didn't even really know the bill was there, that (indiscernible) Solicitor of Indian Affairs, they're dealing was (indiscernible) related to land matter for Indians are always tough situations.

MR. MITCHELL: Right.

MR. BAENEN: So I assumed that somewhere along the line somebody said, "Well, we've got some legal problems developing on the land, and we don't (indiscernible) aspect, but we have some experience, if not expertise." And that's how Paul Kirton ended up with us. Who -- and you've known him and worked with him and against him. And I'm sure a man of -- of incredible memory, tenacious memory, very bright. And, also, shortly after we had gotten started, we had a big gathering -- this was long before merger -- up in Alaska -- I mean, up in Kotzebue. We worked it out, and you probably have -- I mean, you know who Sue Wolf is.

MR. MITCHELL: Yeah, sure.

MR. BAENEN: And -- and you folks probably know who Sue Wolf is.

MR. MITCHELL: For the tape, Sue Wolf use to be the -- one of the people at the Alaska State Office with the BLN who was (indiscernible) implementation was very -- in charge of making sense of shuffling the paper and getting the conveyances of title out to everyone through a thicket of confusion and stupidity.

MR. BAENEN: Right. Well, we made arrangements in working with Sue Wolf, and -- and we got (indiscernible) for Paul Kirton to come to Kotzebue, and they worked out a trip where he was going to come to Alaska and meet a number of people. And so we got him to Kotzebue and -- he and Sue came to Kotzebue, actually. And we had people in from the villages who were involved, and the NANA folk were there. And -- and we had a couple days of seminars on land selection and one session or two, Paul and Sue Wolf talked about conveyancing and (indiscernible) and -- and there was -- it was (indiscernible) and very helpful. But, thereafter, it became something of a problem dealing with Paul. And I could only describe the reason -- I could only describe that this was -- that he really should have been a professor, because every problem -- every -- he wasn't a problem solver, he was a problem creator. He brought the problem to them. He didn't look for the answer. What he wanted to do, like a law professor, is to point out two more problems that might generate from this. And now, instead of having one problem, you've got, potentially, three problems. But each of those new three could possible have three. So now we're talking about 18 problems. And he had the ability and the -- the brains and also this tendency that you just never knew. I mean, he could drive this to infinity. And he would (indiscernible) if not drive you crazy. And it was -- it -- he became the incredible bottleneck. And, of course, he had been something of an obscure attorney in the Department, which made him like almost all the other attorneys in the Department, somewhat obscure. They -- they labored in obscurity. He wasn't obscure because he was Paul Kirton, he was obscure because of the job he had. And now, suddenly, he's the focal point of this 40 million acres and, you know, how many millions of dollars that are going to be in the -- all -- all these attorneys and all these people. So (indiscernible) from obscurity into an incredible opponent. And, of course, he was the one in the Department that knew everything, so even within the Department, there wasn't

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always the Art Lazarus of the world (indiscernible) see him, but, you know, the assistant Secretary were wanting to see him and the bureau chiefs were wanting to see him. And it would be enough to turn anybody's head. But again -- I'll give you an example of one of Paul's -- it doesn't relate to NANA, but it relates to Shatika, which is a corporation for the village urban situation (indiscernible) village of Sitka. And in the D2 legislation in the National Lands Conservation legislation passed in 1980, outside of Sitka, what they call Alice and Charcoal Islands. And they're really not islands anymore because they've been -- they've been joined by -- they've been joined together by Paul's (indiscernible). I guess they still are islands, you still have to go across the bridge to get to them. And they were utilized by the Army in the Second World War, and then they got taken over by the -- by the federal government, and the Bureau of Indian Affairs utilized them, and they became part of the Mt. Edgecumbe BIA's boarding school. And then large portions of them got turned over, and they were also utilized by the Bureau of Indian Affairs that used to handle health matters, and then when the public health service took over Indian health, large portions of it was turned over to the Indian Health Service. And the Bureau and School of Sitka was -- was turned over to the state. It was no longer a big boarding school. And they had all these dormitories, which had been barracks from the Second World War (indiscernible). See (indiscernible) part of it because they were -- part of them were (indiscernible) and (indiscernible) and they were all going to (indiscernible), they'd be valuable property. So we worked out an arrangement with the legislation. Now, we would exchange (indiscernible) 15 acres, whatever it was, and we would relinquish 15 acres of our (indiscernible) land, pay (indiscernible) in turn for getting these. And we would get them -- the parts that were no longer used, we would get right now. And the other part, once all (indiscernible) utilized for grade school, and that school was destined to be closed down in, like, five years. It was written into a plan. They were going to build a new school, and when that happened, we would get that. And we would get the (indiscernible) and get the rest. And getting the building didn't mean anything because they were all (indiscernible) --

MR. MITCHELL: Full of asbestos and --

MR. BAENEN: -- they were -- yeah. They were terrible. PCPs hanging out and all the environmental things. Well, and -- and this was an 11th hour and 59th minute deal. And we finally got clearance, and actually, if I remember correctly, there was a fellow named Don Mitchell who pulled the last string for us and said that -- in working with Mr. Shively, you got to have -- so I quickly called up and got the (indiscernible) on the line, and he sent down the -- the information we needed. And he sent down the wrong section number. So the bill goes through and we get finished, and low and behold, we don't have an exchange for Alice and Charcoal Island, we have an exchange for the small section of the outskirts of the downtown Fourth and Sitka, plus the monument with the little (indiscernible) with all the --

MR. MITCHELL: Yeah. The totem poles.

MR. BAENEN: -- totem poles. I can't think of it now --

MR. MITCHELL: Totem Pole Park.

MR. BAENEN: Yeah. But it's (indiscernible) it's a federal --

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MR. MITCHELL: Right. National Park.

MR. BAENEN: -- National Park. Guy with (indiscernible), so that's what we now own, right? So -- so we -- we -- we get right in, and we say, "Well, so it's time to get our (indiscernible)." So we -- we go to the BLM to get a patent and --

MR. MITCHELL: You still think you're getting a patent for --

MR. BAENEN: Right. Bureau -- Bureau -- Bureau comes back, and they said, "Wait a minute, we got a little problem. A legal restrictions one." So we said, "Okay. Just give us the right path." And they said, "Well, we don't know what to do." So it ended up on Paul Kirton's desk. So we go to talk to Paul Kirton, and he said, "Well, we can't give you a patent because this is what the" -- and I said, "Well, you know, it does create a problem because land title is land title. It's not something that you just" -- so I -- not knowing what to do -- scratched my head and I said, "I know what to do." And so I got one of my bright young associates, and I said, "You know, here's the situation. Can you take a look and see if you can find any answers for something like this." My (indiscernible) associate comes back with a Supreme Court case in which a patent -- not a land patent, but a patent issued by the patent office for an invention -- had been challenged by an individual, and they'd gone all the way through the court system, patent office and -- and the court system had ruled against the person who made the challenge on the ground that this patent belonged to the defendant. They sent it back. And -- and I know nothing about how the patent system works, but this fellow was obviously unhappy with the Court's decision, so he filed another lawsuit. Apparently he was able to do it under -- although we would think he -- he filed another lawsuit, and I can't remember now if that went all the way back up to the Circuit Court of Appeals again before being slapped down. At which time, the guy that owned the patent, because he can't do anything with it because it's under challenge and he can't develop -- goes to Congress. And Congress confirms it, this is his patent. Congress said that so and so has got Patent Number 3478 (indiscernible). It's his patent, he can go forward. Unfortunately, this patent wasn't 3478 to make widgets, it was 3477 to make widgets. Ah-ha. Another lawsuit. It gets up to the Supreme Court or the Seventh Circuit Court of Appeals, and the Seventh Circuit Court of Appeals said, "Enough is enough. Out of here. That's his patent and it will be recognized as 3478, not 3477 or whatever."

MR. MITCHELL: Even though that's not what the statute said.

MR. BAENEN: Even though that's not what the statute said, because we all know what was intended. So I go to Paul and I say, "You know, here is Alice and Charcoal Islands," da-da-da-da. Two years later, we work out a land exchange with Mr. Kirton before we could get our patent. Oh, we couldn't possibly -- because this is a land record and that's different than a patent. And -- and he had all these. And this was just -- he would not let the problem go, and that is because he didn't solve problems, he created problems, and it was -- it was like a -- it was a combination of his intellect that -- that worked that way and, you know, he just was there, and that's the way he was going to do it, and that's an example of what it was. And it -- it truly slowed things down. Now, on a personal basis, I already liked the guy and -- and he wanted the deal. But his conflict of being helpful was not one of solving problems.

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MR. MITCHELL: Did he have a piece of the controversial easements; do you recall? Were you involved in any of that?

MR. BAENEN: We -- I don't recall. We never had -- we -- we, being NANA -- I use the we in that just because (indiscernible) -- we -- we really left things like the easements problems to the AFN to fight because we weren't in an easement situation that we were really worried about. We were sufficiently isolated and -- and we didn't want any more reasons -- we didn't want any easements -- you know, we wanted the land (indiscernible) but we weren't in the -- we weren't worried about easements. That didn't affect us as they did a lot of other corporations. And, for example, down in -- in Chatika Country -- and our easements were a big thing down there, but -- but it kind of (indiscernible) that issue had been pretty well -- pretty well settled. But he was involved in the easements dispute. He was involved in the (indiscernible) lands.

MR. MITCHELL: Right.

MR. BAENEN: He was involved in the navigable water, very -- very much involved. Again, we weren't -- we were affected, but we weren't so affected so dramatically that we got involved in -- we knew that there were a lot of good lawyers fighting the fight for the Natives. So we turned our resources some place else and our attention someplace else. But I do know that -- that -- that -- I do know that when Carter was elected and there was a change in administration, that the Native community had approached assistant secretary about the land, who had a background (indiscernible). And in response to their claim that things weren't moving and there was a lot of problems in getting things done, that their view of the bottleneck -- that it came back from the people that dealt with (indiscernible) when Paul (indiscernible). And he was effectively removed from that position. And things, then -- but there are a lot of other things that knew -- wasn't just Paul, but because (indiscernible) had an Alaska background, he came in with a commitment. And so what happened was, for the first time you had somebody who was in charge as (indiscernible) land who wanted to do something and understood the Native's frustration and the problems and he gave it a priority. So it wasn't just the fact that (indiscernible) had a loop to find (indiscernible) system a whole lot better. He brought in some people in Alaska to help him, Robert Singer and others. And they came in, and they had a background and the knowledge and things moved. And then when -- when administration changed again, Paul came back in the loop, and that's when I ran into him (indiscernible). I told him, we were happy to take it, we just didn't think he would give us a patent for that either.

MR. MITCHELL: Yeah. Actually, I can -- for the purposes of the tape, I can shed some light on this because I've talked to Guy Martin about it at length. And -- and by '77, when -- when the Carter administration came in, out of 44 million, very few acres had actually been conveyed, relatively speaking. And so Martin's first real policy initiative inside the Secretary was to launch a big, basic, review of the whole subject as to why this was happening. But that was his first act according to Guy. His second act was to bring John Leshy, who is now the solicitor for the Department of Interior, who was his associate solicitor (indiscernible).

MR. BAENEN: What?

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MR. MITCHELL: Whatever that corridor is called in the Solicitor's Office for guys -- for public (indiscernible) Public Land Management.

MR. BAENEN: Yeah. Something like that.

MR. MITCHELL: Well, anyway, Guy -- according to Guy, Guy told me that he called Leshy into his office shortly after assuming office himself and said, "I don't want Paul" -- "I never want to be in a meeting about implementing ANCSA with Paul." And, "That doesn't mean he doesn't have good ideas. And so I want you to go find out what he thinks about stuff and then you come to the meeting and you can tell me what the Solicitor's views of this that and the other thing is about breaking this ANCSA conveyance thing. "But I don't want Paul, himself, in the meeting," for precisely the reason you had identified earlier. Because we'd have to listen to 12,000 -- you know, have any of us considered the potential effect or the partial revocation of public land order from 1932 that was enacted in July of 1947? I mean, that, of course, no one had because he's the only guy that knows anything.

MR. BAENEN: The -- the man was absolutely incredible. To this day -- he -- he works part-time.

MR. MITCHELL: Right.

MR. BAENEN: To this day, I could call him up -- I mean, we could put the tape on pause. I could go up and call him up and say, "Paul, could you tell me that Ninth Circuit case that deals with" -- I could make some type of a problem, and if there was anything remotely related to it, he'd say, "Oh, yeah. I think you want to look at and you want to check and you might call so and so." And he was just incredible. A fountain of information. But as you just said, he was never departmentalized for giving (indiscernible). Listen, why don't we -- I'm going to go call the (indiscernible) to see if these guys -- (Brief interruption.)

MR. MITCHELL: The only reason I raised Paul Kirton is because I think anybody who is -- if anybody ever does sit down and try and -- and do something seriously academic about the implementation of ANCSA, you really need to go -- if Paul was still alive and kicking whenever you do that, you need to go talk to him. And if he's not, you need to investigate his files. That's -- it seems to me --

MR. BAENEN: Absolutely. All of the Interior Department files would be very fascinating investigation because there was, as is the case with any major piece of legislation that passes and ends up shuffled off to a -- to the Departments to handle. I don't care whether it's super fun or whether it's a tax cut, IRS, there's always individuals within the bureaucracy whose own personal view as to what life ought to be doesn't correspond with what the legislation is. And so you find a whole lot of things being sidetracked, sabotaged, and -- and things don't get done, and you can't figure out why, and some things get done quicker than others and possibly the things you don't want to get done happen sooner rather than later. And you've got a sufficient background, the person that does it, goes in and looks at those files, they probably come up and say, "Gee, this is real interesting. Here was Deputy Assistant Secretary who kept saying no to something." And here is a Deputy

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Assistant Secretary that's saying, 'yes.' I mean, here was some guy pushing to get something done because he wanted to help the Natives, even though it wasn't in his daily work, he understood things out of (indiscernible). And then taking a look at the D2 legislation is fascinating because that has such a tremendous impact on the Natives and was such a -- such a controversial fight between the conservationists, the Native community, trying not to get in between the conservationists and the State and the (indiscernible) development. And the bureaucrats trying to play one up against the other and -- and -- but that's -- that's a source, just the archives, of the (indiscernible). And as you said, individuals like Paul Kirton, Guy Martin, any of those people that were -- that they were at one time or another players. But certainly people like Paul were there at the very start. And as you say, if he's still alive, good lord, his memory is such that the fellow -- you'd have to take a long (indiscernible) long -- long tapes for each session.

MR. MITCHELL: Actually, one of my -- one of my greatest compliments is the mouthpiece. You know, I've -- I've -- showing how far the circle has turned, you know, that I was retained by Ted to file them because (indiscernible) --

MR. BAENEN: Right. I remember.

MR. MITCHELL: And my phone goes off and it's Kirton, who never called me at home before, ever.

MR. BAENEN: (Indiscernible).

MR. MITCHELL: And Paul had never, in all these years, had never called me at home. And he called me at home to tell me that he awarded me the best (indiscernible) group. He wanted me to know that only -- the only brief that he, Paul Kirton, thought was worth itself in the whole sad affair was me. And, you know, I had that conversation, and I got up and hung up and thought, "Wow. That's pretty amazing that Paul Kirton (indiscernible)." Well, so any way, that's Paul Kirton.

MR. BAENEN: Unless you thought you were doing (indiscernible) cynical lawyer that I am.

MR. MITCHELL: The other thing that maybe would be interesting to talk about, perhaps even from the NANA side as an example is that one of the things that -- that I do discuss a little bit in this first draft to this (indiscernible) is, again, the difference between rhetoric and what's actually happening. We talked, I think, earlier today about the -- the demand, the universal shareholder demand for dividends. But the other thing that -- that struck me is that if you -- if you go back and you look at the -- at sort of the political (indiscernible) of the enactment of the Claims act, you know, take my land, take my life. Native's love the land more than life itself. And there's even, you know, AFN memos that were sort of briefing packet lobbying memos that were sent to the Senate from AFN about, you know, to the State of Alaska, land is merely a commodity, while to Alaska Natives it's some sort of spiritual, and all this stuff. But if you're going to look at performance of corporations, the reasons that I think -- frankly, are quite correct -- to the corporation was, given the opportunity, they have actually used their land rights as land commodity. And the -- the taking selection rights that might have been around NANA villages and moving into (indiscernible). The -- the Afognak, Eddie Weinberg, the -- the giving up all the land around Chandler Lake and Brooks Range by SRC

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in order to get under the coastal plain. And then my favorite, of course, is the famous, ultimately (indiscernible) water, mega (indiscernible) land train of '87, and when the -- they got a whole consortium or 18 corporations, regional and village alike, from Calista Village Corporations to Doyon that were going to give away -- or give back, like, a million acres of land in exchange for nothing other than -- than oil and gas leasing. And, of course -- then the best, of course, being CIRI, who fully understood what really -- that land really was a commodity and -- and took a very disadvantageous situation, in terms of the land selection rights, and turned it into a virtual money pile. And so anyway, I was wondering if you had a view about any of this?

MR. BAENEN: I -- I do. I -- the CIRI, I'll start on the reverse side (indiscernible). The CIRI situation, of course, is they -- the CIRI is the lease (indiscernible) land founded corporation of all the corporations because of its nature (indiscernible) and where they all come from. And so from CIRI's standpoint, if they were going to have any -- whatever land rights they have were basically, you know, mountain tops and all the rest and didn't mean anything to the CIRI people anyhow because most of them were -- were -- by this time, they were more anchor sites than -- than anything else. And some of the other ones I don't know enough about to -- the -- the individuals involved to discuss. I think, in part, it turns upon the group itself; it varied from group to group or corporation to corporation. I know NANA's view has always been exceedingly reluctant to ever give up anything. In terms of -- of making an exchange to pick up Red Dog, you know, a few acres here and a few acres there didn't make any difference to NANA because you could slight (indiscernible) that was far away from the village. Excuse me. What NANA did was before the selection process started, we sat down -- and again, I use the "we" only because it's easier to talk that way.

MR. MITCHELL: Right.

MR. BAENEN: But John Schaeffer and -- and I was part of it but I -- sat down and put together a matrix that would -- that would be the guide for the land selection. And development was in the mix, but it wasn't anywhere near the top, economic development, use. And the first -- the primary and the -- the base of the matrix was subsistence. And then it was historical use, was village needs for expansion, and because of the way the NANA region is set up, we weren't faced with the situation of having to make a decision about whether or not this choice piece of land will throw the matrix out of whack. We had so much land in the interest of oil and gas people -- in fact, we -- they would have been delighted to have a lease on all the land, but we limited it to 500,000 acres. And did that for a variety of reasons, but one basically a business reason, if they discovered oil and gas in some place in the 500,000 acres, then another 1,500 would be worth a lot more even, you know -- or, like, not be anything about the -- people pay a lot more and we could have more competition and all the rest.

MR. MITCHELL: Well, I guess, my -- my point, though, is to the best of my knowledge, there has not been a village or regional corporation in 20-plus years that when an economic opportunity associated with the land sales of land trades has presented itself that any corporation has ever said -- you know, has never done anything other than explore and attempt to take advantage of that opportunity. And as I said, I -- I view that as -- as -- as okay. But in terms of the -- the dis- -- the --

MR. BAENEN: We had -- we had -- I think is what you're talking -- we -- we had a -- a temporary one. There wasn't one time that the -- the -- excuse me, we did it by a, quote, "informal vote,"

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because we did not want to have a -- we didn't want to have a -- an issue presented at the annual shareholders meeting and have them take a vote on it and then have it where it is in the record. And that would preclude people -- they would look at it and say, "Well, there's no need to go talk to them." But we -- we took an -- an informal vote after they got -- after we picked up the Red Dog lands about whether they wanted to have mining development and (indiscernible). And it was that way for about four years or -- or longer. And as things developed -- and so NANA did not go out and look for somebody to develop that (indiscernible), we figured it's there. And several years later, the -- the -- when a number of companies had come -- was raised again and went down as an (indiscernible) matter, and it was changed. They -- they changed. And I think, in part, they changed it to -- time had passed, and they weren't so afraid of the possibility of development. But I don't think -- short of something really disastrous, people would say, "God, nobody in their right mind would do that." I think you're probably right. And I think NANA would -- would -- would go after the development. I don't think NANA would get rid of land, or at least they wouldn't have 15 years ago. They might now. They would exchange it, happy to develop it, and I don't know, depending on the right circumstances, they might well say, "Well," you know, "do we need two-plus million acres, and we can" -- you know, "What is" -- "What is 20,000 acres that is so far away from any villages and nobody ever goes there anyhow and bring some (indiscernible) benefit to the shareholder, why not?" And I (indiscernible) the video. I -- I don't think that they're -- that we should hang on to a piece of property unless it truly is, you know, it's the sacred Blue Mountain, that's one thing. Certainly, define subsistence or -- or -- you know key to your life. But other reasons, I don't think there's anything wrong with it.

MR. MITCHELL: And if -- if -- you know, that -- that kind of -- of -- of expression of participatory self-interest -- sort of back to where we were talking earlier today about Ted Stevens's insight into all this. It's certainly, you know, letting -- giving people an opportunity to participate in the development of Alaska economy is better than the economy developing without.

MR. BAENEN: Absolutely.

MR. MITCHELL: You know, and -- and, you know, it's going to happen, it might as well happen with -- with more participation. Well, is there anything -- is there any other subject matter that are worth kicking around about the subject?

MR. BAENEN: I'd like to turn it off -- (Brief interruption.)

MR. BAENEN: You know, (indiscernible) tape was off (indiscernible) about things that didn't really relate. But there is something that I would like to put on the -- on the tape, and that is that -- that -- for a little bit of background, when I started working for -- for NANA -- actually the Northwest Alaska Native Association, slightly before -- a year or so before the Settlement Act was passed and work for them was kind of a (indiscernible) because everybody that was working to get the Settlement Act was so far along that when I got hired and brought in, there was little that I could do other than sit and watch.

MR. MITCHELL: By the way, just -- did they have, actually, money --

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MR. BAENEN: No.

MR. MITCHELL: -- to -- I mean, they didn't have -- I didn't think that NANA --

MR. BAENEN: No.

MR. MITCHELL: -- I mean, Northwest Alaska Native Association didn't have anything other than letterhead until --

MR. BAENEN: Matter of fact, we ended up having about \$10,000 worth of expenses before the Settlement Act, pre-settlement act expenses. Basically, they were tied up -- we're not -- we're talking about expenses and -- not fees. What we would have gotten in fees -- maybe it was, like, \$10,000 worth of expenses and fees. It wasn't a lot. Probably about 10, \$12,000. Because remember, I came up -- flew up once, so there was one airfare, round-trip airfare. And when it came time to make applications for fees and expenses before the board of claims, I told the partners that based upon the way it was working out, we would end up getting out of our \$12,000 or whatever it was, we'd probably get \$2,000 because of the way that they allocated it amongst everybody else. And I said, you know, "We can spend \$10,000 to get \$2,000 out of the \$10,000," and they grouched and said, "You're absolutely right." But what I wanted to say was that I basically commuted to Alaska from 1971 until '76. And then from '76 to, say, '79, was much less of a commute. '76 happened, '75, '76, John Shively came on board, and that took me off the hotspot of being that person that -- there was somebody else now. And I was doing a lot of things that I was not qualified to do, business related type stuff that I was asked to do. And I told them I didn't, you know -- but somebody had to help them, so I did. I met -- well, NANA, and non-NANA, other corporations, other lawyers, other -- other, you know, accountants, a lot bureaucrats, State and otherwise, and we tend to focus on either the outstanding person (indiscernible) on the real disaster. You know, 90 percent of the people that I met and worked with, really fine people. And I -- you know, I think that -- that people forget that. I mean, they may not have been educated, they may not have had sophistication, or they may have been overeducated. They went -- but they were basically a fine group in those initial stages, and I think that's something that gets lost because time goes by and you say, "Gee, why didn't they do it that way?" People don't understand the problems they were working with and all the rest, and if mistakes were made, and mistakes were made. But the people, most of the people, really fine people, and that is true.

MR. MITCHELL: Yeah. Well, in that regard, I didn't appreciate, you know, what I would call sort of my best years in all that (indiscernible) --

MR. BAENEN: (Indiscernible) --

MR. MITCHELL: -- to say about '77 to about '86 (indiscernible), the beginning of D2 -- (Brief interruption.)

MR. MITCHELL: Until, of course, it was long over, as is normally the condition, was the -- the sort of the relentless (indiscernible) both politically and economically of the Native leadership (indiscernible) during that time. As opposed to -- when you look now at how much, you know, sort

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of the ideology has now gotten into the middle of stuff. And when you look at these hopeless -- the AFN board is now 86 people on it, and half of them have some level of information and half of them have a different level of information. Everybody -- you know, and that was so different as I look back at 10 years, at my first 10-year window, which obviously was coming off, 10 years prior to that (indiscernible) involved. I mean, was that -- I mean, do you have a view of (indiscernible) and particularly how it relates to Indians in the Lower 48. Because --

MR. BAENEN: Well, I -- what's interesting is, is that -- you know, if you take a map of Alaska and you slap it down, if you're always doing this --

MR. MITCHELL: Right.

MR. BAENEN: -- (indiscernible) and they slap the map of Alaska down on the map of the United States and they say, "My God, see how big that is?" And it is big. And that -- and you mentioned the D2 decision. I saw somewhere in between, you know, '75, '76, '77, '78, somewhere in there, I started to see a -- I guess a disintegration -- but that's not -- I started to see a change upon the AFN that was there earlier from the corporate -- they weren't the same unity, the same pulling together. And then the D2 came along and there was another place, and they rallied, and they're all back -- down in the Lower 48, they never had anything that -- the Indians got a problem, they can't rally themselves. They don't have a big leading and, you know, the -- the -- the (indiscernible) Assoc- -- you know the Indian group will get together.

MR. MITCHELL: NCAI.

MR. BAENEN: NCAI, and they'll get together and -- and, you know, then they'll come to Washington, but they don't have 12 corporations and regional corporations, doesn't have all the village corporations. They come to Washington and it's a disaster in the sense that they can't deliver a unified message. They deliver a unified message (indiscernible) from (indiscernible), and that's because they have such different and diverse problems. I mean, you're coming out of -- you know, if you're a Hopi, you know, Pine Ridge is Pine Ridge, never the (indiscernible). And while you can be an Inupiat or you can be an Aleut, D2 problems unify in problem. And that's what was -- what I saw. And I suppose now, when they get it with the subsistence, when they vote, "no," you know --

MR. MITCHELL: Right, '82.

MR. BAENEN: Or vote, "yes," but if you had voted the wrong way --

MR. MITCHELL: Yeah.

MR. BAENEN: -- (indiscernible) how'd I (indiscernible) that, it seemed very confusing because if you vote yes, because that's a "no" vote in terms of -- and that pulled people together. And -- and it would be interesting to see, but I hope the occurrence doesn't happen. But if -- it would be interesting if -- if -- if a major problem, would they coalesce and come together again the way they did in the past or would they not? I mean, as I say, I hope -- I hope there isn't any reason for them to have to do that. There may well be.

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MR. MITCHELL: Well, I mean, one of Shively's view on that was -- is that not only did they need external threat in order to be cohesive, but they -- during say, that first -- you know, '66 to -- to -- really, even '85 so -- through 1991. The -- the group was small enough, in a way, as to be managed. You -- I mean, today -- if D2 were starting over today, it would be -- it would be anarchy, and, you know, the Native political system would never just cut me and Shively loose to go off and do subsistence and come back -- do the -- do the best you can and come back with whatever you can get. There would be meetings with -- there would be -- everybody's got a lawyer now and --

MR. BAENEN: And -- and -- the -- the smallness of the group gave you, gave the Natives, the ability to -- I'll use a mixed metaphor. At once they could circle the wagons to keep other people from getting in. Not only now they're Natives, they can circle the wagon so that X, Y, Z group representing so and so, like a mining (indiscernible), couldn't go over and talk to this corporation, and stood him off. And at the same time -- I mixed my metaphor, the group was small enough that they could have a real sharp-pointed spear and they could run with it. And that wouldn't happen now, because just as you say, the group was so big that -- that it would be so easy for the Enviros -- or one group of the enviros, for the minors, for the sovereignty (indiscernible) and -- and -- which you've got, as you say, anarchy as opposed to a cohesive -- of course, that's -- that's also part of progress.

MR. MITCHELL: Right. Because, obviously, there's more people --

MR. BAENEN: Then (indiscernible) --

MR. MITCHELL: -- (indiscernible) --

MR. BAENEN: Yeah. They've got involvement, and they should be heard.

MR. MITCHELL: Right. So, no, I agree. (Indiscernible), you know, even -- even really up until the end of the '80s, I don't think I ever attended an AFN board meeting, not anything of importance, that was not preceded by a day or two earlier, a sort of pre-meeting five or six or seven people, you know, in Jenny Lee's office or Frank Ferguson who was president, or Morrison who was president, and we would sit there and we would have incredible, raging arguments. But at the end of that, you know, there -- there was never an AFN board meeting that was a free fall. You know, we went in there and you didn't know what the answer was. And -- and now, today, you know, that's the way it works. You go in there and somebody says, "Well, say, I've got a good -- why don't we all declare Warren (indiscernible)?" And somebody goes, "Oh, that's a good idea." And before you know it, there's a resolution to turn Warren Bolivy (indiscernible) and start getting ordinance lined up. Because that kind of, maybe conspiracy, no longer exists. Maybe I'm even getting (indiscernible). But it's -- you know, it was anti-Democratic that it was pragmatically (indiscernible) operation.

MR. BAENEN: Practical Democracy. Practical Democracy. (End of audio recording.) 3
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