

MICHAEL C. GERAGHTY  
ATTORNEY GENERAL

Elizabeth M. Bakalar (Alaska Bar No. 0606036)  
Margaret Paton-Walsh (Alaska Bar No. 0411074)  
Aesha R. Pallesen (Alaska Bar No. 1205021)  
Assistant Attorneys General  
P.O. Box 110300  
Juneau, AK 99811  
Phone: 907.465.3600  
Fax: 907.465.2520  
Email: libby.bakalar@alaska.gov  
margaret.paton-walsh@alaska.gov  
aesha.pallesen@alaska.gov

*Attorneys for all Defendants*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

MIKE TOYUKAK, et al.

Plaintiffs,

v.

MEAD TREADWELL, et al.,

Defendants.

Case No.: 3:13-cv-00137-SLG

**OBJECTION TO PLAINTIFFS'  
EXPERT McCOOL**

The Division objects to the plaintiffs' expert on "Native voting and election issues", because he is actually offering an opinion with respect to Alaska history—an area in which he has no expertise—and because his testimony will not assist the trier of fact in this case.

Federal Rule of Evidence 702 provides that a witness "who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods;
- (d) and the expert has reliably applied the principles and methods to the facts of the case.”

When deciding whether proposed expert testimony will assist the trier of fact so as to be admissible under Rule 702, courts may consider whether a theory or technique 1) “can be (and has been) tested”; 2) “has been subjected to peer review and publication”; 3) has a “high known or potential rate of error” and is to be operated in accordance with certain standards; and 4) enjoys “‘general acceptance’ within a ‘relevant scientific community.’”<sup>1</sup> The four factors established in *Daubert v. Merrell Dow Pharmaceuticals* are not definitive; rather, the inquiry as to reliability under Rule 702 is intended to be “flexible.”<sup>2</sup> The trial court has broad discretion to determine whether to admit expert evidence in light of the circumstances of the case at hand, and its decision will only be reversed for an abuse of that discretion.<sup>3</sup> This “gatekeeper” role of the trial judge extends to all expert testimony, whether it is based on scientific, technical or “other specialized” knowledge.<sup>4</sup> Similarly, the Supreme Court has stated that the *Daubert* factors may be used to assess the reliability of experience-based testimony (not just scientific knowledge) if the trial judge finds the factors to be a reasonable measure of reliability in that instance.<sup>5</sup>

In addition to utilizing the *Daubert* factors, the Ninth Circuit Court of Appeals relies on four criteria to determine the “helpfulness” of expert testimony and thus its admissibility under

---

<sup>1</sup> *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 149–50 (1999) (restating the four factors established in *Daubert*, 509 U.S. at 592–94).

<sup>2</sup> *Id.* at 150.

<sup>3</sup> *See id.* at 158; *see also United States v. Rahm*, 993 F.2d 1405, 1409–10 (9th Cir. 1993) (characterizing the standard of review as “abuse of discretion” in the area of expert testimony for all future cases).

<sup>4</sup> *Kumho Tire Co., Ltd.*, 526 U.S. at 141.

<sup>5</sup> *Id.* at 151–52.

Rule 702: 1) whether the witness is a qualified expert; 2) whether the testimony is on a “proper subject;” 3) conformity to a generally accepted explanatory theory; and 4) probative value compared to prejudicial effect.<sup>6</sup> The court has also declared that, when deciding whether to admit expert testimony, the “key concern is whether [the] testimony will assist the trier of fact in drawing its own conclusion as to a ‘fact in issue.’”<sup>7</sup>

Professor McCool’s proposed testimony fails to meet the standard under F.R.E. 702 for a number of reasons.

First, the rule requires that the witness be “qualified as an expert by knowledge, skill, experience, training, or education.” Although Professor McCool has a Ph.D. in political science, the plaintiffs are actually offering his opinion on Alaska’s history, specifically, his opinion that “the state [of Alaska] has engaged in intentional nonfeasance that is systematic, pervasive, and persistent over many decades.”<sup>8</sup> But Professor McCool is an expert in Native American policy and water rights and although he has done some research into Native American voting rights in the lower 48 states, before being hired by the plaintiffs in this case he had never done any research on Alaska.<sup>9</sup> Nor had he ever taught a class on Alaska history.<sup>10</sup> As a result, Professor McCool does not offer this Court any expertise in Alaska history or politics—the only basis for

---

<sup>6</sup> *Rahm*, 993 F.2d at 1409.

<sup>7</sup> *Id.* at 1411.

<sup>8</sup> Exhibit A (McCool report) at 47; Exhibit B (McCool Dep.) at 67:10-12.

<sup>9</sup> Exhibit B at 21:7-9, 25:16-18.

<sup>10</sup> *Id.* at 25:19-21.

his opinion is a few weeks of research, primarily using sources hand-picked for him by the plaintiffs' attorneys.<sup>11</sup>

According to his deposition testimony, Professor McCool spent approximately eighty hours researching and writing his preliminary report and an additional eighty hours researching and writing his final report.<sup>12</sup> By his own admission then, his claimed "expertise" is the product of only a month's worth of work. In effect, the plaintiffs have hired a researcher with a Ph.D. and are now trying to pass him off as an expert. But because, in fact, he has no expertise in the arena in which he is offering an opinion, this Court should exclude his testimony under F.R.E. 702.

Second, to the extent Professor McCool has any expertise to offer this Court, it appears to be in applying what he calls "qualitative methods."<sup>13</sup> But because qualitative methods means, in essence, looking at evidence and drawing conclusions from that evidence,<sup>14</sup> this expertise at best merely replicates the task of the fact finder. It is thus not a "proper subject" for expert testimony. This Court does not need an expert to explain the meaning or significance of a newspaper editorial or what inferences might be drawn from the passage of a piece of legislation or comments made in an email.

That Professor McCool's testimony is intended simply to substitute for this Court's analysis is apparent from the fact that his report attempts to apply the "Senate factors"—identified by a Senate Report in the 1982 reauthorization of the Voting Rights Act as "factors

---

<sup>11</sup> *Id.* 54:13-24. Professor McCool admitted he merely "did a broad sweep of sources, I got on the Internet, I ordered books, I looked at the sources in the books. Jim and Natalie sent me, I would guess, in excess of 25,000 pages of materials."

<sup>12</sup> *Id.* at 56:11-14, 62:10-16.

<sup>13</sup> Exhibit A (McCool report) at p. 2.

<sup>14</sup> *Id.* at pp. 2-3.

that might be probative of a Section 2 violation”<sup>15</sup>—to the evidence he reviewed. This is quintessentially the function of the Court. In addition, courts have declined to admit expert testimony on the subject of a party’s “intent,” holding that “[i]nferences about the intent or motive of parties or others lie outside the bounds of expert testimony..., “[t]he question of intent is a classic jury question and not one for the experts.”<sup>16</sup> Professor McCool’s opinion about the State’s “intent” is thus not a proper subject for expert testimony.

Thirdly, even if this Court believes expert testimony regarding the historical context in which the Division of Elections has operated would be helpful, Professor McCool has not “reliably applied the principles and methods to the facts of the case,” as required by F.R.E. 702(d). Indeed, his report is littered both with straightforward mistakes, but also with deeply questionable inferences and conclusions. At his deposition, Professor McCool testified that he himself assesses the quality of academic work by looking at three things: “the adequacy of the methodology;”<sup>17</sup> “whether it was employed correctly;”<sup>18</sup> and “whether the conclusions are supported by the data.”<sup>19</sup> He further elaborated that “for example, in a book review,” he would note “an egregious error” or that “someone had misquoted something or had mischaracterized a wor[k] with which I was familiar.”<sup>20</sup> Because Professor McCool’s proffered opinion fails his tests for “reliably apply[ing] the principles and methods to the facts of the case,” his testimony should be excluded pursuant to F.R.E. 702.

---

<sup>15</sup> *Thornburg v. Gingles*, 478 U.S. 30, 36 (U.S. 1986).

<sup>16</sup> *In re Rezulin Products Liab. Litig.*, 309 F. Supp. 2d 531, 547 (S.D.N.Y. 2004)(quoting *In re Diet Drugs*, 2000WL 876900 at \*9 (E.D. Pa. 2000).

<sup>17</sup> Exhibit B at 48:8.

<sup>18</sup> *Id.* at 48:9-10.

<sup>19</sup> *Id.* at 48:11-12.

<sup>20</sup> Dep. at 48:22-49:1; 50:11-12.

For example, Professor McCool misrepresents the Alaska constitutional convention debate over the voter qualification that required that voters be able to “read or speak” English.<sup>21</sup>

Professor McCool states:

The state’s new constitution continued the long tradition of a literacy test for voting, providing that a voter ‘shall be able to read or speak the English language as prescribed by law, unless prevented by physical disability.’... In the debate over the literacy test at the constitutional convention, Marvin Marston, now a representative,<sup>22</sup> argued forcefully that this provision was obviously pointed at Natives and was unfair to them: ‘We have a lot of people out in the Bering Sea and at the Arctic coast and up the great rivers that have lived here since time was, and they are great men and women, and if this amendment passes we blot them out.’ His plea fell on deaf ears.”<sup>23</sup>

Thus, Professor McCool suggests that Marston was opposing the “read or speak” requirement and that the delegates ignored his plea, instituting a qualification that would deny Alaska Natives the vote. But in fact, Marston’s speech was made in opposition to a proposed amendment to replace the word “or” with “and,” thereby requiring that a voter be able to both “read and speak the English language.”<sup>24</sup> The debate squarely recognized that one potential effect of the amendment might be to reduce the number of Alaska Natives who could vote.<sup>25</sup> And Marston’s concern about this was shared by other delegates. Delegate Coghill noted that there was higher turnout in the villages than in urban areas on Alaska:

“You take the villages. You find that if there are 80 people eligible to vote, there will be 80 votes cast in that village. They are very proud of their heritage to take part in the government...They are interested in government, they are interested in the new way of life and in order for them to obtain anything they must participate, and if you are going to shut them off, why that will set that area back probably

---

<sup>21</sup> See 2A PACC 795-801 (Dec. 13, 1955), attached hereto as Exhibit C.

<sup>22</sup> Professor McCool presumably means to say that Marston was a delegate.

<sup>23</sup> Exhibit A at 14 (citations omitted).

<sup>24</sup> 2A PACC 795-801 (Dec. 13, 1955), attached hereto as Exhibit C.

<sup>25</sup> *Id.* at 769-800.

20 years until your generations that are being educated now obtain an understanding.”<sup>26</sup>

Nor did these arguments “fall on deaf ears” as Professor McCool claims. To the contrary, the amendment was soundly defeated by a vote of 36 to 18.<sup>27</sup>

Professor McCool similarly misrepresents the holding of *Moore v. State*, citing it as evidence that “rural schools continued to have serious funding issues.”<sup>28</sup> But in fact, the *Moore* court expressly found that the State was not underfunding education.<sup>29</sup> At his deposition, in explanation, Professor McCool indicated that he had not actually “read the entire hundred and ninety-six pages” of the *Moore* decision,<sup>30</sup> but had relied on “synopses,” the source of which he did not reveal.<sup>31</sup> The proper use of “qualitative methods” presumably requires the practitioner actually to read the sources he is relying on; and to accurately report their contents. Professor McCool’s failure to reliably apply the principles and methods to the facts of this case mean that his expert testimony cannot assist the trier of fact because it is unreliable.

Not only does Professor McCool fail to apply his methodology reliably to the sources he looked at, but his report contains striking omissions of evidence which might have contradicted his conclusions. Thus, his testimony is not “based on sufficient facts or data” to sustain his conclusions.<sup>32</sup> For example, although Professor McCool purports to be applying the “Senate

---

<sup>26</sup> *Id.* at 797.

<sup>27</sup> *Id.* at 801.

<sup>28</sup> Exhibit A at 28

<sup>29</sup> *Moore v. State of Alaska*, Superior Court case No. 3AN-04-9756, Decision and Order at p. 183.

<sup>30</sup> Exhibit B at 125:14-15.

<sup>31</sup> *Id.* at 123:9.

<sup>32</sup> F.R.E. 702(b).

Factors,” his report fails to address a number of those factors.<sup>33</sup> Of particular note, he failed to consider the “extent to which members of the minority group have been elected to public office in the jurisdiction.”<sup>34</sup> Given that Alaska has had a consistently strong record of electing Alaska Natives to both the Territorial and State legislatures,<sup>35</sup> this factor would cut against Professor McCool’s conclusion, making its omission suspicious. An expert who simply ignores evidence that is inconsistent with the desired opinion has not “reliably applied the principles and methods to the facts of the case.”<sup>36</sup>

Similarly, at his deposition, Professor McCool insisted that the “read or speak” requirement in Alaska’s original constitution was evidence of a desire to suppress the native vote, even though he had misread the convention minutes and had not bothered to explore how the legislature had enacted the requirement or how the Division had implemented the statutory provision.<sup>37</sup> “The expert who expresses his opinion with absolute certainty invites skepticism about his candor or his qualifications. With good reason, we wonder whether such an expert is

---

<sup>33</sup> Exhibit B at 135:4-136:16.

<sup>34</sup> *Thornburg v. Gingles*, 478 U.S. 30, 37 (1986).

<sup>35</sup> The number of Alaska Native elected officials closely corresponds to the Alaska Native share of the state’s voting-age population. Evidence in the legislative record of the VRA reauthorization shows that in 2006, seven of the sixty-member Alaska legislature were Alaska Native. *See* S. Rep. No. 109-295 at 134 (2006) (citing Nat’l Comm’n on the Voting Rights Act, Protecting Minority Voters: The Voting Rights Act at Work, 1982-2005 (2006)). The Senate Report mistakenly describes the Alaska Legislature as having 67 members. Thus, the ratio of Alaska Native elected officials (11.6%) against the Alaska Native share of voting-age population (13.8%) at the time of the 2006 reauthorization was almost one-to-one.

<sup>36</sup> F.R.E. 702(d).

<sup>37</sup> Exhibit B at 90:14-92:17. For a history and analysis of how the state implemented the statute see Gordon S. Harrison, *Alaska’s Constitutional ‘Literacy Test’ and the Question of Voting Discrimination*, 22 Alaska History 24 (Spring/Fall 2007), which strongly cuts against assumptions made by Professor McCool.



hiding-or missing-some significant factor.”<sup>38</sup> Professor McCool’s testimony should, therefore, be excluded pursuant to F.R.E. 702 because he is not actually an expert on Alaska history, because he has simply ignored evidence that does not support his opinion, and because he has not reliably applied the principles and methods of “qualitative methods” to the facts of this case. Additionally, because his opinion goes to the intent of the State of Alaska, which is quintessentially the sphere of the fact-finder, his testimony is not on a “proper subject,” and should be excluded.

DATED: June 6, 2014.

MICHAEL C. GERAGHTY  
ATTORNEY GENERAL

By: s/Elizabeth M. Bakalar  
Elizabeth M. Bakalar  
Assistant Attorney General  
Alaska Bar No. 0606036

By: s/Margaret Paton-Walsh  
Margaret Paton-Walsh  
Assistant Attorney General  
Alaska Bar No. 0411074

By: s/Aesha R. Pallesen  
Aesha R. Pallesen  
Assistant Attorney General  
Alaska Bar No. 1205021

*Attorneys for Defendants*

---

<sup>38</sup> *United States v. Rahm*, 993 F.2d 1405, 1412 (9th Cir. 1993).

**Certificate of Service**

I hereby certify that on June 6, 2014, copies of the foregoing **OBJECTION TO PLAINTIFFS' EXPERT McCOOL** were served electronically on the following parties of record pursuant to the Court's electronic filing procedures:

Natalie A. Landreth & Erin C. Dougherty Matthew Newman c/o Native American Rights Fund 745 W. 4th Avenue, Suite 502 Anchorage, Alaska 99501 landreth@narf.org dougherty@narf.org mnewman@narf.org	James Thomas Tucker & Sylvia O. Semper c/o Wilson, Elser, Moskowitz, Edlemen, & Dicker LLP 300 South Fourth Street, 11th Floor Las Vegas, Nevada 89101 james.tucker@wilsonesler.com sylvia.semper@wilsonesler.com
Richard de Bodo BINGHAM McCUTCHEN LLP 1601 Cloverfield Blvd., Suite 2050 North Santa Monica, CA 99404-2055 rich.debodo@bingham.com	

s/Elizabeth M. Bakalar

Expert Witness Report  
For *Toyukuk v. Treadwell, AK*  
January 30, 2014

I. INTRODUCTION

A. Qualifications

I am a professor of Political Science at the University of Utah. I received a B.A. in Sociology from Purdue University, and a Ph.D. in Political Science from the University of Arizona. For over thirty years I have conducted research regarding the political relationship between American Indians and Anglos.<sup>1</sup> One of my first publications, in 1982, was on Indian voting patterns. Many of my publications focus on Indian voting, land and water rights, and environmental issues on Indian reservations. All of my research has a strong historical context. From 1998 to 2007 I was the director of the American West Center, where I administered several grants and contracts dealing with Indian land, water, and sovereignty issues. In 2007 I co-authored *Native Vote: American Indians, The Voting Rights Act, and the Right to Vote* (Cambridge University Press). My most recent edited book is *The Most Fundamental Right: Contrasting Perspectives on the Voting Rights Act* (Indiana University Press, 2012).

I have served as an expert witness in three Voting Rights Act cases in Indian Country: (*U.S. v. Blaine County*, U. S. D. Ct., Montana. NO. CV99-122GFPMP. 157 F.Supp.2d 1145 (2001); *Bone Shirt v. Hazeltine*, United States D. Ct., South Dakota, Cent. Div. No. CIV.01-3032. 200 F.Supp.2d 1150 (2002); *Cottier v. City of Martin*, U.S. D. Ct., South Dakota, West. Div. No. CIV. 2002-5021 (2005); 445 F.3d 1113 (8th Cir. 2006)). I was also retained as an expert in the case of *U. S. v. South Dakota*, U. S. D. Ct., South Dakota, CIV. 00-300800-3015

---

<sup>1</sup> Throughout this report I will use the term, "Anglo" to refer to people who are not American Indian or Alaska Native. Even though that term is not entirely accurate—it includes people who are not of European descent, it is preferable to referencing people in the negative as "Non-Natives" or "Non-Indians." "Anglo" is also a fairly standard term in the academic literature.

(2000), but the case was rendered moot before expert reports were submitted. I am currently retained as an expert witness in the case of *Navajo Nation v. San Juan County, UT* (CIV. 2:12-cv-00039-RS). My vita is attached. I have been hired by the plaintiffs and I am compensated at the rate of \$225/hour.

## B. Methodology

I utilize a well-recognized methodology known as Qualitative Methods (Denzin and Lincoln, 2000, 2011). I employ this methodology by using data and information gleaned from multiple and overlapping sources: in-person interviews (whom I refer to in this report as “interviewees”), newspapers (including editorials and letters to the editor), past court cases, interest group publications, secondary published sources such as books and articles, online sources (chat rooms, websites, blogs), business advertising and business policies, campaign flyers and publicity, and documents and studies created by tribal, local, state, and federal governments, including voting data and census data. In some cases it is also useful to examine photographs, videos, and other visual “data.” I examine these multiple sources for significant long-term trends among multiple sources of information and data. Confidence levels increase when consistent patterns of responses appear across multiple sources over a sustained period of time.

Qualitative Methods is well recognized in the social sciences. The Consortium on Qualitative Research Methods was established in 2001 (see: <http://www.maxwell.syr.edu/moynihan/programs/cqrm/>). The American Political Science Association organized a section on Qualitative Methods in 2003. See:

([http://www.apsanet.org/content\\_57139.cfm](http://www.apsanet.org/content_57139.cfm)). By 2003 almost half of all peer-reviewed articles in Political Science journals utilized Qualitative Methods (Bennett, Barth, and Rutherford 2003). Qualitative Methods is well-suited for expert analysis in voting rights cases because it is adept at analyzing phenomena that are complex, multi-dimensional, and subject to rapid change. Lamont and White note that Qualitative Methods is “particularly useful for studying timely topics such as group identities and boundaries [and] race, class, gender...” (2009: 5). It is also particularly useful to study phenomena that occur over long periods of time, due to the large number of variables and factors that change over time (see, for example: Bartolini 2013)..

#### C. Purpose of Analysis:

The research question for this report is: Is there a consistent pattern of intentional discrimination in the state of Alaska that has negatively affected the ability of Yup'ik-speaking Alaska Natives living in the Wade Hampton and Dillingham Census Areas to participate in state elections?

## II. CONTEXT

### A. Historical Discrimination in the State of Alaska

Prior to discussing the specifics of this case, it is important to establish the broader historical and socio-economic context because these factors have a direct impact on voting. When the Voting Rights Act was being considered for renewal in 1982, the Senate adopted a list of factors from two cases (*White v. Regester* 1973; *Zimmer v. McKeithen* 1973). These “Senate Factors” are typically found in jurisdictions with problematic voting procedures, and are applied in Section 2 cases and 14<sup>th</sup> and 15<sup>th</sup> Amendment cases, but they are relevant here because they

are indicators of racially troubled political jurisdictions, especially in regard to voting, and are also used to analyze the issue of intent (*Arlington Heights v. Metropolitan Housing Development* 1977).

One of those Senate Factors is “The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process” (U. S. Senate Report 1982). Thus it is important to briefly summarize this history. The U. S. Supreme Court, in a case from Alaska, provided a remarkably succinct summary of how Native peoples have been treated by the dominant Anglo society: “Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but the conquerors’ will that deprived them of their land” (*Tee-hit-ton Indians v. U.S.* 1955). Of course, Alaska has a unique part in that saga. The extremes of distance and weather helped insulate Alaskan Natives from at least some of the “conquerors’ will.” Alaskan Natives did not sign treaties or create reservations (with one exception), and instead have Native corporations and villages (Case and Voluck 2002: 1-32). But in other ways the history of Anglo-Native relations in Alaska is all too typical with the usual stories of conflict, disease, exploitation, oppression, land theft, and a strong belief among whites that Native people were sub-human inferiors undeserving of the natural rights guaranteed to the white man—in the words of the Supreme Court case just cited, “savage tribes.” The Alaska Advisory Committee to the U. S Commission on Civil Rights summarized this relationship: “The histories of Alaska Natives and American Indian groups have many similarities. Theirs are histories marked by conquest, genocide, forced

cultural and land loss, and the subsequent evolution of alcohol use, violence, and chronic disease” (Alaska Advisory Committee 2002: 3. Also see: Peter 2009; Hensley 2009). A wall panel at the Anchorage Museum echoes that dreadful message; as a result of the contact between Native peoples and Anglos, “The outright losses were great—in population, sovereignty, resources, and spirit” ( Anchorage Museum Wall Panel 2013).

The U. S. purchased Alaska in 1867 from Russia without consulting Native people. The historian Hubert Bancroft described their reaction: “discontent arose, not from any antagonism to the Americans, but from the fact that the territory had been sold without their consent; and that they had received none of the proceeds of the sale” (Bancroft 1886: 609). Over a century later a man from Emmonak expressed the lingering bitterness over that sale in an interview with the Alaska Native Review Commission: “They sold this land, which is ours and belonged to our forefathers since time immemorial. The Russians...sold our land to the U. S. government for money, even if it was not their land” (Berger 1985: 77).

After the purchase the U. S. virtually ignored Alaska, especially Native Alaska: “In the beginning, and for a long time after the cession of this Territory Congress took no particular notice of these natives” (Department of the Interior Opinion 1932). The only “government” was the military. Alaska’s first military governor was Jefferson C. Davis, a man best known to history for murdering in cold blood a fellow Union general during the Civil War. His moral compass was apparently matched by the men in the ranks: “The [military] outposts were manned by an extremely uncouth and rugged breed of soldier who apparently contributed substantially to the difficulties of the Native groups” (Langdon 2002: 113). Another description of Davis’ soldiers notes their impact on Native people: “The day after the men were paid many of them were beastly drunk, and while in that condition the Natives had a hard time of it” (quoted in



Mitchell 1997: 70). Later the U. S. Navy took over, and in 1882 shelled Tlingit villages that had the temerity to resist military authority (Langdon 2002: 113; Native Voices 2014). A few years later the Kenaitze people wrote a letter of protest to the government, complaining about the “incredible oppression of the local Americans” (Anchorage Museum Wall Panel 2013). A court case at about the same time decided against Alaskan Native land claims because it “militates against the true interests of a white population” (Niedermeyer 1988-89).

This period of “almost complete neglect” did not end until 1884 when the U. S. Congress created a governing structure for Alaska with an organic act (Ray 1973: 1). That act noted that Natives were not to be disturbed in their homes, but did not recognize them as citizens; rather, it invited settlers to come to Alaska and claim land. This inevitably led to dramatic losses of Native land and conflict between the two peoples. Thirty years later the Indian Commissioner would write that “[W]ith the influx of white men the villages sites, hunting grounds, and fishing waters frequented by the Natives from time immemorial have often been invaded. Native settlements were exploited by unscrupulous traders, and the pristine health and vigor of the Natives sapped by the white man’s diseases and by the white man’s liquor” (quoted in Mitchell 1997: 265). Echoing this decline, Stephen Haycox writes: “Natives in the towns, who were regularly subject to segregation and discrimination, became increasingly dependent on white goods and the white economy” (Haycox 2002: 209).

The 1915 Territorial Act continued the policy denying Indians citizenship status unless they could prove, through a vigorous examination, “the total abandonment of any tribal customs or relationship, and the facts regarding the applicant’s adoption of the habits of a civilized life” (Alaska Session Laws 1915). The well-known Alaskan politician and judge James Wickersham used this cultural purity test in 1916 when he argued that the Indian votes that he garnered should



be counted because they came from Indians living apart from tribes, but that the Indian votes his opponent received should not count because they lived on land that had been withdrawn by the federal government for their use, and thus “they have no right to vote because they are classed as reservation Indians” (quoted in Mitchell 1997: 213). This is somewhat ironic because Wickersham was considerably more tolerant of Native people than many of his contemporaries—and he carefully groomed the Indian vote --at least the “civilized” ones. This led his political opponents to describe his politics thusly: “The dastardly effort on the part of Wickersham to incite the natives to hostility against the whites by proclaiming to them that they have been ill-treated, abused and robbed by the government is having its effect on white voters” (Atwood 1979: 361-62).

The discriminatory “civilized” requirement was tested again in the case of *U. S. v. Jones* in 1922 when a Tlingit attempted to vote. He had to swear he was a citizen, which he did. He was then prosecuted for perjury for claiming he was a citizen, and Jones had to prove that he lived like a white person (*U. S. v. Jones* 1923; Mitchell, 1997: 214-15)). This cultural purity requirement was also found in other states and territories, but it is important to recognize just how pernicious it was. Indigenous Americans are the only ethnic group in our country’s history that had to choose between their culture and their right to citizenship and thus the right to vote. When, for example, Italians or Germans came to the U. S., they were never told that they had to prove they had abandoned their native culture in order to vote. This requirement speaks loudly about the extent of racist sentiment against American Indians, and it was prevalent in the U. S. and in Alaska. It forced Indians and Native Alaskans to choose between who they were, and the right to participate freely in the democratic process. It also had the direct effect of preventing many Native people from voting, thus severely constraining their political influence.

After the U. S. Congress passed the Indian Citizenship Act in 1924, it became more difficult to directly disenfranchise Native Alaskans. William Paul, a Tlingit, was elected to the territorial legislature, and Native people began to register to vote, leading some whites to fear the growing power of Indian voters. With the passage of the Citizenship Act, and the election of the dynamic William Paul, several legislators immediately became concerned about the political power of Native voters. One Anglo candidate for office referred to Paul as “a half-breed” who could generate Indian votes for candidates, and worried that at the next election “several hundred more votes of this kind will be cast, as the squaws will be broken in by that time” (quoted in Mitchell 1997: 216). There were also concerns that this new-found power would be used to desegregate the schools. The *Alaska Daily Empire* demanded: “Keep Alaska and its Schools free from Indian Control” (quoted in Paul 2003: 45). Legislators came up with the idea that Natives could be barred from voting by a literacy test. The *Alaska Daily Empire* opined that Natives “cannot be even remotely considered as possessing proper qualifications for the exercise of the franchise,” and what was needed was a “white man’s party” (quoted in Paul 2003: 47). An editorial in the *Fairbanks Daily News-Miner* headlined: “Alaska—A White Man’s Country,” and warned darkly of the threat of Native voters of a “lower order of intelligence” (quoted in Cole 1996: 318). A senator declared “We do not want to be ruled by an inferior race, nor dominated by an illiterate one,” and a member of the House echoed the phrase about Alaska being a “white man’s country” (quoted in Haycox 1986/87: 19). If there was any doubt that the motive for the legislation was to keep Natives from voting, supporters put that to rest when they ran an ad in a Juneau newspaper stating they supported a literacy test “to prevent the mass voting of illiterate Indians...[It is] an opportunity to keep the Indian in his place” (quoted in Haycox 1986/87: 21).

In 1925 the territorial legislature heeded these racist demands and passed a literacy test following a debate during which the authors of the law “advanced frankly racist arguments in its favor” (Mangusso 1996: 255). This new law made education a critical component of the political process, but at that time spending for education for Natives lagged far behind that for Anglo children: “...in 1924, the Territorial government spent approximately \$280 per white and nothing on Natives while the federal government spent \$380 per white Alaskan and only \$190 per Native” (Lethcoe and Lethcoe 1994). Like literacy tests passed throughout the southern states to prevent Blacks from voting, this Act was probably effective in preventing many Native Alaskans from voting.

Alaska’s racism was reflected in its Jim Crow laws, social custom, and economic segregation. An early territorial governor, John Brady, referred to Natives simply as “Alaskans” because “for too many whites *Indian* was synonymous with *nigger*” (Hinckley 1982: 62). There are numerous descriptions of racist signs on businesses: “The U. S. Congress granted American citizenship to all Native Americans in 1924. Though recognition was official, equality was far from a reality. Signs in businesses and stores read ‘No Natives Allowed,’ ‘We cater to white trade only,’ ‘No Dogs, No Natives,’ or advertised ‘Meals at all hours—All white help’ (Peratrovich n.d.: 6).<sup>2</sup> Territorial governor Ernest Gruening confronted some of the business owners who displayed such signs (Gruening 1973: 318-19; Driscoll 1943: 304). Segregation was the rule of the day: “In those pre[WWII] years, pioneer Alaskans often refused Natives the right to vote, prayed every Sunday in segregated churches, and sent their children to segregated schools” (Cole 1996: 315).

<sup>2</sup> For this report I have only been able to find one photograph of an offensive sign; it advertises a restaurant “with all white help.” See: “Jim Crow in Alaska.” <http://www.alaskool.org/projects/JimCrow/Jimcrow.htm> This photograph is reproduced on a wall panel at the Anchorage Museum.

Housing segregation was also widespread in urban areas. Wallace Olson writes that “In the early days of Alaska, most cities were comprised of nearly all non-Natives with a small ‘Native village’ set off from the rest of the community. In Sitka there was the ‘Ranch,’ in Juneau the ‘Indian village,’ and in Fairbanks and Anchorage there were small settlements of Natives scattered in the poorer sections of town” (Olson n.d.: 15). Native people were kept out of the nicer neighborhoods by restrictive covenants. An example was the Airport Heights subdivision of Anchorage; properties were not to be “sold or alienated in any manner whatsoever to other than Americans of the white race” (Northern Construction 1948). One interviewee described his family’s experience with housing segregation: “...we were slowly ethnically cleansed out of Auke Bay, the best place to live just north of Juneau.... We ended up in the ‘new Indian village’ i.e. the Juneau Indian village” (Goodwin 2013).

The negative effects of discrimination also affected economic activity. Salmon canning has long been an important part of the Alaskan economy, but it has had many deleterious impacts on Natives. Terrence Cole writes: “For many years anthropologists and others have described the harmful effects that the canneries had on the Native peoples of Alaska. Few Natives were allowed to work in the canneries...the impact on the traditional Native way of life was serious” (Cole 1980: 55).

World War II brought many changes to Alaska, but the racism persisted. In 1943 a visiting journalist, Joseph Driscoll, wrote about the racism he encountered in Alaska:

Having given Alaska credit for making democracy work better than the majority of places, it is my painful duty to charge here on the debit side with being undemocratic, unfair and discriminatory to the real 100 per cent Alaskans—the Eskimos, the Indians, and the Aleuts.... these natives, as they are collectively designated, are subjected to

endless slights and snubs. Their social position is equivalent to that of a Negro in Georgia or Mississippi” (Driscoll 1943: 302).

The following year a visiting BIA worker wrote to BIA Commissioner John Collier that Alaska was a “territory where race prejudice is more shocking than in the South” (Mitchell 1997: 333). When an all-Native Alaska Territorial Guard, known unofficially as the “Tundra Army,” was proposed to help push the Japanese out of the Aleutians and prevent additional invasions, the commander, Marvin “Muktuk” Marston encountered stiff resistance from some locals: “The opposition came from the white traders in the villages, the Loman Shipping Company of Nome, the politicians and the miners who tried hard to stop the organization of the native” (Marston 1969: 172). Marston speculated that the local whites were “fearful that if the natives organized, they might ask for some of the blessings of a democracy” (Marston 1969: 173).

During the war Native people had to suffer through yet another form of discrimination. The U. S. military opened military bases in the territory under the command of General Simon Bolivar Buckner, Jr.<sup>3</sup> Buckner, a southerner whom Alaska Governor Earnest Gruening described as a man who “shared a prejudice against any darker races” (Gruening 1969), issued an order “to prohibit the association of soldiers with native women” (Will 1943). This blatant insult elicited a response from Governor Gruening: “I think it is scarcely necessary to elaborate on the underlying issues of this war throughout the world and that our democracy and non-discrimination against people because of their race must begin at home” (Gruening 1943. Also see: National Park Service 2007; Gruening 1973: 320-21).

Ernest Gruening was appointed territorial governor in 1939 by President Roosevelt. It did not take long before he became dismayed by the rampant racism he encountered. Locals explained to him that such bigotry was “the custom of the country” (quoted in Cole 1996: 320).

---

<sup>3</sup> Buckner was the son of a confederate Civil War general of the same name. He was killed in action on Iwo Jima.

Gruening was especially disturbed by the many signs on businesses stating they did not allow Natives in their business; Gruening called such beliefs “a replica of Hitlerist policies” (Quoted in Cole 1996: 321). He tried to push through an equal rights act in 1943, but could not muster the votes. He tried again two years later, this time with the advantage of having two Natives serving in the legislature. He was also assisted by an ugly incident that occurred in Nome.

In 1944 a young Eskimo woman, Alberta Schenck, was arrested for sitting in a “whites only” section of a movie theater in Nome; the section of the theater for Eskimos was locally known as “nigger heaven.”<sup>4</sup> Ms. Schenck wrote a telegram to Governor Gruening describing the incident. It is worth quoting at length because it is so emblematic of the pernicious racism that was occurring in Alaska at that time:

I am a girl, seventeen years old, half-white, half-Eskimo. My father was a soldier in World War I. I have two brothers in the Army in this war. Last night I went to the theater with a friend of mine, a sergeant in the Army. He paid for the tickets. When we sat down the usher came and ordered me to move to the other side of the aisle. When I refused, he called the police and had me ejected. When I struggled, I was arrested and spent the night in jail” (quoted in Gruening 1973: 321).

The head of the Alaska Territorial Guard commander Major Marvin Marston described Schenck’s mistreatment as part of a “festering core of racial prejudice and social injustice” (Marston 1969: 134). The Alberta Schenck affair and the election of two Natives to the Territorial legislature helped convince Governor Gruening to try again to pass an equal rights act. He encountered stiff resistance to his anti-Jim Crow law. Senator Shattuck from Juneau complained: “Far from being brought closer together, the races should be kept farther apart. Who

<sup>4</sup> According to an interviewee, The Gross 20<sup>th</sup> Century Alaska Theater in Juneau also had a balcony reserved for Natives. See: Goodwin 2013. This story is corroborated by Shirley Kendall, a Native Elder who was interviewed by Stebing (2009: 27).



are these people, barely out of savagery, who want to associate with us whites with 5,000 years of recorded civilization behind us" (Tetpon 1988).<sup>5</sup> But Gruening pushed hard; according to one of the Native legislators, Roy Peratrovich, he was "the mastermind behind the scenes" (Liston 1974). He received some assistance from Elizabeth Peratrovich. She gave an impassioned floor speech that she mocked the racists and described being a victim of discrimination:

I would not have expected that I, who am barely out of savagery, would have to remind gentlemen with five thousand years of recorded civilization behind them of our Bill of Rights. When my husband and I came to Juneau and sought a home in a nice neighborhood where our children could play happily with our neighbors' children, we found such a house and had arranged to lease it. When the owners learned that we were Indians, they said no (Quoted in Gruening 1973: 330).

In 1945 Gruening succeeded in making the Alaska Equal Rights Act a territorial law (Territory of Alaska 1945). In his memoirs, he made specific reference to the racism he found in Alaska: "I had found that the pure democracy and egalitarianism of Alaskans which had so impressed me was subject to one basic exception. It did not apply to the native people—the Indians, Eskimos and Aleuts" (Gruening 1973: 318). Gruening's new law, and statehood in 1959, did not suddenly erase the long history of discrimination. Marvin Marston, the commander of the "Tundra Army," wrote this post-WWII lament about Alaska: "In this matter of racial prejudice we of the Caucasian race are more guilty than any other. Wherever the white man has gone the natives of another color have suffered at his hands. Alaska is no exception. The present generation of native Alaskans is keenly aware of the unjust discrimination and exploitation of his race by unscrupulous white men" (Marston 1969: 130-31).

---

<sup>5</sup> Shattuck's remarks were made in 1945. The "civilized" cultures of the world had just concluded a world war that killed 50 million people.

The state's new constitution continued the long tradition of a literacy test for voting, providing that a voter "shall be able to read or speak the English language as prescribed by law, unless prevented by physical disability" (Harrison, n.d: 106). It is important to note that many Native Alaskans at that time did not speak or read English—their isolation, and the lack of schooling made sure of that. In the debate over the literacy test at the constitutional convention, Marvin Marston, now a representative, argued forcefully that this provision was obviously pointed at Natives, and was unfair to them: "We have a lot of people out in the Bering Sea and at the Arctic coast and up the great rivers that have lived here since time was, and they are great men and great women, and if this amendment passes we blot them out" (Constitutional Convention 1955: 17). His plea fell on deaf ears. The literacy test was not removed until the state was forced to do so in 1970 by the Voting Rights Act. A state publication notes that "This change, too, was precipitated by federal election law" (Harrison, n.d: 107). This long history of discrimination continues. Although a great deal of progress has been made, problems persist.

Many of the complaints of racism come from Anchorage. A 1991 study of Native students in Anchorage schools found that "virtually all" believed they had been subjected to discrimination (Craciun and Associates). In 1997 an Anchorage landlord was found guilty of discrimination against Native Alaskans and Blacks (*Anchorage Daily News* 1995). In 2001 a carload of white males shot frozen paintballs at Native Alaskans in Anchorage, hitting nine people. Instead of arresting the perpetrators—who were immediately apprehended, the police arrested one of the victims (AFN Report 2001). The Alaska Federation of Natives responded by issuing a report claiming that this incident "was only the latest indication of racial intolerance that permeates modern Alaska and also underlies discriminatory public policies" (Alaska Federation of Natives 2001: 2). The paintball incident prompted the mayor of Anchorage to hold



a town meeting to discuss racism, where he said “I’ll be the first to say, yes, we have racism in Anchorage, yes, we have racism in Alaska” (Wuerch 2001). After the meeting people some people found that their cars in the parking lot had been leafleted by a racist group called the National Alliance, based in Anchorage; the leaflet proclaimed that “no multi-racial society is a healthy society... if the White race is to survive we must unite our people on the basis of common blood...” (National Alliance, n.d.a). At about the same time, the National Alliance sent letters to Alaska legislators, with the flyer that was distributed at the town meeting included. The letter demands that hate-crime legislation should be directed toward minorities, not Anglos (National Alliance n.d.b).<sup>6</sup>

That same year, 2001, an Anchorage woman beat two Alaskan Natives with a baseball bat because she “didn’t like Alaska Natives” (AFN Report 2001). Eight years later two white people attacked a Native man on a street in Anchorage; according to the victim, the assailants said, “I hate you Eskimos” and pelted him with rocks and eggs (Halpin 2009). According to Anchorage Community Survey data from 2009, “experiencing racism still occurs in Anchorage, especially among racial and ethnic minorities” (Green and Chamard 2013: 9).

The state capital has also experienced racism: “Juneau has a long history of racism, and I know dozens of my kin who would back me up, and it still does today” (Goodwin 2013). In 2004 a Juneau high school student held up a sign while riding a school bus that was overtly insulting to Native people; this sparked “concerns about a generations-long pattern of racism at Juneau-Douglas High School” (*Anchorage Daily News* 2004a). Recently a group of local citizens attempted to deal with the problem of racism by organizing a panel discussion in Juneau titled

---

<sup>6</sup> It is not clear if the National Alliance’s Anchorage office still exists. According to the Southern Poverty Law Center’s Hate Watch, two neo-Nazi groups are currently found in Alaska; the American Third Position (a white nationalist group) and Vinlanders Alaska (racist skinheads). See: <http://www.splcenter.org/get-informed/hate-map#s=AK>

“Deconstructing Racism: Power and Privilege in Our Community.” The panel formed in part in response to a racist incident that had occurred at the Alaska Folk Festival (Kelly 2013).

Other evidence of racism is state-wide. In the late 1990s the relationship between Natives and other Alaskans reached the boiling point, resulting in several marches around the state that focused on Native rights, subsistence, education, and discrimination (*Anchorage Daily News*, 1998a, 1998b). According to one observer, “Bitter debates dominated the legislature, the media, and citizen forums in rural and urban communities across the state” (Barnhardt 2001: 24). In response to this conflict, the governor established the Alaska Commission on Rural Governance and Empowerment. Its 1999 Final Report searched for signs of improved relations despite the “misguided and often harmful public policy of the past” (1999: 2).

The Governor’s Commission on Tolerance found that: “Alaskans describe instances of prejudice and intolerance that prevented them from working, or from accessing critical state services” (2002: 7). The governor followed that report with an Administrative Order designed to reduce discrimination in state government, stating “Alaskans have made great strides in overcoming discrimination and injustice, but recent events and findings of the Governor’s Commission on Tolerance make it clear that levels of intolerance and discrimination continue to exist in our state” (Knowles 2002). That same year a report by the Alaska Advisory Committee to the U. S. Commission on Civil Rights concluded that “racism indeed exists in Alaska, although there was disagreement on the extent of the problem...” (Alaska Advisory Committee 2002:6).

Racism and discrimination were recurrent themes in my interviews with Native Alaskans; all of them told of experiencing ill treatment from Anglos. Perhaps the best way to summarize their experiences is to list what they had to say:

- > “Discrimination? There is plenty of that” (Michael Hunt 2013).
- > “You run into very few friendly people here [in Anchorage]” (Winiford Hunt 2013).
- > “They [Anglos] are mean to me sometimes; when I can’t understand the papers [the ballot] or the questions [on the ballot] we ask for help and they get mad at us” (Amelia Adams 2013).
- > “People are not so friendly, everywhere. Here in Alaska, you just don’t get treated friendly, it’s not a nice feeling. I’ve been asked to leave from a store, just for walking in. That was in Anchorage, never in the village. I know other people too, Natives, who have this happen” (Justina Shelton 2013).
- > “Some people have been discriminated against because they are Native. It all depends on whether you decide to engage” (Andrew Guy 2013).
- > “The white people want to discriminate against me. They think we are dumb, we don’t know what we are doing. They look down on us” (Alexandra Kozevnikoff 2013).
- > “Some tell me, why are you dumb? Who said this? The people who come around to our village. Some people say, get away from us, we are not here to see you. When I come to shop, they look at me like I’m just a poor Native” (Natalie Alexie 2013).
- > “I used to work on the parts line, the bosses called me a dumb Eskimo” (Patrick Kameroff 2013).
- > “Two federal employees said the villagers are lazy and uneducated.... They were supposed to be working on behalf of the villages” (Mark John 2013).
- > “Historically Alaska Natives were discriminated against. It wasn’t until after World War II that Natives were allowed to be fishermen to fish for canneries in Bristol Bay.... You could see discrimination at the cannery; the mess hall was segregated with a different section for the Natives” (Joe Chythlook 2013).

> “There is a bias for commercial fishermen so the Native fishermen in the river system are shot down” (Myron Naneng 2013).

> “The prejudice is that they [the state] are way up there and look down at Natives, not as if they are here with us” (Johnny Evan 2013).

These statements are corroborated by others. A witness at the 2001 town meeting organized by the mayor of Anchorage made this revealing statement:

I moved here nine year ago from five years in Asia and eight years in New York City and when I first came here I actually did not think that there was much racism here compared to other places where I had lived. I ran the Brother Francis Shelter for four years and still didn’t see the extent of racism here until I began working at Homeward Bound, where 88 percent of the clientele who we serve are Alaska Native. And I was, and have been, just astounded at the extent of the racism that I have found here against Alaska Natives (Morgan 2001: 22).

Another witness at the same town meeting made a similar claim: ‘Anchorage is racist.... The racial issues, the overtones, the undertones, the actuality of it is alive’ (James Patlin 2001:26).

Another witness was a Yup’ik from Bethel, who stated: “I think most of the people who wanted to come up and talk to you about what happens when racist comments or activities happen on the street, in restaurants, in bars happens, it really does. I’ve been at the receiving end of many of those” (Vaska 2001:14).

Additional corroboration is found in the book, *Growing Up Native in Alaska*. Some excerpts:

> “For Alaska Natives, discrimination was a fact of life. Jobs were scarce. And even the most basic of human needs, a way to maintain health, was elusive” (McClanahan 2000: 18).

> “Discrimination? I saw it in the military, and I felt it. It was very insidious.... I went to UAA and got introduced to the concept of institutionalized discrimination.... I saw it at UAF in the early ‘80s: Natives were invisible. We had the feeling that we weren’t wanted there. It hurt us” (Owletuck 2000: 174).

> “Discrimination? Here in Anchorage. It’s the worst I’ve ever felt it before” (Vo 2000: 186).

Other stories of discrimination come from memoirs, films, and blogs. Jan Harper-Haines tells how, as a little girl of mixed-race growing up in Sitka, she didn’t want to play with Indians. Her father then explained that she was half-Indian herself (Harper-Haines 2000: 15). In the documentary film, *For the Rights of All: Ending Jim Crow in Alaska*, Nora Marks Dauenhauer talks about her experience: “Coming to town in my childhood put us into first contact with whites. With this contact came our first experience with racism. From the first time I saw white hate, I experienced racism, as a white-hot whip can bring you to your knees with one strike” (Blueberry Productions 2009). In the same documentary, Rosita Worl says: “We might have enacted the Anti-Discrimination Act but that doesn’t mean the discrimination went away and racism remained, maybe not in its overt forms, but nevertheless still very pervasive” (*For the Rights of All: Ending Jim Crow in Alaska* 2009). In the popular blog, city-data.com, a blogger poses the question: “How bad is prejudice and racism in Anchorage? How well are minority citizens treated there?” The first response admits that there are racists in Alaska, but then claims it is the minorities who are the racists, and says that “you can run into some minorities/natives on the street who will literally spit in your face for no reason other than the color of your skin.” The next poster disagrees with that characterization, and says, “Natives suffer greatly from the racism that typical non-Native Alaskans direct at them constantly.” Subsequent posters agree with that

(city-data.com). All of these posts, including the first one, indicate a high degree of racial hostility and polarization.

These stories of deep-seated discrimination are also corroborated in the 29 interviews with Native elders conducted by Holly Miowak Stebing. The Natives she interviewed tell numerous stories of being the target of both overt and covert racism, and discrimination in housing, voting, jobs, transportation, and commercial enterprises (2009).

These compelling personal stories of racism are politically significant because the perpetrators of racism vote and participate in politics. It strains credibility to the breaking point to argue that this long history of racism has not affected state government and policies. Elected officials are aware of the inclinations of their constituents, and if they want to stay in office, they respond accordingly.

#### B. Political Context: Racial Bloc Voting and Turnout

Another “Senate Factor” is the “extent to which voting in the elections of the state or political subdivision is racially polarized.” Political cohesion and bloc voting are also “Gingles” factors (*Thornburg v. Gingles* 1986), and thus indicative of racially problematic political jurisdictions. There is evidence that voting in Alaska has been polarized for a long time. During the debate over the voter’s literacy test in 1925 a Juneau newspaper described William Paul as a leader of the “organized Indian voting bloc” (*Alaska Daily Empire* 1925). One of the major reasons why the literacy test was passed was to prevent that voting bloc from growing larger.

In 1993 the Department of Justice objected to Alaska’s proposed redistricting plan, noting that it would negatively affect Native voters, and that “there appears to have been a pattern of racially polarized voting in elections involving these districts” (Turner 1993). A local



newspaper headlined that the “Justice Department Rules Plan is Unfair to Natives in Interior” (Mader 1993). A revised plan was not approved until it “addresse[d] concerns about Native voting” (*Anchorage Daily News* 1994b). During the redistricting process following the 2000 Census, the state redistricting board hired a voting expert to determine the extent of racially polarized voting. That expert found numerous cases of polarized voting in several elections (Handley 2002). There were also problems following the 2010 redistricting. The chairperson of the redistricting board described what she called a “bad district” which was “a purposeful effort to dilute the Native vote” (Vicki Otte 2013; See also: *In Re 2011 Redistricting* 2012).

Turnout rates for minorities is also an important political factor. In the Voting Rights Act, low levels of participation in elections was one of the built-in triggers for Section 5 coverage; that is because low minority turnout is indicative of significant racial problems and voter suppression (Thernstrom 2009: 26-31; McDonald 2003: 124-127). Much of the assessment of the sufficiency of language assistance is measured by input variables, i.e. what the state has done procedurally going into an election cycle. Another approach to assessing efficacy is to examine output variables, i.e. how many LEP voters actually participate in presidential elections.<sup>7</sup> In the 2000 presidential election, the Native vote turnout was approximately 50 percent (Landreth and Smith 2006: 25). In the 2004 presidential election, Native turnout was 44.8 percent; Anglo turnout was much higher at 68.4 percent (*Congressional Record* 2006: S7962). According to a brief filed by the Alaska Federation of Natives, Alaska Native turnout was 17 % below the statewide average for the 2012 presidential election, for data from 100 Native villages; for areas with numerous LEP voters the difference can be as great as 30 %.

---

<sup>7</sup> The Voting Rights Act uses presidential elections as triggers because they have the highest turnout; if turnout among minorities is below 50 percent, it is indicative of serious problems.

(Tucker and Landreth 2013: 3)<sup>8</sup>. In the Bethel area's House District 38, turnout in 2008 was 57.7 percent, up from 54 percent in 1998. Turnout in that area's House District 6 was noticeably lower, ranging from a low of 15.18 percent in the Sleetmute precinct, to 57 percent in the Aniak precinct (Growden Affidavit 2008). For the 2012 presidential elections, data from 100 Native villages indicate that all but four of them had turnout less than that of state average. Of the 44 villages where there are Yup'ik speakers (and data was available), the average turnout was 16.3 percent below the state average (U. S. Census 2011). These figures are for all Native voters, not just LEP Native voters; it is probably a safe assumption that turnout among people who encounter significant language difficulties is even lower.

### C. The Socio-economic Context

Another of the "Senate Factors" is the extent to which minorities bear the effects of discrimination in employment. Also, it is a well-known axiom in political science that poverty correlates negatively with political participation (Wolfinger and Rosenstone 1980; Lien 2000). Unfortunately, that means that Native Alaskans must jump an additional hurdle to participate in state elections because they have high rates of poverty. Alaska Natives have a long history of poverty. After statehood, "Alaska Natives generally were viewed as extremely disadvantaged during the decade after statehood. The Yupiit of the Yukon-Kuskokwim delta region were among the most impoverished" (Fienup-Riordan 2007: 13). The 1994 Alaska Natives Commission's Final Report described "acute and chronic" unemployment in Alaska's Native communities (Alaska Natives Commission, Final Report. 1994). A 1998 analysis of Native job opportunities found that 74 percent of Native villages had unemployment rates exceeding 50

---

<sup>8</sup> Keep in mind that the state average includes the 15 percent of the population that is Native; if that were excluded from the sample, the average would be higher.



percent. That study also found that only 6.4 percent of state employees are Native, and they are primarily in lower-paying jobs (McDiarmid, et. al. 1998). Case and Voluck write: “In three separate studies preceding and following ANCSA and spanning nearly thirty years, Alaska natives were found to be among the most disadvantaged people in the nation” (2002: 209). A 2004 report found that “Natives are three times as likely as other Alaskans to be poor” (Goldsmith, et. al. 2004: 1). The report also notes that Native income levels are about half that of non-Natives, and incomes are lowest in the most remote villages; in other words, Native Alaskans living in rural villages are poorer than Natives living in less remote locations—they are the poorest of the poor (Goldsmith, et. al. 2004: 12). According to the 2010 Census, more than one-fifth of Alaskan Athabascans and Eskimos lived in poverty (U. S. Census 2006, Figure 8).

#### D. The Provision of Services

Another “Senate Factor” is “whether there is a significant lack of responsiveness on the part of elected officials to the particular needs of the members of the minority group.” Historian Stephen Haycox described the development of a “significant rift” between Native Alaskans and the state over declining state support for services in the 1990s (Haycox 2002: 309-10). The relationship between the state and Native Alaskans became so contentious that Byron Mallot, the former director of a Native corporation, wrote an opinion piece titled “It’s Not a Good Time to Be an Alaska Native” (Mallott 1999). Conflicts over service delivery continue; a few examples will illustrate the extent of the problem.

The 2002 report of the Alaska Advisory Committee to the U. S. Commission on Civil Rights analyzed at length the question of adequate provision of services, and found:

Although the SAC heard allegations of individual cases of racism and discrimination, many Alaska residents charged that the state itself has neglected its responsibility in the provision of services and finances for necessary programs. They argued that the state, through ill-conceived policies and unfair distribution of wealth, is culpable for the poor economic, social and political condition of its minority residents (Alaska Advisory Committee 2002: 7).

The governor at that time, Tony Knowles, acknowledged that there are problems: “There is no excuse for us not to provide the essential services based on a lack of budget” (Alaska Advisory Committee 2002: 7). The Governor’s Commission on Tolerance also referenced the problem of discrimination in the delivery of state services (2001: 17). And, as we know from the judge’s decision in the *Nick* case, the state has not provided adequate language assistance service (see discussion below). There are also challenges with the delivery of justice and police services (Indian Law and Order Commission 2013; Mauer 2013), and drinking water infrastructure—a backlog of nearly \$600 million in unmet needs (Environmental Protection Agency 2013: 29).

The Native people I interviewed repeatedly emphasized the lack of government responsiveness and a resulting lack of attention to village areas. Many of them pointed out that local politicians promise much, but deliver little. Here is a sample of their comments:

- > “I said why vote? You see them [politicians] on the news, they say they will help Natives, but they don’t do their jobs. They said they would help us, but they didn’t” (Winiford Hunt 2013).
- > “They make promises but after they are elected they don’t even come back to our region. They say: we’ll help you improve airports, as an example, but we don’t get it, nothing comes out of that” (Michael Hunt 2013).

- > “Turnout used to be pretty good [among Native people] but it’s dropping now. Younger people don’t have that same passion for participating. Older folks would vote. But for the younger people they think it won’t make a difference. They say they [the government] is supposed to provide services but the politicians aren’t here” (Andrew Guy 2013).
- > “Candidates show up and talk good but that’s it; we never see them again” (Sergie Nick 2013).
- > “The state provides a lot of service to the big city, but those in the bush they just leave us alone—and we’re in more poverty” (Alexandra Kozevnikoff 2013).
- > “State officials come only once in a great while, and we’d voice what we need, but then nothing usually happens. Like roads; we ask for roads, but the state hasn’t built them, they don’t respond. We talk about it for many years but it hasn’t happened” (Patrick Kameroff 2013).

#### E. The Educational Context

Another “Senate Factor” is the extent to which members of a minority group bear the effects of discrimination in education. Also, there is a strong correlation between educational attainment and political participation (Wolfinger and Rosenstone 1980). After the federal government purchased Alaska from Russia, it virtually ignored public education, especially in Native areas. About the only opportunity for Natives to get an education was if a mission happened to be opened in that area. In the 1884 Organic Act of May 17, 1884, the U. S. Congress finally established a governing structure in Alaska; the act severed Native education from state control, and vested it in the federal government (Case and Voluck 2002: 190).

One of the earliest figures in Alaska education was the Presbyterian missionary Sheldon Jackson. He initially attempted to establish mission schools in Alaska that were integrated, but he encountered a wall of opposition from local Anglos: “Jackson soon found he had to retreat

from intense white community pressure and to start separate Native public schools. With this, segregated schooling began in Alaska. The territory witnessed the beginning of parallel school systems that exist to the present day” (Dauenhauer 1996: 82). Today, Jackson would be labeled a cultural imperialist; he forbade any instruction in Native languages, and insisted that all reading and texts must be in English, with a thick overlay of biblical indoctrination (Alton 2005: 24-26). Native languages were considered unworthy of being utilized for reading the Bible. One enterprising missionary teacher concocted a mixture of myrrh and capsicum “hot like fire...everyone who talked Indian had his mouth washed to take away the taint of the Indian language” (quoted in Alton 2005: 27).

The Nelson Act of 1905 created a fully segregated school system, and required that “the schools specified and provided for in this Act shall be devoted to the education of white children and children of mixed blood who lead a civilized life” (Nelson Act 1905). This led to questions regarding the exact legal definition of a “civilized life.” In a test case in 1908, *Davis v. Sitka School Board*, mixed-blood children attempted to attend a public school for whites in Sitka, but the court ruled the children were not sufficiently civilized. The judge’s decision was overtly racist: “Those who from choice make their homes among the uncivilized or semi-civilized people and find their sole social enjoyments and personal pleasures and associations cannot, in my opinion, be classed with those who live a civilized life” (*Davis v. Sitka School Board* 1908). It was clear from the court’s decision that any child who retained even a vestige of Native language and culture—what the judge called “the old barbaric, uncivilized environment”—was considered too offensive to rub shoulders with white school children. This effectively barred Native people from all public schools. Dauenhauer described this time in the history of Alaska’s Natives like this: “The dark ages had settled over Alaska Native language and culture, and the

suppression would continue without letup until the 1970s” (Dauenhauer 1996: 86). Native children did win a victory eleven years after the Davis case when a judge forced a school district to admit a mixed blood girl to a public school (*Jones v. Ellis* 1929).

The state’s limited involvement in educating Natives, and the federal government’s inadequate efforts to provide education, had significant negative ramifications for Native school children. Many were sent to boarding schools in distant places—literally thousands of miles from home, with “deleterious effects” (*Tobeluk v. Lind* 1976: 4). Others, under a state program, were sent to live in the homes of white people in primarily urban areas, which also produced “harmful effects” (*Tobeluk v. Lind* 1976: 6). In the 1960s the state finally began providing local public school education to Native children, but only at the primary level (Cotton 1984). It was not until the Molly Hootch case (i.e. *Tobeluk v. Lind*) was settled that the state started building secondary schools in Native areas. The settlement agreement summarized the history of educational segregation and discrimination in Alaska: “Prior to the turn of the century, a dual school-system emerged unofficially in Alaska as resentment grew among the relatively few whites over emphasis on education for Natives and a belief that integrated schools would give only inferior education.... Two statutes enacted by Congress in the early 1900s [The Organic Act and the Act of March 3, 1917] gave official sanction to this dual system” (*Tobeluk v. Lind* 1976: 3). The lawyer for the plaintiffs in that case became involved after finding “overwhelming evidence that Alaska was in flagrant violation of the Equal Protection Clauses of both the 14<sup>th</sup> Amendment to the U. S. Constitution and Article 1, Section 1, of the Alaska Constitution (Cotton 2004: 4). The Molly Hootch case finally forced the state of Alaska to provide secondary education to Native villages. Those villages had been asking for quality education for decades, but, as the attorney for the plaintiffs in the case noted, “It was as if some officials simply could

not hear what people had for years been saying” (Cotton 1984: 8). After the court mandated the construction of these schools, it took a decade to actually build them (Cotton 1984: 42), and rural schools continued to have serious funding issues (*Kasayulie v. State of Alaska* 1999; *Moore v. State of Alaska* 2007).

The impact of decades of inadequate educational opportunities can be seen directly in the data on literacy and educational attainment. During the hearings on the 1975 renewal of the Voting Rights Act, Alaska Senator Gravel testified that the literacy rate among Native Alaskans was 36 percent—lower than that for Blacks living in the Jim Crow southern states that were also subject to Section 5 of the Voting Rights Act (quoted in Tucker 2009: 256). In 2002 the Alaska Advisory Committee to the U. S. Commission on Civil Rights summarized the problem: “Alaska Native students, in particular, score lower on achievement tests than any other minority group, and considerably lower than white students” (Alaska Advisory Committee 2002: 19). A 2004 report by the University of Alaska’s Institute of Social and Economic Research (ISER), based on the 2000 Census, found that 75 percent of Natives had a high school diploma, compared to 90 percent for Anglos (Goldsmith, et. al. 2004: 14). The good news is that educational levels among Natives rose sharply after the 1970s, due largely to the fact that the state constructed high schools in rural areas (it was forced to do so by the Molly Hootch litigation). Unfortunately, at the college level the numbers are still quite low; only 4 percent of people living in Native villages have a bachelor’s degree or more (U. S. Census 2006, Figure 13). Even more discouraging are the performance scores for Native school children; their scores on ACT and SAT tests are significantly lower than their Anglo counterparts, due to the “failure of the schools to adequately prepare Alaska Natives” (Alaska Native Commission, n.d.). Another study found that Native students scored “significantly lower” on benchmark exams and high school



qualifying exams (Alaska Native Policy Center 2004). A lower level of educational attainment makes it more difficult for Natives to participate fully in the political process. The literacy test is gone, but understanding the complexities of politics, ballot issues, and candidate perspectives requires a high-quality education.

LEP Native speakers are caught in a classic “catch-22.” The state, by all accounts, has provided poor opportunities for education; this has resulted in an extremely high rate of illiteracy and a large number of Native speakers who are not fluent in English. At the same time the state has a long history of literacy tests and English-only elections. In other words, the state requires a skill in order to vote with English-only voting materials, but has withheld or limited training in that skill. This guarantees a low level of voting among LEP voters. This contradiction has such a long history, and is so persistent, that it constitutes indirect evidence of purposive behavior designed to thwart the political participation of Native speakers. When the U. S. Congress was considering amending and renewing the Voting Rights Act in 1975, this link between inadequate education and the suppression of LEP voting was an important issue. The Senate Report notes: “...any literacy test has a discriminatory effect if the State or county has offered its minority citizens inferior educational opportunities. It may be assumed that many minority citizens who have received inferior education in certain areas of the county migrate to Northern and Western States where literacy tests might be imposed” (Senate Report 1975). The resulting amendment to the Voting Rights Act responded directly to this problem:

The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local



governments, resulting in severe disabilities and continuing illiteracy in the English language....The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections.... (Voting Rights Act, Sec. 203).

That paragraph seems particularly relevant to Alaska.

### III. LANGUAGE AND VOTING

The suppression of Native languages has long been a feature of the Alaskan education system. Missionary Sheldon Jackson laid out a framework for early mission schools that strictly forbade any instruction in a Native tongue, arguing that speaking a Native language was an impediment to “civilization.” The resulting “legacy of linguistic insecurity” still has an impact today (Dauenhauer 1996: 83). The literacy requirements for voting—part of the State Constitution until 1970, and a long tradition of English-only elections, have worked against the use of Native languages in state elections, and made it difficult for Native speakers to understand and participate in elections.<sup>9</sup> Many of the Native people I interviewed described how difficult it has been for Yup’ik speakers to fully participate in the political process and understand who, and what, they were voting for:

> “At least until the Bethel area put a complaint that they don’t understand the voting issues, there was a whole lot of people in our region who don’t understand the voting system for everyone to vote” (Michael Hunt 2013).

---

<sup>9</sup> It could have been worse; in 1998 voters in the state made English the state’s official language. This was struck down by the court (*Alaskans for a Common Language v. Kritz* 2007).

> “The people at the polls, they don’t do a good job. They couldn’t translate a ballot measure, not too many people understand that. Some of that [ballot measures] is hard to understand, even for me. We have to vote yes or no but we don’t quite understand what the language says”

(Justina Shelton 2013).

> “There is someone at the polling place that does ‘a little bit of explaining’ of the ballot. There is nothing in Yup’ik in writing. Some people who speak Yup’ik try to explain the ballot. They are local people.... Nowadays most people have enough to understand [election materials], but for people like me there could be help to understand better. Old people like me never had a good school or good grades” (Sergie Nick 2013).

> “The first people who did the voting booth, they just said mark this stuff down because you wouldn’t understand it anyway. We were frightened that someone might run us over if we didn’t put a mark on that paper. My forefathers didn’t know what they were voting for” (Alexandra Kozevnikoff 2013).

> “I first voted in Alakagik, they had a polling place there. My parents did not understand what was happening, but they still voted” (Joe Chythlook 2013).

> “One of the things I know is that some of the ballot initiatives are written so that if you vote yes that means you don’t support it. It’s confusing on purpose; there’s been so many examples” (Myron Naneng 2013).

But, despite the decades of language suppression, intolerance, and difficulties at the poles, many Natives still speak their own language due to physical isolation, inadequate or non-existent educational opportunities, and cultural pride and the strength and power of tribal traditions. In the 2011 Census there were 30,696 LEP Alaskan Native citizens of voting age in Alaska in areas covered by Section 203 (U. S. Census Section 203 Determinations 2011). The

Dillingham Census Area had a population in 2012 of 5,034 people, of whom 36.3 percent spoke a language other than English in the home. The Wade Hampton Census area had a population of 7,809 in 2012, 57.3 percent of which spoke a language other than English in the home. Yup'ik is the largest tribal group in Alaska, with 29,000 people identifying themselves as Yup'ik in the 2012 Census (U. S. Census 2012: 9). And, clearly, some of these people need language assistance in elections. In a 2009 survey of Native languages in Alaskan elections, the Institute of Social and Economic Research found that one-third of the respondents “did think language assistance was a problem for Yup'ik speakers in their communities—especially the Elders.” The report continued to list reasons why language assistance has been problematic (2009)

Alaska is required by Section 203 of the Voting Rights Act to provide language assistance to Native voters. It is important to understand that the state has fought vigorously and continuously to avoid this commitment—from the very beginning of the debate and passage of Section 203. When Section 203 was initially proposed, Alaskan Lieutenant Governor Lowell Thomas, Jr. immediately wrote to the counsel for the Subcommittee on Constitutional Rights, and insisted that Alaska be exempted from coverage (Thomas 1975a). He then wrote another letter to the chair of the Judiciary Committee, arguing for total exemption for Alaska, and making the wholly unsubstantiated statement that “Alaska’s native people do not feel discriminated against nor do they feel they are suffering any special burdens when it comes to participating in the electoral process” (Thomas 1975b). The abundant evidence in this report makes it clear that such a statement is contrary to a large body of data and the historical record.

Patty Ann Polley, the director of the Alaska Division of Elections in 1975, wrote to Congressman Don Young to provide information about Alaskan Native languages. She informed him that “Writing systems for the languages have been developed since 1960 [She was

apparently unaware of Moravian Yup'ik, developed in the 1800s]. Only in the last 3 or 4 years have writing systems been developed. As a result, many older people are unable to read the newly developed writing system" (Polley 1975). Polley included in her letter an itemized account of how much it would cost to translate and print bilingual ballots; the total came to \$24,300 per election (Approximate Expenses n.d.). That year, 1975, the state of Alaska's total appropriations were \$496 million; it is hard to believe that such a small sum would be an unbearable budgetary burden (Alaskabudget.com 2014a).

Congressman Young also received a letter from Lory Leary, the Southeast Election Supervisor for the state, imploring him to fight against Alaska's inclusion in Section 203 because the state would then be "burdened" with printing ballots in multiple languages. She argued that "very, very few people do not speak, read or understand the English language" (see data above that disprove that claim). She ended her letter with this statement: "As a taxpaying registered voter in the State of Alaska, I demand exemption for Alaska!" (Leary 1975). Keep in mind that both Polley and Leary were state election officials tasked with providing equitable voting opportunities for all Alaskans.

Congressman Young responded to this pressure by offering an amendment to the Voting Rights Act, and explained to Ms. Leary: "I offered an amendment on the House floor that would have exempted Alaska, however it failed by a vote of 145 to 264.... Fortunately, we did eliminate the state having to print bilingual ballots when the native language is oral and not written" (Young 1975). Senator Ted Stevens also fought hard against Section 203 coverage. In a letter to Lieutenant Governor Thomas he noted that "Don Young worked hard on the House side to exclude Alaska from this legislation." He then noted that he wrote to the chairman of the Judiciary Subcommittee "requesting that Alaska be excluded from any legislation extending the

Voting Rights Act of 1965” (Stevens 1975a). Stevens’ letter to Senator Tunney argued that including Alaska under Section 203 would be “extremely burdensome.” He ended his letter by saying “I do hope you will exclude Alaska from any legislation reported out of your subcommittee to extend the Voting Rights Act of 1965” (Stevens, 1975b).

The lone exception, at least temporarily, to the fierce resistance to Section 203 coverage, was Senator Mike Gravel. In a press release he encouraged Congress to include Alaska in Section 203: “Gravel urged continuing the act [The Voting Rights Act] for 10 years and increasing its coverage to all language minority groups, including the many groups of Alaska Natives. He expressed hope that the committee would interpret the phrase ‘language minority groups’ to including ‘native Alaskan language groups,’” (Gravel 1975). This prompted a letter from Lieutenant Governor Thomas to John Borbridge of Juneau, who apparently had some pull with Senator Gravel: “It seems that Alaska is going to be included with the result that we will have to print up ballots in all the twenty or more separate languages used in the State unless someone can convince Senator Gravel to change his position.... If you and other Native leaders would get in touch with Gravel and tell him to back off, it could make all the difference and save a lot of unnecessary grief in the coming statewide elections” (Thomas 1975c). Gravel’s press release also prompted letters from the home state. Cathleen Parrish, an election supervisor from the Central District, wrote to Senator Gravel with obvious anger, citing his press release and complaining that the application of the Voting Rights Act to Alaska would require the state to print bilingual ballots—“Alaska State election officials will be charged with the task of distributing these ballots.” However, she admitted that “it probably is possible that this responsibility can be carried out efficiently,” but concludes that it would be “extremely difficult” (Parrish 1975).

Senator Gravel gave in to the pressure and began working on some form of exemption. It was Senator Stevens, however, who took the lead on this and inserted an amendment into the Act that exempted “historically unwritten languages” from the requirement to provide printed ballots. When news of the exemption got back to Alaska, the Lieutenant Governor wrote a congratulatory letter to Senator Stevens, stating: “All of us involved in elections were absolutely delighted to learn through the press that you had been successful in amending the Voter [sic] Rights Act so that we would not be saddled with the expensive chore of printing up ballots in native languages that are spoken only. That would have been an impossible task in any event!” (Thomas 1975d). If Thomas’ claims are correct, it means that the entire Alaskan political edifice—the entire congressional delegation, the highest-ranking state elected officials, and everyone working in the elections division—opposed providing written assistance to Natives, and at least some of them opposed the entirety of Section 203 coverage.

Despite Senator’s Stevens “historically unwritten” exemption, Alaska still was forced to provide language assistance. The state’s Assistant Attorney General advised the Attorney General to immediately file a lawsuit against the U. S. “to have this requirement lifted” (Bradley 1975a). In a follow-up legal analysis, Assistant Attorney General Bradley expressed concern that the “historically unwritten” exemption language was not inserted into Section 4 (only Section 203), but then made an interesting concession that most Alaskan Native languages are in fact written: “...if we fail to escape preclearance under Section 5, we may be forced to print ballots and election materials.... This is because most, if not all, of the Alaskan Native languages are written, though, historically, little has been printed in them.” He notes later in his memorandum that the bible had been printed in Yup’ik, and that approximately 14,000 people



speak Central Yup'ik (Bradley 1975b).<sup>10</sup> Despite this, the state of Alaska assumed that no printed ballots in a Native language were required. The state was still required to provide language assistance in some form.

The sufficiency of this assistance was tested in the case of *Nick v. Bethel* (*Anna Nick v. Bethel, Alaska, et. al* 2008). The state of Alaska committed to providing additional language assistance to Native voters, but only because it was *forced* to do so. The Court noted that the state was supposed to be overhauling its Minority Language Assistance Program, “Yet the State’s efforts to overhaul the language assistance program did not begin in earnest until after this litigation began” (*Anna Nick v. Bethel*, Order). Indeed, in the settlement agreement the state of Alaska essentially admitted that it was only providing assistance because of the VRA: “The State’s agreement relating to language assistance under Sections 203 and 4(f)4 was set out in this Settlement and Release continues only so long as the BCA [Bethel Census Area] is subject to Sections 4(f)4 and 203 of the Voting Rights Act. The State will have no further obligations under this Agreement if: (1) the State ‘bails out’ of statewide Section 4(f)4 coverage and the BCA bails out from Section 203 coverage...” In other words, if the state can somehow escape the confines of the Voting Rights Act, it would no longer feel obligated to provide language assistance.

The parties agreed to settle but the issue remains contentious. The relevance of that to this report is not whether all the complaints in that motion are justified—that is up to the judge—but that yet again it appears that the state did not provide a comprehensive, aggressive effort to ensure maximum assistance. The *Nick* case and its aftermath were sufficiently contentious that the U. S. Attorney General ordered federal observers to the Bethel Census Area in 2009 to

---

<sup>10</sup> Father Ivan Veniaminov developed an Aleut dictionary and school textbooks in the 1820s (Borneman 2003). See footnote 12 for the early development of Yup'ik writing.



“enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States” (U. S. Attorney General 2009).

For the purposes of writing this report, I have had access to some depositions and emails provided by the defendants (but no expert reports provided by the defendants). In that paper trail I see a consistent pattern—a pattern that is the dominant theme of this report---and that is a pervasive, long-term tendency to resist assisting Natives, to fight against any additional assistance, and an attitude that the state’s election officials should do the absolute minimum amount of legally required assistance—and perhaps not even that in some cases. I describe many examples of this attitude below.

In 2004, the U. S. Department of Justice asked the Division of Elections for a list of bilingual voting officials in Wade Hampton and the North Slope. Laura Glasier emailed Becka Baker, asking for assistance in her response, but noted that she believed “our response is that we are not required to provide such service.” (Glasier email May 19, 2004). Ms. Baker replied that a majority of precincts had bilingual voting officials, but “I don’t have a database created here that has that info, nor has one ever been created—and VREMS does not keep track of this” (Baker email May 19, 2004). Without keeping track of which precincts actually have bilingual voting officials, how could the state adequately respond to the requirements of Section 203? Keep in mind that this statement was made almost three decades after Section 203 was applied to Alaska.

In 2008, the state’s HAVA Election Systems Manager was asked by the Gwich’in interpreter if she should translate all four ballot measures; the answer, provided by Shelly Growden, was: “If you have time to do the other measures, that would be fine, but at the least we need #1 and #4” (Growden email July 29, 2008). This same attitude of incomplete work was

**Exhibit A - Page 37 of 59**

expressed in the minutes from an April 22, 2012 Division meeting: “It would be nice to have translated ballot measures for the training in Bethel. Shelley said they should have most of it done for them” (Division of Elections April 21-22, 2010). In these cases, language assistance seems to be viewed as an optional luxury, not something that is required by law, and it certainly does not indicate an attitude that the state should be pursuing a complete, thoughtful, and well-intentioned effort to make sure Native speakers can understand everything on the ballot.

In 2008, the inadequacy of language assistance was revealed in another statement by election officials: “We may expand to add a Language Assistance Coordinator for the Athabascan and Inupiaq languages in 2010, but not for this election year. Siberian Yupik is still needed at polling places” (Managers Meeting May 12, 2008). That same year Ms. Growden admitted that some poll workers were not trained: “it is always a problem when we have workers working that did not receive training. We do have a mandatory training, but if the workers decide not to work after having training, we have to rely on untrained workers.” She then expressed the very attitude about which I have been writing—a resistance to shouldering the responsibility to assist people who need help with language during elections: “*Unfortunately* [my emphasis], it is the Division’s responsibility to provide the training and we cannot give that responsibility to the councils” (Growden email Sept. 3, 2008).

Inadequate assistance was also evident in 2009; a PSA in Yup’ik mispronounced the word for absentee voting, and instead used a word meaning “to be voting for a long time.” The language assistance coordinator noted that that word “is not a proper word to use” (Wassilie email 17 Sept. 2009a). Another Division employee responded that “we don’t pay KYUK all that much and to ask them to record the spot a third time would be asking a lot” (Tonkovich email Sept. 17, 2009). Ms. Wassilie, the language assistance coordinator, then decided to use the PSA

as-is without making the correction, noting “We’ll be criticized by the plaintiffs if they catch it, but what the heck, it’s a similar word and hope that it goes right over their heads” (Wassilie email September 17, 2009b). I realize that last statement was probably made in jest and without malice. But the decision not to improve the accuracy of the PSA is part of the overall pattern of inadequate effort.

During that same election cycle, the state Division of Elections sent a letter to village councils that included this statement: “If you need Yup’ik language assistance, please call toll-free....” The Division also sent flyers to each registered voter (Growden email October 23, 2008). I am not questioning whether those letters and flyers met the letter of the law, but observing that, if the state was truly interested in creating an inclusive election process with maximum access by all, would it not be prudent to provide all such materials in Yup’ik? Once again, the question here is in regard to attitude and behavior, which are telling in any determination of intent.

Another indication that full inclusiveness was not the objective of the Division of Elections came in an exchange of emails in 2009. Dorie Wassilie was asked if Village Council members should be invited to attend a Division meeting in Bethel. Her response was: “I think we need to think this over because if we invite them even to observe... they may end up participating and that would make the follow up meeting long and hard.... Some people don’t understand the standardization part and want their dialect to be included” (Wassilie email Feb. 2, 2009). This is another display of the attitude of non-inclusion, and attempting to avoid language assistance in all dialects.

The state of Alaska, in response to the *Nick* litigation, provided Yup’ik language assistance coordinators for Region 3 and Region 4. From 2008 to 2012 that person was Dorie

Wassilie. It is interesting to me that she never traveled to either the Wade Hampton or Dillingham Census areas as part of her work, and indicated she spent no time whatsoever working specifically on language assistance in those two areas (Wassilie Deposition 2013). The Region III Coordinator, and her two full-time employees, also never visited these areas (Speegle Deposition 2013). The Region IV supervisor, Becka Baker, had traveled to Dillingham to train poll workers, but had never been there to supervise elections. She had never visited Wade Hampton; her employees had not been to either area. When asked why, she said: "There's no need for us to go out to those villages" (Baker Deposition 2013: 68). In an email, Ms. Baker also expressed disdain for voters who need language assistance. When told that Yup'ik speakers had requested more assistance to help them understand "what is on the ballot," she dismissed it as merely "they want to be told 'how to vote' so to speak" (Baker 2012). The elections systems manager explained why state employees working for the election division do not visit Dillingham and Wade Hampton: "We don't usually go out into the communities. There's no legal requirement that we do, and we have outreach workers out there..." (Growden Deposition 2013: 80).

I also found it interesting that the language assistance coordinator's position is financed with HAVA funds, not state funds, and there is no separate fund for Yup'ik language assistance, despite the large numbers of Yup'ik speakers and the mandate of the *Nick* litigation (Fenumiai 2013; Growden Deposition 2013: 87-88). The state's lieutenant governor indicated that his point person on language assistance, Gail Fenumiai, had never requested any additional funding (Treadwell 2013: 39-43). Yet Division language assistance staff repeatedly state that their efforts are limited due to a lack of funds and they don't have the money to provide complete assistance. The 2009 ISER report, noted above, lists eight "challenges that it [the Division] faces

when implementing Yup'ik language assistance; one of the items is "limited resources" (the Institute of Social and Economic Research 2009: 4). In a meeting with Division staff in 2008, the minutes provide a clear indication that the state does not want to fully fund language assistance: "These [ballot measures] need to be sent to all Yupik precincts. Realizing there are many dialects, the division does not have the resources to produce in all dialects" (Division of Elections June 16, 2008). In other words, the Division could have provided translations in various dialects, but it chose not to spend the necessary money to do so. Yet, despite this alleged shortage of funds, the Division used its language assistance coordinator to work on issues other than language assistance --and paying for it with HAVA funds (see: Growden email Oct. 5, 2010). Keep in mind that this alleged inability to fund language assistance occurred when the state's total budget was approximately \$13 billion (FY 2012), and the state spent \$312 million on administrative expenses (alaskabudget.com 2014b).

If the state's objective was to provide the most effective and useful language assistance possible, and thus create an equal opportunity for Yup'ik-speaking voters to elect candidates of their choice, I would expect a much more aggressive program, well-funded by the state, and fully implemented in a way that maximizes outreach and contact in all areas that are covered by Section 203. In sum, I see another instance of the attitude I described earlier, endemic in the Division of Elections, to provide—at best-- the absolute least amount of language assistance, and only then because they have been forced to do so and at the least possible expenditure of state funds.

Also, the state argued in the *Nick* case—with some success—that Yup'ik is a historically unwritten language.<sup>11</sup> The Voting Rights Act provides that: "Where the language of the

---

<sup>11</sup> Even though the judge ruled that Yup'ik was a "historically unwritten" language, he still required the defendants to provide some materials in writing "to provide 'effective' language assistance as required by the federal

applicable minority group is oral or unwritten or in the case of Alaskan native and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting” (*Anna Nick v. Bethel*, Answer 2007: 5). Without engaging the question as to whether Native Alaskan languages are indeed historically unwritten, it once again points out that the state fights, rather than assists, Native voters.<sup>12</sup> If the state was truly interested in ensuring that LEP voters had equal access to voting, would it not willingly print all relevant documents, flyers, letters, and announcements in the Yup’ik language and its various dialects? That is not an impossible task. The state prepared a glossary of election terms in Yup’ik (required by the Settlement Agreement).<sup>13</sup> Yup’ik-English dictionaries are available (Jacobson 1984).<sup>14</sup> Some of the Declarations in the case at hand are printed entirely in Yup’ik, including that of the lead plaintiff, Mike Koyukuk (Koyukuk 2013; Franklin 2013). So obviously it is possible to use written materials, and the judge in the *Nick* case did require some materials to be written. This case again drives home the message that the state appears to do the minimum required by law, or perhaps less—I leave it to others to determine if it is the former or the latter.

#### IV. CONCLUSION

Several significant trends or patterns are discernable in the relationship between the state of Alaska and its Native citizens. These patterns are consistent, pervasive, and long-lasting.

---

regulations implementing the VRA.” This included sample ballots and a written glossary. See: *Anna Nick v. Bethel*, Order.

<sup>12</sup> Dauenhauer argues that The Yup’ik language was initially translated and written as early as 1842, when a missionary priest began to translate church materials (Dauenhauer 1996: 84). Charles says that his fellow Yup’ik instructors “carried remnants of a writing system introduced by early missionaries...” (2009: 87).

<sup>13</sup> There are appear to be some problems with the state’s Yup’ik glossary. See Michael Jackson’s deposition, pp. 93-96.

<sup>14</sup> A Yup’ik-English dictionary can be purchased on Amazon.com: Terry Miller. 2007. *Yup’ik (Central Eskimo) Dictionary*. World Friendship Publishing.



Even a cursory examination of the state's history indicates a deep-seated and long-term pattern of racism against Native Alaskans. There are of course numerous fair-minded Alaskans who are repelled by racist dogma—just like there was in the South when the Voting Rights Act was initially passed in 1965. But what is important in this regard is that prejudice has tainted so many official acts—both federal and state, starting with early enabling legislation, to the State Constitution, to the state's consistent resistance to the provisions of the Voting Rights Act. I think it is instructive that the state was covered by Section 4, Section 5, and some areas are covered by Section 203. In addition, the federal observer provisions have also been applied to the state. All of these sections of the Act are essentially means-tested; they can easily be avoided by simply conducting elections in a manner that does not prohibit, dilute or inhibit the ability of all racial and ethnic groups to have an equal opportunity to elect candidates of their choice. Yet Alaska failed every one of these means-tests. The application of so many elements of the Voting Rights Act is strongly indicative of persistent efforts on the part of the state to inhibit or minimize the ability of Native voters to participate in elections.

Particularly relevant to this point is Alaska's many attempts to bail out of Section 5 coverage. The state tried repeatedly to escape federal oversight—and was successful twice (both times before Section 203 became part of the law), but remained a covered jurisdiction until the *Shelby County* decision because it never had a clean record for the required ten-year period. The state argued that Alaska should never have been covered initially, and should not have remained covered (Geraghty n.d.) Without entertaining the merits of that claim, it is important to note that Alaska's inability to bail out was because the state kept engaging in behaviors that prevented bailout. The literacy test is one example; the state could have avoided problems by eliminating that "test or device" prior to 1970 (when it was forced to do so by federal law). Another example



is the Department of Justice's objection to the state's 1993 redistricting plan. The objection letter points out that the proposed redistricting would have had a negative impact on Native voters in House District 36, reducing their share of the voting age population from 55.7 percent to 50.6 percent (a difference that could mean the difference between electing a candidate of choice or losing). The redistricting would have also negatively affected Native voters in the corresponding Senate district (Turner 1993). Once again the state could have avoided problems by simply drawing district boundary lines that had a neutral effect on Native voters.<sup>15</sup> A third example is the decision by Attorney General Holder to send federal observers to the Bethel Census Area in 2009 after the Preliminary Injunction was issued in the *Nick* case. The state probably could have avoided that by an enthusiastic and complete response to LEP voters in that area. Satisfied voters seldom call for federal observers. The point is not whether the state violated the law in these three instances (that is a determination to be made by others), but rather that these incidents indicate a long-term, deeply embedded tradition in state government to fight, or at a minimum remain unresponsive, to the needs of LEP voters and other Native voters.

An additional indicator of this attitude can be found in Attorney General Geraghty's amicus brief to the U. S. Supreme Court in the *Shelby County* case. He argues that Alaska was "captured" (actually re-covered) by the 1975 amendments to the Voting Rights Act "because it [Alaska] failed to provide written election materials in languages that almost no one could read" (Geraghty n.d.).<sup>16</sup> There are three important elements in this statement. First, Mr. Geraghty apparently believes that the number of LEP voters who could benefit from written assistance is very small—"almost no one." Census data, cited above, indicate that there are thousands of

<sup>15</sup> Redistricting problems regarding Native legislators arose again in 2011. See: *In re Redistricting Cases*, Trial court No. 4FA-11-02209CI, Consolidated Case Nos. 4FA-11-2213CI/1JU-1100782CI. Supreme Court No. S-14721.

<sup>16</sup> Later in the same brief Mr. Geraghty says that Alaska was "again ensnared" in Section 5 "because the formula was expanded to include jurisdictions that provided 'registration and election materials...only in English' (p. 27).

voters who could potentially benefit from assistance. According to 2011 Census Determination data on population covered by the language assistance provisions of the VRA, there are 30,696 LEP Alaska Native voting-age people in Alaska who qualify (U. S. Census 2011). The Native speakers in that group are scattered across eleven political subdivisions (*Federal Register* 2011). In the Bethel Census Area—the subject of the *Nick* litigation, the plaintiffs state that 10,000 people speak Yup'ik. (*Anna Nick v. Bethel*, Complaint 2007: 6). According to the plaintiffs in the case at hand, 2,050 people speak Yup'ik in the Dillingham Census Area, and 18.3 percent of them are LEP. In the Wade Hampton Census Area, 3,195 voting-age people speak Yup'ik; 16.1 percent are LEP (*Toyukuk v. Treadwell*, Complaint 2013). This hardly constitutes “almost no one.” In short, Geraghty’s statement is dismissive of a significant group of potential Native voters, again reflecting a persistent attitude of, at best indifference, at worst, hostility to Native people with limited English proficiency.

A second point concerning Mr. Geraghty’s brief is that, if a significant number of LEP voters cannot read their own language it can be partially, if not largely, attributed to the inadequate schooling they have received, resulting in rather astounding rates of illiteracy. This strikes me as an example of blaming the victim and is illustrative of the “severe disabilities,” cited above, that are mentioned in Section 203.

A third point concerning Mr. Geraghty’s statement is an ethical rumination; is it ethical to discriminate against a group of people if their numbers are relatively small? There is no exemption clause in the Voting Rights Act that makes it is legal to refuse language assistance to LEP voters if their numbers are limited. Mr. Geraghty’s statement is symptomatic of the habitual response of the state to either minimize, ignore, deny, or fight any claim made by Native speakers that they need assistance.

This persistent attitude of, at best, limiting or minimizing responses to Native concerns is also reflected in a statement made by the state director of elections. When asked about low Native turnout among Yup'iks, she simply said that "has been the trend in that area" (quoted in Tucker 2009: 261). That appears to me to be an expression of indifference, not deep concern, but it's an attitude that matches the election division employees cited earlier. I do not see a commitment to improve Native turnout, simply a resignation that that's the way things are in Alaska.

The methodology that has directed me in the research for this report, known as Qualitative Methods, is effective at analyzing long-term trends and patterns that involve many interlocking variables. Any single data point, event, or expression of attitude is an insufficient basis upon which to draw conclusions. But when the analysis generates evidence of consistent patterns of behavior and actions over a lengthy period of time, I am confident that I can draw valid conclusions, even from indirect evidence. I have investigated whether intentional discrimination has affected the ability of Native Alaskans to fully participate in electoral politics, especially those of limited proficiency in English. It is my professional opinion that the long and persistent resistance to Native voting is at least partially explained by prejudice and an intentional desire to limit the voting efficacy of Native people. Why else would the state fight so hard against any effort to assist Native voters? Why else would there be such a predominant strain of anti-Native sentiment and expressions of discriminatory values in Alaska's history-- what Terrence Cole described as a "hidden plague of prejudice" and a "persistent pattern of discrimination" (Cole 1996: 316, 326)? Despite these attitudes, Native Alaskans have persistently attempted to participate in the political process. One of the most telling tidbits of information I came across in my research for this report was one line in the minutes of a meeting

held by the Division of Elections: “**I Voted Stickers**—Translated stickers. These were a big hit” (Division of Elections Meeting Oct. 2-3, 2008). Obviously voting is important to Native people, as it is to all of us.

In my professional opinion the state has engaged in intentional nonfeasance that is systematic, pervasive, and persistent over many decades. I reach this conclusion after reading numerous accounts of how the state responded to the needs of Native citizens only after being *forced* to do so by federal legislation or litigation. For example, the state responded to the *Nick* litigation with an array of language assistance tools (State Defendant’s Post-Election Report 2008). But this was because they were forced to do so; even the report just cited was ordered by the court. As one of the Native interviewees put it, “the state fights us” (Andrew Guy 2013). Another Native interviewee was even more strident in his criticism of Alaskan government: “the state is more authoritarian against the tribes, not egalitarian which is the way we are. They are like a dictator” (Johnny Evan 2013). I think it is instructive that there is not a single department or division in Alaska state government that is devoted to Native affairs; with the exception of references to the commercial value of Native Arts, and the Alaska Native Language Council, Natives are virtually invisible. And, in the “on-going struggle to exercise self—determination and sovereignty,” the state did not formally “recognize and respect” the 227 federally recognized tribes in the state until the turn of this century, and subsequent governors have attempted to rescind any form of recognition (Barnhardt 2001: 13; UAF 2014; Alaska Commission on Rural Governance and Empowerment 1999: 34).

The conflicts between the state government and Native Alaskans are numerous, including subsistence issues, land rights, sovereignty, the provision of services, law enforcement, language assistance—the list is long. This enduring, multi-faceted conflict has generated bitter feelings

and resentment; it is impossible to analyze this conflict and not conclude that purposeful discrimination is at work here. I do not believe any fair-minded, objective observer could examine the history of Alaska Natives and their relationship to the state government, and reach any other conclusion. Whether it is the delivery of educational resources or other services, or assistance in voting, each act of beneficence by the state toward Native people has been presaged by a federal law or court case that mandated such behavior. This could only be interpreted as purposeful behavior intended to reduce or minimize Native Alaskan voting.

#### REFERENCES

Adams, Amelia. 2013. From the village of Nunam Iqua. In-person Interview, Anchorage, AK, Dec. 16.

*AFN Report*. 2001. May 18, Vol. 1, Issue 4. "Lawsuit Filed in Paintball Attack."

Alaska Advisory Committee. 2002. U. S. Commission on Civil Rights. "Racism's Frontier: The Untold Story of Discrimination and Division in Alaska." April.

Alaskabudget.com. 2014a. Table: "State Unrestricted General Fund Appropriations."  
<http://citizensguide.uaa.alaska.edu/3.SPENDING>

\_\_\_\_\_. 2014b. "Understanding Alaska's Spending."  
<http://citizensguide.uaa.alaska.edu/3.SPENDING>

Alaska Commission on Rural Governance and Empowerment. 1999 (June). "Final Report to the Governor."

*Alaska Daily Empire*, 6 March 1925. Quoted in Mary Childers Mangusso, "Anthony Dimond and the Politics of Integrity." In *An Alaska Anthology*, ed. by Stephen Haycox and Mary Childers Mangusso, pp. 246-266. Seattle: University of Washington Press.

Alaska Federation of Natives. 2001 (April 26). "Briefing on Recent Hate Crimes Against Alaska Natives and Other Acts of Discrimination." Anchorage, AK

Alaska Natives Commission, Final Report. 1994 (May). University of Alaska, UAA Justice Center.

Alaska Natives Commission (n.d.). Report of the Education Task Force, Section Four, "Alaska Native Education." [www.alaskool.org/resources/anc2/ANC2\\_sec4.html](http://www.alaskool.org/resources/anc2/ANC2_sec4.html)

Alaska Native Policy Center. 2004. "Alaska Native K-12 Education Indicators, 2004."

Alaska Session Laws. 1915. 52, April.

*Alaskans for a Common Language v. Kritz*. 2007. 170 P.3d 183.

Alexie, Natalie. 2013. From the village of Russian Mission. In-person interview, Anchorage, AK, Dec. 16.

Alton, Thomas. 2005. "Politics, Economics, and the Schools: Roots of Alaska Native Language Loss Since 1867." *Alaska History* 20, No. 2: 18-41.

*Anchorage Daily News*. 1994a. "Racist Sign Triggers Soul-Searching at Juneau High School." Feb. 7.

\_\_\_\_\_. 1994b. "Feds Approve Redistricting Plan." May 11

\_\_\_\_\_. 1995. "Landlord's Policies Racist, Jury Says." July 29.

\_\_\_\_\_. 1998a. "Urban-Rural Divide Widens in Juneau." May 3.

\_\_\_\_\_. 1998b. "Native Rights Demonstration Born Out of Frustration." May 7.

Anchorage Museum at the Rasmuson Center. 2013. Visited Dec. 16. Wall panel.

*Anna Nick v. Bethel, Alaska, et.al.* 2008. Case no. 3:07-cv-00098-TMB

\_\_\_\_\_. Complaint. Filed June 11, 2007.

\_\_\_\_\_. 2010. "Settlement Agreement and Release of All Claims Under Sec. 203, 4(f)4, and 208 of the Voting Rights Act."

Approximate Expenses. n.d. Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

Atwood, Evangeline. 1979. *Frontier Politics: Alaska's James Wickersham*. Portland, OR: Binford and Mort.

Baker, Becka. 2004. Email of May 19 to Laura Glaiser. SOA 007026.

\_\_\_\_\_. 2012. Email of Nov. 27 to Shelly Growden. SOA 005846.

\_\_\_\_\_. 2013. Deposition in the case of *Toyukuk v. Treadwell*.



Bancroft, Hubert. 1886. *The Works of Hubert Howe Bancroft*, Vol. XXXIII. San Francisco: A.C. Bancroft & Co.

Barnhardt, Carol. 2001. "A History of Schooling for Alaska Native People." *Journal of American Indian Education* 40 (Issue 1), pp. 1-27.

Bartolini, Stefano. 2013. "The Temporal Dynamics of the Franchise Expansion: Timing, Tempo, and Reversals." *Qualitative & Multi-Method Research* 11 (Fall, No. 2): 3-7.

Bennett, Andrew, Aaron Barth, and Kenneth Rutherford. 2003. "Do We Preach What We Practice? A Survey of Methods in Journals and Graduate Curricula." *PS: Political Science and Politics*, 36 (3), 372-376.

Berger, Thomas. 1985. *Village Journey: The Report of the Alaska Native Review Commission*. New York: Farrar, Straus and Giroux.

Blueberry Productions. n.d. *For the Rights of All: Ending Jim Crow in Alaska*. Documentary film, produced in 2009. Produced by Jeffry Loyd Silverman. [www.alaskacivilrights.org/](http://www.alaskacivilrights.org/)

Borneman, Walter. 2003. *Alaska: Saga of a Bold Land*. New York: Perennial.

Bradley, Richard. 1975a. Memorandum to Attorney General Avrum Gross, subject: "Voting Rights Act of 1975." Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339. Director's Subject Files. Box AS 8755, folder, "Voting Rights Act of 1965-1970."

\_\_\_\_\_. 1975b. Memorandum to Attorney General Avrum Gross, subject: "Background Analysis; Voting Rights Act of 1975." Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339. Director's Subject Files. Box AS 8755, folder, "Voting Rights Act of 1965-1970."

Case, David and David Voluck . 2002. *Alaska Natives and American Laws*, 2<sup>nd</sup> Ed. University of Alaska Press.

Charles, Walkie Kumaggaq. 2009. "Continuing Our Language." In *The Alaska Native Reader*, ed. by Maria Shaa Tlaa Williams, pp. 192-201. Duke University Press.

Chythlook, Joe. 2013. From the village of Togiak and Dillingham. In-person interview, Anchorage, AK, Dec. 17.

city-data.com. Accessed January 21, 2014. <http://www.city-data.com/forum/anchorage/859793-racism-anchorage-alaska.html>

Cole, Terrence. 1980. Alaska State Archives. RG 251 Office of History and Archaeology. DNR



Ser. 1347 Historic Project Files 1971-2000. Box AS 25399, folder "Terrence Cole. 1980 South Central."

\_\_\_\_\_. 1996. "Jim Crow in Alaska." In *An Alaska Anthology*, ed. by Stephen Haycox and Mary Childers Mangusso, pp. 314-335. Seattle: University of Washington Press.

*Congressional Record*. 2006. Vol. 152 (July 20): S7962.

Constitutional Convention. 1955. Alaska Constitutional Convention Minutes, Dec. 13, 36<sup>th</sup> day.

Cotton, Stephen. 2004. "Thirty Years Later: The Molly Hootch Case." *Sharing Our Pathways* 9, Issue 4 (Sept./Oct.).

\_\_\_\_\_. 1984. "Alaska's 'Molly Hootch Case': High Schools and the Village Voice." *Educational Research Quarterly* 8, No. 4, pp. 30-44.

Craciun and Associates. 1991. Report Submitted to "Winning with Stronger Education."

*Davis v. Sitka School Board* (1908). 3 Alaska 481.

Dauenhauer, Richard. 1996. "Two Missions to Alaska." In *An Alaska Anthology*, ed. by Stephen Haycox and Mary Childers Mangusso, pp. 76-88. Seattle: University of Washington Press.

Denzin, Norman K. and Yvonna S. Lincoln, eds. 2000, 2011. *The SAGE Handbook of Qualitative Research*, 1<sup>st</sup> ed., 4<sup>th</sup> ed. SAGE Publications.

Department of the Interior Opinion. 1932. "Status of Alaskan Natives." 53 Interior Dec. 593, 1932. WL 2244 (DOI).

Division of Elections. 2008. June 16. Meeting. SOA 011274.

\_\_\_\_\_. 2008. Oct. 2-3. Meeting. SOA009641

\_\_\_\_\_. 2012. April 21-22. Meeting. SOA 011317.

Driscoll, Joseph. 1943. *War Discovers Alaska*. Philadelphia, PA: J. B. Lippincott Co.

Environmental Protection Agency. 2013. "Drinking Water Infrastructure Needs Survey and Assessment. Fifth Report to Congress. EPA 816-R-13-006. April.

Evan, Johnny. 2013. From the village of Tuntutuliak, and Bethel. In-person interview, Bethel, AK, Dec. 18.

*Federal Register*. 2009. "Certification of the Attorney General; Bethel Census Area, AK." Vol. 74, No. 192, Oct. 6.

\_\_\_\_\_. 2011. "Voting Rights Act Amendments of 2006, Determinations Under Section 203." Vol. 76, No. 198, Oct. 13.

Fenumiai, Gail. 2013. Deposition, Nov. 1. In the case of *Toyukuk v. Treadwell*.

Fienup-Riordan, Ann. 2007. *The Way We Genuinely Live*. University of Washington Press.

Franklin, Andrew. 2013. Declaration, August. In the case of *Toyukuk v. Treadwell*.

Geraghty, Michael. n.d. "Brief of Amicus Curiae The State of Alaska in Support of Petitioner Shelby County, Alabama." *Shelby County v. Holder*, No. 12-96.

Glasier, Laura. 2005. Email of May 19 to Becka Baker. SOA 007026.

Goldsmith, Scott., et. al. 2004. "The Status of Alaska Natives Report 2004, Vol. 1." Institute of Social and Economic Research, University of Alaska, Anchorage.

Goodwin, Sorrel. 2013. In-person interview, Alaska State Library, Historical Collections. Dec. 13.

Governor's Commission on Tolerance, Final Report. Juneau, AK, Dec. 6.

Gravel, Mike. 1975. Press release dated May 29. Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

Green, Melissa, and Sharon Chamard. 2013. "Experience of Racism in Anchorage." *Alaska Justice Forum* 30 (Summer): 8-9.

Growden, Shelley. 2008. Email of July 29 to Adeline Raboff. SOA 011164.

\_\_\_\_\_. 2008. Email of Sept. 3 to Dorie Wassilie. SOA009033.

\_\_\_\_\_. 2008. Email of October 23 to various parties. SOA009828.

\_\_\_\_\_. 2008. Affidavit. "Affidavit of Shelly Growden for State Defendants' post-Election Report for General Election 2008." *Anna Nick v. Bethel*, Dec. 3.

\_\_\_\_\_. 2010. Email of 5 Oct. 5 to Julie Husmann. SOA012222.

\_\_\_\_\_. 2013. Oct. 23. Deposition in the case of *Toyukuk v. Treadwell*.

Gruening, Earnest. 1943. Letter to Lt. General Simon B. Buckner, Fort Richardson, AK, May 20.

\_\_\_\_\_. 1969. "Forward." In *Men of the Tundra: Eskimos at War*. New York: October

House.

\_\_\_\_\_. 1973. *Many Battles: The Autobiography of Ernest Gruening*. New York: Liveright.

Guy, Andrew. 2013. From Calista Native Corporation. In-person interview, Anchorage, AK, Dec. 16.

Halpin, James. 2009. "Race Seems to be Sole Reason for Downtown Attack." *Anchorage Daily News*, Aug. 14.

Harper-Haines, Jan. 2000. *Cold River Spirits*. Epicenter Press.

Handley, Lisa. 2002. "A Voting rights Act Evaluation of the Proposed Alaska State Legislative Plans: Measuring the Degree of Racial Bloc Voting and Determining the Effectiveness of Proposed Minority Districts. Unpublished.

Harrison, Gordon. n.d. "Alaska's Constitution: A Citizen's Guide," 4<sup>th</sup> Ed. Alaska Legislative Affairs Agency.

Haycox, Stephen. 1986/87. "William Paul, Sr., and the Alaska Voters' Literacy Act of 1925." *Alaska History* 2, No. 1 (Winter): 17-38.

\_\_\_\_\_. 2002. *Alaska: An American Colony*. University of Washington Press.

Hensley, William Iggiagruk. 2009. "Why the Natives of Alaska Have a Land Claim." In *The Alaska Native Reader*, ed. by Maria Shaa Tlaa Williams, pp. 192-201. Duke University Press.

Hinckley, Ted. 1982. *Alaskan John G. Brady: Missionary, Businessman, Judge, and Governor, 1878-1918*. Columbus: Ohio State University Press.

Hunt, Michael. 2013. From the village of Kotlik. In-person interview, Anchorage, AK. Dec. 16.

Hunt, Winiford. 2013. From the village of Kotlik. In-person interview, Anchorage, AK. Dec. 16.

Indian Law and Order Commission. 2013. "A Roadmap for Making Native America Safer." November.

*In Re 2011 Redistricting Cases*. 2012. Trial court No. 4FA-11-02209CI, Consolidated Case Nos. 4FA-11-2213CI/1JU-1100782CI. Supreme Court No. S-14721

Institute of Social and Economic Research. 2009. "Yup'ik Language Assistance Tribal Outreach: Report to the Alaska Division of Elections, Part 1. University of Alaska Anchorage. June 22.

Jackson, Michael. 2013. Deposition in *Toyukuk v. Treadwell*.

Jacobson, Steven. 1984. *Yup'ik Eskimo Dictionary*. Fairbanks: Alaska Native Language Center,

University of Alaska Press.

John, Mark. 2013. From the Calista Elders Council. In-person interview, Anchorage, AK, Dec. 17.

*Jones v. Ellis*. 1929. 8 Alaska 146. No. 1323-KA, Dist. Ct. Terr. Alaska, Nov. 9.

Kameroff, Patrick. 2013. From the village of Kotlik. In-person interview, Anchorage, AK, Dec. 17.

Kelly, Casey. 2013. "Juneau Panel Aims to Deconstruct Racism in Alaska and Beyond." KTOO, Juneau, Nov. 25.

Knowles, Tony. 2002. Administrative Order No. 195. Office of the Governor, State of Alaska, March 5.

Kozevnikoff, Alexandra. 2013. From the village of Russian Mission. In-person interview, Anchorage, AK, Dec. 16.

Lamont, Michèle, and Patricia White. 2009. Workshop on Interdisciplinary Standards for Systematic Qualitative Research. Washington, DC: National Science Foundation, Cultural Anthropology, Law and Social Science, Political Science, and Sociology Programs.  
[www.nsf.gov/sbe/ses/soc/ISSQR\\_workshop\\_rpt.pdf](http://www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf).

Landreth, Natalie, and Moira Smith. 2006. "Voting Rights in Alaska 1982-2006." A Report of RenewtheVRA.org. March.

Langdon, Steve. 2002. *The Native People of Alaska*. Anchorage: Greatland Graphics.

Leary, Lory. 1975. Letter to the Honorable Don Young, dated May 28. Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

Lethcoe, Jim, and Nancy Lethcoe. 1994. *A History of Prince William Sound, Alaska*. Rev. ed. Prince William Sound Books.

Lien, Pei-te. 2000. "Who Votes in Multiracial America? An Analysis of Voting Registration and Turnout by Race and Ethnicity, 1990-1996." In *Black Politics in Multiracial America*, edited by Yvette Alex-Assensoh and Lawrence Hanks. New York: New York University Press.

Liston, Donn. 1974. "Gruening Rights Fight Recalled." *Anchorage Daily News*, June 28.

Mader, Ian. 1993. "Redistricting Plan Rejected." *Fairbanks Daily News Minor*. September 29.

Mallott, Byron. 1999. "It's Not a Good Time to be an Alaska Native." *Anchorage Daily News*. May 3.

Manager's Meeting Agenda. 12 May 2008. SOA 011261.

Marston, Marvin "Muktuk." 1969. *Men of the Tundra: Eskimos at War*. New York: October House.

Mauer, Richard. 2013. "What Now for Panel's Ideas to Improve Law and Order in Rural Alaska?" *Anchorage Daily News*, Dec. 7.

McClanahan, Alexandra (Ed). 2000. *Growing Up Native in Alaska*. Anchorage: The CIRI Foundation.

McDiarmid, G. Williamson, et. al. 1998 (November). "Expanding Job Opportunities for Alaska Natives (Interim report)." Institute of Social and Economic Research, University of Alaska, Fairbanks.

McDonald, Laughlin. 2003. *A Voting Rights Odyssey*. New York: Cambridge University Press.

Mitchell, Donald Craig. 1997. *Sold American: The Story of Alaska Natives and Their Land, 1867-1959*. Hanover: University Press of New England.

Morgan, Hilary. 2001. Statement made at Mayor's Town Meeting. MCPRTF/Office of the Mayor, Discussion of Racism in Anchorage. Fairview Recreation Center, Anchorage, AK. May 11.

Naneng, Myron. 2013. From the village of Hooper Bay, and Bethel. In-person interview, Bethel, AK, Dec. 18.

National Alliance. n.d.a. "We Believe..." Alaska State Archives, RG 378 Governor Tony Knowles, 1994-2002. Office of the Governor, Ser. 1581 Governor's Commission on Tolerance. Box AS 7188, folder "Hate Crimes."

\_\_\_\_\_. n.d.b. "Dear Alaska Legislator." Alaska State Archives, RG 378 Governor Tony Knowles, 1994-2002. Office of the Governor, Ser. 1581 Governor's Commission on Tolerance. Box AS 7188, folder "Hate Crimes."

National Park Service. 2007. "Civil Rights in America: Racial Voting Rights." Department of the Interior, A Historical Historic Landmark Theme Study. March.

Native Voices. 2014. <http://www.nlm.nih.gov/nativevoices/timeline/362.html?tribe=Tlingit>

Nelson Act. 1905. Act of January 27, 1905, Sec. 7, 33 Stat. 616.

Nick, Sergie. 2013. From the village of Pitkas Point. In-person interview, Anchorage, AK, Dec. 16.

Niedermeyer, Deborah. 1988-89. "The True Interests of a White Population": the Alaska Indian Country Decisions of Judge Matthew P. Deady." *NYU Journal of International Law and Policy*. Vol. 21: 195.

Northern Construction. 1948. Amended Platt of Sexton Subdivision. Filed May 10 with the U. S. Commissioners Office, Anchorage, AK.

Olson, Wallace. n.d. Alaska State Archives. RG 251 Office of History and Archaeology, DNR. Ser. 1347 Historic Project Files 1971-2000. Box AS 25399, folder "An Introduction to the Native People of Alaska, by Wallace M. Olson.

Otte, Vicki. 2013. CEO for Native Affairs for MTNT Limited. In-person interview, Anchorage, AK, Dec. 18.

Owletuck, George. 2000. In: McClanahan, Alexandra (Ed). 2000. *Growing Up Native in Alaska*. Anchorage: The CIRI Foundation.

Patlin, James. 2001. Statement made at Mayor's Town Meeting. MCPRTF/Office of the Mayor Discussion of Racism in Anchorage. Fairview Recreation Center, Anchorage, AK. May 11.

Parrish, Cathleen. 1975. Letter to the Honorable Mike Gravel. . Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

Paul, Fred. 2003. *Then Fight For It*. Victoria, Canada: Trafford.

Peratrovich, Elizabeth. n.d. "A Recollection of Civil Rights Leader Elizabeth Peratrovich, 1911-1958." Available at:  
[http://www.alaskool.org/projects/native\\_gov/recollections/peratrovich/Elizabeth\\_1.html](http://www.alaskool.org/projects/native_gov/recollections/peratrovich/Elizabeth_1.html)

Peter, Evon. 2009. "Undermining Our Tribal Governments: The Stripping of Land, Resources, and Rights from Alaska Native Nations." In *The Alaska Native Reader*, ed. by Maria Shaa Tlaa Williams, pp. 178-183. Duke University Press.

Polley, Patty Ann. 1975. Letter to the Honorable Don Young. Dated April 28. . Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

Ray, Charles. 1973. "Alaska Native Education: An Historical Perspective." Department of the Interior, Bureau of Indian Affairs. October.

Shelton, Justina. 2013. From the village of Nunam. In-person interview, Anchorage, AK, Dec. 16.

Speegle, Michell .2013. Oct. 29. Deposition in the case of *Toyukuk v. Treadwell*.



State Defendants' Post-Election Report for General Election 2008. 2008. *Nick v. Bethel*, Dec. 4.

Stevens, Ted. 1975a. Letter to Hon. Lowell Thomas, Jr. Dated May 16. Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

\_\_\_\_\_. 1975b. Letter to Senator John Tunney. Dated May 16. . Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

Territory of Alaska. 1945. Alaska Equal Rights Act. Approved Feb. 16.

Tetpon, John. 1988. "In Memory of a Rights Advocate: State Sets Aside Day in Honor of Elizabeth Wanamaker Peratrovich." *Anchorage Daily News*, June 6.

Thernstrom, Abigail. 2009. *Voting Rights—and Wrongs*. The American Enterprise Institute.

Thomas, Lowell, Jr. 1975a. Letter to Marshall Goldberg, dated April 18. . Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

\_\_\_\_\_. 1975b. Letter to the Honorable John Tunney, dated June 3. Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

\_\_\_\_\_. 1975c. Letter to John Borbridge, dated May 14. Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

\_\_\_\_\_. 1975d. Letter to the Honorable Ted Stevens, dated July 28. Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

*Thornburg v. Gingles* (1986). 478 U. S. 30.

*Tobeluk v. Lind*. 1976. "Agreement of Settlement." No. 72-2450. Sup Ct. AL, 3<sup>rd</sup>. Jud. Dist.

Tonkovich, Alexa. 2009. Email of Sept. 17 to Doris Wassilie and Shelly Growden. SOA012072.

Toyukuk, Mike. 2013. Declaration, Mike Toyukuk-aam Apervikuallri, Aug. 28. In the case of *Toyukuk v. Treadwell*.

Treadwell, Mead. 2013. Oct. 31. Deposition in *Toyukuk v. Treadwell*.

Tucker, James, and Natalie Landreth. 2003. "Amicus Brief of the Alaska Federation of Natives,



Alaska Native Voters and Tribes In Support of Respondents.” In the case of *Shelby County, Alabama, v. Holder* (Feb. 1).

Tucker, James. 2009. *The Battle Over Bilingual Ballots*. Burlington, MT: Ashgate Publishing.

Turner, James. 1993. Letter to Virginia B. Ragle, Assistant Attorney General, State of Alaska, from James Turner, Acting Assistant Attorney General, U. S. Department of Justice. Sept. 28.

UAF. 2014. “Federal Recognition of Alaska Tribes and Relations with the State of Alaska.” <http://tm112.community.uaf.edu/unit-4/federal-recognition-of-alaska-tribes-and-relations-with-the-state-of-alaska/>

U. S. Attorney General. 2009. “Certification Regarding Federal Observers for the BCA, 74 Fed. Reg. 51, 320 (Oct. 6).

U. S. Census. 2013. “Alaska QuickFacts from the U. S. Census Bureau.” <http://quickfacts.census.gov/qfd/states/02000.html>

\_\_\_\_\_. 2013. “Voting Rights Determination File.” [http://www.census.gov/rdo/data/voting\\_rights-determination\\_file.html](http://www.census.gov/rdo/data/voting_rights-determination_file.html)

\_\_\_\_\_. 2012. “The American Indian and Alaska Native Population 2010.” Issued January.

\_\_\_\_\_. 2011. “Language Minority Group Citizen Voting Age Population for Areas Covered for that Language Minority.” [https://www.census.gov/rdo/data/voting\\_rights\\_determination\\_file.html](https://www.census.gov/rdo/data/voting_rights_determination_file.html)

\_\_\_\_\_. 2010. Table 7: “American Indian and Alaska Native Population by Selected Tribal Groupings: 2010.” U. S. Census Bureau.

\_\_\_\_\_. 2006. Figure 8. “Poverty Rate 1999.” *We the People: American Indians and Alaska Natives in the United States*. U. S. Census Bureau.

\_\_\_\_\_. 2006. Figure 13. “Educational Attainment by Place of Residence: 2000.” *We the People: American Indians and Alaska Natives in the United States*. U. S. Census Bureau.

U. S. Senate Report No. 97-417. 1982. U. S. Code Cong. And Adm. News 177: 206-7.

*U. S. v. Jones*. 1923. D. Alaska Territory 250.

Vaska, Tony. 2001. Statement made at Mayor’s Town Meeting. MCPRTF/Office of the Mayor Discussion of Racism in Anchorage. Fairview Recreation Center, Anchorage, AK. May 11.

Vo, Deborah. 2000. In: McClanahan, Alexandra (Ed). 2000. *Growing Up Native in Alaska*. Anchorage: The CIRI Foundation.

Voting Rights Act, Sec. 203 (Title 42, 1973aa-1a, "Congressional Findings and Declaration of Policy."

Wassilie, Dorie. 2009. Email of 2 Feb. 2 to Alexa Tonkovich. SOA010003.

\_\_\_\_\_. 2009a. Email of 17 Sept. 17 to Alexa Tonkovich and Shelly Growden. SOA012064.

\_\_\_\_\_. 2009b. Email of Sept. 17 to Alexa Tonkovich and Shelly Growden. SOA012072.

\_\_\_\_\_. 2013. Oct. 31. Deposition in the case of *Toyukuk v. Treadwell*.

Will, E. J. 1943. Adjutant to General Simon Bolivar Buckner. Posts Headquarters, Fort Ray, AK. May 11.

Wolfinger, Raymond, and Steven Rosenstone. 1980. *Who Votes?* Yale University Press.

Wuerch, George. 2001. MCPRTF/Office of the Mayor Discussion of Racism in Anchorage. Fairview Recreation Center, Anchorage, AK. May 11.

Young, Don. 1975. Letter to Lory Leary, Southeast Election Supervisor. June 12. Alaska State Archives. RG 35 Division of Elections. Office of the Governor. Ser. 339 Director's Subject Files. Box AS 8755, folder "Voting Rights Act Correspondence 1975."

Daniel McCool  
Expert Witness Report  
*Toyukuk v. Treadwell, AK*  
January 30, 2014



<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA</p> <p style="text-align: center;">-ooOoo-</p> <p>MIKE TOYUKAK, et al., : CIVIL NO. 3:13-CV-00137-JWS</p> <p>Plaintiffs, :</p> <p style="text-align: center;">DEPOSITION OF:</p> <p>v. : DAN MCCOOL</p> <p>MEAD TREADWELL, et al, : TAKEN: March 3, 2014</p> <p>Defendants. :</p> <p style="text-align: center;">-ooOoo-</p> <p style="text-align: center;">Deposition of DAN MCCOOL, taken on behalf of the Defendants, at 10 West 100 South, Suite 200, Salt Lake City, Utah, before ROCKIE E. DUSTIN, Certified Shorthand Reporter for the State of Utah, pursuant to Notice.</p>	<p style="text-align: right;">Page 3</p> <p>2</p> <p>WITNESS PAGE</p> <p>3</p> <p>4 DAN MCCOOL</p> <p>5 Examination by Ms. Paton-Walsh. . . 5</p> <p>6 Examination by Mr. Tucker. . . . 193</p> <p>7 Further Exam by Ms. Paton-Walsh. . 194</p> <p>8 Further Exam by Mr. Tucker. . . . 195</p> <p>9 Further Exam by Ms. Paton-Walsh. . 196</p> <p>10</p> <p>11 -ooOoo-</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>For the Plaintiff:</p> <p>James Thomas Tucker WILSON, ELSER, MOSKOWITZ, EDLEMAN &amp; DICKER LLP 300 South Fourth Street Suite 1100 Las Vegas, NV 89101</p> <p>For the Defendant:</p> <p>Margaret Paton-Walsh ASSISTANT ATTORNEY GENERAL P.O. Box 110300 Juneau, AK 99811</p> <p style="text-align: center;">-ooOoo-</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX TO EXHIBITS</p> <p>2 EXHIBITS PAGE</p> <p>3 No. 150 Vita 14</p> <p>4 No. 151 Expert Witness Report 37</p> <p>5 No. 152 Excerpt from the Moore Opinion 123</p> <p>6 No. 153 United States Code Annotated 182</p> <p>7 No. 154 Opposition of AK Federation of Natives 185 to Motion for Temporary Restraining Order and Preliminary Injunction</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 (Pages 1 to 4)

**Exhibit B - Page 1 of 17**

Page 5

1 March 3, 2014 9:38 a.m.

2 PROCEEDINGS

3 DAN MCCOOL,

4 called as a witness herein, having been first duly

5 sworn by the Certified Court Reporter to tell the

6 truth, was examined and testified as follows:

7 EXAMINATION

8 BY MS. PATON-WALSH:

9 Q. Good morning, Professor McCool. My name is

10 Margaret Paton-Walsh and I'm one of the lawyers

11 representing the state of Alaska in this case.

12 Could you state your full name for the

13 record, please?

14 A. Yes. Paton, dash, Walsh?

15 Q. Yes. No Y, just sounds like there would

16 be.

17 A. Oh, really. P --

18 Q. A-T-O-N.

19 A. P-A, okay. All right.

20 My name is Daniel Craig McCool.

21 Q. Have you ever been involved in a lawsuit

22 before, other than as an expert witness?

23 A. I got a divorce once.

24 Q. Okay.

25 Were you deposed in that lawsuit?

Page 6

1 A. No.

2 Q. Were you deposed in a case where you've

3 been an expert witness?

4 A. Yes.

5 Q. And what was the most recent time that you

6 were deposed?

7 A. That would have been in the Cottier V

8 Martin case. I'd have to refer to my vitae, but I

9 would guess about -- that must have been about six or

10 eight years ago.

11 Q. Okay.

12 I'm going to start by going over sort of

13 just some ground rules so that we can -- the goal is to

14 make the clearest possible transcript.

15 A. Great.

16 Q. So that's sort of the basic idea for these

17 rules. There are a few other things.

18 I'd like to start by saying, you just took

19 an oath and that oath means you need to give complete,

20 accurate and truthful testimony to the best of your

21 knowledge and ability.

22 Do you understand that?

23 A. I do.

24 Q. You also -- at the end of the deposition,

25 you'll get a chance -- well, once the transcript is

Page 7

1 ready, you'll get a chance to review the transcript and

2 make any clarifications or changes. But if you do

3 change your answers, later on that might be used to

4 impeach you at trial. So I want you to understand

5 that.

6 A. Okay.

7 Q. Is there anything that would prevent you

8 from testifying fully and truthfully today? Illnesses,

9 medications, anything like that?

10 A. I'm on the tail end of a cold so I'm a

11 little hoarse, but I brought cough drops and

12 medications and coffee to help me get through today.

13 Q. Well, one of the other things is we can

14 take a break whenever necessary. If you need more

15 coffee or more water or whatever, or to take a bathroom

16 break or whatever, we can do that.

17 A. Okay. Great. Thank you.

18 Q. Because the court reporter is writing down

19 everything that we say, in order to get the most

20 accurate transcript, it's important that you answer

21 questions with a "yes" or "no" as opposed to saying

22 "uh-huh" or "um-hum" or something like that. Just

23 totally natural, everybody does it all the time, but

24 it's not always clear on the transcript whether that's

25 affirmative or negative.

Page 8

1 So if you can say "yes" or "no," that's

2 much more helpful. We'll try to catch if you stop

3 doing that, because it's totally easy to do, to fall

4 back in sort of more natural speech patterns. But

5 that's why I may say to you sometimes, "Is that a yes?"

6 I'm not trying to be rude. I'm just trying to get the

7 clear answer for the transcript.

8 A. I see. Thank you.

9 Q. Also, it's very hard for the court reporter

10 to take down what we're saying when we're both talking

11 at the same time.

12 A. Yes.

13 Q. So in an ideal world, you'll wait for me to

14 finish the question before you start to answer. I will

15 wait to finish -- for you to finish your answer before

16 I ask you another question.

17 The more conversational a deposition is,

18 the more difficult that is to maintain. So we'll try

19 to keep it smooth, but at some point, Rockie may

20 interrupt us and be like, "Hey, I can't everybody down

21 at once." So we'll try to keep that clean.

22 If you don't understand a question that

23 I've asked you, please ask me to repeat it or to

24 clarify it. Maybe if you don't hear me, I can repeat

25 it. Sometimes I can be wordy and confusing and

2 (Pages 5 to 8)

**Exhibit B - Page 2 of 17**

1 Q. And then you compared that data with data  
2 from the elections? So you looked at turnout figures  
3 and party --  
4 A. And how they voted, yes.  
5 Q. Okay.  
6 There's a name for what you did and that  
7 particular method of analysis that I can't think of  
8 right now.  
9 MR. TUCKER: I know what it is if I can  
10 tell him. It's called stream precinct analysis.  
11 THE WITNESS: At that time, I don't think  
12 that name existed and I don't think anybody had done  
13 that.  
14 MS. PATON-WALSH: That wasn't the phrase I  
15 was thinking, but that sort of describes it. Some kind  
16 of precinct thing.  
17 MR. TUCKER: Yeah, what it means is where  
18 you take the one with the most and the one with the  
19 least.  
20 THE WITNESS: Sure.  
21 MS. PATON-WALSH: Sure.  
22 BY MS. PATON-WALSH:  
23 Q. So then from that -- that was in 1982. So  
24 then it looks to me like maybe you didn't do any more  
25 voting rights research until the early 2000s; is that

1 fair?  
2 A. I didn't publish something for quite some  
3 time. I was busy writing books on water policy, so  
4 that sort of took over. Let's see. I had a book  
5 chapter come out in 1985. That's at the bottom of  
6 page 4 in my vitae.  
7 Q. You have too many publications, Professor  
8 McCool, for me to find everything. Okay.  
9 A. That came out in 1985. And yes, then there  
10 was a --  
11 Q. Was that based on the same research or had  
12 you expanded that research by that time?  
13 A. I had expanded that to include the data set  
14 that I had originally used, but also did a historical  
15 context analysis. So I looked at laws that affected  
16 Indian participation --  
17 Q. Okay.  
18 A. -- as a book chapter. I'm sorry.  
19 Q. And then -- but -- and then from -- is  
20 there something else that I missed between 1985 and --  
21 A. No. I'm thinking.  
22 Q. -- 2007?  
23 A. At that point, I began working on water  
24 policy and Indian water rights, which I also felt like  
25 was very important. And again, that was an area where

1 there was a huge gap in the literature. Tons of books  
2 on water, very few of them actually analyzing the role  
3 of Indian tribes in that milieu of policies and laws  
4 and things.  
5 So there was a period where I switched. I  
6 wrote two books on Indian water rights and negotiated  
7 water settlements. That took up quite a bit of time.  
8 Q. Yeah. Writing books is -- yeah.  
9 A. Right.  
10 Q. So is the -- am I right there, that the  
11 next -- your next publication is the "Native Vote:  
12 American Indians, the Voting Rights Act, and the Right  
13 to Vote"?  
14 A. Yeah, that's probably the next one dealing  
15 specifically with voting rights. There are two books  
16 on water policy and American Indians that deal  
17 extensively with both the historical context and the  
18 political context. So I -- especially Command of the  
19 Waters. That was my first book about Indian water. It  
20 delves deeply into the political role of American  
21 Indians and their participation, but it's not limited  
22 to voting.  
23 And I didn't gather additional precinct  
24 evidence, but I did develop the role of Indians as  
25 political players in the political system.

1 Q. Sure.  
2 This book, Native Vote, it looks like it  
3 was written with Susan Olson and Jennifer Robinson.  
4 Can you explain the collaboration to me?  
5 A. Yes.  
6 Susan Olson is a colleague in political  
7 science who does research on law and society.  
8 Jennifer Robinson was one of her graduate  
9 students.  
10 Q. And did you -- so sometimes there are books  
11 that are written partly by one person and partly by  
12 another, and then there are genuinely joint writing  
13 projects where people draft together.  
14 Can you sort of -- are there parts of this  
15 book that are yours --  
16 A. Yes.  
17 Q. -- rather than theirs?  
18 A. Yes. I wrote four chapters. Susan wrote  
19 two chapters and Jenny wrote two chapters. So I wrote  
20 half the book.  
21 Q. Can you tell me which chapters are your  
22 chapters?  
23 A. I was afraid you were going to ask me that.  
24 Q. You don't have to remember the number, but  
25 maybe you can remember what they were about.



1 A. Well, the first one was the historical  
2 context, which I think is Chapter 1. And there's a  
3 chapter based on my Blaine County expert report and  
4 there's a chapter based on my Bone Shirt expert report.  
5 And then I wrote the final chapter on modern Indian  
6 political participation.  
7 Q. Okay. Have you ever done any research in  
8 Alaska?  
9 A. Not until this time.  
10 Q. Okay.  
11 Had you been to Alaska before your trip in  
12 December?  
13 A. Yes.  
14 Q. Can you tell me when and where you went?  
15 A. I was in Alaska in 1974 and I hitchhiked to  
16 Anchorage from Tucson, Arizona.  
17 Q. How long did that take?  
18 A. A month, but I didn't have any money. And  
19 I was going there to work so that was the only way I  
20 could get there. I did stop at Denali on the way and  
21 do a little sightseeing.  
22 Q. Seems like a good stop.  
23 A. Yes.  
24 Q. Was that a summer job?  
25 A. Yes. I believe it started -- I think I

1 left Tucson in early May and I flew out to -- I believe  
2 it's Naknek and Bristol Bay, and then I had to -- I  
3 think flew to Bethel on a commercial plane, and then  
4 hired a bush pilot to fly me to Naknek. And then I  
5 hired a boat to take me out to the salmon processing  
6 ship where I worked.  
7 And we spent a month in Bristol Bay and  
8 then we went north to the Yukon River Delta and we  
9 spent a little over a month there. While I was there,  
10 I went to villages of Emmonak, and there was one  
11 other -- another village close to Emmonak.  
12 Q. Alakanuk?  
13 A. I think it was Alakanuk. This was 1974.  
14 Q. I won't take that to the bank or anything.  
15 A. I was only three.  
16 (Laughter.)  
17 THE WITNESS: This is the only way I could  
18 go get the money to go to graduate school.  
19 BY MS. PATON-WALSH:  
20 Q. So you were -- most of the time you were  
21 living on a salmon processing ship?  
22 A. Yes, for two months. Yes.  
23 Q. Is that as horrifying as it sounds?  
24 A. Yes. Yes. Yes.  
25 Q. Okay.

1 A. And then we decided to leave the ship, so  
2 we hired a local person to pick us up in a boat and  
3 they took us to, I think it's -- is it Alakanuk? Is  
4 that how you say it?  
5 Q. I believe it's pronounced Alakanuk.  
6 A. I think that's -- do both of them have an  
7 airstrip, Emmonak and Alakanuk?  
8 Q. Yes.  
9 MR. TUCKER: Relatively speaking.  
10 BY MS. PATON-WALSH:  
11 Q. Well, airstrip doesn't require that much,  
12 right? So I'm assuming that you're not talking about  
13 an airport, right?  
14 A. No, the airport terminal was like a log  
15 cabin.  
16 Q. There's a terminal? I'm actually surprised  
17 there's a terminal.  
18 A. There was a log cabin, one-third the size  
19 of this room.  
20 Q. Yeah, but still, I feel like a lot of  
21 villages just have an airstrip and nothing there.  
22 A. There was a building we were directed to go  
23 into. And they said, "You can get your tickets there."  
24 And we went in and they said -- we said, "When does the  
25 next plane leave?"

1 And they said, "Whenever the weather  
2 clears. We have no idea when that will be."  
3 And I think we were there three days. It  
4 was multiple days we were there. And then finally, an  
5 airplane showed up and I got on it, and I'm pretty sure  
6 we went to Bethel. And then I think I took a  
7 commercial flight from Bethel back to Anchorage. And  
8 then I stayed in Anchorage for a few days, just roaming  
9 around, sightseeing, and then started hitchhiking --  
10 When I went to Alaska, I went up the Alcan  
11 Highway, but now I had at least -- they had the worst  
12 salmon season in history. I thought I would come home  
13 with thousands of dollars and I came home with  
14 hundreds, but at least I could afford the state ferry.  
15 So I hitchhiked -- I believe the route goes  
16 up to Fairbanks and then comes down to Haines Junction.  
17 And I hitchhiked that and then got on the Alaska state  
18 ferry. And I took that to Prince Rupert Island and  
19 started hitchhiking again.  
20 BY MS. PATON-WALSH:  
21 Q. And how long did it take you to get home?  
22 A. Well, school starting so this time I was in  
23 a big hurry. So I just got home in a few days. I  
24 stayed with it.  
25 Q. And before -- in between 1974 and last



1 December, had you been to Alaska?

2 A. Yes. My wife and I went there for a  
3 vacation about five years ago and we went to Juneau and  
4 hung out for a couple of days. And then we took the  
5 ferry up to Skagway and stayed there for a day or two.  
6 And then we backpacked the Chilkoot Trail in to Canada  
7 to -- I think it's called White Horse, the railroad  
8 station. And we took the railroad back to Skagway and  
9 then we hired a private plane.

10 This is a little different level of  
11 accommodation than when I was there in 1974.

12 We hired a private plane and went to  
13 Glacier Bay and stayed in a B&B there for, I don't  
14 know, maybe five or six days.

15 Q. Okay.

16 But you -- in neither of those times, 1974,  
17 approximately, 2008, '9, you didn't do any research?

18 A. No. No.

19 Q. Have you ever taught a class on Alaska  
20 history?

21 A. No.

22 Q. Okay.

23 So also on your CV, I'm going to talk about  
24 a paper that you gave last year called "Social Science  
25 Expert Witness Testimony in Voting Rights Act Cases."

1 A. Uh-huh (Affirmative). What page are we on?

2 Q. Page 7. The first of the conference papers  
3 listed.

4 A. Yes.

5 Q. I'm fascinated about how that conference  
6 ended up in the Czech Republic.

7 A. It travels, so it's in a different place  
8 every year. And the idea is to draw an international  
9 audience. So the audience for our paper, I think the  
10 theme was something like indigenous people's -- no, it  
11 wasn't indigenous people. It was Democratic Rights and  
12 Participation or something like that.

13 So there was someone from South Africa  
14 there, a couple of people from Europe, and I believe a  
15 woman from Japan.

16 Q. Okay.

17 So you were on a panel, is that right?

18 A. And we delivered a paper.

19 Q. And so this was a paper that you wrote with  
20 three other people?

21 A. Yes.

22 Q. Can you talk to me about that  
23 collaboration? How did that work?

24 A. Well, Richard Engstrom is the one who  
25 organized it. I have -- he's a political science

1 professor. I've known -- he goes by "Dick." I've  
2 known Dick for many, many years. He's one of the  
3 chapter authors in my edited book, The Most Fundamental  
4 Right.

5 I brought him to the University of Utah  
6 campus as a guest lecturer in about, oh, 2006. Up to  
7 that point, I had read a lot of his stuff. If you  
8 think I've published a lot, this is child's play  
9 compared to Richard Engstrom, a leading expert. He  
10 does quantitative analysis.

11 So I had read a lot of his stuff but I  
12 didn't actually meet him until I brought him to the  
13 campus as a speaker, as part of the program on voting  
14 rights. And then I emailed with him and communicated  
15 with him when I was working on the edit book.

16 And he organized this. And at that time, I  
17 did not know Jorge Chapa or Gerald Webster. I still  
18 have not met them, but Dick has worked with them off  
19 and on through the years.

20 Q. So if you haven't met them, all four of you  
21 did not go to Prague?

22 A. No. Just Dick and I went.

23 Q. Okay.

24 And what's the -- can you summarize the  
25 substance of the paper for me?

1 A. Yes. They're -- Jorge and Gerald are  
2 geographers who have been involved in VRA cases, Voting  
3 Rights Act cases.

4 And Dick and I are political scientists,  
5 but we use different methodologies, and Jorge and  
6 Gerald are both geographers but they use different  
7 methodologies.

8 So we explored four different methodologies  
9 that are applied in expert witness reports in Voting  
10 Rights Act cases.

11 Q. Okay.

12 So let's talk about your expert testimony  
13 and Voting Rights cases.

14 A. Okay.

15 Q. So United States versus Blaine County, what  
16 was the -- what was that litigation about?

17 A. It was a Section 2 case regarding the  
18 county commissioners for Blaine County. A portion of  
19 the county is the Gros Ventre and Assiniboine, Fort  
20 Belknap Indian Reservation.

21 And they had not elected a county  
22 commissioner because there were three and they were  
23 elected at large, even they though represented  
24 districts. And the case was an effort to force the  
25 county to use district elections in the selection of

1 So if I could, I might go to the primary source. That  
 2 takes a lot of time and it's not always available.  
 3 That data would be -- if that was the only data I have,  
 4 I would report it as an editorial that claims this.  
 5 That's different from saying, "Here is the data."  
 6 Q. Okay.  
 7 A. Okay?  
 8 Q. So on page 3 of your report at the top, you  
 9 say -- I'm starting on the third line, "Qualitative  
 10 Methods is well-suited for expert analysis in voting  
 11 rights cases because it is adept at analyzing phenomena  
 12 that are complex, multi-dimensional, and subject to  
 13 rapid change."  
 14 A. Uh-huh (Affirmative).  
 15 Q. Can you expand on that for me? What other  
 16 questions that experts are called upon to answer in  
 17 voting rights cases?  
 18 A. What other questions?  
 19 Q. What are the questions? You say  
 20 "well-suited for this particular type of analysis," and  
 21 I'm wondering what are the questions that experts are  
 22 being asked?  
 23 A. Well, I think you're asking me to speak for  
 24 experts that use other methodologies and I --  
 25 Q. No. I'm just -- I think I'm -- you say,

1 "Qualitative methods is well-suited to this particular  
 2 category of analysis."  
 3 A. Uh-huh (Affirmative).  
 4 Q. And I'm asking you what the questions are  
 5 that you're asked in these kinds of cases?  
 6 And then my next question is going to be,  
 7 why is qualitative methods so adept at answering these  
 8 questions?  
 9 MR. TUCKER: And I'll just object to the  
 10 form of the question, but you may answer.  
 11 THE WITNESS: Okay.  
 12 The kinds of questions are ones like the  
 13 one that I answer here. Right here, the purpose of the  
 14 analysis. There's the question. Qualitative methods  
 15 is well-suited to answer a question like that.  
 16 BY MS. PATON-WALSH:  
 17 Q. And why is that?  
 18 A. Precisely because it's good at analyzing  
 19 phenomena that are complex, multi-dimensional and  
 20 subject to rapid change. And then I quote from a  
 21 well-known article, or a book, on qualitative methods  
 22 that says, "It's particularly useful for studying  
 23 timely topics such as group identities and boundaries,  
 24 race, class and gender."  
 25 And then I quote another source that says,

1 "Phenomena that occur over long periods of time to the  
 2 number of variables and factors that change over time."  
 3 I think, if you look at this question, it  
 4 embodies all of those different research challenges  
 5 there. It's long term, things change over time.  
 6 There's a number of variables at work.  
 7 And it's very difficult to use quantitative  
 8 analysis with such a long period of time with multiple  
 9 variables like that. It gets very complex. That's  
 10 where qualitative analysis, I think, really shines, is  
 11 looking at patterns of data over many different kinds  
 12 of evidence and numbers and words over a long period of  
 13 time in a complex political situation.  
 14 Q. Okay.  
 15 I want to shift gears a little bit now and  
 16 talk about how you -- as a scholar, how you assess the  
 17 quality of work that you're reading. So you have a lot  
 18 of book reviews in your -- on your vitae. You have --  
 19 do you have graduate students?  
 20 A. I do.  
 21 Q. So when graduate students give you their  
 22 work for review, I want to try and understand what it  
 23 is that you look for to assess the quality of that  
 24 work.  
 25 MR. TUCKER: I'll object to the form of the

1 question, but you may answer.  
 2 THE WITNESS: Okay.  
 3 There is -- the way I would address a book  
 4 review might be quite different than the way I might  
 5 evaluate a graduate student, but I think there's a  
 6 couple of different questions that you would always  
 7 ask.  
 8 One is the adequacy of the methodology.  
 9 The second is whether it was employed  
 10 correctly.  
 11 And third, whether the conclusions are  
 12 supported by the data.  
 13 BY MS. PATON-WALSH:  
 14 Q. Okay.  
 15 So when you're reading, do you look for  
 16 things like, for example -- let's imagine that you're  
 17 reading an academic work in a subject that's not your  
 18 primary field of research.  
 19 Would you look for -- well, first of all,  
 20 would you double-check sources in order to determine  
 21 whether somebody has correctly cited them?  
 22 A. No, I'm not a copy editor. So for example,  
 23 in a book review, unless I saw it, an egregious error,  
 24 or it looked to me like someone had misquoted something  
 25 or had mischaracterized a word with which I was

1 familiar, I might go to that work. But ordinarily, I  
 2 would not assume that they made up the list of  
 3 references.  
 4 Q. But you would -- but you just listed a  
 5 couple of things. So you said an egregious error.  
 6 Would that be like a factual error?  
 7 A. Yes.  
 8 Q. The first world war started in 1910 or  
 9 something like that?  
 10 A. Yes. If I saw that and I was writing a  
 11 book review or reviewing a student's paper, I would  
 12 draw -- point out that factual error.  
 13 Q. And then I think you said a misquotation?  
 14 A. Yes, or mischaracterized something.  
 15 Q. So what about incomplete citations?  
 16 A. You mean if I saw one?  
 17 Q. Yeah. I mean if you're grading a graduate  
 18 student's work and there's an incomplete citation that  
 19 leaves it impossible for you to determine where  
 20 something is coming from, is that a troubling sign to  
 21 you?  
 22 A. Oh, I might ask them to provide a full  
 23 citation. That's an easy mistake to make. It doesn't  
 24 mean that they're trying to mislead me or they didn't  
 25 actually use the cite. It may mean they've left off a

1 page number or something.  
 2 Q. And I think you said inaccurate quotation,  
 3 but I think you also said citing something that doesn't  
 4 really stand for the proposition that you think the --  
 5 let me back up and say this. Let me try to  
 6 characterize it.  
 7 If you see something or somebody is citing  
 8 a work for a proposition that seems inconsistent with  
 9 the thesis of that work, is that -- is that the sort of  
 10 thing that --  
 11 A. What I said was if they have  
 12 mischaracterized a work with which I am familiar.  
 13 Q. Okay.  
 14 A. So I can recognize it.  
 15 Q. How did you come to be involved in this  
 16 particular litigation?  
 17 A. I received a phone call from Mr. Tucker,  
 18 and maybe Natalie might have been on the phone, I can't  
 19 remember, and they asked me if I was interested in  
 20 working on this case.  
 21 Q. Okay. Do you remember when that phone call  
 22 came?  
 23 A. In early November. Late October, something  
 24 like that.  
 25 Q. Okay.

1 A. I have three different jobs at the  
 2 University of Utah so I --  
 3 Q. You don't keep track of everything  
 4 meticulously?  
 5 A. Keeping track of when a phone call came in  
 6 is problematic.  
 7 Q. That's fine.  
 8 Do you know why they want your expert  
 9 testimony in this case? Do you know what that -- let  
 10 me rephrase it.  
 11 Do you have any idea how it fits into the  
 12 lawsuit?  
 13 A. They briefly described the lawsuit. They  
 14 told me what my task would be if I wanted the work.  
 15 And it's a task with which I'm familiar using  
 16 qualitative methods.  
 17 Q. So what did they describe your task as  
 18 being?  
 19 A. To answer this question here.  
 20 Q. Okay.  
 21 MR. TUCKER: And specifically, what you  
 22 just pointed to was the purpose of the analysis on  
 23 page 3, Bates number 20828?  
 24 THE WITNESS: Yes.  
 25 MR. TUCKER: Thank you.

1 BY MS. PATON-WALSH:  
 2 Q. Do you consider yourself to be fairly  
 3 familiar with the Voting Rights Act?  
 4 A. I'm not a lawyer so I could not recite to  
 5 you everything in the Act.  
 6 Q. I would be amazed if you could find a  
 7 lawyer who could do that.  
 8 A. Right. Right. So I have a general  
 9 understanding of it, but not a lawyer's understanding  
 10 of it.  
 11 Q. Okay.  
 12 Are you familiar with the concept of  
 13 bail-in?  
 14 A. Uh-huh (Affirmative). I'm sorry.  
 15 Q. That's a yes?  
 16 A. Yes, vaguely.  
 17 MR. TUCKER: And I know we caught you  
 18 mid-sip on that.  
 19 THE WITNESS: Yes. Vaguely.  
 20 BY MS. PATON-WALSH:  
 21 Q. So can you tell me what your vague  
 22 impression or understanding of bail-in is?  
 23 A. Well, there's both a bail-in and a bail-out  
 24 provision. Bail-out means you can get out of Section 5  
 25 or 2 or 3 coverage and bail-in means you could be

1 added.

2 Q. Okay.

3 Is it your understanding that your report

4 relates to the plaintiffs' request that the state of

5 Alaska be bailed in to coverage under Section 5?

6 A. They didn't ask me to do that. They asked

7 me to answer this question, so I've just focused on

8 this.

9 Q. Okay.

10 MS. PATON-WALSH: I'm wondering if now is a

11 good time to take our first break.

12 MR. TUCKER: Sounds good.

13 (Recess taken.)

14 MS. PATON-WALSH: Back on the record.

15 BY MS. PATON-WALSH:

16 Q. I just want to remind you that you're still

17 under oath. I want to do that each time. It's just a

18 formality.

19 A. Okay. Thank you.

20 Q. I believe just before the break you were

21 saying that the research question came from the

22 plaintiffs.

23 So that was a question given to you in this

24 exact form?

25 A. We discussed it. I told them this is what

1 I do, this is my strong point. This is the kind of

2 question I can answer using qualitative methods and

3 they agreed to that.

4 Q. Okay.

5 Well, how did you determine what sources to

6 consult?

7 A. I looked at the broadest possible array of

8 sources.

9 Q. But that's not quite what I asked you.

10 When you sat down to determine how you

11 would approach this research project, how did you

12 figure out what to look at?

13 A. Again, I did a broad sweep of sources, I

14 got on the Internet, I ordered books, I looked at the

15 sources in the books. Jim and Natalie sent me, I would

16 guess, in excess of 25,000 pages of materials.

17 Q. And did you review everything that they

18 sent you?

19 A. There's no way I can read 25,000 pages

20 word for word, so I perused that. So I -- sometimes I

21 could tell by the document that it probably did not

22 have relevance to the question I was asking, but yeah,

23 for the most part, I tried to peruse it in some

24 fashion.

25 Q. Okay.

1 Can you tell me your -- the reference list

2 at the end of your report, I interpret that only as a

3 list of things that you've expressly cited as opposed

4 to a comprehensive list of what you looked at; is that

5 right?

6 A. There are sources I looked at that are not

7 cited in there because I did not find something that I

8 put in the report.

9 Q. Okay.

10 Can you tell me, aside from stuff that

11 the -- that Jim and Natalie sent to you, what else you

12 looked at?

13 A. I ordered perhaps 15 books on Alaska.

14 Q. Okay.

15 Can you tell me what those books were?

16 A. They're listed in the references. I think

17 there's only one book that I did not list in the

18 reference because it was a personal memoir and was

19 irrelevant. I can't tell from the title.

20 Q. It happens to us all.

21 A. Right.

22 Q. What about journal articles, did you review

23 Alaska History, which is a journal, just for

24 clarification?

25 A. I looked at sources, and one of the things

1 you do with secondary sources is you look at the

2 sources they use and then look at some of those. So I

3 used the initial set of sources to look at a subsequent

4 set of sources, in both books and articles.

5 Q. Okay.

6 Can you tell me approximately how many

7 hours you spent? Actually, you should be able to tell

8 me almost precisely, right, because there will be a

9 bill at some point? How many hours you spent

10 researching this report?

11 A. I think I spent about 80 hours, roughly, on

12 the preliminary report and about 80 hours writing the

13 final report. That's a rough estimate without looking

14 at my tabulation.

15 Q. So can you disaggregate the research time

16 from the writing time for me?

17 A. No. It's all the same.

18 Q. Okay.

19 Did you visit the Dillingham Census Area?

20 A. I went to Bethel. I did not go to

21 Dillingham.

22 Q. Did you go to the Wade Hampton Census Area?

23 A. No. I did interview people from those

24 areas.

25 MR. TUCKER: Just for the record, when you

1 refer to "those areas," what areas are you referring  
2 to?

3 THE WITNESS: Wade Hampton and Dillingham.  
4 MR. TUCKER: Thank you.  
5 BY MS. PATON-WALSH:

6 Q. How many people did you interview?  
7 A. I'd guess about a dozen, and those people  
8 are listed in the references.  
9 Q. And did those interviews happen in Bethel  
10 or did some of them happen in Anchorage?  
11 A. Most of them in Anchorage. I believe two  
12 occurred in Bethel.  
13 Q. And how did you determine who to talk to?  
14 A. The plaintiffs' attorney pointed these  
15 people out. I also interviewed someone in Anchorage at  
16 the library, the state library.  
17 Q. Okay.  
18 Who was that person?  
19 I'm sorry. Wait a minute. Back up.  
20 The state library?  
21 A. Yes.  
22 Q. Can you tell me where that is?  
23 A. Yes. In Juneau.  
24 Q. Oh, I'm sorry, because you said in  
25 Anchorage.

1 A. No. One of the interviews took place in  
2 Juneau, I'm sorry.  
3 Q. Okay.  
4 A. I'll have to look this guy's name up.  
5 Sorrel Goodwin, in-person interview, Alaska State  
6 Library, Historical Collections, December 13th.  
7 Q. How much research, if any, did you do in  
8 the state library?  
9 A. I spent most of my time in Juneau in the  
10 archives.  
11 Q. And how long did you spend in the archives?  
12 A. I think I was there for 22 days.  
13 Q. What did you look at when you were there?  
14 A. I asked for any files dealing with voting  
15 rights.  
16 Q. How many files did you get?  
17 A. I went through probably 30 or 40 boxes of  
18 materials. I asked for voting rights. I had two or  
19 three key words but they're all centered around voting  
20 rights. So I was thinking that was a fairly specific  
21 search, and they brought out a truckload of materials.  
22 I went through literally thousands of pages of stuff  
23 very quickly.  
24 Q. Okay.  
25 Looking at the list of references at the

1 end of this report, can you point out for me the things  
2 that you found in the archives?  
3 A. Yes. They're all listed. There might be  
4 one or two things that were -- that I found in the  
5 archives, but had a complete citation on their own so  
6 you could find them. You know, it would be like a copy  
7 of a newspaper article.  
8 Q. Okay.  
9 A. So you could find that at the newspaper, or  
10 it might be a copy of a journal article. So in those  
11 cases, instead of putting full state archives, I just  
12 put the citation for the journal article.  
13 Q. So the newspapers articles, were they  
14 clippings that were in a --  
15 A. Yes.  
16 Q. Okay.  
17 A. And you can tell by the date those were  
18 from the 1970s.  
19 Q. Okay.  
20 So I'm looking at page 49, which is Bates  
21 20874, and you have a -- the fifth citation from the  
22 bottom, that's your archive citation? So anything that  
23 came from the state archives, that's -- the citation  
24 will look like that?  
25 A. Yes. And I ordered things to be copied and

1 the archives attached the proper citation to it. So  
2 that's the form of citation that the archives told me  
3 to use.  
4 Q. Okay. I'd like to go back to those  
5 entities that you did.  
6 Do you know how many different villages  
7 were represented by the people you talked to? And by  
8 that I mean, how many different communities were those  
9 people from?  
10 A. Well, I listed their communities in the  
11 references. So if you look through my references, we  
12 can go through those together if you like and determine  
13 that.  
14 Q. That seems like a less than an incredibly  
15 useful use of our time. If the answer is I can figure  
16 it out by looking here, the communities are listed,  
17 that's fine.  
18 A. Yes.  
19 Q. Okay.  
20 Did anybody help you review sources? I  
21 mean did you use a research assistant, I guess is my  
22 question?  
23 A. No.  
24 Q. Did plaintiffs' attorneys review drafts of  
25 this report?



1 A. No. Just the preliminary.  
 2 Q. Did they make any suggestions to you?  
 3 A. No.  
 4 Q. Did they guide you to specific sources that  
 5 they thought would be of interest to you?  
 6 A. Well, they -- we discussed the kind of  
 7 sources that I needed and I -- I'm very sensitive to  
 8 the fact that I don't want anybody cherry picking for  
 9 me, so I told them I wanted everything and they  
 10 complied with that, perhaps even more so than I  
 11 anticipated. I have a basement full of boxes now. I  
 12 copied everything.  
 13 Q. You're killing the trees. I just want you  
 14 to know that.  
 15 A. Oh, I -- they took out a whole forest for  
 16 this. So I told them to send me everything and I'll be  
 17 the one who decides what's important and what is not  
 18 important. And they did on a series of CDs and I took  
 19 them to FedEx and copied everything on every CD and it  
 20 was enormous. I'm not exaggerating when I say I must  
 21 have at least 20- to 25,000 pages of documents in boxes  
 22 that I went through for this.  
 23 In addition to all that, I read hundreds  
 24 and hundreds of pages in books and articles and I  
 25 looked at census data. I got on the web and looked for

1 everything I could find that was relevant. I did a  
 2 general web search, so I have a very dramatic spread of  
 3 different kinds of documentation. And then, of course,  
 4 I went to the state archives.  
 5 Q. Okay.  
 6 A. I also went to the state library in  
 7 Anchorage, the Rasmuson -- not library, but museum, the  
 8 Anchorage museum. I'm sorry.  
 9 Q. Okay.  
 10 So you've collected a lot of sources, but  
 11 you also said you spent approximately 160 hours on this  
 12 project?  
 13 A. Yes. I think that's a good estimate.  
 14 Q. Do you think that's sufficient time for you  
 15 to become confident in your research and the answers to  
 16 the question that you gave?  
 17 A. Do I think that's sufficient time?  
 18 Q. Yes.  
 19 A. Well, when you ask a researcher did you  
 20 have sufficient time, the answer is always no. We'd  
 21 always love an infinite amount of time and money to go  
 22 on and on and on.  
 23 Is that a sufficient amount of time to  
 24 support the conclusions that I reach in this document?  
 25 Yes.

1 I have 183 different sources listed here.  
 2 It's voluminous evidence. I went through tens of  
 3 thousands of pages. Yes, that's enough documentation  
 4 to reach and support the conclusions that I express in  
 5 this report.  
 6 Q. Okay.  
 7 You indicated that you had published the  
 8 expert reports that you produced in Blaine County in  
 9 one of the other cases and I don't remember which one.  
 10 A. Bone Shirt.  
 11 Q. Bone Shirt?  
 12 A. It wasn't the verbatim report, it was based  
 13 on the research. So it just describes the case. And  
 14 in both of those chapters, I accessed some material  
 15 from my expert witness report, but I also described the  
 16 opponent's reports and the exchange. And then I  
 17 described the judge's decisions and the appeal.  
 18 So it's an explanation of the case, not an  
 19 expert witness report.  
 20 Q. Okay. Thank you for that clarification.  
 21 A. Okay.  
 22 Q. Do you think this expert witness report  
 23 would pass a peer review process?  
 24 A. Well, yes, I think my peers would see this  
 25 as an accurate and legitimate and valid use of

1 qualitative methods.  
 2 Q. Okay.  
 3 A. Journals don't publish expert witness  
 4 reports.  
 5 Q. I understand.  
 6 A. Okay.  
 7 Q. Is there any testimony or any expert  
 8 opinion that you expect to offer at trial that's not  
 9 described in this report?  
 10 A. Not unless I receive additional  
 11 information.  
 12 MR. TUCKER: And I'll state for the record,  
 13 we've been feeding him the documents as we've been  
 14 getting them from you. So I think that probably  
 15 whatever has been produced in February, obviously,  
 16 didn't make it into this report. So there's a  
 17 possibility that that could also be part of it.  
 18 MS. PATON-WALSH: Are you planning to  
 19 supplement to the extent that he wants to rely on  
 20 additional information that's not in his report?  
 21 MR. TUCKER: Yeah, I mean if you would like  
 22 for us to do that, we can -- if we can come up with a  
 23 deadline, we're more than happy to do that. I know  
 24 Natalie, I think, just finished getting through the  
 25 documents, I think it was like the end of last week.



Page 65

1 MS. PATON-WALSH: Now, I just think if  
2 there's stuff that you're going to rely on that's not  
3 in here, that we should know.  
4 MR. TUCKER: What I'll do is I'll  
5 coordinate with you afterwards to see if we can come up  
6 with a reasonable deadline.  
7 THE WITNESS: They did send me a CD that  
8 arrived, I think yesterday or the day before. So I  
9 have not looked at that, and that's not in this report.  
10 BY MS. PATON-WALSH:  
11 Q. Okay.  
12 So to the extent that there is stuff that  
13 you find on that CD that you would want to refer to in  
14 trial or whatever, we'd just like to have a heads up.  
15 A. Okay. At this point, my contract was to  
16 produce this report.  
17 Q. I understand.  
18 A. Right. So if they want me to do additional  
19 research, that would require another -- an addendum to  
20 the contract or something. Right now, I'm done.  
21 Q. Can you summarize for me the expert opinion  
22 that you expect to offer at trial?  
23 A. The same one that I express in this --  
24 Q. Just boil it down into a couple of  
25 sentences, what is the gist of this report in your

Page 66

1 mind?  
2 MR. TUCKER: Object to the form of the  
3 question, but you can answer it.  
4 THE WITNESS: Okay. Well, let's go to the  
5 question that I asked, the research question.  
6 "Is there a consistent pattern of  
7 intentional discrimination in the state of Alaska that  
8 has greatly {sic} affected the ability of  
9 Yup'ik-speaking Alaska Natives living in the Wade  
10 Hampton and Dillingham Census Areas to participate in  
11 state elections?"  
12 I believe there is.  
13 BY MS. PATON-WALSH:  
14 Q. Okay.  
15 And just for the record, you had said  
16 "greatly," but I think the word is "negatively."  
17 A. I'm sorry. Negatively. Thank you.  
18 Q. Can you compare that to the conclusions  
19 that you reach at the end of your report?  
20 A. Okay.  
21 Q. So I'm looking at page 47 to 48, Bates  
22 stamped 20872 to 873.  
23 A. {Witness reviews document.} Forty-seven to  
24 forty-eight. Okay.  
25 Q. Is it fair to say that you conclude here

Page 67

1 that there's purposeful discrimination on the part of  
2 the state of Alaska at work?  
3 A. Yes.  
4 Q. And that that purposeful behavior is --  
5 expresses a direct intent to reduce or minimize Alaska  
6 Native voting?  
7 A. Can I just read from the report?  
8 Q. If that's -- I mean if that's the best way  
9 for you to do this, sure.  
10 A. "In my professional opinion the state has  
11 engaged in intentional nonfeasance that is systematic,  
12 pervasive, and persistent over many decades."  
13 Do you want me to --  
14 Q. I guess I want to focus down on voting. So  
15 your conclusions are expressly with regard to an intent  
16 to suppress a Native vote?  
17 A. I think that's the result of that, of the  
18 discriminatory behaviors in history. I think it has  
19 suppressed Native vote.  
20 Q. But there's a difference between an intent  
21 to suppress a Native vote and conduct that has a result  
22 of affecting -- negatively affecting the Native vote.  
23 Is that fair?  
24 A. I don't see that difference.  
25 Q. So you don't see a difference between

Page 68

1 intending an outcome and doing something that produces  
2 an outcome?  
3 A. I don't think there was some kind of  
4 misunderstanding among state officials that their  
5 actions would have a negative impact on the ability of  
6 Yup'ik-speaking people to vote. I think they  
7 understood that.  
8 Q. Okay.  
9 Do you think that there are problems in  
10 ascribing intent to institutions as opposed to  
11 individual people?  
12 A. I think that intent is always difficult to  
13 prove, and we have to rely on a mixture of direct and  
14 indirect evidence. And when we talk about the intent  
15 of an institution, we're really talking about the  
16 people involved in that institution and their actions,  
17 which, of course, has a direct impact on the behavior  
18 of the institution and the impact it has on people.  
19 Q. Do you think it's fair to infer intent with  
20 respect to individuals and an institution based on the  
21 conduct of previous individuals in those institutions?  
22 A. I think it might be fair to assume that the  
23 conduct of previous individuals has an impact on the  
24 behavior of subsequent individuals and helps form the  
25 political context and, certainly, affects the laws that

17 (Pages 65 to 68)

**Exhibit B - Page 11 of 17**

1 MS. PATON-WALSH: Well, he can tell me what  
2 the --  
3 MR. TUCKER: Well, you just represented to  
4 him and he said he doesn't know so you can speculate  
5 based upon what she's told you.  
6 THE WITNESS: I don't know.  
7 BY MS. PATON-WALSH:  
8 Q. Do you know which delegate to the  
9 constitutional convention introduced the read or speak  
10 requirement, proposed it?  
11 A. I don't.  
12 Q. So would you be surprised to learn that it  
13 was the only Alaskan Native delegate to the  
14 constitutional convention who proposed this?  
15 A. Not terribly surprised.  
16 Q. So even though you consider this to be a  
17 deliberate attempt to suppress the Native vote, it  
18 doesn't seem surprising to you that the only Native  
19 Alaskan delegate would be the person who introduced it?  
20 A. If they were Tlingit or Haida, no, that  
21 wouldn't surprise me.  
22 Q. So you're saying you think that Alaska  
23 Natives in the southeast were deliberately trying to  
24 suppress the Native vote in other parts of the states?  
25 A. You're asking me to ascribe motivations to

1 this person and I don't know what their motivation was.  
2 That's one possibility, but I don't know.  
3 Q. Well, what I'm asking you is to explain why  
4 you weren't surprised. So you said you weren't  
5 surprised, there must be a reason for that.  
6 A. And --  
7 Q. You're just saying because they're Tlingit,  
8 that's enough in your mind?  
9 A. There's a motivation for that. If they're  
10 Haida or Tlingit, they have much higher rates of  
11 literacy, so that would allow them to maintain more  
12 power among the Indian community. Was that that  
13 person's motivation? I don't know.  
14 Q. How did the legislature implement the read  
15 or speak requirement?  
16 A. I don't know.  
17 Q. Do you think that matters for your  
18 analysis?  
19 A. I think what matters is that there was a  
20 literacy test passed by the legislature.  
21 Q. So you don't think the actual effect of  
22 that test on Native voting or on people's ability to  
23 vote matters at all?  
24 A. If we could get hard data on that, I'd love  
25 to see it. I've looked for that. I couldn't find it.

1 But the fact that it existed in law I think is an  
2 important element in the history of Alaska.  
3 Q. But you don't think how the legislature  
4 chose to implement that matters?  
5 A. I think it matters but --  
6 Q. But you didn't bother to find out?  
7 A. It's not a matter of bothering to find out.  
8 I think the important element here is that they passed  
9 the literacy test.  
10 Q. So would it surprise you to learn that the  
11 Alaska statute implementing this provided, and I quote,  
12 "If an election judge is doubtful as to ability of a  
13 person to speak the English language, a satisfactory  
14 showing is made by the person briefly conversing with  
15 the election judge by the use of simple English words"?  
16 A. Uh-huh (Affirmative). There was similar  
17 language in southern states where the literacy test was  
18 actually very obviously neutral in the law, and not  
19 neutral in the way it could be manipulated. And that's  
20 why it was outlawed, because it was very evident to the  
21 U.S. Congress that literacy tests were being used in a  
22 discriminatory manner and that's why they outlawed it.  
23 Q. Okay.  
24 So you're going to assume on the basis of  
25 what happened in southern states that Alaska would have

1 implemented this statutory requirement so as to exclude  
2 Alaska Native voters?  
3 MR. TUCKER: Objection to the form of the  
4 question. You may answer.  
5 THE WITNESS: Okay.  
6 It certainly has that potential.  
7 BY MS. PATON-WALSH:  
8 Q. Would you be surprised to learn that the  
9 Division of Elections implemented this statute by  
10 requiring voters to say "hello" and their name in order  
11 to get a ballot?  
12 A. It may have been implemented like that. I  
13 haven't seen the data that would indicate that  
14 everybody implemented that in that fashion.  
15 Q. Who do you think would have been working at  
16 polling stations in rural Alaska in the 1960s?  
17 A. That's conjecture.  
18 Q. Well, you've offered conjecture about  
19 various other things.  
20 MR. TUCKER: Objection. Argumentative.  
21 THE WITNESS: I don't -- I don't know.  
22 BY MS. PATON-WALSH:  
23 Q. On page -- further down in that paragraph  
24 you say, "The literacy test was not removed until the  
25 state was forced to do so in 1970 by the Voting Rights

1 Act."

2 A. Uh-huh (Affirmative).

3 Q. "The state publication knows that this

4 change, too, was precipitated by federal election law."

5 Is it your view that this quotation from

6 the state publication supports a claim of the previous

7 sentence, that the state was forced, in 1970, to

8 abolish that literacy test?

9 I'm just trying to understand the writing.

10 So oftentimes, you'll put a quotation after the

11 statement and the quotation is intended to be support

12 for that. I'm just trying to figure out if that's what

13 you intended here.

14 A. Right. Again, you're asking me for the

15 context of an article and asking me to recall the

16 discussion. I think the important point here is did I

17 accurately quote Harrison on page 107? And I believe I

18 did. If I didn't, please let me know.

19 Q. We'll get to that in just a second.

20 A. Okay.

21 Q. But there's a stylistic issue here which I

22 don't think requires you to remember anything

23 specifically, and also, just in terms of the substance

24 of your report.

25 "The literacy test was not removed until

1 the state was forced to do so in 1970 by Voting Rights

2 Act." There's no citation for that claim.

3 Then you have a sentence with a quotation

4 and a citation, and my question is: Is it your view

5 that this source that you were citing is evidence to

6 support your claim that the state was forced to remove

7 the literacy test by the Voting Rights Act?

8 A. Again, without going back at Harrison and

9 reading the context, I'd say it's complimentary.

10 Q. Okay.

11 How did the VRA force the state of Alaska

12 to amend its constitution?

13 A. The literacy tests were outlawed.

14 Q. Literacy tests were suspended for a period

15 of five years by the 1965 act in covered jurisdictions;

16 is that right? Is that consistent with your

17 recollection?

18 A. I believe so.

19 Q. Okay.

20 But Alaska bailed out of coverage, didn't

21 it, in 1966?

22 A. Uh-huh (Affirmative).

23 Q. So it wasn't a --

24 MR. TUCKER: Is that a yes?

25 THE WITNESS: Oh, okay.

1 BY MS. PATON-WALSH:

2 Q. I believe you do say later in your report,

3 you note that Alaska bailed out in the 1960s.

4 A. Yes.

5 Q. So Alaska wasn't actually covered

6 jurisdiction, was it, in 1970?

7 MR. TUCKER: Yeah, and I just wanted to

8 clarify what year you were talking about.

9 THE WITNESS: I don't believe so.

10 BY MS. PATON-WALSH:

11 Q. Okay.

12 So it was in a position to continue to use

13 its literacy test in 1970?

14 MR. TUCKER: Objection. Mischaracterizes

15 the statute. It was a nationwide ban in 1970. You

16 didn't have to be covered.

17 MS. PATON-WALSH: Well, we're talking about

18 1965. The renewal in 1970 --

19 MR. TUCKER: Right.

20 BY MS. PATON-WALSH:

21 Q. So the -- I'm still trying to understand

22 why you think that Alaska was forced to abandon the

23 literacy test by the VRA.

24 A. I believe it was a nationwide ban, is my

25 understanding.

1 Q. But it was also a temporary ban in 1970.

2 A. Okay.

3 Q. So not every state with a literacy test

4 abolished its literacy test under -- as a result of the

5 VRA temporarily suspending literacy tests, did they?

6 A. I thought the VRA abolished literacy tests

7 in 1965. Maybe I'm mistaken. I think it was fairly

8 obvious to any astute political observer in 1970 that

9 if you have a literacy test, there's going to be

10 problems with the federal government. Anybody could

11 see that handwriting on the wall.

12 Q. So is it -- am I right in thinking that

13 your assertion that the literacy test was removed as a

14 result of force by the Voting Rights Act was based on

15 your belief that in 1965 literacy tests were abolished?

16 A. Again, I don't recall specifically, but I

17 think it was quite obvious in 1970 that if a state had

18 a literacy test there was going to be problems with the

19 Federal Government.

20 Q. Okay.

21 A. And I think that was the political context

22 at the time. Now, when exactly was the literacy test?

23 I'd have to go back and look at the VRA to see what

24 year it was.

25 Q. How was the Alaska constitution amended?

1 MR. TUCKER: I object.  
 2 MS. PATON-WALSH: It's -- what's your  
 3 objection, Jeff.  
 4 MR. TUCKER: Mischaracterizes testimony.  
 5 He didn't say that at all.  
 6 MS. PATON-WALSH: I'm asking him to  
 7 clarify. He said that the state of Alaska had -- could  
 8 have done something else. I'm just trying to determine  
 9 when that option became available to...  
 10 THE WITNESS: I think the state had, at its  
 11 option, the freedom and the ability to educate Natives  
 12 if they had chosen to, but they chose not to.  
 13 BY MS. PATON-WALSH:  
 14 Q. Starting in 1959 or throughout the entirety  
 15 of the 20th century?  
 16 A. Yeah. There was never a time when adequate  
 17 education was delivered to Native school children in  
 18 Alaska. I think that's the outcome of the Molly Hootch  
 19 case.  
 20 Q. So going back to your -- to page 850,  
 21 page 25.  
 22 A. 850, okay.  
 23 Q. You say in the Organic Act of May 17, 1884,  
 24 the act -- and I quote, this is your language, "The act  
 25 severed Native education from state control, and vested

1 it in the federal government."  
 2 A. Right. So the Federal Government, at that  
 3 time, took upon itself the responsibility to provide at  
 4 least some education to Native children.  
 5 There's absolutely no reason why the state  
 6 couldn't also do that. It did not say you must throw  
 7 Native children out of your public schools. That act  
 8 said, "Oh, we will provide at least some semblance of  
 9 education." There was never a time when the Federal  
 10 Government said it is illegal for Native children to  
 11 attend public schools in Alaska. I don't think that  
 12 was the intent of the Nelson Act.  
 13 Q. Was there any kind of law that excluded  
 14 Native Alaskan children from state schools?  
 15 A. They were -- the state willingly went along  
 16 with this inadequate treatment of Native children. And  
 17 I think if you -- in my reading the Molly Hootch case,  
 18 that was ample evidence that the state had not done the  
 19 job that it was supposed to do to educate Native  
 20 children, and they were forced to at that point. And  
 21 then there were funding issues.  
 22 Q. So when you say "and then there were  
 23 funneling issues," can you elaborate?  
 24 A. After Molly Hootch, I quote two court cases  
 25 that are in regard to inadequate funding for Native

1 education.  
 2 Q. And so that would be on page 28 of your  
 3 report, that Kasayulie case and Moore versus State of  
 4 Alaska?  
 5 A. (Witness reviews document.) Yes.  
 6 Q. Okay.  
 7 And did you read the opinions in these  
 8 cases?  
 9 A. I think I read synopses of them.  
 10 Q. Okay.  
 11 And your understanding is that these cases  
 12 found that the state of Alaska was not adequately  
 13 funding Native schools?  
 14 A. My understanding is that they found that  
 15 rural schools continue to have serious funding issues.  
 16 Q. Let me show you I guess what we're going to  
 17 mark as 152.  
 18 (Exhibit 152 marked.)  
 19 MS. PATON-WALSH: And the Moore opinion is  
 20 a 196-page opinion so I did not photocopy all of it.  
 21 MR. TUCKER: When you enter this could you  
 22 do me a favor and just clarify what -- it may be on the  
 23 last page, but the date of the order.  
 24 MS. PATON-WALSH: The date of the order is  
 25 the 21st of June 2007.

1 MR. TUCKER: Okay.  
 2 BY MS. PATON-WALSH:  
 3 Q. So the Moore case involved a number of  
 4 different claims, but I'd like you to direct your  
 5 attention to paragraph 458.  
 6 A. Okay.  
 7 Q. "Based on all of the evidence presented at  
 8 this trial, this Court finds that the Plaintiffs have  
 9 failed to demonstrate that the State of Alaska is  
 10 inadequately funding public education for its children  
 11 at this time."  
 12 A. Uh-huh (Affirmative).  
 13 Q. This court decision actually finds that  
 14 there is -- that the problem -- the problem is the  
 15 inadequacies in state education identified in this  
 16 litigation were not related to funding.  
 17 A. What I find interesting is that it seems to  
 18 me that paragraph 458 is, to a certain extent,  
 19 contradicted by the following paragraph, that there are  
 20 still serious problems.  
 21 Now, can you argue that it's -- money's not  
 22 a silver bullet? Well, money is related to the kinds  
 23 of problems that they discuss in this.  
 24 Q. But if you had read this opinion, you would  
 25 know that the court expressly addresses that issue,



1 talks about testimony, about whether funding was the  
 2 problem, and concludes that it was not the problem.  
 3 MR. TUCKER: Objection. Are you done?  
 4 BY MS. PATON-WALSH:  
 5 Q. So it's like do you think maybe it would  
 6 have helped you to read the entire opinion instead of  
 7 rely on the summary that you got?  
 8 MR. TUCKER: Objection to the form of the  
 9 question but you may answer.  
 10 THE WITNESS: I think you mentioned it was  
 11 a hundred eighty-six pages.  
 12 BY MS. PATON-WALSH:  
 13 Q. A hundred and ninety-six.  
 14 A. A hundred and ninety-six. I did not read  
 15 the entire hundred and ninety-six pages.  
 16 What I took away from this is that there's  
 17 still inadequate educational opportunities.  
 18 Q. Is that not something you could say about  
 19 every state in the union?  
 20 A. I don't know. I haven't investigated this  
 21 in every state. We know that education correlates with  
 22 political participation. Yeah, educational problems  
 23 for certain people or races or ethnic groups, it causes  
 24 problems. Could you say that in every state? Probably  
 25 not about white people like me, where I grew up. There

1 wasn't a funding shortage where I grew up. I was in an  
 2 all white high school.  
 3 Q. But I'm not talking about -- there's a  
 4 difference between inadequate education, is there not,  
 5 and inadequate funding?  
 6 A. I see that this case tries to draw a  
 7 distinction there. In my view, they're related. I  
 8 think it would be very tenuous to separate one from the  
 9 other.  
 10 Q. Well, but so it's one thing to say  
 11 inadequate funding causes inadequate outcomes, but is  
 12 it your opinion that if you just spend enough money,  
 13 you can fix any problem with education?  
 14 A. No. It requires changes in curriculum  
 15 design and other things, but they all require money.  
 16 Q. Were you aware that the Native communities  
 17 that were suing in the Moore litigation received more  
 18 than twice as much money per student as the Anchorage  
 19 School District did, for example?  
 20 A. And perhaps the reason for that is the  
 21 delivery of education is more expensive in some rural  
 22 areas.  
 23 Q. Right, and more difficult?  
 24 A. And more difficult, fair.  
 25 Q. Now, I want to draw your attention to

1 something on the next page. Here you say -- and again,  
 2 I want to read this into the record, it's a long --  
 3 relatively long quotation.  
 4 "LEP Native speakers are caught in a  
 5 classic 'catch-22.' The state, by all accounts, has  
 6 provided poor opportunities for education; this has  
 7 resulted in an extremely high rate of illiteracy and a  
 8 large number of Native speakers who are not fluent in  
 9 English."  
 10 I'd like to stop there and ask you, large  
 11 number is a very fuzzy sort of term. What do you mean  
 12 by "large number"?  
 13 A. Well, I believe I do provide data in this  
 14 section on the literacy rates, do I not? Isn't that  
 15 covered previously?  
 16 Q. No, I don't think so.  
 17 A. (Witness reviews document.) I think there  
 18 is a section in here where I talk about problems with  
 19 literacy.  
 20 MR. TUCKER: I think it's on 31, 31 and 32.  
 21 THE WITNESS: (Witness reviews document.)  
 22 Yeah, so I'm actually talking about the very issue  
 23 there. So it appears some numbers to flesh that out.  
 24 BY MS. PATON-WALSH:  
 25 Q. So you're talking about the number of

1 limited English proficient Alaskan Native citizens?  
 2 A. Uh-huh (Affirmative). Yes.  
 3 Q. "At the same time the state has a long  
 4 history of literacy tests and English-only elections.  
 5 In other words, the state requires a skill in order to  
 6 vote with English-only voting materials, but has  
 7 withheld or limited training in that skill."  
 8 Did you do any research into this number,  
 9 the 30,696 limited English proficient Alaskan Native  
 10 citizens?  
 11 A. Where are we?  
 12 Q. The number you cite is at the bottom of  
 13 page 31.  
 14 A. Okay.  
 15 Q. Did you review the census numbers to  
 16 determine, for example, the ages of these thirty and a  
 17 half thousand, approximately, voters?  
 18 A. No. I just looked up the U.S. census  
 19 records.  
 20 Q. Okay.  
 21 But the census records contain some  
 22 information about age range; right?  
 23 A. This is a cumulative figure, I believe.  
 24 Q. Okay.  
 25 Do you think that age of these voters

1 BY MS. PATON-WALSH:  
 2 Q. Okay.  
 3 So --  
 4 A. And as we know from our readings of  
 5 American history, we had a boarding school system here  
 6 as well and it was plagued with tremendous problems.  
 7 It was not an educational opportunity. It created  
 8 enormous problems. Children were taken from their  
 9 families and forced to go to school literally hundreds,  
 10 sometimes thousands of miles from home. That's not an  
 11 adequate substitute for local schools and the same kind  
 12 of education that the rest of us get.  
 13 Q. So in your mind, there's no difference  
 14 between failing to provide any kind of education and  
 15 providing this education that, granted, was extremely  
 16 flawed in many ways?  
 17 A. There's no difference? There's a big  
 18 difference between providing local education from the  
 19 state --  
 20 Q. No, no, no. That wasn't my question.  
 21 A. -- and having to go to federal boarding  
 22 schools.  
 23 Q. That wasn't my question.  
 24 A. Okay.  
 25 Q. My question was: Prior to Molly Hootch,

1 Alaska Natives did actually receive education.  
 2 Now, I grant you in every rate far, far  
 3 from ideal circumstances, but they were not actually  
 4 denied an education. And in fact, one of the  
 5 criticisms of boarding schools, to my understanding, is  
 6 that Alaska Natives were told not to speak their Native  
 7 languages; is that true?  
 8 A. Yes. They were prohibited in many boarding  
 9 schools.  
 10 Q. They were being educated, forced to learn  
 11 English?  
 12 A. Yes.  
 13 Q. Which would then equip them to understand  
 14 the political process in English.  
 15 A. If they actually learned English and went  
 16 through the boarding school experience, they would have  
 17 no choice but to learn at least some English.  
 18 Q. Can you list the Senate factors for me?  
 19 A. They're all in my paper. Do you want me to  
 20 read them?  
 21 Q. So you think that all of the Senate factors  
 22 are discussed in your report?  
 23 A. Some of them I combine, but I think I've  
 24 captured the ones that are relevant.  
 25 Q. Okay.

1 A. There's a couple of them that didn't seem  
 2 relevant to this case.  
 3 Q. Okay.  
 4 So for example, you didn't think it was  
 5 relevant -- number seven, "Extent to which members of  
 6 the minority group have been elected to public office  
 7 in the jurisdiction."  
 8 A. That's the kind of thing that is best  
 9 covered by quantitative analysis, I think.  
 10 Q. Okay.  
 11 But are you saying -- I thought your  
 12 qualitative analysis also included some numbers.  
 13 A. Some numbers, yes.  
 14 Q. I mean, the number of people from the  
 15 minority group elected to public office, that doesn't  
 16 actually require regression analysis or any kind of --  
 17 anything than adding up, does it?  
 18 A. That's true.  
 19 Q. But you don't have any discussion in here  
 20 about the number of Alaska Natives elected to the state  
 21 legislature, do you?  
 22 A. No.  
 23 Q. And did you decide to exclude, for example,  
 24 "The extent to which the state or political subdivision  
 25 had used unusually large election district's majority

1 vote requirements, anti-single shot provisions or other  
 2 voting practices or procedures that may enhance the  
 3 opportunity for discrimination"?  
 4 A. That would be quite difficult from -- maybe  
 5 to get that kind of information.  
 6 Q. What about the candidate slating process?  
 7 A. Again, that's very difficult for me to get.  
 8 And could I have included all of this? If I had a  
 9 great deal of time, if I had a year to work on this, I  
 10 could certainly include more sources, more data, more  
 11 evidence, but there's always a finite limit to how much  
 12 time and money is available for research.  
 13 So there has to be a practical limitation  
 14 on what I can accomplish in a finite amount of time,  
 15 with a finite amount of resources. That's true for all  
 16 research.  
 17 Q. All right.  
 18 Let's keep moving.  
 19 A. Okay.  
 20 Q. So on page 858, page 33 of your report,  
 21 Bates stamped 20858, you quote an election official  
 22 saying, "Very, very few people do not speak, read or  
 23 understand the English language."  
 24 And then you say, "See data above that  
 25 disprove that claim."



1 What data is that exactly?

2 A. The data -- where is it, on page 30 and 31

3 where I talk about LEP voters?

4 Q. So you're citing 2011 census statistics to

5 contradict a woman making a statement in 1975?

6 A. Well, one would assume if there's a

7 significant number of LEP Alaska Native voters in 2011,

8 that there would be even more in 1975, in part because

9 of improvements in the educational system.

10 I think it would task reason to assume that

11 the reverse is true.

12 Q. Okay.

13 But your speculation, while perhaps

14 logical, isn't really data, is it?

15 MR. TUCKER: Objection to the form of the

16 question, but you may answer.

17 THE WITNESS: Isn't really data? Yes, this

18 looks like data to me.

19 BY MS. PATON-WALSH:

20 Q. But that data comes from 40 years ahead and

21 is based on an entirely different process for

22 determining there's no ACS at this point in time.

23 MR. TUCKER: Objection, form of the

24 question. Argumentative, but you may answer.

25 THE WITNESS: That would still be 30,000

1 LEP voters in 2011. I think that data allows us to

2 conclude that if there were 30,000 in 2011, there would

3 have to be more in 1975. I think that's a pretty safe

4 assumption.

5 BY MS. PATON-WALSH:

6 Q. Even though you didn't do anything to

7 determine the ages of these LEP voters?

8 A. That's correct. I can't imagine that the

9 number of LEP voters dramatically increased over that

10 time. I have a hard time seeing that.

11 Q. All right.

12 On the bottom of --

13 A. And I might add that I read that letter and

14 there were no statistics provided to substantiate that,

15 that claim in that letter. If there had been, I would

16 have relied on those, but there weren't.

17 Q. On page 2861, page 36 of your report, you

18 talk about the Nick settlement.

19 A. Uh-huh (Affirmative).

20 Q. And you quote part of the release language

21 there.

22 "The State's agreement relating to language

23 assistance under Sections 203 and 4(f)4," I think

24 that's probably "as set out" but I don't know if the

25 typo is in your report or ours, or the settlement

1 agreement. Either seems quite possible.

2 MR. TUCKER: Which part are you referring

3 to?

4 MS. PATON-WALSH: It's the middle of the

5 page, page 36.

6 MR. TUCKER: Okay.

7 BY MS. PATON-WALSH:

8 Q. So, "The State's agreement relating to

9 language assistance under Sections 203 and 4(f)4, as

10 set out in this Settlement and Release" --

11 MR. TUCKER: Yeah, I think you're right. I

12 think it's a typo. I think it was supposed to be "as."

13 MS. PATON-WALSH: But it could easily be in

14 the settlement agreement.

15 MR. TUCKER: Yeah.

16 THE WITNESS: Oh, instead of "was"?

17 MS. PATON-WALSH: Yes.

18 BY MS. PATON-WALSH:

19 Q. -- "continues only so long as the Bethel

20 Census Area is subject to Sections 4(f)4 and 203 of the

21 Voting Rights Act. The State will have no further

22 obligations under this Agreement if: (1) the State

23 'bails out' of statewide Section 4(f)4 coverage and the

24 Bethel Census Area bails out of Section 203 coverage."

25 And then you say, "In other words, if the

1 state can somehow escape the confines of the Voting

2 Rights Act, it would no longer feel obligated to

3 provide language assistance."

4 How does a jurisdiction bail out from 203

5 coverage?

6 A. By proving that there's no longer a

7 problem.

8 Q. Right.

9 So why is it significant in your mind that

10 the state would not want to provide language assistance

11 after a period in time when it had been determined not

12 to be necessary?

13 A. What I think this demonstrates, and what's

14 so important here, is that when we're exploring the

15 issue of discriminatory intent, we're looking at

16 attitudes, we're looking at behaviors towards another

17 ethnic group. And the pattern that I see over and over

18 again, and this is an example, is not a willingness to

19 help and maximize the assistance, maximize Native vote,

20 but instead just the opposite, an effort to avoid

21 assistance.

22 If the state were -- of Alaska -- I think,

23 in my view, after reading all the thousands of pages,

24 if they were truly committed to making sure that

25 everyone had an understanding, even the LEP voters, of

# ALASKA CONSTITUTIONAL CONVENTION

## PART 2

Proceedings: December 13, 1955 -- January 9, 1956

Alaska Legislative Council

Box 2199 — Juneau, Alaska

**Exhibit C - Page 1 of 8**

COOPER: I would like to ask for the floor on a point of personal privilege.

PRESIDENT EGAN: If there is no objection. Mr. Cooper asks the floor under the point of personal privilege.

(Mr. Cooper spoke under the point of personal privilege.)

PRESIDENT EGAN: Often times a delegate, yourself or others, might rise and request the privilege to ask a question, question of a member. Now the Chair has not been considering that as using up one of his allocated times on the floor. Now that happened many times here this morning. And the Chair will agree with you that people should remember that they only have two times allowed on the floor on any question.

COOPER: I bring this up because of the moving of the previous question which the other day we were reprimanded, the Convention as a whole, and I think justly so far acting hastily, but if the arguments were prepared and presented within the scope of Rule 38 I believe it would be far more educational and advantageous to expediting the business at hand.

PRESIDENT EGAN: Well Mr. Cooper, the Chair would not say that the delegates had been reprimanded, but it was the feeling of the Chair in that discussion by one delegate that it was just being brought to the attention of all the delegates what the previous question meant. It meant the shutting off of all debate. Mr. Robertson?

ROBERTSON: I have an amendment to Proposal No. 1, Section 1, line 9. Delete "or" and insert "and".

PRESIDENT EGAN: Mr. Robertson, what is your pleasure?

ROBERTSON: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Robertson moves that his proposed amendment be adopted. On line 9 delete the word "or" and insert the word "and". Is there a second to the motion?

METCALF: I second the motion.

PRESIDENT EGAN: Mr. Metcalf seconds the motion. Mr. Robertson?

ROBERTSON: Mr. President, my thought is yesterday by refusing to adopt Mr. Johnson's proposal, that we pretty well lowered the standards of education or qualifications as an elector and that the delegates seemed to press down or emphasize considerably the thought that many people could not write but they listen to the radio and listen to campaign talks so they are well informed on the subject. Now it seems to me that if that is true they ought to also have the qualifications of being able



to read and speak the English language and not just read "or" speak the English language. So that is the thought of my proposed amendment.

PRESIDENT EGAN: Is there other discussion? If not, the question is, "Shall Mr. Robertson's proposed amendment be adopted?" Mr. Marston.

MARSTON: Mr. Chairman, did we not pass on this one time?

PRESIDENT EGAN: The Chair does not recall that that particular amendment had ever been made, Mr. Marston. If such an amendment had been made, the Chair would stand corrected. It is the remembrance of the Chair that there never was such an amendment before us.

MARSTON: May I speak on it? I have got to. We are building citizens of the United States of America and particularly the State of Alaska, and we want them all. It is a hard time getting them to vote. We have a lot of people out in the Bering Sea and at the Arctic coast and up the great rivers that have lived here since time was, and they are great men and great women, and if this amendment passes we blot them out. They do not belong to the stars and stripes any more in their mind. If you tell a man who has been voting on problems and a part of us and you isolate him -- he is not for us. I am absolutely against this amendment in any way shape or form you put it through. The "read or write" was put in by a great statesman from Southeastern Alaska to save a lot of great people who live here. I am unalterably opposed to this amendment. I wish some others would speak on this. I wish the great statesman of Southeastern Alaska would talk on it who put the "read or write" in there. I am against this amendment.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: First, before I start, I want to thank Mr. Marston for his reference to me. I am very anxious, just like a good many of you are here, to do what is right, and I do feel in my presentation yesterday that I covered the subject thoroughly, that is as far as my knowledge goes. I can see the disadvantage it is going to create to a certain group of people, perhaps not only the Natives. I can refer to some from your side of the fence right down in our area with the same proposition. There are few in number, but yet there is such a condition existing, and I cannot help but think of that type of citizen. Whether I am wrong, I still maintain that in writing this constitution we should think of such a group within our area, within our country. It is true that those of you perhaps that live in larger communities have had the advantages of civilization which lacks in the outlying and fringe areas. However, I don't think that should be a factor in determining what to put in your constitution. I maintain that when political issues



arise, anything that is going to be beneficial to our country as a whole, if it is advertised or brought to the attention of these types of people that I am trying to protect, they understand just what it is all about. They are not going to vote against any issue that they feel is going to be detrimental to the country. They are not going to vote on any issue they do not understand. I think Mr. Robertson will bear me out in the First Division. He ran for office, he has gone to the villages, and I don't think that after he got through talking to these individuals that they did not know what he was talking about. They knew, that's the way they are. I don't know what the condition is up here. I have high respect for Mr. Marston, and I feel that what he says is perhaps is the actual condition that is existing up here. Therefore, I am for that also. I don't feel that the fact that these people are going to be swayed by some politician coming to town and voting should be a major factor, and I have never seen any such conditions existing anywhere, and if it is up here then I think there should be some way of remedying that. I am going to have to vote against this amendment and to be consistent, I will support my views.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: I think that the voting record of Alaska in previous years will bear Mr. Peratrovich's argument out, that in the large cities and the large election districts, that you will find that a very small percentage go to the polls and vote on election day. You take the villages. You find that if there are 80 people eligible to vote, there will be 80 votes cast in that village. They are very proud of their heritage to take part in the government. I might bring out the thought that was placed in the White House Conference on Education for Alaska. It was spelled out straight that in one section here, it says, "Second was the idea of more parent participation in education in the school system. This was brought about more emphatically by the Native and Eskimo villages as the teachers in these areas are faced with the problem of teaching first and second generation children. These aborigines know that their aged tradition and forms of economy are being engulfed by our modern way of life in which to learn these ways so as to live a free and healthy life among us. Thus they have emphasized night adult classes." That came right from the small villages. That was not put in this report by any one of us that participated in it. We took and sent out questionnaires and got that. They are interested in government, they are interested in the new way of life and in order for them to obtain anything they must participate, and if you are going to shut them off, why that will set that area back probably 20 years until your generations that are being educated now obtain an understanding.

PRESIDENT EGAN: Mr. Smith.

SMITH: I merely want to reiterate what Mr. Peratrovich has said and add that I have had the privilege of knowing a good many people who were not able to read, yet had a thorough knowledge of affairs of the Territory. They had an instinctive knowledge of the right and wrong of issues and for that reason and a good many other reasons, I must oppose the amendment.

PRESIDENT EGAN: Mr. B. D. Stewart.

STEWART: I just merely want to argue further, because I think Mr. Peratrovich and Mr. Marston have very well covered the ground, but from my experience in Southeastern Alaska and in the Eskimo country I have found that individuals that would be allowed to vote under this provision as it stands, are perfectly capable of passing judgments on issues, and I would support the idea that it be left just as it is.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, it seems to me that by the very nature of the mechanics of voting, regardless of whether they are intelligent, informed, the very nature of the mechanics by which we set up our means of voting, which is by the written word, that they must be able to read what that written word is. It seems to me that no matter how they would be prepared, if they could not read, how could they vote intelligently? No matter how intelligent they are, if they don't know how to read, they can't tell what they are voting for. It seems to be basic that they might be entirely well informed, be very intelligent and practical in handling their affairs but they could not carry out the mechanics of actually voting their wishes unless they were able to read what the ballot said.

PRESIDENT EGAN: Mr. Marston?

MARSTON: During the war when the enemy submarines were in the Bering Sea, I went to those people representing the United armed forces and asked them to join the colors. Thirty seven hundred men joined the colors with enemy submarines in the Bering Sea. Not one man ever refused to join the colors while the war was on, and 3700 joined, and I could not and nobody could turn down a loyal patriotic group of men like that who were our frontier men, armed and stood between us and the enemy during that time. They picked up 27 Jap balloons, they had weekly drill, and they built 21 armories without pay, and they received no pay as the Alaska Territorial Guard. They are loyal, patriotic, and we cannot turn them down.

V. RIVERS: I would like to ask how many of the 3700 could read a name, Mr. Marston?

MARSTON: The first man I swore in came in from the Kuskokwim



off the Bering Sea and I told him that Uncle Sam wanted him to join with us together and fight the common enemy. They said they would be happy to be Uncle Sam's man and I said I was ready to sign them up and here a man stood before me, a solid citizen, five feet tall and four feet broad with his parka on and I said, "How old are you?" He said, "I don't know. I old enough and not too old. What you want done?"

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: One thing that is very, very interesting here is that they are arguing that it should be left as is because we would be discriminating if we support the amendment. Now as I read line 9, we are discriminating right now. It says that they at least have to read or speak, they can choose which they will, so what does it mean to speak? Saying hello? We have not defined it at all. If they have one word of English then they can speak, so I would say then that we have our standard down pretty low as far as that is concerned. Would speaking alone be such a great virtue that we could allow just voting on that alone? I think it should be as we have it in the Session Laws of Alaska right now, where I believe there is a "read and write" clause in it -- not just speak or read, whichever they may choose. I would like to call your attention to another thing that we have mentioned before. There is going to have to be some very clever manipulating of the laws to provide a way of selecting juries if we divert from the present law as far as qualifications for voting. I think we ought to give that due consideration. I don't think that our answer is lowering the voting standards but bringing the people up to the standards so they can vote intelligently. Reference was made to our excellent school system. I have here a report from the Alaska Native Service where there are 1592 children still without a school. That is something for us to think about also. We of Alaska have a job to do, not lowering voting standards but bringing the people up to the standards.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: One thing I want to remark to Delegate Londborg. I think he is worrying unnecessarily about jury duty. I mean if he has ever watched a civil or criminal trial, there is such a thing known as a more dere in which both counsel and court have unlimited opportunity at examination. There is such a thing as challenges and if any juror is not capable of understanding or following the evidence he is dismissed so there would be more tests for jury duty than there would be for voting. If it was a highly technical case it would be up to the counsel and the court. I think that both counsel and court could certainly protect the public or the plaintiffs or the defendant in any particular given matter.

LONDBORG: Mr. President, I would like to answer that.

PRESIDENT EGAN: Mr. Londborg, if there is no objection.

LONDBORG: I am not particularly worried about it. I just say there is going to have to be some way to do it. I don't know if we can discriminate against them and say they cannot at least be summoned for jury duty. I wonder if everyone is aware of the fact that to summon someone for jury duty from Hooper Bay to Nome costs round trip about \$230 and it makes a nice trip to go to Nome for awhile and then be refused for jury duty. You add that up a few times and you have a great state bill just getting people eliminated from jury duty.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: One of the delegates in arguing against my proposed amendment apparently misread the article itself because it won't be "read and write". It will be "read and speak" if my amendment is adopted. I am like Delegate Victor Rivers. I can't see how a person can intelligently vote by secret ballot if he is not able to read. I think to read and speak the English language is the very minimum of qualifications. We are not challenging the loyalty of the Eskimo or the Indians or anyone else. We are simply trying to put something into our law so a person can intelligently vote the secret ballot.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: There are two points I wish to bring out, and reference has been made many times to the wonderful educational system that we have here in Alaska. If that is true we should have no objection and no worry about adopting Mr. Robertson's amendment, if that is true. Point number two, when we get our constitution bill constructed there will no doubt be provision for the initiative and referendum which we have had very little of that under our Territorial setup such as they have had in the states. Many of those initiative and referendum measures are going to be measures covering half a page in length, and therefore a person, in order to vote intelligently is going to have to be able to read.

PRESIDENT EGAN: Mr. Cross.

CROSS: There is one question that has been brought up I think honestly stating that it is necessary for a voter to read in order to vote. I would like to state that I have seen a great many voters turned down by reading tests when they were perfectly able to read a ballot and know who they were voting for.

PRESIDENT EGAN: Mrs. Nordale.



NORDALE: Is there not a provision in the law that allows the election board to cast a ballot for a blind person? I am quite sure there is. I don't see any reason why an election board could not also assist a person who couldn't read but who could speak and very definitely make his wishes known in casting his vote.

PRESIDENT EGAN: The question is -- Mr. Johnson?

JOHNSON: I request a roll call.

PRESIDENT EGAN: "Shall Mr. Robertson's proposed amendment be adopted?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 18 - Armstrong, Barr, Collins, Cooper, Hinckel, Hurley, Johnson, Laws, Londborg, Metcalf, Nerland, Reader, V. Rivers, Robertson, Sweeney, Taylor, Walsh, Mr. President.

Nays: 36 - Awes, Boswell, Buckalew, Coghill, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Kilcher, King, Knight, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Nolan, Nordale, Peratrovich, Poulsen, Riley, Rosswog, Smith, Stewart, Sundborg, VanderLeest, White, Wien.

Absent: 1 - R. Rivers.)

CHIEF CLERK: 18 yeas, 36 nays and 1 absent.

PRESIDENT EGAN: The "noes" have it and so the amendment has failed. Mrs. Hermann.

HERMANN: At this time I wish to make a motion that the Committee Proposal No. 1 be referred to the committee for specific amendment, the committee that produced it, for specific amendment.

SWEENEY: I second the motion.

PRESIDENT EGAN: Do you have a specific amendment that you want to offer to the body?

HERMANN: No, Mr. President. I will speak on the subject now that it has been seconded.

PRESIDENT EGAN: If there is no objection.

TAYLOR: Mr. Speaker, I rise to a point of order. I think that