old cases in the U.S. district and circuit courts which imply there may have been an extinguishment. There is a quarrel about what some of the provisions mean, but there are provisions in the treaty which make it appear that there was an intention not to truncate any existing rights.

Lastly, the Court of Claims in the 1959 decision in the Tlingit-Haida case concerning liability simply rejected the argument of the Department of Justice that the Treaty of Cession had extinguished rights. The Department argued in that case though Congress gave the Tlingit-Haida jurisdictional acts, as a right of substantive law they were barred because of the Treaty of Cessions and the Court of Claims rejected it. I am confident that if this same question ever reached the other authoritative tribunals of the United States the same conclusion would be reached.

We have another very important consideration here too, and that is that under the Statehood Act there is a grant of 103 million acres to the State. I think the question was raised this morning, shouldn't the State try to deal with this problem in some fashion. Here we get into another very significant decision by the Court of Claims earlier in this year, in 1968. No, it was in 1967 in the Lipon Apache case where the Republic of Texas attempted to extinguish title to lands there before Texas entered the Union and when Texas was a sovereign nation presumably. Also the year after it entered the Union the State legislature took measures to extinguish Indian title. The United States stood by idly and let the Texans do it at the time. This was a source of liability in the Lipon Apache case and the Court of Claims said that only Congress could extinguish these. There wasn't a clear enough act by the previous sovereign and therefore aboriginal title endured and they were entitled to compensation. As the Court of Claims pointed out, the extinguishment occurred only by the sword, by purchases, by treaty and by positive act of Congress.

So I think, gentlemen, this is the posture in which the Alaska native land claims are at the moment.

As to the great bulk of Alaska, there has not been a positive taking, but we have this terrific problem because of the land freeze, the fact that the State was standing ready to select 103 million acres, and we have other collateral problems, such as the gradual encroachment of civilization upon the formerly native way of life. So that there may be a series of what I would characterize as creeping takings, some of them so minor and insignificant that it would not pay the claimant group to come to Congress and seek a jurisdictional act and then spend 25 or 35 years in a judicial process to establish liability to the modest amount of land involved. I think this is what is feared by many of the groups.

As to the date of taking in the Alaska situation, we have a number of executive withdrawals and congressional withdrawals which would establish a taking date on the lands involved there and as to a great part of the balance, there has been no taking. So I would submit if you are going to talk about land values you have to talk about the values obtained today. That is, if the Lipon Apache case means anything, and if the doctrine stated by the Court of Claims in that case means anything, certainly this argument of taking 1867 as the taking date is unacceptable, I think, as a matter of sound law, as well as logic.