if the state oppose them carte blanche. The reason for such a thought is that the Congress traditionally has been unwilling to continue the traditional injustices inflicted on the Indians by further encroachments. The Congress will do so if enough pressure is brought to bear. But the Congress will take its own sweet time in doing so, and it will take a longer time than if some other equitable solution can be found. It is, therefore, our prognosis that if the role of the state is merely to oppose native rights, the ultimate solution will be delayed.

To answer your question categorically, we believe that the role of the state in solving our problem should be to assist the natives in their request in Congress for a legal vehicle for the determination of their rights and the extent of such.

Question 3. What do you think is the best interim solution to the native claim vs. state selected land problem?

Answer. As a temporary palliative, we recommend the Yakutat formula.

Question 4. What are your views on a reasonable test for "actual possession" of lands by natives from time immemorial? (Emphasis not supplied.)

Answer. We are a little puzzled by this question because of your use of the word "reasonable." It seems to connote that there are unreasonable definitions of possession.

In order to fully express our views on this subject we should start rather obliquely. *Tee-hit-ton Tribe of Indians* v. *the United States* held that the Act of 1884 did not ripen aboriginal rights in Alaska to a dignity sufficient to be protected by the Fifth Amendment. Therefore, in suing the United States, the Tee-hit-ton Indians needed the consent of the United States. There being no consent, the action was dismissed. But notice that the Supreme Court did not hold that there were no aboriginal rights in Alaska. The Court did not hold that third parties could invade Indian-title lands.

The Court did hold that the Tongass National Forest situation, that the Congress could put the Tongass National Forest stumpage into an escrow fund, with or without the consent of the Indians, and the Indians could not complain. An important principle to be gained from the Tee-hit-ton case is that the converse is true: While the United States may do as it pleases with aboriginally held lands, no third person can do so. Traditionally, the United States has protected any invasion of aboriginally held lands by a third person, which, of course, would include the state.

A second oblique comment should be about *Miller* v. *The United States*, which arose out of Juneau. First, the individual members of a tribe, as distinguished from the tribe itself, brought that action. Secondly, it was a case which arose early in the Alaskan situation. Thirdly, it has been discredited in *Hynes* v. *Grimes Packing Company*. We mention this case because apparently our good friend W. C. Arnold seems to believe that it has some dignity. The *Miller* case is only misleading to the student of Alaskan native rights.

The text in any Alaskan situation and native rights is *Tlingit and Haida Indians* v. *The United States*, rendered by the Court of Claims in 1959. It can be found in 177 Fed. Supp. 452. The Court is composed of five members and had the benefit of able counsel on both sides. While the attitude of the United States, as such, has been beneficient towards Indians, the Department of Justice has done its best to protect the United States' Treasury. In any event, the Court of Claims held, at page 463, 464:

"The Commissioner has found and we have adopted his findings that the use and occupancy title of the Tlingit and Haida Indians to the area shown on the map reproduced herein was not extinguished by the Treaty of 1867 between the United States and Russia, 15 Stat. 539, nor were any rights held by these Indians arising out of their occupancy and use extinguished by the treaty."

Thus, not only did the Indians of Southeastern own all of Southeastern (the map there mentioned includes all of Southeastern), but also such ownership, by way of Indian title, survived the Russian Treaty and the public domain laws and the laws of general application relating to homesteads, mining claims, etc.

In the Southeastern situation, so far as any wholesale appropriation of Indian title lands by the Tlingit and Haidas are concerned, the Court had to rely upon the Tongass National Forest Proclamations as the act of expropriation.

"These acts (principally the Tongass National Forest Proclamation) on the part of the Government represent takings of land and water aboriginally used and occupied by the Tlingit and Haida Indians for which they are entitled to compensation under the terms of the jurisdictional act. 177 Fed. Supp. 452, 467, 468."