> Prolonged or repeated separations from parents (due to...removal of children to boarding schools, and other kinds of family disruptions) remain a common occurance (sic) for Alaskan (Native) families. The damageness (sic) of these circumstances for the child's development has frequently been pointed out.
>
> From the standpoint of educational development the most crucial result is that the necessary conditions for sturdy character development...is often missing. Capacity to delay gratification, to develop a consistent set of values, to persist in effortful activity, and to strive for long range goals -- all the necessary foundations to any real participation in education -- are jeopardized....Consequently, no matter how "good" the parents or teachers, the child experiences them as a series of starts and abortive endings, of contradictory and confusing injunctions and demands, and of promises made and hopes raised but not carried out. The capacity to believe, trust, depend upon, and care about anyone or anything is irreparably blunted.
>
> Nachman, Prepared Statement, Hearings Before the Subcommittee on Indian Education at 533.

Such psychological disturbance is uncommon in villages, e.g. Kraus, Suicidal Behavior in Alaskan Natives, 7 (unpublished, 1972), where children are able to maintain a stable home life. Norton v. Norton, 112 Cal. App. 2d 358, 245 P.2d 1108 (1952); Fine v. Denny, 111 Cal. App. 2d 402, 244 P.2d 983 (1952). The harm done is irreparable, and in direct conflict with the parens patriae interest of the State in the welfare of children. Prince v. Commonwealth of Massachusetts, 321 U.S. at 165-166.

The Native student is in the "ambivalent situation of having to make a choice between the middle-class values of the school system and the traditional values of his family and tribal heritage; and whatever his choice, facing negative consequences and/or alienation from the discarded source." Hearings Before the Subcommittee on Indian Education at 707. Kleinfeld, A Long Way From Home at 87; Ross, Cultural Integrity and American Indian Education, 11 Ariz. Law. Rev. at 667. The emotional trauma is evident from the fact that

> while phaically remaining in the city, students attempted psychologically to return to the village. They would "go home" by spending every possible moment in the company of friends from home....visit(ing) Natives from their home town ....haunt(ing) the bars, where they could meet other Natives.
>
> Kleinfeld, Alaska's Urban Boarding Home Program at 19.

Chief Justice Burger in a decision discussing the propriety of busing to correct racial imbalances in schools segregated by state action, stated:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process.
>
> Swann v. Charlotte-Mecklenburg School District, 402 U.S. 1, 28 L.Ed.2d 554. (1971).

Accord, Cisneros v. Corpus Christi Independent School District, supra; Green v. School Board of the City of Roanoke, 316 F. Supp. 6 (W.D.Va., 1971), aff'd, 444 F.2d 99 (4th Cir., 1970). The situation in Swann allowed children to live at home and be bussed to school daily. Family life was not destroyed. The fundamental "right to satisfy intellectual and emotional needs in the privacy of (one's) own home" was respected. Stanley v. Georgia, 394 U.S. at 565.

The objection to Native student transportation in Alaska is far more compelling than the situation in Swann. Only Native students in Alaska are forced to acquire their secondary education under such conditions so deleterious both to health and education.[8]

In addition to causing damage to the health of Native secondary school

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8. The psychological health of students was an important factor in Brown v. Board of Education, supra, and has been considered significant by many courts in determining the constitutional appropriateness of educational programs. Wisconsin v. Yoder, supra; Serrano v. Priest, supra; Van Dusartz v. Hatfield, 334 F. Supp. at 874; Brice v. Landis, 314 F. Supp. at 978.

students, Alaska's secondary education for Native students is unequal. Alaska's educational system, controlled by non-Natives, is a system of white values, customs and world-views which clash with Native culture. There is an "underlying acculturative missionary spirit," Kleinfeld, Alaska's Urban Boarding Home Program at 8, to the school program that "generates a feeling of inferiority" in Native students "as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Brown v. Board of Education, 347 U.S. at 494. Ross, Cultural Integrity and American Indian Education, 11 Ariz. Law Rev. at 667-668.

The education received by Native secondary school students does not give them knowledge of and instill them with pride in their historic and cultural heritage. The educational program has little relationship to the life most Native children intend to lead. In fact, the secondary schools are essentially insensitive to Native culture and its demands, involving, for example, the provision of assistance to one's family in fulfilling subsistence living needs. Hobson v. Hansen, 269 F. Supp. at 480; United States v. Texas, 342 F. Supp. at 26.

> There are very few and sometimes no items in Alaska classrooms that would suggest the schools were not in Ohio. The only consistent Eskimo item...was an Alaskan Airline poster that regularly presents Eskimo portraits.
>
> Havighurst, To Live On This Earth at 63.

Even when non-village secondary school curricula contain Native cultural content, the courses are ineffective because of the non-Native environment in which they are given. "...vital elements of a living culture may be perpetuated only by personal association," Ross, Cultural Integrity and American Indian Education, 11 Ariz. Law Rev. at 670. The variety of Native cultures is another factor complicating the development of effective bilingual and bicultural

education programs in a non-Native environment. The failure of Alaska's education for Native children[9] is summarized by an Alaska Area Mental Health doctor:

> We have seen a thousand kids more or less who were social-promoted. We have seen them a few years later, still going through the motions of class attendance without understanding much of what was going on. We have seen them starting high school pretending to understand for a while, and then pretending they didn't care and weren't interested -- getting drunk, cutting classes, cutting wrists, and getting to go home -- for the wrong reasons.
>
> Nachman, Paper prepared for Northern, Cross-Cultural Education Symposium: Needs and Resources, 6-7.

Ross, Cultural Integrity and American Indian Education, 11 Ariz. Law Rev. at 667-668. Consequently, thousands of Alaska Native children receive no secondary education, S. Rept. 91-501 at 59, at a time when such education is intensely desired and of paramount importance to the survival of Native communities. Fed. Field Comm. for Dev. Planning in Alaska at 67; Hearings Before the Subcommittee on Indian Education at 222, 475; Havighurst, To Live On This Earth at 63. By failing to bring the school to students, Natives are as effectively deprived of education as when a state fails to bring the students to school. Manjares v. Newton, 64 Cal., 2d 365, 411 P.2d 901 (1966).

In part, the address of Native parents unlawfully determines if their children receive education and the quality of that education. Serrano v.

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9. The failure of Alaska's secondary education program for Native children, in terms of inappropriate, denigrating, and often irrelevant curricula content, as well as minimal achievement is commonly noted. The discussion here is a condensation of analyses found in Hearings Before the Subcommittee on Indian Education at 221, 261 (Statement of Senator Mike Gravel), 264, 472 (Statement of Arthur Hippler, ISEGR, University of Alaska), 490, 508; Fed. Field Comm. for Dev. Planning in Alaska at 67, 69; Kleinfeld, A Long Way From Home at 91, 108, 110; Havighurst, To Live On This Earth at 63.

Priest, 467 F.2d at 1269. Thus, Natives are the only group in Alaska's population that must subject their children to the merciless imposition of alien values, culture and language in order to secure the right to a secondary education. Hobson v. Hansen, 269 F. Supp. at 480. Once the choice is made to attend the boarding home or boarding school program, Native parents relinquish the right to raise their children and participate in their education, and the Native child submits to a course that will irreversibly tear him from his home and culture. Non-Native parents and children are not required to undergo such deprivations of rights in order to obtain secondary education for their children. As applied, Alaska's school laws, regulations and policies limit and in many instances terminate the right of Natives as a class to receive public school secondary education. The State must have a compelling interest to justify its educational means.[10] Since the real compelling interest of the State lies in promoting family cohesion and cultural integrity, encouraging local control of schools so that students can realize their maximum potential in the context of the needs of their community, and in providing education under circumstances with minimal hardships, the State cannot justify its educational policies as they apply to Natives. Consequently, Alaska Natives do not receive the equal protection of the laws in secondary education programs. Castro v. Beecher, supra.

Equality of educational opportunity is measured by the degree of response to the differing educational needs of children. Equal educational

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10. The State's interest in saving money is neither compelling nor fundamental. Shapiro v. Thompson, 394 U.S. at 633; Watson v. City of Memphis, 373 U.S. 526, 537, 10 L.Ed.2d 529 (1963); Palmer v. Thompson, 403 U.S. 217, 226, 29 L.Ed.2d 438 (1971); Hosier v. Evans, 314 F. Supp. at 320-321; United States v. School District 151 of Cook County, 301 F. Supp. at 232; Hall v. St. Helena Parish School Board, 197 F. Supp. 649 (E.D. La., 1961); Griffin v. County School Board, 377 U.S. 218, 12 L.Ed.2d 256 (1964); State v. Wylie, supra.

opportunity demands a curriculum that enables children to achieve at their maximum level of ability, Hobson v. Hansen, 269 F. Supp. at 407; United States v. Texas, supra (1971), and educates them for participation in "a democratic society (which) rests, for its continuance, upon healthy, well-rounded growth of young people into a full maturity as citizens, with all that implies." Prince v. Commonwealth of Massachusetts, 321 U.S. at 168. For Native children lacking village secondary schools, such curriculum opportunities are currently unavailable. "Providing students with the same facilities, text books, teachers and curriculum" does not constitute equality of treatment; "for students who do not understand English are effectively foreclosed from any meaningful education." Lau v. Nichols, 42 U.S.L.W. at 4166. Denetclarence v. Board of Education of Independent School District No. 22, Civ. No. 8872 (D.N.M., February 15, 1974). Lau involved non-English speaking students of Chinese ancestry who sought some form of bilingual education. The Supreme Court observing that "basic English skills are at the very core of what these public schools teach," reasoned that:

> Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.
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> 42 U.S.L.W. at 4166.

Like the Chinese-speaking students in Lau, English is a second language for Alaska Natives. Inherent in the English language, as with all languages, is an expression of cultural values and the embodiment of a world-view. The school system benefits the non-Native secondary school student mostly and damages the Native secondary school student quite frequently. The alien language and culture, the provision of few adult Native professionals and

paraprofessionals who might bridge the cultural gap, and the exclusion of Natives from participating in the formulation of the educational program preclude Alaska Native students from any meaningful education, the hallmark of equality.

Bilingual and bicultural programs in a village secondary school provide the only sure solution to cultural and linguistic shock, and guarantee of equal educational opportunity. Serna v. Portales Municipal Schools, supra. In United States v. Texas, supra (1972), Mexican-American students faced an educational environment as alien to their background as the educational system in Alaska is for Natives. The Court ordered that equal educational opportunity for Mexican-Americans includes an "instructional program which is compatible with their cultural and learning characteristics" and which "provide(s) for the characteristics of the child's immediate environment and the characteristics of the larger environment in which he shall function in the future." 342 F. Supp. at 30. In order to achieve such a program which would allow students to develop "positive self-concepts," the Court ordered the employment of Mexican-American professionals and paraprofessionals and required "comprehensive parental involvement at both the planning, implementation and evaluation level as well as at the instructional level as parent volunteers fully engaged in the learning-teaching process." 342 F. Supp. at 31. Such a school program would eliminate negative cultural presentations, provide cultural reinforcement and "respond to the life styles, family structures and needs of children." 342 F. Supp. at 33.

The vast cultural and linguistic differences between Natives and non-Natives are far greater than between Mexican-Americans and non-Mexican-Americans. Alvarado v. State, supra. Equal educational opportunity for Alaska

Native secondary school students does not necessarily require remedies as dramatic as those ordered by the Court in United States v. Texas, supra. Natives seek what all other Alaskans have, the self-determination to use the educational system to shape the destiny of their people and build a better life for themselves and their children in a changing world. Village secondary schools are the only mechanism through which Alaska Natives can obtain the conditions so necessary to the realization of equal educational opportunity. The failure to provide such schools constitutes discriminatory unequal distribution of educational resources the impact of which is borne entirely by the Native people, denying them the equal protection of the laws. Brown v. Board of Education, supra; Dunn v. Blumstein, supra; Hawkins v. Town of Shaw, supra; Hobson v. Hansen, supra; Price v. Landis, supra; Natonabah v. Gallup, supra; State v. Wylie, supra.

CONCLUSION

Alaska has a compelling state interest in an educated populace. This interest is given impetus by Alaska's constitutional mandate to establish an educational system open to all. Unfortunately, Alaska's implementation of the mandate has not been culturally or ethnically impartial. Racial and cultural bias in the distribution of educational resources has resulted in an educational system as closed as in segregated education situations. Many Native secondary school students, rejecting the conditions placed on their educational opportunity, are excluded from a secondary education. Others, who do enroll in a secondary boarding school or boarding home program face an education which undermines what the Alaska State Legislature described as a "viable, valuable culture". Section 1, ch. 172, SLA 1972. The impact of these educational programs is homogenization or coerced assimilation. S. Rept. 91-501, 91st Cong., 1st Sess. (1969); Fannin, Indian Education: A Test for Democracy, supra. The "lower 48" experimented with a similar Indian education policy for many years only to have many educators conclude that its destruction of parents, children and communities was neither good for the Indians nor for the United States.

In violating Native rights to cultural integrity and family cohesion, rights "far more precious than property rights", Stanley v. Illinois, supra; Alaska's secondary educational program subverts the due process of law and equal protection of the laws guarantees of the United States and Alaska Constitutions.

Just as separate but equal was found to be inherently unequal, the dynamics of shipping Native children off to secondary school for ten months each year cause extensive damage to Native children, parents and communities and make the entire educational process inherently unequal.

Boarding school programs in the "lower 48" have created an array of social problems which Alaska now has the opportunity to avoid. By providing local

village secondary educational opportunity for Natives, there will be an interplay between education and Native culture which will improve the quality of both.

If education is a fundamental right in Alaska, it cannot be offered with conditions which actually have the effect of denying the right.

Amici curiae join Appellants in respectfully praying that this Court protect the rights of Native parents and secondary school age children to a secondary education in their villages of residence.

Respectfully Submitted

BERTRAM E. HIRSCH
Attorney for Amici Curiae
Room 1000
432 Park Avenue South
New York, New York 10016
212-689-8720.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WILLIAM A. EGAN, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU 99801

April 4, 1974

Mr. Bertram E. Hirsch
Attorney at Law
Association on American
Indian Affairs, Inc.
432 Park Avenue, South
New York, New York 10016

Re: Hootch v. ASOSS

Dear Mr. Hirsch:

Pursuant to Alaska Appellate Rule 11(b)(9), the State of Alaska hereby consents to your filing an amicus curiae brief in the current appeal in the captioned proceeding.

It is my understanding from our recent phone conversation that you intend to brief the limited point as to the right of parents to choose the type of education which their children shall receive. It is my further understanding that this point is not being treated in appellants' brief in their appeal. The State's consent to your amicus brief is conditioned on these two points. We would oppose the filing of any brief which served merely to rehash issues briefed by the parties, or which raised issues which were not related to the issues currently on appeal.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Peter C. Partnow
Assistant Attorney General

cc: Eric Van Loon, Esq.
Christopher Cooke, Esq.

EXHIBIT C

RICE, HOPPNER, BLAIR & HEDLAND

ATTORNEYS AND COUNSELORS AT LAW

POST OFFICE BOX 585

BETHEL, ALASKA 99559

(907) 543-2845

J. L. VAN GORDER
LLOYD E. HOPPNER
JAMES H. BLAIR
JOHN S. HEDLAND
GEORGE E. SNELL
JOSEPH W. SHEEHAN
H. JOHN DEVAULT III
ROBERT W. HIRSCH
CHRISTOPHER R. COOKE

CHARLES J. CLASBY
OF COUNSEL

FAIRBANKS OFFICE
P.O. BOX 2551
FAIRBANKS, ALASKA 99707
(907) 452-1401

ANCHORAGE OFFICE
810 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 272-5528

April 3, 1974

Mr. Bert Hirsch
Association on American Indian Affairs
432 Park Avenue South
New York, New York 10016

RE: Hootch v. Alaska State-Operated School System, (Alaska Supreme Court No. 2157)

Dear Mr. Hirsch:

As counsel for the appellants in this action I hereby consent to your participation in this appeal as Amicus Curiae.

I understand that you will be representing the interests of your organization and several Alaskan associations and corporations.

Your attention and concern for the important issues presented in this appeal is greatly appreciated.

Very truly yours,

Christopher R Cooke

RICE, HOPPNER, BLAIR & HEDLAND
Christopher R. Cooke