

IN THE

SUPREME COURT OF THE STATE OF ALASKA

MOLLY HOOTCH, et al.,

Appellants,

-against-

ALASKA STATE-OPERATED
SCHOOL SYSTEM, et al.,

Respondents.

File No. 2157

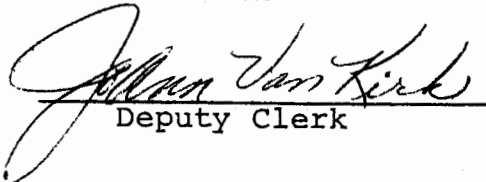
No. 72-2450

BRIEF OF ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.,
ALASKA FEDERATION OF NATIVES, INC., ASSOCIATION OF
VILLAGE COUNCIL PRESIDENTS, INC., BERING STRAITS
NATIVE CORP., BRISTOL BAY NATIVE ASSOCIATION, BRISTOL
BAY NATIVE CORP., INC., DOYON, LIMITED, KODIAK AREA
NATIVE ASSOCIATION, NANA REGIONAL CORP., INC., NUNAM
KITLUTSISTI (PROTECTORS OF THE LAND), RURAL ALASKA
COMMUNITY ACTION PROGRAM, INC., TANANA CHIEFS
CONFERENCE, AND TLINGIT-HAIDA CENTRAL COUNCIL, as
AMICI CURIAE, IN SUPPORT OF APPELLANTS.

Filed in the Supreme Court of
the State of Alaska, this 13th
day of May, 1974.

Respectfully Submitted

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STATUTES AND CONSTITUTIONAL PROVISIONS

The statutes which the case involves are appropriately set out in Appellants' Brief.

CONSTITUTIONAL PROVISIONS

United States Constitution, First Amendment

Congress shall make no law...prohibiting the free exercise (of religion); or abridging the freedom of speech....

United States Constitution, Ninth Amendment

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

United States Constitution, Fourteenth Amendment, Section 1.

...nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Alaska Constitution, Article I (Summary)

Section 1 provides that all persons have the natural right to life, liberty and the pursuit of happiness; and that all persons are equal and entitled to equal rights, opportunities and protection under the law.

Section 3 states that no person shall be denied the enjoyment of civil rights due to race.

Section 4 guarantees the free exercise of religion.

Section 5 protects freedom of speech.

Section 7 provides that no person shall be deprived of life, liberty or property without due process of law.

Section 22 states that the right of people to privacy shall not be infringed.

JURISDICTIONAL STATEMENT

The date on which judgment was entered and the legal authority of this Court to consider the matter upon which review is sought are set out in full in Appellants' Brief.

STATEMENT OF ISSUES

- I. DOES ALASKA'S FAILURE TO PROVIDE VILLAGE SECONDARY EDUCATION FOR ESKIMOS, INDIANS AND ALEUTS VIOLATE THEIR RIGHTS, PROTECTED BY THE UNITED STATES AND ALASKA CONSTITUTIONS, TO FAMILY COHESION, CULTURAL INTEGRITY, AND EQUAL EDUCATIONAL OPPORTUNITY?

STATEMENT OF THE CASE

This is an action by village Alaska Native children of secondary school age to secure their right to secondary education in their communities of residence. This case comes before the Court upon the denial in the court below of Appellants' motion for summary judgment.

Alaska provides secondary education to most village Natives by transporting them for ten months each year to boarding schools and boarding house programs hundreds and sometimes thousands of miles from home. Although more than two-thirds of Alaska Natives live in villages, Fed. Field Comm. for Dev. Planning in Alaska at 6 (1969), seventy per cent of the villages with at least eight persons of secondary school age do not have secondary schools, First Amended Complaint, pp. 11-16. As a result thousands of Native secondary school age students, who will not leave home, are not in school. S. Rept. 91-531, 91st Cong. 2nd Sess. at 59 (1969).

Most non-Native persons of secondary school age are able to attend day schools in their communities of residence. First Amended Complaint, Paras. 18, 53.

Native secondary school age children who do enroll in secondary school through the boarding school or boarding home program receive an education unequal to that provided non-Native Alaskans. Alaska's educational program denies the cultural background and needs of Native students and fails to teach them the skills they need for effective and meaningful involvement in our pluralistic society. Moreover, the Native students attending these programs suffer irreparable injuries directly attributable to the circumstances under which they must accept secondary education. Senator Paul Fannin of Arizona, a widely respected expert on Indian problems, provides a description, applicable to Alaska, of the educational system available to Indians.

The system of administration and education inflicted upon Indian people for the past 100 years has been actively oriented toward their assimilation into the "mainstream" of American society as rapidly as possible. These policies, which usually disregarded Indian values and philosophy, have only increased the Indians resistance to assimilation and destroyed his feeling of self-worth.

Fannin, Indian Education: A Test for Democracy,
13 Ariz. Law Rev. 661, 670 (1968)

Cultural diversity handicaps Native students when it should be a bridge to their maximum educational development.

In this appeal, Appellants respectfully urge the Court to establish the right of Alaska Natives to obtain a quality secondary education on equal terms with all other Alaskans and without the abridgment of fundamental rights.

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No. 72-2450

BRIEF OF ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.,
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RURAL ALASKA COMMUNITY ACTION PROGRAM, INC.,
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COUNCIL, as AMICI CURIAE, IN SUPPORT OF APPELLANTS.

ARGUMENT

1. ALASKA'S FAILURE TO PROVIDE VILLAGE SECONDARY EDUCATION FOR ESKIMOS, INDIANS AND ALEUTS ERODES THEIR FAMILY COHESION AND CULTURAL INTEGRITY IN VIOLATION OF THE FIRST, NINTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I OF THE CONSTITUTION OF THE STATE OF ALASKA.

INTRODUCTION

"School is the enemy!" This harsh evaluation by a Ponca Indian of schools servicing Indian students, S. Rept. 91-501, 91st Cong., 1st Sess. at 9 (1969), echoes the thoughts of village Alaska Native parents and their children of secondary school age. For many rural Alaska Natives, access to secondary educational opportunity is burdened with the necessity of choosing between severing strong family, community and cultural bonds for ten months each year to attend school hundreds of miles from home or foregoing secondary education to remain in a deep-rooted familial and cultural environment. To choose education constitutes an election to destroy Native culture, the key to cultural survival residing in the daily maintenance of family-village relationships.

To condition equal secondary educational opportunity for Natives on the relinquishment of fundamental First, Ninth and Fourteenth Amendment protected rights to family association and ethnic identity unfairly burdens that group, undermines, if not denies, fulfillment of their rights, and is inherently unequal. Sherbert v. Verner, 374 U.S. 398, 10 L.Ed.2d 965 (1963).

A. THE RIGHT OF ALASKA NATIVE PARENTS AND THEIR CHILDREN TO LIVE TOGETHER AS A FAMILY IS A FUNDAMENTAL LIBERTY SAFEGUARDED BY THE UNITED STATES AND ALASKA CONSTITUTIONS.

The freedom of Americans to marry and raise a family and for parents and children to enjoy each other's association, love, and care are not founded only in natural law. These most fundamental personal liberties are squarely within the ambit of constitutional protection.

Specifically, they are embraced within the First Amendment right of association and privacy, within the Ninth Amendment which provides that the Constitution's enumeration of certain rights may not be construed to deny others retained by the people, and within the Fourteenth Amendment's Due Process and Equal Protection Clauses. Stanley v. Illinois, 405 U.S. 645, 31 L.Ed.2d 551 (1972); Wisconsin v. Yoder, 406 U.S. 205, 32 L.Ed. 2d 15 (1972); Engelstadt v. Baird, 406 U.S. 438, 31 L.Ed.2d 349 (1972); Griswold v. Connecticut, 381 U.S. 479, 14 L.Ed.2d 510 (1965); Pierce v. Society of Sisters, 268 U.S. 510, 69 L.Ed. 1070 (1925); May v. Anderson, 345 U.S. 528, 97 L.Ed. 1221 (1953); Skinner v. Oklahoma, 316 U.S. 535, 86 L.Ed. 1655 (1942); Meyer v. Nebraska, 262 U.S. 390, 67 L.Ed. 1042 (1923).

The constitutional protection accorded the family relationship was first made explicit in Meyer v. Nebraska, *supra*, in which the Court upheld the right of parents to have their children taught the German language. Although the Court observed that the liberty guaranteed by the Fourteenth Amendment had never been defined with exactness, it determined that "without doubt, it denotes...the right of the individual...to marry, establish a home and bring up children." 262 U.S. at 399. Wisconsin v. Yoder, 406 U.S. at 232; Pierce v. Society of Sisters, 268 U.S. at 534-535; Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 165-166, 88 L.Ed. 645 (1944).

In Skinner v. Oklahoma, supra, the Court invalidated a state statute providing for the sterilization of habitual criminals. Skinner emphasized the fundamental nature of the constitutionally protected rights to marry and to procreate. So fundamental are these rights, the Court held, that in determining whether infringement of them violates the Fourteenth Amendment's Equal Protection Clause, it will apply the highest test of "strict scrutiny of the classification which the State makes" in legislation affecting those rights. 316 U.S. at 541.

More than two decades ago in May v. Anderson, supra, the Court denied full faith and credit to an ex parte Wisconsin custody decree and emphasized that a parent's "immediate right to care, custody, management and companionship of...minor children" is one of the most precious personal liberties. 345 U.S. at 533. And in Griswold v. Connecticut, supra, the Court, invalidating a Connecticut statute which criminalized the use of contraceptives by married couples, reaffirmed that the "sanctity of a man's home and the privacy of life" are rights so fundamental that they are safeguarded both by the right of privacy inherent in the First Amendment and by the Ninth Amendment to the United States Constitution. 381 U.S. at 487. See also, Eisenstadt v. Baird, supra.

The Court's most forceful exposition of these constitutionally protected liberties and their fundamental nature was stated as recently as two years ago in Stanley v. Illinois, supra. There the Court declared unconstitutional Illinois' dependency and neglect statute which deprived unmarried fathers of their right to care for and have custody of their natural children on the death of the mother:

The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed essential, basic civil rights of men, and rights far more precious than property rights. It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment.

31 L.Ed.2d at 588-589

Flowing from the personal liberties of parents and children to association in a family relationship is the broader but just as fundamental right to cultural integrity and continuity. Cultural integrity can only be achieved if the family, as the primary instrument of socialization, has the opportunity to appropriately educate its minor members into the customs, traditions and history of the society from which it derives sustenance. In short, cultural integrity is the preservation of the way of life of the family in the context of the society in which it exists.

This Court has recognized the unique and distinctive culture of Alaska Natives. Alverado v. State, 486 P.2d 891 (Alaska, 1971); Carle v. Carle, 503 P.2d 1050 (Alaska, 1972). The Court in its historic decision, Breese v. Smith, 501 P.2d 159 (Alaska, 1972), followed United States Supreme Court precedent, extending by implication the protection of the Constitution and laws of Alaska to the preservation of Native cultural integrity. The court observed that:

...the United States of America, and Alaska in particular, reflect a pluralistic society, grounded upon such basic values as the preservation of maximum individual choice, protection of minority sentiments, and appreciation for divergent lifestyles.

501 P.2d at 169 (emphasis added) .

Judge Singleton in the court below adhered to and amplified this proposition. Order Denying Motion for Summary Judgment, pp. 1-2, fn. 18, October 3, 1973. Of paramount importance in resolving the issues in the case at bar is the Court's conclusion that in "bicultural" Alaska a child reared within the Native culture will have a different lifestyle from a child reared in "what is believed to be the dominant culture," Carle v. Carle, 503 P.2d at 1055, and that this factor is significant in determining child custody as between two Native parents, one leading "the traditional subsistence existence of village Alaska," Carle v. Carle, 503 P.2d at 1051, and the other leading an assimilated urban life. The importance of protecting traditional Native village culture is implicit in the Court's decision. See also, Alverado v. State of Alaska, supra. When, as here, the parent(s) of a Native child live only a traditional non-assimilated village existence, the right to cultural integrity is even more compelling.

As shown in the cases set out above, the judicial branch of Alaska's government has long recognized these rights. In addition to the judicial branch of government, the legislative branch has recognized and forcefully proclaimed the right of Alaska Natives to the protection of their cultural integrity. Affirming this principle two years ago in passing the bilingual education act, A.S. 14.08.160, the Alaska State Legislature stated its findings:

The right to one's native language and culture is inherent in the concepts underlying our constitutional guarantees; and continued disregard of this right has been protested by many who believe that Alaskan schools have an obligation to provide education which does not

bypass this right and which is not designed to shift students unilaterally from one culture to another. Students in the villages of Alaska are representatives of a viable, valuable culture which is in a continual process of change, as are all cultures, but which has a right to continue its existence as a unique culture whether Indian, Eskimo, or Aleut.

Section 1, ch.172, SLA 1972 (emphasis added)

The United States Constitution also shields Native cultural integrity from truncating state action. The private realm of the "home derives its pre-eminence as the seat of family life. And the integrity of that life is something...fundamental." Poe v. Ullman, 367 U.S. 497, 551, 6 L.Ed.2d 989 (1961) (J. Harlan, dissenting). Prince v. Commonwealth of Massachusetts, 321 U.S. at 166. See also Alaska Constitution, Article I, Section 1. It includes the primary function and freedom of parents to prepare their children "for obligations the state can neither supply nor hinder," Prince v. Commonwealth of Massachusetts, 321 U.S. at 166; Pierce v. Society of Sisters, 268 U.S. at 534-535. Family life in this context encompasses the transmission of cultural values and precepts through interaction and association with other members of the same cultural community or group. Griswold v. Connecticut, 381 U.S. at 483.

In Wisconsin v. Yoder, supra, the Supreme Court was primarily concerned with the First Amendment right of the Amish to practice their religion freely. Although Yoder did not directly propound the Constitutional right to cultural integrity, the decision is strongly grounded in the

primary role of the parents in the upbringing of their children (which) is now established beyond debate as an enduring American tradition.

406 U.S. at 232, 32 L.Ed.2d at 35.

Noting the parental duty to inculcate their children with "moral standards" and "elements of good citizenship," 406 U.S. at 233, the Court repeatedly emphasized the intimate connection between such parental education and the integration of the child into the way of life of the community. 406 U.S. at 218.

The State of Alaska has infringed upon the fundamental freedoms of appellants and their class in the most drastic and partisan manner conceivable. It has not merely imposed strictures upon their care and education. Rather, as a precondition of secondary education, it requires dissolution of the family and extrication from the only cultural community known to the child. The effect of the State's action is unusually severe because Native culture places great emphasis on children and a family structure based on strong kinship bonds. Alvarado v. State, 486 P.2d at 894-895. Kraus, 'Eskimo Suicide', Paper read at the Meeting of the American Psychiatric Association, 1973. Refusal to accept this abridgment of rights forces abandonment of the right to any equal secondary education. Because "the values and programs of the modern secondary school are in sharp conflict with the fundamental mode of life," Wisconsin v. Yoder, 406 U.S. at 217, of the Natives, submission to the non-village educational scheme of the State coerces assimilation into the society at large, S. Rept. 91-501 at passim, and would "gravely endanger if not destroy" the way of life of the Native community. Wisconsin v. Yoder, 406 U.S. at 219. Although couched in free exercise language, the holding in Yoder clearly extends the protection of the First Amendment to a visible culture that has existed for centuries. See also Alaska Constitution, Article I, Section 5.

The Native way of life is as "religious" as the way of life protected in Yoder. It falls within the ambit of First Amendment solicitude for the free exercise of religion and freedom of association.¹

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1. Yoder suggests that state interests may be overcome when fundamental rights, other than the free exercise of religion, are in jeopardy. "Thus a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment...."

406 U.S. at 214. (Emphasis added)

In determining the existence of an intimate relation between Amish religious beliefs and way of life, the Court found it significant that for almost three centuries the Amish have sustained essentially unaltered a highly self-sufficient and successful social unit. 406 U.S. at 215, 217, 219, 222, 225. This Court has recognized that religion is a profound element that characterizes the "enormous gulf which separates the mode of life of the typical Alaskan villager from the type of existence led by most residents" of non-village Alaska. Alvarado v. State of Alaska, 486 P.2d at 599. See also, Alaska Constitution, Article I, Section 4. The Native village way of life has existed far longer than the three centuries attributed to the Amish. Native culture is fundamentally based on self-sufficiency and its continuing viability has been attested by this Court, Alvarado v. State of Alaska, supra, and the State Legislature, supra. Similarly to the Amish, Native religion endures in the integral role it plays in the daily living of village Natives. As in Yoder, Alaska Native parents have a substantial First Amendment right to an education for their children that does not threaten Native cultural integrity. The critical difference between Yoder and the case at bar is that rather than desiring complete separation from the larger society, Natives want to blend the skills and resources of the outer world with their own cultures and traditions. The difference is not substantive. The Amish invoked the shield of the First Amendment to block the attendance of their children in a secondary school atmosphere destructive of Amish culture. After completion of elementary school, Amish children would receive a continuing vocational education steeped in the Amish pattern of daily living. Alaska Natives do not want to withhold from their children accessibility to the influences of the outside world. However, the boarding home and boarding school secondary education program that most Alaska Natives must attend if they are to receive any

schooling beyond the elementary level, is distinguished not only by its failure to provide equal education but by its destructive impact on Native children, families, and culture "by substantially interfering with the...integration (of the children) into the way of life...at the crucial adolescent stage of development." Wisconsin v. Yoder, 406 U.S. at 218. (See discussion pp. 21-24).

Native parents want their children to receive secondary education on Native terms. The educational program must respect the cohesion of Native families and the preservation of Native culture. Such a program can only function in a village setting where Native parents can participate in and direct the school and out-of-school education of their children, exposing them to "attitudes, goals and values" consistent with beliefs. Wisconsin v. Yoder 406 U.S. at 218.

The fundamental right to privacy guaranteed by the First and Ninth Amendments and Article I, Section 22, of the Alaska Constitution further secures against infringement the cohesion of Native families and the integrity of Native cultures. Griswold v. Connecticut, 381 U.S. at 483, 496. Justice Brandeis, dissenting in Olmstead v. United States, 277 U.S. 438, 478, 72 L.Ed. 944 (1928), captured the essence of the Constitutional guarantee of privacy.

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone -- the most comprehensive of rights and the right most valued by civilized men.

Stanley v. Georgia, 394 U.S. 557, 594; Griswold v. Connecticut, 381 U.S. 473, 494; Poe v. Milman, 367 U.S. 497, 548-552 (J. Harlan, dissenting); Union Pacific Railway Co. v. Botsford, 141 U.S. 250, 251, 35 L.Ed. 734 (1891); Breese v. Smith

501 F.2d 159, 171. The basis upon which Alaska provides secondary education to most rural Alaska Natives denies them and their parents every aspect of privacy deemed important by Justice Brandeis. Despite the fact that the right to privacy cases involve unconstitutional state intrusions, constitutionality does not attach merely because Native children, not having access to one, do not have to attend secondary school. A.S. 14.30.010. Secondary educational opportunities are provided for most of the children of Alaska. The exemption in A.S. 14.30.010(6)(7) applies almost exclusively to Native children. Alaska's Constitution mandates the establishment of a "system of public schools open to all children of the State," Article VII, Section 1. Consistent with its Constitutional obligation, Alaska has undertaken the provision of secondary school programs. These programs must be open to all the children of the state on equal terms. Brown v. Board of Education, 347 U.S. 483, 493, 98 L. Ed. 873 (1954). Non-Native children do not have to relinquish their rights to privacy in order to obtain secondary education nor must they forego secondary education in order to preserve privacy.

1. ALASKA'S FAILURE TO PURSUE EDUCATIONAL ALTERNATIVES WITH AN IMPACT LESS DRASTIC THAN TOTAL FAMILY DISSOLUTION AND CULTURAL ABANDONMENT IN FURTHERANCE OF ITS INTEREST IN SECONDARY EDUCATION VIOLATES THE DUE PROCESS RIGHTS OF BOTH NATIVE PARENTS AND CHILDREN.

The fundamental rights of Alaska Native parents and children to family cohesion and cultural integrity are not absolute. Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 166-167. But state laws and regulations may subordinate fundamental rights only upon a clear showing of a compelling and substantial governmental interest. Oregon v. Mitchell, 400 U.S. 112, 238, 27 L.Ed. 2d 272, 346 (1970) (separate opinion of Brennan, White and Marshall, JJ.); Griswold v. Connecticut, 381 U.S. 479, 497, 503-504 (Goldberg and White, JJ., concurring); State v. Wylie, 515 F.2d 142, 145 (Alaska, 1973); People v. Woody,

61 Cal. 2d 716, 394 P.2d 813 (1964). If such a State interest is demonstrated, the State, in achieving its goals consistently with due process, must use a method that least burdens fundamental rights. Shelton v. Tucker, 364 U.S. 479, 485, 5 L.Ed. 2d 23 (1960); State v. Wyllie, 516 P.2d 142, 148.

The failure of the State of Alaska to offer village secondary education so that the Native culture might survive is evident in the record. First Amended Complaint, pp. 11-16, 20. If Alaska has a compelling state interest in secondary education that permits intrusion upon the free exercise of fundamental constitutional rights and personal freedoms of parents to raise and educate their children within Native culture, then Alaska must use the least drastic means to accomplish this legitimate state end. Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274 (1972); Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969); Griswold v. Connecticut, supra. The Supreme Court first developed the doctrine of "least drastic alternatives" where the government sought to regulate freedom of speech. Shelton v. Tucker, 364 U.S. 473, 485. NAACP v. Button, 370 U.S. 415, 9 L.Ed.2d 405 (1963). The doctrine, however, has been expanded to mean that whenever the freedoms to be affected are personal and fundamental, the State is obliged to pursue reasonable alternatives which impose a lesser, rather than a greater, infringement. Dunn v. Blumstein, supra (the right to vote); Shapiro v. Thompson, supra, (the right to travel); Griswold v. Connecticut, supra (marital privacy). In Dunn, the Court acknowledged the State's interest in regulating the franchise. Nonetheless, in rejecting Tennessee's durational residence requirement, the Court admonished:

It is not sufficient for the State to show that durational residence requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means which unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with precision, and must be tailored to

serve their legitimate objectives. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose less drastic means.

405 U.S. 330, 31 L.Ed. at 285.

The interest of the State of Alaska in providing a secondary education for all children within its borders is beyond dispute. However, Alaska is obliged to pursue this legitimate interest through the provision of education in a manner that does not impinge upon the personal, fundamental and constitutionally protected right of Native children and parents to live together as a family within the Native cultural environment. The State's legitimate interest in secondary education

cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.

Shelton v. Tucker, 364 U.S. at 188.

Needless to say, the State of Alaska has violated appellants' due process rights by pursuing the most drastic means available despite the fact that Alaska Native parents are eager and willing to care for and participate in the education of their children. Fed. Field Comm. for Dev. Planning in Alaska, 67 (1968); Hearings before the Subcommittee on Indian Education, United States Senate, 91st Cong. 1st Sess., Part I, 222, 475 (1969). The State of Alaska has chosen to provide secondary education to Alaska Natives in a boarding school and boarding home program that shatters Native families, seriously threatens the integrity of Native culture, and risks grievous emotional harm to some, if not all, of these young children (see discussion, pp. 28-31) in flagrant violation of the constitutional rights of both children and parents.

In striking down a durational residency requirement for State employment that burdened a constitutional right, this Court observed that less drastic means were available to achieve State interests and that the requirement was poorly tailored to meet its objectives. State v. Wylie, 516 P.2d 142, 149. Stanley v. Illinois, *supra*; Meyer v. Nebraska, *supra*; Castro v. Beecher, 459 F.2d 735 (1st Cir., 1972); Alaska Constitution, Article I, Section 7. The Constitutional rights involved in the case at bar are at least as important as the right to travel in Wylie. Means that are less burdensome on the exercise of these rights are apparent, i.e., village secondary schools. Local schools for village children have many advantages (see discussion pp. 24-25) and are best suited to achieving state educational objectives, which, for Natives, have not been accomplished, and solving the problem of "inadequate education... in remote (Native) areas of the State." State v. Wylie, 516 P.2d at 149.

Alaska can demonstrate no compelling legitimate state interest that would allow it to prevail in providing secondary education programs that "twenty-four hours a day, seven days a week, nine months a year" significantly encroach on Native personal freedoms. Richards v. Thurston 424 F.2d 1280, 1285 (1st Cir., 1970). Bates v. City of Little Rock, 361 U.S. 516, 524, 4 L.Ed.2d 480.

A...State may...serve as a laboratory; and try novel social and economic experiments (citation omitted). I do not believe that this includes the power to experiment with the fundamental liberties of citizens.

Griswold v. Connecticut 381 U.S. at 406
(Goldberg, concurring)

Alaska's experiment has "allow(ed) expediency to be the basic principle." Alvarado v. State 486 P.2d at 905. By "succumb(ing) to the temptation of convenience," Alaska has "neglected(ed) or ignore(d) communities of individuals located in remote areas of the state" and has thus failed to extend with an "even hand" the benefits conferred by the Constitutions of the United States and Alaska.

Alvarado v. State, 406 P.2d at 905-906.

A "governmental purpose to control...activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." NAACP v. Alabama, 377 U.S. 288, 307, 12 L.Ed.2d 325. Meyer v. Nebraska, 262 U.S. at 401; Gomillion v. Lightfoot, 364 U.S. 339, 347-348; United States v. Texas, 321 F.Supp. 1043, 1352 (E.D. Texas, 1970). The means used by Alaska to control secondary educational activities affecting Natives sweep so broadly that protected freedoms must be surrendered as a prerequisite to obtaining the secondary educational benefit. Consequently, as in Yoder, state interests must yield to protect fundamental rights.

B. NATIVE PARENTS HAVE A RIGHT TO SUBSTANTIAL PARTICIPATION IN THE FORMULATION OF PUBLIC SECONDARY EDUCATION FOR THEIR CHILDREN.

Education is a process whereby knowledge is imparted. Brown v. Board of Education, supra, expresses the signal role of education in our society:

Today, education is perhaps the most important function of state and local governments....It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

347 U.S. at 493 (emphasis added)

Accord, Meyer v. Nebraska, 262 U.S. at 400; Shelton v. Tucker, 364 U.S. at 487, 5 L.Ed.2d at 250-251; Serrano v. Priest, 5 Cal.3d 584, 487 P.2d 1241, 1255-1259 (1971); Van Duzert v. Hatfield, 334 F. Supp. 870, 875 (D. Minn., 1971); Piper v. Big Pine School District of Inyo County, 193 Cal. 604, 226 P. 926, 930 (1924); Perry v. Grenada Municipal Separate School District, 300 F.

Supp. 748, 753 (N.D. Miss., 1969); Ordway v. Hargraves, 323 F. Supp. 1155, 1158 (D. Mass., 1971); Hosier v. Evans, 314 F. Supp. at 319. "Thus, education is the lifeline of both the individual and society." Surrano v. Priest, 487 P.2d at 1256.

A singular feature of Alaska's secondary school program for Native students, is the denial of the right of Native parents to awaken their children to cultural values and to help them adjust normally to their environment. The denial stems directly from the failure of the State to provide local "neighborhood" schools; thus preventing Native parents from participation in and direction of the education of their children.

The neighborhood school system, widely used throughout the country, was organized in direct response to the strongly felt need in our society for "direct control over decisions vitally affecting the education of one's children." Wright v. Council of the City of Emporia, 407 U.S. 451, 469 (1972). As recently as last year, the United States Supreme Court again emphasized that local community control of schools "is of overriding importance from an educational standpoint." San Antonio School District v. Rodriguez, 411 U.S. 1, 49-50, 52 (1973); Wright v. Council of the City of Emporia, 407 U.S. at 478 (G.J. Burger, dissenting); Deal v. Cincinnati Board of Education, 369 F.2d 55, 60 (6th Cir., 1966); Springfield School Committee v. Barksdale, 348 F.2d 261 (1st Cir., 1965); Robsen v. Hansen, 269 F. Supp. 401, 504 (D.D.C., 1967).²

The idea of local control of schools was firmly adopted by the Alaska

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2. Most of the "neighborhood school" cases involve efforts of the dominant group to keep races apart and in their "proper" social stratum. Natives seek neighborhood schools to preserve cultural integrity and the very essence of the family unit, Constitutionally protected goals. Neighborhood schools are also necessary to provide Natives with the best quality education possible for their children, a right others have attempted to obtain through integration. Secondary education a long way from home, in seriously undermining a child's security, destroys the basis for equality of educational opportunity and results in inferior education.

State Legislature in its enactment of A.S. Ch. 12 and Ch. 14 (A.S. 14.14.090), providing for local school administration and development of educational programs. This Court recognizes that the adaptation of schools to meet the varying conditions of different localities was the purpose prompting the Legislature to establish local school boards. Kacaulley v. Hildebrand, 491 P.2d 120, 122 (Alaska, 1971). Alaska's commitment to the concept of local control and recognition of Native special needs was implicit in this Court's recent upholding of the creation of the North Slope Borough, Mobil Oil Corp., et al. v. Local Boundary Commission of the State of Alaska, ___ P.2d ___, File No. 1947 (January 16, 1974), and in the various transactions of the State with this Borough. The North Slope Borough School District is coextensive with and an integral part of the Borough. Thus, the special needs of Native children requiring local village schools has in effect been recognized by Alaska.

Local community control of schools permits the tailoring of educational programs to local and student special needs. Lind, Small Secondary Schools Administrative Manual (Alaska Department of Education, 1971); Fannin, Indian Education: A Test For Democracy, 10 Ariz. Law Rev. 661 (1968); Serna v. Portales Municipal Schools, 351 F. Supp. 1279 (D.N.M., 1972); Mills v. Board of Education, 348 F. Supp. 866 (D.D.C., 1972); Pennsylvania Association for Retarded Children v. Pennsylvania, 334 F. Supp. 1257 (E.D.Pa., 1972). The State-Operated School District, however, encompasses thousands of square miles and includes villages from Southeast Alaska to above the Arctic Circle, with "significant differences in language, race and culture," Alvarado v. State, 486 P.2d at 901, and thus a multitude of dissimilar needs. The District is so large geographically that Alaska Natives are for all practical purposes deprived of the right to effectively participate in crucial educational decisions affecting their children³ and

3. The District's administrative offices are in Anchorage, more than 400 miles from most of its predominantly Eskimo population.

have no input in the development of an educational program that meets the needs of their children in the context of the goals of the Native community. Consequently, Native children attending Alaska's boarding home or boarding school program are thrust into a secondary education system that is alien in orientation and, in its inherent incapacity to meet their needs, exposes them to serious risk of substantial harm and poor quality education. (See discussion, pp. 29-37).

Not restricted to the formalistic confines of the classroom, education embraces the broader context of learning through active involvement in the way of life of the community. Wisconsin v. Yoder, supra; Tinker v. Des Moines Community School District, 393 U.S. 503, 512, 21 L.Ed.2d 731, 741 (1969); Serrano v. Priest, 487 P.2d at 1257; Devighurst, To Live on This Earth, 299 (1972). When children are physically separated from their parents, parental ability to participate in the formulation of the type of education that protects family cohesion and preserves cultural integrity vanishes. It is axiomatic that Native children in attendance at secondary schools far from home are unable to maintain family cohesion and the culture of the Native village way of life. This has been graphically documented in a recent comprehensive study by the University of Alaska's respected Institute for Social, Economic and Government Research. Kleinfeld reports that dissipation of Native cultural values and accepted conduct is an inevitable end product of the boarding home and boarding school system. See broad exposition in Kleinfeld, A Long Way From Home, 67 and passim (ISEGR, 1973). The findings of this most recent study have been pointed out by other social scientists. Kraus, in Esquimo Suicide, supra, discusses the impact of boarding schools and homes on Native children.

Going out to school involved a physical separation of thousands of miles. In some instances, it was not possible for children to return home even for Christmas. In addition to the physical separation a more subtle loss, the erosion of ethnic identity was experienced. The educational opportunity afforded American Natives by the United States (and Alaska) Government was, as a matter of policy,

oriented towards assimilation of the native into the Western culture. The incongruence of Western culture and Eskimo culture has been noted....The term "psychosocial nomadism"...describe(s) the objectless, anomic plight of native children separated from home and attempting to adjust to the Western education situation.

Kraus, Eskimo Suicide at 11-12.

The cultural dislocation of the Native child as a result of the boarding home and boarding school experience is described by Salisbury, "Teaching English to Alaska Natives," *Journal of American Indian Education* (January, 1967):

When (the native student) returns to his village each summer, he finds only vestiges of his formerly comfortable family relationship, and he encounters increasing frustrations because of the differences between himself and his village. His exposure to western education has taught him to respect (though not necessarily to understand) western standards, and at the same time it has decreased his respect for the native culture. He finds himself, figuratively, with a foot in each culture, unable fully to identify with either group and accepted by neither as well.⁴

Precisely because education is of such paramount importance and because education in an alien environment poses "a very real threat of undermining the...community," Wisconsin v. Yoder, 406 U.S. at 218, our society traditionally emphasized the parental right to direct, supervise and control the education of children, Wisconsin v. Yoder, 406 U.S. at 203-214, 231-232; Breen v. Kahl, 419 F. 2d 1034 (7th Cir., 1969), and our communities place great value on the concept of the neighborhood school. Legal theory has been fashioned to sanctify parental and, by extension, community control of the education

4. These points are extensively reviewed in the testimony and articles presented in the Hearings Before the Subcommittee on Indian Education, supra. See also, Bergman, Boarding Schools and the Psychological Problems of Indian Children, Paper presented at Annual Meeting of American Academy of Pediatrics, Indian Health Committee (1967).

children receive. Parental rights to direct the education of children found early expression in Meyer v. Nebraska, supra, where applying the Fourteenth Amendment Due Process Clause, the Supreme Court stressed that "corresponding to the right of control (of upbringing), it is the natural duty of the parent to give his children education suitable to their station in life," 262 U.S. at 400 (emphasis added). Implicit in the provision of "suitable" education is participation in curriculum development and in location of the educational site. In striking down Oregon's attempt to regulate where a child must receive education, the Court, in Fierco v. Society of Sisters, supra, affirmed the First and Fourteenth Amendment parental right to educate one's children as one chooses. Griswold v. Connecticut, 381 U.S. at 482; Prince v. Commonwealth of Massachusetts, supra. The "fundamental interest of parents, as contrasted with that of the State, to guide...the education of their children," is grounded in the overriding purpose of the First Amendment to protect differing beliefs and diverse ways of life. Wisconsin v. Yoder, 406 U.S. at 232. The State may not "contract the spectrum of available knowledge" by determining what shall be taught and what beliefs and lifestyles shall be promoted, Griswold v. Connecticut, 381 U.S. at 482; Meyer v. Nebraska, supra.

The right of Native parents to use the educational system as a vehicle for the transmission of Native culture to their children is supported by First Amendment protection of unpopular or uncommon forms of speech. The right of freedom of speech includes freedom of thought. Griswold v. Connecticut, 381 U.S. at 482. Broadly conceived, freedom of thought encompasses the daily manifestation of one's way of life as a medium of expression. Road, Cultural Integrity and American Indian Education, 11 Ariz. Law Rev. 641, 651, 670 (1969). The right of Native parents and children to strongly assert their way of life is compelled by the high value the First Amendment accords to rich

cultural diversities and the Amendment's disapproval of coerced adherence to official orthodox opinion.

In a mass society, which presses at every point toward conformity, the protection of a self-expression, however unique, of the individual and the group becomes ever more important.

People v. Woody, 394 P.2d at 821
(upholding Indian peyote religion)

Homogenization or standardization of children through the educational process is precluded by the First Amendment. Board of Education v. Barnette, 319 U.S. 637, 641-642, 87 L.3d. 1628 (1943); Meyer v. Nebraska, 262 U.S. at 401-402; Pierce v. Society of Sisters, 268 U.S. at 535; Tinker v. Des Moines Community School District, 393 U.S. at 511; Wisconsin v. Yoder, 406 U.S. at 226; Serrano v. Priest, 487 P.2d at 1258; Marks v. City of Anchorage, 500 P.2d 644 (Alaska, 1972); Broese v. Smith, supra; Breen v. Kahl, supra.

If Native parents have the right to an educational system that expresses the unique qualities and concepts of Native culture, Native children have the corollary right to receive the information and ideas that such a system would make possible. Griswold v. Connecticut, 381 U.S. at 482; Stanley v. Georgia, 394 U.S. at 564. See also Alaska Constitution, Article I, Section 5.

Experts in the field of Indian and Alaska Native education have long concluded that equal educational opportunity resides in Native control of locally available schools. Navighurst, To Live On This Earth at 24; S. Rept. 91-501 at 135; Kleinfeld, A Long Way From Home at 117; Fanning, Indian Education: A Test
5.
for Democracy, supra. Native-controlled schools would reflect Native

5. The Native majority composition of the school board of the State-Operated School District does not provide Native control or satisfy the right of Native parents to substantial participation in the formulation of public education for their children. The school board is appointed, meets infrequently and represents an area almost as large as the entire State. Under such circumstances, the board is really the creature of the school administration. Furthermore, the District includes Eskimo, Indian and Aleut cultural communities. The board cannot affectively represent the different educational needs of these communities. Finally, parents of Native students from villages within the State-Operated School District are completely excluded from any involvement in the educational process if their children attend borough schools. This is the case for many appellants.

educational goals. The goals of education are not uniform for every group in our population. Since "free public education...will not be partisan or enemy of any class, creed, party, or faction," the founding fathers, recognizing that "compulsory unification of opinion achieves only the unanimity of the graveyard," Board of Education v. Barnette, 319 U.S. at 641, (a fate not unknown to Native secondary school students), provided a Constitutional framework that protects "the right to differ as to things that touch the heart of the existing order." Board of Education v. Barnette, 319 U.S. at 642. Wisconsin v. Yoder, 406 U.S. at 223-224. The Supreme Court, emphasizing that "probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public education officials shall compel youth to unite in embracing," Board of Education v. Barnette, 319 U.S. at 641, has protected the right of minority groups to realize educational goals that best suit their needs.

It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the acculturated agrarian community that is the keystone of the Amish faith.

Wisconsin v. Yoder, 406 U.S. at 222.
See also, San Antonio School District v. Rodriguez, 411 U.S. at 50.

A village secondary school would harmonize educational values and directions with a respect for the integrity and dignity of Native cultural identification and community orientation, accommodate Native calendrical events and assist the Native community to adapt to contemporary needs. Havighurst, To Live On This Earth at 24, 63, 220; Kleinfeld, A Long Way From Home at 92. Home-school communication would improve substantially. Deal v. Cincinnati Board of Education, 369 F.2d at 60. Teachers in a village secondary school

would have "direct contact with the community and thus become aware of its values, economic orientations, and respected adult roles." Kleinfeld, *A Long Way From Home* at 92. Parents would be able to assist teachers to learn about the background of the children and, drawing on parent and community resources, teachers could provide learning experiences suited to the needs of the children. United States v. Texas, 312 F. Supp. 24 (E.D. Texas, 1971), aff'd, 466 F.2d 579 (5th Cir., 1972).

(The village high school curriculum would) include educational experience(s) far more appropriate to village students' academic and developmental needs.... Most important, small village high schools could take advantage of the potential of small group situations and location in the home community to create the unified educational directions, personal adult guidance, and peer group values which better enable village students to solve the central developmental problem of adolescence -- strong identity formation.

Kleinfeld, *A Long Way From Home* at 117.

In short, village secondary schools would expose Native students to the values, traditions and customs of both Native and non-Native culture in the most healthy way -- without forcing them to abandon one culture for the other. Fannin, *Indian Education: A Test for Democracy*, 10 *Ariz. Law Rev.* at 650; Ross, *Cultural Integrity and American Indian Education*, 11 *Ariz. Law Rev.* at 670.

II. ALASKA'S BOARDING HOME AND BOARDING SCHOOL SECONDARY EDUCATION PROGRAM FOR VILLAGE NATIVE CHILDREN VIOLATES THE EQUAL PROTECTION OF THE LAWS BOTH TO NATIVE CHILDREN AND PARENTS.

Alaska offers secondary education to most Native children on the condition that they enroll in the boarding home or boarding school program. Enrollment entails leaving home -- usually by airplane -- for most of the school year to attend a school hundreds and sometimes thousands of miles away from home. The vast majority of the Alaska Native population is scattered throughout

the State in 178 villages. Fed. Field Comm. for Dev. Planning in Alaska at 6. Three-quarters of these villages, all with eight or more children of secondary school age, are not provided with local village secondary education. First Amended Complaint, pp. 11-16. The secondary school age children from these villages are the primary enrollees in the boarding home and boarding school programs. The programs are almost exclusively Native in composition, Kleinfeld, Alaska's Urban Boarding Home Program, 5 (ISMR, 1972), because virtually all areas of Alaska, urban and village, with a predominantly non-Native population have State-provided local secondary school programs. First Amended Complaint, p. 16.

Today, exactly two decades after the Supreme Court's landmark decision, Brown v. Board of Education, supra, it is undisputed that equal educational opportunity is the standard required by the Fourteenth Amendment. "The opportunity of an education...where the state has undertaken to provide it, is a right which must be made available to all on equal terms." Brown v. Board of Education, 347 U.S. at 493. Piper v. Big Pine School District of Inyo County, supra. Importantly, the Alaska Constitution also guarantees that all persons are "entitled to equal rights, opportunities and protection under law," Article I, Section 1, and that no person shall be denied the enjoyment of a civil right on account of race. Article I, Section 3.

When a state establishes a classification based on "suspect" criteria, such as race or ethnicity, or which denies or abridges a fundamental right, the Fourteenth Amendment is violated. Such classifications are subject to the most strict scrutiny which may be survived only if the classification is necessary to promote a compelling and substantial governmental interest. Oregon v. Mitchell, supra; Grigold v. Connecticut, supra; State v. Wylic, supra; McLaughlin v. Florida, 379 U.S. 184, 192, 13 L.Ed.2d 222 (1964); Bolling v.

Sharpe, 347 U.S. 497, 499, 98 L.Ed. 884 (1954); Korematsu v. United States, 323 U.S. 214, 216, 89 L.Ed. 194 (1944); Ferry v. Grenada Municipal Separate School District, supra; Ordway v. Hargreaves, supra.

To demonstrate invidious discrimination based on "suspect" criteria, thus calling into play the strict scrutiny test, it is not necessary to show that the state law as written or applied is intentional in impact or that actual harm resulted to the class. Sufficient harm occurs when one group is denied advantages available to another group. "Classifications based on race violate the Fourteenth Amendment because they are obviously invidious and irrelevant." Deal v. Cincinnati Board of Education, 369 F.2d at 59. Brown v. Board of Education, supra; Goss v. Board of Education, 373 U.S. 603, 607, 10 L. Ed.2d 632 (1963); Chance v. Board of Examiners, 458 F.2d 1167, 1175 (2nd Cir., 1972); Castro v. Beecher, supra; Hawkins v. Town of Shaw, 437 F.2d 1286 (1971), adhered to en banc, 461 F.2d 1171 (5th Cir., 1972); Cisneros v. Corpus Christi Independent School District, 467 F.2d 142 (5th Cir., 1972); Netembeh v. Gallup, 355 F. Supp. 716, 724 (D.N.M., 1973).

If, in order to secure the enjoyment of a right, disadvantageous burdens are placed entirely on one class or group that are not required of any other class or group, there is discrimination which denies the equal protection of the laws to the burdened group. Brown v. Board of Education, supra; Lau v. Nichols, 42 U.S.L.W. 4165 (1974); Dunn v. Blumstein, 405 U.S. at 362; State v. Wyllie, 516 P.2d at 147-148; Lee v. Macon County Board of Education, 410 F.2d 746 (5th Cir., 1971); Brice v. Landis, 314 F. Supp. 974, 978 (N.D. Cal., 1969). Where fundamental rights are involved, discrimination may, however, be excused when there is a compelling state interest and the discrimination is necessary to its achievement. Shapiro v. Thompson, supra; Dunn v. Blumstein, supra.

As a result of State action, Alaska Natives suffer "unconstitutional deprivations." Gomillion v. Lightfoot, 364 U.S. at 347-348. United States v. Texas, 381 F. Supp. at 1052. As applied, Alaska's Constitutional establishment of a system of public schools open to all, Article VII, Section 1, creates a racial or ethnic class of actual and potential Native secondary school students who, by not having access to village secondary schools, are treated differently, to their disadvantage, from non-Native secondary school students and whose fundamental rights are denied. Hernandez v. Texas 347 U.S. 475, 98 L.Ed. 866 (1954).

Underlining any description of Alaska's secondary educational system is the unequal terms on which it is made available to Native children. Access to Alaska's secondary education is conditioned on the relinquishment of the fundamental Native rights to family cohesion, cultural integrity, and the right to direct the education of one's children. These prerequisites to Native enrollment in secondary education programs are not demanded of any other group in the Alaska population. Other groups in the population have local secondary education and so are able to maintain family and cultural integrity intact and establish a healthy communication between the home and the school.

The severance of Native children from their families and cultures further denies them the equal protection of the laws by placing them in an educational environment that endangers their health and fails to furnish equal educational opportunities in the school program itself.

Alaska's boarding home and boarding school programs for Native children have been the subject of professional study and widespread commentary. The evaluations uniformly reject the validity from an educational standpoint of separating students from their families during the school year and encourage

the establishment of local village secondary school options for Native students.⁶ This conclusion is based on the observed impact on Native children of the physical and psychological dislocation they experience and the failure of the secondary school program to educate Native children.

The transportation of Native children from a culture, whose central social structure revolves around the strong nuclear family and kinship bonds and a subsistence economy, dependent on social cohesion for its survival, to a city or town where they must usually reside in a non-Native foster home, with alien values, social structure and unstable parent-student relationships, or an impersonal boarding school dormitory where guidance from primary adults is unavailable has severe socio-psychological effects. The students experience "culture shock" and an undermining of Native culture characterized by feelings of inadequacy and inferiority, self-defeating attitudes, inability to achieve identity formation, deep personal withdrawal, personality disintegration, a large number of suicides and suicide attempts, drug and alcohol abuse, violent behavior, severe homesickness, and excessive dropout and transfer rates.⁷ Hobson v. Hansen, 269 F. Supp. at 480.

6. This position is repeatedly emphasized in the testimony and articles presented in the Hearings Before the Subcommittee on Indian Education, supra.

7. The literature describing emotional and psychological damage to Native boarding home and boarding school children is extensive. The descriptions above are an amalgamation and condensation of widely accepted findings. For a more extensive discussion, the Court's attention is commended specifically to Hearings Before the Subcommittee on Indian Education at 222, 253 (Statement of Senator Mike Gravel), 301, 470, 497 (Statement of Alaska F.H.S. doctors), 508, 706-707; Kleinfeld, Alaska's Urban Boarding Home Program at 5, 8, 10, 15, 18, 19; Kleinfeld, A Long Way From Home at 74, 84-85, 87, 90, 99, 104-105, 106, 108, 110, 111; Kraus, Eskimo Suicide at 11-13; Richard, "Experience Statements of Alaskan Native Students," 2, 6, 9-10 (Alaska Area Mental Health, U.S.F.H.S.-I.H.S., 1973). See also, United States v. Texas, 342 F. Supp. at 28.