

SCOMM

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CSSB 39  
LIMITED ENTRY WORK SESSION  
FLETCHER  
February 22, 1973

CHAIRMAN: We've sent him a rather large bundle of our work drafts of the governor's bill and various papers, and so on, last week. We don't know if there's been much time to go over them, but I'd like this morning to be the carry~~on~~ of what we've been doing in the past, just a work session that's quite informal for we're to find solutions--ways out of--a way out of this maze that we're in, and I think perhaps Professor Fletcher has had some opportunity to put some thoughts together at least, and I think we'll just turn it over to you, and let you give us the benefit of your thinking to this point and then we'll go on from there, so...

PROFESSOR FLETCHER: Alright, fine. As Senator Palmer suggests, my exposure to this material has been really quite brief in recent times, and I must say my thinking is far from having arrived at conclusions, particularly with reference to details, and I know that some of the things that perhaps I label detail are not going to be considered detail by you at all, such as transferability of licenses. It seems to me that, in some sense, is a major problem, but I've kind of put that off to the end and not really come to any firm conclusions, indeed I've not really got many factors that I've been able to come up with that deal that particular aspect very well. On the other hand, it does seem to me that there's certain rather generalized considerations that I think can furnish a basis for development of detail that, at least, in what I had furnished to me I felt, perhaps, had not been clearly enough differentiated, and I want to suggest to you one or two major lines of thought that may be helpful in deciding what you want

to do by way of fleshing it out in the sense of what do you put in the actual bill that you pass. I make this statement, now, from the standpoint of what I think would be applicable and we'll say, reasonably well-educated predictions as to what the Supreme Court of the United States would do if it were to be reviewing what you've done, what system you have put into effect. I don't profess to be an economist, nor a fisherman, nor a politician, and I daresay that some of the ideas that I might suggest to you will run aground on considerations of that sort. I've tried to avoid them, but I don't necessarily have confidence in my capacity to do that. I think first of all, that you have to differentiate fairly sharply between what I conceive to be a whole range of legitimate legislative objectives incident to a transitional period and those that are incident to the long run operation of this scheme. Certainly the transitional period can take into account presently existing situations, and all aspects of it. I take it the most critical one, however, deals with persons who are actually fishing, to some extent to those who are related to the fishery--that is to say, the processors, so that transition can be one that makes it at least relatively painless to those who perhaps in the long run will stand to be hurt by the fact that you're going to a limited licensing system. Certainly, historically, in many instances there's been no real objection to grandfather approaches to making that transition relatively painless, or at least, not as harsh as it would otherwise be if you simply went whole hog into the new system all at once. The degree to which you protect persons in their present condition is in major part a legislative judgment. The factors that you should take into account are two

or three, perhaps. One surely is that in the background you have a kind of constitutional worry, perhaps, in terms of, as I would phrase it, taking a property without due process, meaning to say without compensation. If you render something worthless, you run a risk of the court saying you can't do that because you run afoul of this constitutional inhibition. I say that's only a concern because, in fact, there are many things that government does that does take away and destroy, and make worthless--zoning regulations, all manner of things, in fact, can produce that result. I say then that only that's a consideration that you could have in mind in terms of how you shape your transitional period. In addition, you should be sure that it's done on a basis that fair as among the various persons who are affected, so that it avoids suggestions of favoritism and, in one particular setting that's important, favoritism as between persons who are residents and those who are non-residents. Affirmative factors that can be taken into account incident to this are, of course, the investment that a person has by way of actual equipment, his economic dependence upon what it is that he's been doing in the past. Of course, to the fisherman is an extremely important factor, and it's probably much more acute in the great bulk of fishermen, as I understand, in that many of them are almost solely dependent upon it, and indeed are not really readily adaptable to picking up any other means of livelihood, and this is going to--is indeed a major, legitimate consideration that the Legislature could take into account in deciding how to make this transition. The mechanisms that you have, I think, are ones that you've approached in your major effort. That is to say, you've been more concerned, it seems

to me, as to how to make the transition than you have been with what the thing's going to be in the long run, because most of what I read is aimed toward, how are you going to set this up initially, and that in turn is showing through in detail, it's taking into account these factors I've been describing. The measure of economic dependence of a particular operator or pond fishery--how much gear he's got, the plight of the fisherman in terms of groups of people, and so on. Now, let me suggest that those factors are almost exclusively legitimately applicable incident to the transitional period. And let me shift, then, for a moment, to the long run side of the picture. On the long run side of the picture we think of it in terms of what are the most clearly legitimate objectives to be served. The list is surprisingly unconcerned with people as such. Let me put it in terms of the fish, for example. Traditionally, government has been concerned about the biological aspects of the fishery, preservation and improvement of runs, techniques for catching that are not harmful to those that you don't want to catch. I don't know, you don't want to catch--I don't know enough about fishing to say, but I assume, perhaps, there's certain sizes that you don't want to catch because they're young and so on, and you're going to want to leave them there to let them grow up, or something of that nature. Anything having to do with the technical quality of your fishery operation is, of course, quite legitimate and time-honored basis upon which you can devise legislation. Furthermore, I think that, clearly, government can be concerned with and take steps to insure more efficient operations from the standpoint of better gear, better techniques, encouragement of experimentation, new approaches completely.

I don't know to the extent to which it's feasible, for example, to rely on improved electronic gear to know where the fish are, or something like this. Any steps that are aimed towards that objective are clearly fine, legitimate in terms of legislative effort. And I suppose I needn't dwell on that. The more interesting thing, and the one that comes closer to home in terms of the real problems that you can see are embodied again, I think, a quite legitimate heading, but here we have to be careful. That is that I think there's no question in the abstract but that it's a legitimate objective for a legislature to say that there shall be a better economic position with respect to this particular economic activity in the state, that this is a product of the state to fish, and that steps that it takes to make this a better one in an economic sense, are legitimate. For example, you could take steps that would insure that the product is going to compete on world markets. In order to do so you must have a price that is in such range that people are not going to be resorting to other products that would possibly compete. I don't buy canned crab any more. It just offends me to pay that much for it. I suppose you could have that side of the concern in your mind in terms of how expensive have you made it, for this particular product. Are you fortunate in having something that is such a--in fact, indeed, all of your fishery products are of such high tempting quality that you could afford to let that one ride for quite a while before it begins to hurt you any. I just assume that's true. But it's certainly legitimate to take into account and devise schemes that's going to keep your product competitive. Quality, of course, is something you can control for that purpose,

too, even though it may hurt somebody to control quality, you're certainly entitled to do that on that basis. Now, in the process of doing this you can say that you want your fishery product to be good from these standpoints. Now, this in a sense is the product, not as it leaves the fisherman's hands, but as it arrives on the shelf in the grocery store or wherever. It's a little more difficult to translate that back one stage and say, well, we want this product to be in this type economic condition when the fish is delivered to the processor, because there you're beginning to introduce a purely business relationship that begins to stack as against each other, entities that are competitive within states, and I believe that you would have a more difficult time sustaining measures that are intended to make the fishermen well off as contrasted to the processor well off. Those are simply going to ask for trouble. I don't say that you can't, but that there is some less degree of assurance that I would have as to steps taken to achieve that particular objective. Now it seems to me that those three things are in a sense primary in terms of legitimate government objectives, the sustaining of the resource, the more efficient acquisition of the resource from the wild state, and the better economic exploitation of the resource in the terms of it's competing in the worlds markets for acceptance, and so on. Now, let me move then to something I would consider somewhat secondary, and perhaps incidental toward the accomplishment of the others. It's been considered to be, in certain fields particularly, a quite legitimate governmental objective as a means of getting into a different place, to take steps that insure the economic well-being of the persons who participate. This has been true,

for example, in the milk industry of dairy products, growing out of depression times, really. States, many states, it's persisted long beyond the depression, but growing out of that setting, and all manner of regulations that have really been price supports for the dairy farmer. The theory is that you want an economically healthy dairy industry because certain attributes flow from that that are for the social good. It isn't that you're interested in the dairy money per se, it's that you want a better product out of him, so you want something in that setting that's helpful. You want him to have enough money so he keeps his barn clean, and so on. He has good facilities, good milk cooling facilities, and on and on. Now, I take it you could translate that over to your fishermen by saying, if you looked at these primary things in terms of better gear, experimentation for new methods, more efficient operation, and so on, you could very easily say that the only way we're going to get that is to have a fisherman who can afford to do it. So, you want him to have a decent income. So, you want his--first of all you'd take the major step which is to limit the entry in the first place, but then you would shape your determination of who the particular participant is in terms of his capacity to produce these desirable effects, and you would want the groups as a whole to be economically good condition in order to accomplish this. Now you might notice that you could argue from that basic premise that that means we want a person who is not economically beholden to his immediate consumer, so that he will have this independence. Now, this in turn could bear upon what you decided, for example, as to the transferability of a license. If his entry permit is something that he can mortgage to the processor, and

thereby give the processor some economic stranglehold over him, presumably that would make him in a position where he's not able to bargain as effectively. That's not good, because that defeats the purpose of which you are trying to make him economically healthy, that is, to encourage the better operation of your basic fisheries. Now, in kind of moving down into these secondary levels, you see, you can start to pick up details, but they must be ones which relate to your ultimate objectives which you're trying to accomplish. I think another kind of subsidiary thing that you can do that also is somewhat in terms of making your fishermen economically in good condition is safety of operation, surely a better equipped boat and so on. Fine. You're not going to lose many people and so on, not as many injuries. A last factor of this sort has to do with what you might call administrative convenience, problems or considerations. Surely you can shape your entry system in terms of just being able to keep track, to make sure that your biological control system works, and so on. For example, I would suppose that if you permitted persons who were only part-time to fish, that you could say this would make it much more difficult for us to make our escapement, biologically speaking, work properly, because we can't predict when they're going to be there, or we can't control them as well and so on, and we've got an unpredictability factor in terms of how many fish are going to be taken, so let's just wipe the part-time man entirely, then we'll know that we have maximum effort all the time out of these full-time fishermen, because we require them to be full-time fishermen. Now, you putting that back in the context of what primary objective you're furthering you wouldn't have been carrying that out. You're doing it, and

that, you see, would make it a legitimate thing for you to do in deciding that only a full-time fisherman would fish. Now, that's pretty much all I have to say as what I would consider legitimate governmental objectives are--is concerned. And you'll notice I've excluded something that seems to me dominate in your thinking. I realize, at least I think I do, think accurately, that you're concerned for a class of people, that you've got a lot of fishermen that are most numerous and now on the whole terribly economically healthy, and they are persons in a sense who are locked into what they're doing, their families have been fishing for generations, they're not about to change, it's very hard on them to say you're going to let somebody else come in and take over your fishery right out from under you, because he's better qualified to fish, he can put more money into it, and we've got to take care of you. That's troublesome. You'll run into some Supreme Court law that says you can't do that. You can't take care of your own, and I'm sorry to tell you that, but you can't. If you do it, you do it indirectly. You do it because you've been tearing out these other things that I described first. Now, this leads me back to, then, to some of the detail. Let me emphasize the distinction I drew in the first place between transition and long run. Certainly instant to the transition that type of consideration for this group of persons is quite legitimate. There's no question but that the Legislature could address itself to hardship problems, ones that are incident to making substantial change in operative policy, such as to go to the limited entry system, but it's only transition. It's only incidental. Now, I would suggest, for example, or let me put it this way, if I'd been drafting the statute, I would have

been tempted to say part one defines who's what in the commission and so on. Part two says transitional period. Part three says long run. And in the transitional period I would have dealt with who gets the licenses in the first place, and under that, of course, you take into account economic dependence for a particular person on the fishery, how much he's got invested, his capacity to engage in other occupations, his amenability to training and so on. But once I got beyond that, and I was dealing with the question of who's going to have entry permits thereafter, or transmissibility from one person who presently holds to another one, and so on, I would not let that enter in. That would not be a major factor. I would suggest that you all leave it out entirely. Now, at this stage I begin to lose confidence in my capacity to be practical, because it's an effect you have to--it's hard for you to take that out of your thinking in terms of the long run operation. I don't have any solution for that. I'm going to have to leave it to you as a problem. Now that's kind of the total picture that I see, and in terms of detail maybe we can talk about it, and I'd be glad to do it on that basis.

CHAIRMAN: Alright, let's talk about this part of it a little bit, then. Incidentally, I'd like to introduce you to two members of our Committee here. This is Senator John Radar who is an attorney from Anchorage, and the former Attorney General for the State, and one of our--don't say that.

(Laughter)

UNIDENTIFIED SPEAKER: He's our expert.

CHAIRMAN: Anyway, Senator Hohlman from Bethel. Okay. In the Committee Substitute our philosophy, at least that of some of us, has been to

attempt to do this. To set up these five categories of fishermen, we say career fishermen, consistent participation in this fishery provides a primary or substantial influence income source. Number two, career fishermen from a multiple fishery, consistent participation in this fishery, together with participation in other fisheries, constitutes the primary income source. Then number three, alternative occupation fishermen. Participation in this fishery provides a substantial income supplement. There may be some overlapping in number one and three of the concept there. Number four is avocational fishermen, irregular participation in the fishery provides a variable minor income source, an inactive fisherman, the paper license type. We have in Alaska, of course, widely varying conditions within the fishery itself. One of our biggest concerns, of course, is that Bristol Bay fishery. There we have in peak years the richest of the fisheries, in the minor years some of the most extremes of hardship, economically. We also have probably the most over-gearred fishery in Bristol Bay of any of the fisheries, the most severe problems as far as too much gear, so we were considering this kind of an approach, that in the legislation itself we would attempt to guarantee in this transitional phase, at least, who was in and who was out, not leave it to the commission to decide, but to guarantee the legislation who was in and who was out. According to these categories and saying in effect that statewide, categories one, two and three, those people that can show as of the '72 season, again this is '73, but we would assume the effective date laws will be immediately upon passage, and therefore, the commission will be judging on the basis of what has happened in '72 past years. Based on those judgments, people that would go into one, two and

three would be guaranteed statewide they would be in, except for Bristol Bay where we recognize a much more severe problem exists, and in those areas, only categories one and two will be guaranteed, that anybody that does not stay in because of this would be compensated for his loss, the decreased value of his boat and gear, and as far as the entry permit loss, and the loss of right to fish, that's another problem. I don't know how we've come to state that, quite frankly. Well, let me stop at that point. Does that seem something that we can legitimately do as far your concerned in this transition period, that we can treat separate areas of the State separately?

PROFESSOR FLETCHER: Sure. I would have no question.

CHAIRMAN: You'd have no problem with this?

PROFESSOR FLETCHER: It seems to me the material I've gone through here makes an absolutely water-tight case for the proposition that you do indeed have varying conditions here. Your gear availability is enormously different from area to area, and economic condition of the present persons in it, various--I don't have any problem with that at all.

CHAIRMAN: Were you able--did you at any time, considering these five categories, did you find those in the stuff we sent you? It wasn't in the Governor's original file.

PROFESSOR FLETCHER: Yeah, I did.

CHAIRMAN: Okay. Do you see a problem of vagueness in our wording in that or is it--if we leave it...

PROFESSOR FLETCHER: Not in that particular area. I found some other places where I felt that you could be more specific, this less...

CHAIRMAN: This matter of consistent participation provides a primary or substantial source.

PROFESSOR FLETCHER: I didn't have any worries. The only that struck me about that was that it was not clear to me that this was purely transition, and my point would be that that type consideration, that is, the amount of dependence which that particular person has upon the fishery, from the standpoint of his own individual economic well-being, is legitimate incident to deciding who of the present people are to persist, the grandfather proposition, but I don't think it's legitimate in terms of what the long run operation is to be, although that may well carry over for some several years, the matter of biological endurance of human life, but in terms of what your long run consideration is I am much more skeptical about the legitimacy of whether the person is economically dependent upon a fishery as the determinant as to whether he gets a permit or not.

CHAIRMAN: Well, and yet I thought I understood you to say that grandfather rights, now only for the transitional, but for the long range, were reasonable.

PROFESSOR FLETCHER: No. No, I mean to distinguish--maybe it semantic here. When I say grandfather rights I mean to say to perpetuate only the person who's presently fishing. I don't mean it in the way the original clause developed. That was if your grandfather was entitled to a boat, you were, too. I don't mean to carry this down generationally, but only the persons presently in will--are entitled to protection as a means of making easier upon them incident to going to a new system.

CHAIRMAN: Okay, let me go further then. If we were to adopt a program here that as I've indicated for the initial decision of who goes in--or who gets in and who is not in. Combine that with a compensation and buy-back program where we can offer some incentive

for more rapid attrition, but depend on voluntary action of the fishermen after this initial phase, after this initial decision of two here and three the rest of the places, depend on voluntary action to get down to what we term optimum numbers. Do you see any difficulty with those people that are then left staying in the fishery on a long term basis and then coming up with whatever we come up with transferability at a later stage.

PROFESSOR FLETCHER: No, the only thing that I think that you should make sure to require of those persons who, by the combination of factors, are the ones that are left from the original batch is that their standards of performance should be roughly the same as the standards required of the persons that you let in on the new basis. In other words, don't give them special priveleges just because they were original fishermen. In other words, if you require full-time operation you should require it of them, too.

CHAIRMAN: I think that's a little different in our fishery. I think that anybody here involved is going to be pretty much full-time.

PROFESSOR FLETCHER: Well, I gathered that the legislative determination is in the process of being made that you really think that only persons who are full-time want to be fishing.

CHAIRMAN: Well, I guess what I'm trying to say is that even now about anybody that's involved is full-time.

PROFESSOR FLETCHER: I see.

CHAIRMAN: From--let me put it this way. For instance, in Cook Inlet where I live we presently have on an average only two 12-hour periods a week where the fishermen are allowed to fish.

PROFESSOR FLETCHER: Aha, but notice it's going to be different. We'll at least assume it is.

CHAIRMAN: Yeah. Okay.

PROFESSOR FLETCHER: Well, maybe not in the initial stages, because I take it you may be keeping so many people in that you're still going to have to say you can fish only two days a week.

CHAIRMAN: Well, perhaps, but even as we go further down the line the fishing period, the time the run is available, is short enough that most of the people that are going to be there anyway are going to be fishing all the time that's available. Now when we talk about part-time fishermen there, we're talking about a guy that is doing something part of the week, and doing--and fishing the two days that is available--that are available, or he's working in another job the rest of the year and takes off for the six weeks maybe that the fish are available, and fishes that part of the time, so...

PROFESSOR FLETCHER: So full-time doesn't mean full-time the way I've been thinking of. Now, full-time means economic dependence on it rather than that he's working any more hours or more days of the year than anybody else.

CHAIRMAN: That's right. I think that's it in a nutshell. John.

SENATOR RADAR: You see, we have a further complication, too, and that is the amount of gear effort that should be required to harvest a run in one year is vastly different than the next year, so it would require those in the fishery to be full-time every year, then we will require an over-gear in the off year because we'll have to have enough gear for the good year, which means that we'll be going backwards as to our basic goal of trying to make it so people can fish less gear, and of course, the real problem is in the bad run. That's really our biggest conservation problem, so? So even when we require full-time it begins to work against our basic goal on

every year except a peak year because we anticipate that we will have to have enough for the peak year. An additional complicating thing.

PROFESSOR FLETCHER: Have you resolved that one?

SENATOR RADAR: I don't know, I can't. I haven't yet in my own mind.

PROFESSOR FLETCHER: It seems to me that's a terrible problem, because it almost forces you to compromise by saying well, we can't afford to have this much gear around because...

SENATOR RADAR: You can't make full-time attempts.

PROFESSOR FLETCHER: That's right.

SENATOR RADAR: You have to get to something else, and then you get into, okay, then what's part-time and you have this time of problem, too, the class of people that we're concerned with, and that is our-- we really start with that. And you're right. We end up losing that concern here because we can't legislate if we want to for that class. First of all that class tends to be a marginal class, and any truly administered test of ability such as boats, and financial capability, you know, on--to handle the fish, and that sort of thing. A lot of our own fishermen, the ones, the very class we're trying to protect, will be marginal as compared with fishermen from other districts in Alaska in a particular area as, or from also outside of Alaska. And then we have the problem also that a fishery-- a man in some particular area where the fishery is, in anybody's definition, is not enough to give him an annual income from two or three weeks of fishing, and he really can't do any more than two or three weeks because that's as long as the run lasts, unless he fishes several different runs, and then...

PROFESSOR FLETCHER: Different areas.

SENATOR RADAR: Different areas. Then you have the problem of a man being able to do that economically, which then forces him into either

welfare the rest of the year, or else he's a part-time fisherman and has to take a job pumping gas in Anchorage or, you know, whatever other method he might have to obtain a living.

PROFESSOR FLETCHER: I was really quite skeptical of the proposition that-- well, I don't know about the economics of it, but what you might call legitimacy of an argument that said you don't want the guy with another job to be out there fishing, because he is able to sell his fish for less, and that, therefore, drives down the price at which all people have to sell their fish, and so if you eliminate him and you put in only those persons who are wholly economically dependent, or substantially so, that the price will necessarily be higher and then it will make that group of persons better off economically. Even assuming that the economics of it would work that way, I don't know whether they would or not, but let's assume that it would, I don't know, really, that you can causalate relate that to some objective that I would consider that will pass muster from a constitutional standpoint. Can you spell it out in some way so that if you make this man who is wholly economically dependent upon the fishery, or nearly so, better economic condition that you will be furthering the objectives of better fisheries, and so on? I don't know. It would be pretty hard. Maybe on the broad proposition that the more money these fellows the better off your fishery would be. I think if you can get to that point that they are going to make a much better economic class out of these people, alright, but I'm just kind of skeptical of the whole thing. Maybe the point--maybe I'm worried about something that's economic rather than legal. Is actually going to work that way?

SENATOR RADAR: No, it won't, because you're quite right. The man will

have to supplement his--he'll have more income and, therefore, more economic independence if we has another job for six months out of a year, than if he is forced into idleness for six months, in a lot of instances, which would give him a superior ability, then, to withhold his fish, to bargain with the processor, or to have superior equipment.

PROFESSOR FLETCHER: I had trouble in the Governor's letter that tells of this point, and I... The main problem with the part-time avocational fisherman is not the multiple employment, it is that they can afford to participate in the fishery even when it's not profitable, but the effect of the average income for all fishermen is driven down to sub-marginal levels. Does that really...?

CHAIRMAN: I think what he's trying to say is that, to a certain number of people at least, it's a way of life, it's a vacation type thing and in some it's even a tax write-off, and that it's not because they're willing to take a lower price, but it's simply because the pie is dividing up--being divided up among more participants, and therefore, those who really depend on it primarily as a source of income have a smaller number of the fish and, therefore, a lower income, rather than the part-time fisherman being able to sell at a lower price in order to do so.

PROFESSOR FLETCHER: So you go to a limited entry system, what does that factor become?

CHAIRMAN: Well, we're assuming that through transition, or through attrition, many of those people over a relatively short period of time will leave the fishery and perhaps they'll not find it so attractive to buy in if they have to buy a license or a gear permit. I'm not sure what that becomes, quite frankly. This is matter of

transferability is one that just apparently has no solution available, or, at this point. That's the reason one of the things that I think we have to discuss today is also the advisability of the--the legality of this legislation, taking care of the transition period, but saying also, charging this commission, if we so constitute one, to come back to the Legislature in a year's time with recommendations for a buy-back program, and two years' time with recommendations for a transferability program. Now, recognizing that it's just too big a problem to try to solve all at once in a short period of time, and it does (indisc.)

PROFESSOR FLETCHER: I would be hesitant to jump in without having at least some program set up for long range operation. One of the places where I felt the present draft was quite deficient was the respect to long range where particularly certain standards were described only as those consistent with the purposes of the chapter, because the purposes of the chapter, at least to my thinking, are very sharply divisible into two functions, one transitional, one long run, and to lump them is a mistake, because many of the considerations incident to transition are not legitimate for long run, and I do feel that if you're going to set this thing up with protection for persons presently in, which by itself is fine, you have to have it as being transitional, and if you're going to have it transitional you'd better specify what it's transitional to. Washington's one effort of this way back in depression times fell flat on it's face, because they were dealing with an interim of urgency situation, and only with that. They just plain closed the fishery to everybody except those who'd had licenses, and they didn't set up a long run operating system at all. Well, that's

(indisc.) for trouble, wasn't it, because (indisc.).

SENATOR RADAR: What has experience been in other jurisdictions with this-- this type of thing?

PROFESSOR FLETCHER: I wish I could tell you I was up-to-date. I'm not. As I told Senator Palmer when he called me, I really had almost nothing to do with this since we made this initial study in 1963. As of that time there were very few places that had done it. It was attempted in Texas, Maryland and somewhere with respect to it (indisc.) fishery, and that was about all. You had some experience here in Alaska with some attempts to have dug into some problems, and I don't know of others. I did talk with Jim Crutchfield, one of the persons who worked on this initial study as an economist at the University of Washington, as to what had been done in Washington in terms of effect, and the answer is nothing, but he said that he had worked with the Department of Fisheries to make a proposal for carrying out a limited entry system. He thought the work product of that effort was still confidential and he wasn't about to tell me what's in it. I didn't follow up, and he was only working for them, and I don't know what the Department's attitude would be. They apparently got in touch with either a committee of the legislature or some legislators, but it stopped at that stage, so that--I know that the Washington picture has not made any substantial progress at all.

CHAIRMAN: We heard that British Columbia had some sort of a program going.

PROFESSOR FLETCHER: Yeah, I understand they do. I think I'm observing it from my sail boat in that I see a lot of boats that look to me as if started out like fish boats that somebody's bought up and made

into pleasure craft. They're buying them in British Columbia for that purpose. I think that's what's happening.

**SENATOR RADAR:** Would your comment still remain the same, or your evaluation of the situation, in view of the fact that the biggest single problem facing us, probably, is the relatively rapid increase in gear year after year, and that our real need right now is to put a lid on that so that we've stopped the increase.

**PROFESSOR FLETCHER:** Yeah, I don't have any problems with this. The basic limited entry idea is wholly defensible and I've had no concern out of it. I'd say the problems are all incidental in the sense of operative ones.

**CHAIRMAN:** Well, this is the reason why, it seems to me that it might be in keeping with our purposes, if we were to take care of the transitional period, but still recognizing the long range difficulties, and charging this commission to come back with recommendations with us, in the meantime, we've declared this moratorium and we've stopped the build-up of this so that...

**PROFESSOR FLETCHER:** I would suppose that a tolerant court would be tolerant. That is to say, okay, we'll take you at your word that you're not just freezing things for the benefit of people who are not there, but you really do intend to come up with something that's going to operate in the long run, and what you're doing now is just to tide you over until you get the thing underway, and you do indeed, in this statute, end up with the last paragraph which says that the commission is charged with further study and report the next session, or something, that that would be taken at face value (indisc.). Well, we'd prefer to see it worked out now at least on the good possibility that indeed it might have to be

modified, but it wouldn't be right.

UNIDENTIFIED SENATOR: Well, Mr. Chairman, I'm no fisherman and I don't want anybody to get the impression that I'm more concerned about the fish than I am with the fishermen, because that's not true. I don't even like fish very much to eat, but I've wondered from time to time if, in our bill now, if it's sufficiently clear that one of our major goals, if not the major goal, is the conservation really of the fish stocks, and it would seem to me that we must be awfully careful not to lose sight of that, because obviously our concern is with who is going to be restricted and limited and thrown out, and I've wondered, too, again because perhaps I'm not a fisherman, that merely by limiting the amount of gear, is that still guarantee, really, that we're meeting the long range goal of conservation of the fish? I just wondered if you had any thoughts as to whether...

(End of one side of tape)

PROFESSOR FLETCHER: ...objective. In other words, I just assumed that that was the basic objective and went from there. If you sit the statute and read no further, maybe you've got a point. It may not be perfectly clear in the statute itself, but that's the essential concern. As a matter of legislative style fashions change. There was an era in which it was felt that every statute had to have as it's first couple of pages a complete recital of the reason why you passed the statute. This is changing, and indeed, recently it hasn't been done, and courts in considering challenges based on constitutional provisions have typically looked at legislative background, legislative history. This is easy to do in the Federal government, because committee reports are published and congressional

records exists. With state legislatures it's more difficult, because typically they don't make any record of what they do at all. You can't come up with anything that's stamped official document type of substantiation, and yet, surely, all of these studies and so on would be legitimately concerned--to be considered by a court on this, so I think that it's not--it's probably not a serious concern because, indeed, there is the scientific background to draw upon and the fact that it's considered this big report, most of the total pages are devoted to it, as a matter of fact, graphs and charts, and all this sort of thing. So, I think you would make the grade. Now, whether the statute makes it clear, as I say, I'm not so sure. It didn't occur to me that that wasn't the true purpose, and so I...

UNIDENTIFIED SENATOR: Well, Mr. Chairman, I'm just asking the basic question, I guess, whether gear limitation equals less fish being harvested automatically, per se, because I could see that this might be interpreted as just another means of cutting up the pie, and if you have more efficient techniques in using a smaller amount of gear, well...

SENATOR RADAR: Fishing longer time, you catch more fish really.

UNIDENTIFIED SENATOR: Yeah, it seems to me it just has to be clearer somehow in here that we're really going to meet that goal.

PROFESSOR FLETCHER: One of the things which will be more telling than what you recite in the statute was to what your consideration were will be the operative effect of it, if all, in fact, you do is to say that everybody who now fishes is entitled to fish indefinitely into the future, you're asking for some trouble, because it does look as if you're simply freezing things, and saying, okay, from

here on in nobody else gets in. If, on the other hand, it's apparent that this contemplates in some areas particularly that you will in fact end up saying there are to be fewer people fishing than presently fish, I gather may potentially be the situation in Bristol Bay, then you begin to get legitimacy cranked back in, but surely, if it's simply a guise for perpetuating a presently existing class of persons and nothing else, you're in trouble.

CHAIRMAN: I think your point is very well made, because some of the effects that will be seen, I think, as a result of this really can't be spelled out in the legislation, but for instance, I think there's no doubt but as soon as these fish begin to have more value on the idea of a farmer husbanding the fertility of his soil, the fishermen are going to be more concerned about adequate escapement of the resource. For instance, right now there is nothing in the world to really say to a fisherman, don't go in and rob that creek if you're fairly sure you won't get caught, and this is exactly what's happening. They're seining the mouths of the stream and actually killing off the runs in many cases, simply because there's competition for those fish, but once this becomes a property right, and the man has his own vested interest that he's hurting when he robs the creek, because those fish are not coming back then two, three, four, or five years later, then I think there's going to be a very considerable change in attitude. So that's just one of the examples. It's very difficult to say that in the legislation, I think, but it's something that would definitely be the result of this, anyway.

PROFESSOR FLETCHER: I think that you could extenuate that point without actually saying it explicitly if you--I don't whether you could make it apparent in the language, but somehow have a provision in there

that made it apparent that you did contemplate an immediate reduction somewhere, such as to provide in some paragraph for a present system for buy-back, rather than to say that's what's to be part of the study from two years from now, so that it's apparent you were planning to cut down, that you had a system set up for that. As one of these things points out, it might pretty expensive to buy it out to the point where you really had the ideal economic fishery. You can't afford to get there immediately, but at least to set up the mechanism for doing it and let the commission decide at what stage they're going to, and the Legislature as to how much money's going to be furnished for the purpose, and so on, something of that nature which would lend credence to the legitimacy of the project.

CHAIRMAN: Assuming then if we were to say, as an example, that the license shall be freely transferable, but we're also charging the commission to bring back recommendations in two years on transferability for as perhaps to modify that program and does this largely meet the objectives that you're talking about?

PROFESSOR FLETCHER: I have not been able to decide in my own mind which way the various things that you could do to transferability, which way they point. I noticed, I think common to every proposal is the proposition that this license is not going to be something that you can encumber, you can't reach it by process, you can't voluntarily encumber it, (indisc.) it in any way. That's going to be pretty hard to combine with the proposition that it's really transferable. It's almost inconsistent, not quite, but almost. Surely there are going to be some transfers to people who will not be able to pay full value right as of that time, and I would assume you're going

end up with some conditional sales contracts with some sort of long-term financing arrangements, but for instance, to quote free transfers that are not falling into this prohibitive category of mortgaging it, those are hard distinctions to draw, because to say what's permissible and what isn't. Now, assuming that you can get by with making that distinction, what bearing does that have upon the idea that you are first of all interested in protecting the persons who are presently in in terms of getting their investment out. Suppose on that it's a means by which they can, so if you let him sell it, that's one way in which you can get him out of the picture, and he's happy because he's sold. He's got his money's worth for what he had. Presumably the value of his equipment and so on would be reflected in what he sells. In terms of whether you're promoting a good fishery that's not directed toward protecting certain people, but simply in terms of having an economically healthy industry that's doing good for the State as a whole, transferability seems to me to work in conflicting directions, and I have to say I have trouble with deciding what the operative effect of it is. And maybe I'm not the guy to answer. It isn't a legal question. It's as much economics as anything else, I suppose, as to what the effect of transferability would be. If you can put it back in legal context I suspect the analysis simply has to be based on some hypotheses. If you can show that by free transferability you are encouraging the development of a good fishery, economic and good techniques, safe equipment, and so on, and the fishing escapement, biological control is better afforded, fine, then free transferability is great. If you can show that just the opposite is going to happen, then you can say, okay, it's legitimate to say no transfer. The one thing

I didn't like in this whole business about transferability is the one that says that the guy can give it to his spouse, or his child, or some suggestion that when he dies he can give it by will to somebody else. That doesn't relate to an efficient fishery except in the most tenuous of reasoning processes. You could possibly get that one cranked in.

CHAIRMAN: I suppose that we really better cut this off now, and we go into session at 10 o'clock.

PROFESSOR FLETCHER: I understand.

CHAIRMAN: I planned on us getting back together at 1:30 this afternoon and continuing this as long as you have time for.

PROFESSOR FLETCHER: I'm on the 6:50 flight, so the rest of the time's yours.

CHAIRMAN: Okay. Good. If you don't mind, and some of these gentlemen that are not part of our Senate Committee, but are very much vitally interested in this thing, and have been a great help to us, if they want to stay and discuss this with you and you don't mind, why, it would certainly be fine with us. On the other hand, if you want to come over and observe the session...

PROFESSOR FLETCHER: No, I'd prefer to stay right here and I would particularly like it if you had some suggestions or some particular points to which you think we might be devoting our attention between now and the time we see you again.

CHAIRMAN: Alright, very good. That's what I'd hoped you'd say. John, I'm sure you've got...

SENATOR RADAR: Well, I think that--I personally think, I'm like you, I hate to see us embark on this unless we, at this moment, can have some rational idea as to where we're going and how we're going to

handle it, and to go into it without some pretty good understanding, everything except the details worked out, and I really mean everything except the draftmanship and the concepts worked out solidly, and so from my point of view I think that the first problem of issuing the licenses isn't too difficult. I think the whole problem is how you make it continue to work.

PROFESSOR FLETCHER: Yeah, I do, too.

SENATOR RADAR: In the very message that we're talking about, whether or not you can even use time or full-time fishermen, whether or not that's a possible use, when you have a triple gear one year required and a third of it the next year, where is you push that (indisc.) three times the gear that should be fishing the weakest run, which exactly against Senator Thomas' point that we're doing anything for the fish. Those kind of tests, and yet I think that absolutely they have to be worked out, plus when I get down to it, remember we don't have to go into limited entry, and we do have a concern for a class of people, and if limited entry is going to affect that class adversely we at least want to do it knowingly so that we can try to do something else for that class. I don't want it knowing position, and I think you'd be real helpful here if you could take some of the fellows from some of these areas that could describe the problem that we have there, because we're liable to take a group of people who depend on this historically and they'll get left out of this fishery, and although it's very bad now, it's likely to be so much worse then, or relegated to the situation of perpetual part-time, casual labor in the fishery that historically has been theirs, you know, so to speak. It's a very difficult problem, recognizing also that we think that the land claims has extinguished Native claims,

that that legislation, and that at this point all of our citizens are equal when it comes to our State government in these matters. That's the kind of thing that I get stopped on, because I thought for ten years this was the way to go and I finally, I get stopped because I can't resolve the very questions that you're mentioning here that I'm mentioning to you.

PROFESSOR FLETCHER: Yes, almost... Right, and I have no question in my mind at all but that whatever you come up it's going to have to compromise several factors that are really basically in conflict.

SENATOR RADAR: Yeah.

PROFESSOR FLETCHER: I see no other way to work this out and it's an evaluative thing that you go through as legislators, that some lawyer make look at the outer edges to see whether you've gone off the deep end somewhere and say no, but basically it's going to come right down to a policy determination.

CHAIRMAN: But we have several alternatives as far as this transferability is concerned, and I'm sure that Mike can spell it out very well for you, and these other gentlemen have a lot of input as far as the specifics and the differences perhaps in our fishery and some of the others. We've looked at transferability. You might call it free transferability which I think in this sense means the guy's, the holder's ability to sell, or someone else's ability to buy, but perhaps the one that's buying has to be qualified through an applicant pool, either through an experience or through a training program, or something of this nature. We've talked about one of the big problems here facing us is the so-called windfall that results from closing this more or less to a certain number of people, perhaps not a class of people, but each one of the number that is

left having a ten, perhaps 20 thousand dollar value left as a result of the closing, and the value attached to the permit. Maybe it's far less than that ten or twenty.

PROFESSOR FLETCHER: I don't worry on that, because it seems to me that the extent that you create new value, you are at the same time saying well, that is a rough equivalent, so what you would have if you took this whole thing away, if we closed down, in other words, we're putting you now in a category where you really were before and in the long run this is supposed to sort neutralize, work itself out economically. I just doesn't concern me quite as much beside these other factors we've talked about.

SENATOR RADAR: I don't understand your answer there.

PROFESSOR FLETCHER: As I understand, you were concerned that there was an element of unfairness that worked in favor of the persons that would be getting licenses as an initial proposition, because they would be getting them and presumably some people would not. Now, the some people who would not be getting a license, who are to some extent equally well committed, equally heavily committed, they've got gear and so on, or something, that you've got to buy out. You buy off those persons. You're going to have to have a fund to do this. Hopefully, you're not going to have to buy off too many, you're going to set this at some reasonably financially feasible level. These people who have the gear now are going to get something, which if they sell it within the next six months may bring them \$10,000, or some figure that the market will determine. Have you given them any extra by doing this. My suggestion was that maybe it's not so much a windfall as it is a recognition of the past history that they have, that they've got

a lifetime of investment in this, and in a way we're treating them fairly. The only way you'd have to make sure that it wasn't unfair with respect to the person you bought out is that when you bought out somebody you have to reflect that he, too, has had a lifetime investment in his gear and so on. Now, if you could make that relatively (indisc.) you're alright. I meant--there's a little weakness in all this, because it may be that the market value of this thing is way above in excess of what you're trying to approximate.

SENATOR RADAR: Yeah, what if the lifetime investment you speak of is worth \$10,000.

CHAIRMAN: Wait a minute. You're talking about the actual investment monetarily in gear and boats. I think you're talking about more the effort.

PROFESSOR FLETCHER: I'm kind of putting a sociological factor into dollars. I don't know whether it's wholly defensible to do it, but that's the idea, that somehow or other you're saying to this fisherman that, okay, you've got something that's really worth while here, and we're going to recognize it by giving you a license. Now, the guy we have to buy out, we may have to buy out him on the same basis, but we're not really giving you anything that you don't already have. Now, as I say, the weakness is that you may be able to turn that around and sell it for some astronomical figure, I don't really know.

SENATOR RADAR: Well, this is--I think I probably was the one that raised this argument, and here's the thing that bothers me about it, and I'm like you, I don't feel completely comfortable in either one--either your analysis or the one that I can make by saying that this

resource is worth, well it's worth ten billion dollars--it's worth a billion dollars every ten years in productivity at it's present level. How much is it worth in the future? So let's assume you divide that up against--between a thousand fishermen. this resource, and you give it to them, and when they get ready, when their use of this resource is over with, then they will sell that. We will have given--and the second generation of fishermen pay for this billion-dollar resource, but they don't pay the State whose resource it is, they pay the fisherman who the State gave the resource to, you see? You see that argument? I'm not talking about gear or anything else.

PROFESSOR FLETCHER: It was just kind of the total picture that you're talking about.

SENATOR RADAR: Yeah, and that's what has bothered me in the free transferability with a gift in the first instance, and yet, we know there was no way to set a reasonable value now, and if we did that the class of people, again, that we're really working with here, and we have two purposes, one's the fish and the other's the class of people.

PROFESSOR FLETCHER: I suppose one thing you could do would be...

SENATOR RADAR: But we could handle the fish with fish traps if we were unconcerned about fishing as a way of life in our fishing communities. You know, there's a lot of ways to make certain that this fishery could come back, other than what we're doing here, so I think from the outset, in my mind, and I think it would be apparent from the legislation, that we are interested in a class of people, and legitimately I think so.

PROFESSOR FLETCHER: Yes. Yes, but you're interested in a class of

people, legitimately interested in a class of people as a kind of a large impersonal group.

SENATOR RADAR: It seems to be a closed class.

PROFESSOR FLETCHER: That's right, and it can't be their immediate family successors, and their friends and so on, despite this case about the river pilots which I'm very skeptical about, but anyway, it's simply--not to take on that quality if you can avoid it.

SENATOR RADAR: Medieval guild.

PROFESSOR FLETCHER: Right. And I just don't think you can do that.

CHAIRMAN: Well, this is the (indisc.)...

PROFESSOR FLETCHER: We could go on forever. I can see why you've been at it for so many weeks as you are.

UNIDENTIFIED SPEAKER: This sounds as tough as some of the oil legislation. (Pause in tape - discussion with fishermen begins)

UNIDENTIFIED SPEAKER: Now, it doesn't fit the category of part-time fishermen.

PROFESSOR FLETCHER: I've got to stop a bit, because I've been laboring under a misapprehension as to what part-time meant, and I really haven't thought through in terms of what it apparently means, and that is simply it's a matter of looking at each individual fisherman and asking where his livelihood comes from. It isn't a question of how much he fishes, it's how much--what other things he has to do in life.

UNIDENTIFIED SPEAKER: This is pretty much the context that we used a bit. Why don't we ask Joel here to sort of continue as the moderator as Senator Palmer did to maintain a little order to our whatever we're going to do here, and then proceed as we were before.

UNIDENTIFIED SPEAKER: Roy, you have a plane to catch.

**MR. RICKEY:** Right, and I have about two more... Okay, is this alright, Mr. Moderator? One of the first things you said, I thought you said. There must be standards for transfer as well the limited entry. You didn't say this, but is this what you imply in that you couldn't let anyone in after if you made this group of people qualify and this one only buy in? Is this your point?

**PROFESSOR FLETCHER:** Let me restate in as few a words as I can of what my basic proposition was, and then see whether that fits in with what you're saying. You must, I think, make a sharp differentiation between what you do by way of protecting persons who will be hurt, or essentially can be hurt, by the impositions in this system, and I put this under a broad label of grandfather. Your protective mechanisms for them can cover a quite different range from what you would do with respect to once you've made the transition to what you then do in the future. Now, I think you have to look at this from a time segment standpoint. During your interim period you are indeed interested in making this transition so that the person presently are--who have got the total investment in the operation can be protected so that it's preserved or bought out, one of the two. Now, once you get past that and you have done that with respect to these people, then what you do in terms of letting either the person who presently has this position transfer what he's got, or somebody else come if you decide to issue a new permit, or you get one that forfeited in, or something, then your standards for that are quite different, and those are the ones that I said had to relate more to the kind of a scientific and economic aspects of what constitutes a good fishery than what would relate to how are you going to take care of a certain group of people.

**MODERATOR:** I think I understand what you're saying. My question is more particularly to the qualifications other than purchase of a permit, after you've accomplished the level.

**PROFESSOR FLETCHER:** Alright, we're talking about the long run operation of this scheme, now. Okay, and then what...

**MODERATOR:** Were you inferring that you must have standards for transfer other than sale in the long run?

**PROFESSOR FLETCHER:** Whether you must have standards, I don't know that I commented. I don't think I intended to. Whether you do, whether you must have them, I don't know. The question that I looked at was whether you could have certain kinds of standards, and as to that I think that if you are going to impose restrictions they have to be ones that are reasonably calculated to produce the kind of fishery you would want. In other words, you can't say that only Scandinavians are going to be the new entrants, see, you've got to relate it to promoting good fisheries. Now, on this, under my old idea of what a part-time fisherman was, I could see that maybe you could justify saying that you had to have a full-time fisherman, and only those, or that you had to have somebody who himself was going to fish as distinct from a corporation that its headquarters were in New York. I suppose you could come to that conclusion, because that in turn is going to reflect upon the quality of the fishery, or at least legislatively you could decide it would, but... Now, whether you could operate in absence of any qualifications at all in terms of who was to be the new fisherman, and the new fisherman, the new entrant, I would suppose you could do that only if you didn't impose any restrictions upon the persons who presently had permits, and you just want to let anybody in the world out there

so long as you had only so many total permits. I suppose y u could have that. I don't think it would be legislatively a very wise thing to do. You might want to control who's out there in terms of qualifications.

MODERATOR: In the original bill the three general standards would, of course, only affect the transitional period. Now would you necessarily have to relate anything of this nature to a person who eventually gets the permit.

PROFESSOR FLETCHER: You wouldn't have to.

MODERATOR: You wouldn't have to.

PROFESSOR FLETCHER: I think it would be more a question of whether you could, because some of those were not, it seems to me, not legitimate except as transitional ingredients, such as how long have you been fishing in this fishery. I suppose that...

MR. ADASIAK: Well, in the original bill the only standard that would be applied when the commission reviewed transfers was whether the person was ready, willing and able to fish.

PROFESSOR FLETCHER: Yeah, that's fine. It seems to me that's a perfectly legitimate thing to have in mind, to ask. On the other hand, some of the modifications came up in terms of how long have you been fishing in these waters, or words to that effect. It seems to me to ask for nothing but trouble. You get a Puget Sound fisherman up here, he's going to say, I don't care whether I fish in these waters or not, I'm a good a fisherman as you are, and I daresay he'd qualify.

MODERATOR: I have one more question. You mentioned capabilities of a fisherman as a standard. You meant past demonstration?

PROFESSOR FLETCHER: I don't care how you measure it. You can give them

a test, but you could decide skill. I mean, you could take skill into account as determining, for helping to determine who was entitled to a license. I don't have any question in the world about it. Now, how you'd go about it, you'd better be careful so that it doesn't work out so that you favor only the guy who's been living down in so and so bay all of his life, but I assume that you'll avoid that.

MODERATOR: Dave.

DAVE: In relation to this, can the commission be given the job of applying this test?

PROFESSOR FLETCHER: Oh, surely. Yeah.

DAVE: And if it is stated that the commission can set up tests to determine who shall be granted these things, is this something that's going to leave it open to legitimate legal challenge which would probably shoot it...

PROFESSOR FLETCHER: You have to be aware of two hazards. One is that you must, within broad limits at least, specify the nature of the standards that the commission is to use. You can't just say, and the commission shall decide who shall fish. You'd better say, based upon those which will lead to an efficient fishery, or something at least as that specific, and I think if I were drafting it I'd add a few more which had to do with such things as capacity and willingness, and adequate gear, and various other things, whatever you thought was necessary, but I would be attempted to reduce it to that level of specificity. Now, in addition, the other hazard is not so much as to the validity of the legislation, but the actual operative policies, and such regulations as are issued and so on are likewise subject to challenge at any time, depending upon how

they carry them out. There's a very famous old case out of San Francisco where the statute was perfectly good, there was no problem about it at all, if (indisc.) heard about it, what they're really trying to do was to get the Chinamen out of San Francisco, and they were regulating the laundries. Well, the way they administered it was to say, I'm sorry, you're a Chinaman, and therefore, you didn't get a license. Well, you see, if your commission starts doing things like that, of course they're going to be subject to challenge. There's nothing wrong with their laws, just how they're carrying it out.

DAVE: Now, in this case, does the statute falls if...

PROFESSOR FLETCHER: No, the statute's perfectly alright.

DAVE: Right. It would be the commission. In our case, it would be the commission regulation...

PROFESSOR FLETCHER: The regulation, or indeed your regulations could be alright, it's in fact what they do. And you've got some sort of an injunction which says you can't do that.

MODERATOR: Roy, did you have any...?

MR. RICKEY: No, those were the only ones I can recall.

MODERATOR: Okay.

DAVE: In other words then, it may come down to how the the--well, the commission's actual record. What we're talking about here is non-resident versus resident, right?

PROFESSOR FLETCHER: Well, I suspect that this is in the background.

DAVE: I hope we can be candid.

PROFESSOR FLETCHER: Well, sure. I was warned this was the case of Alaskans.

(Laughter)

MR. ADASIAK: I want to take exception to that when you say what we're talking, because the Governor's task force is talking about resident and non-resident.

PROFESSOR FLETCHER: Oh, surely. But I didn't get the impression so much from that, except there was one reference to the fellow who came up from Boeing to fish in the Governor's letters. No, the place where this came through clearly was something I read where somebody had capitalized the word outsider. He's apparently some sort of a devil.

UNIDENTIFIED SPEAKER: But not individually, but collectively.

MR. ADASIAK: As far as I'm concerned, regardless of what a lot of the people in the general public want to believe or feel, we can't do anything that draws a resident non-resident distinction.

PROFESSOR FLETCHER: Now, you're speaking from the legal standpoint here?

MR. ADASIAK: Yeah.

PROFESSOR FLETCHER: Legally we cannot discriminate, and the Governor's task force has done an admirable job of avoiding this pitfall, however...

MR. ADASIAK: I just wanted to qualify the we when you spoke.

UNIDENTIFIED SPEAKER: Let's put it this way. In order for this desirable future goal to indeed be desirable from the viewpoint of the people who are enacting this legislation, namely the Alaskan Legislature, if this Legislature does not enable ultimately their Alaskan constituency to derive some benefit, it is sort futile.

PROFESSOR FLETCHER: Yes, of course it is. Well, you know, there's in a sense an inadequacy of our law here in that it does seem to me that on kind of a philosophical plane, that we are, in fact, concerned about the welfare of groups of people that we can point to and say,

all those fishermen over there are in terrible and I'd like to be able to do something for them. Our constitutional background, and theorizing, and indeed practical application in many cases, says, no, you can't do that, you've kind of got to treat everybody equally, you've got considerations of the mobility of the population, you've got to let people move in and out, you've got to let them do business where they don't live, and so on, and it's a kind of an overriding consideration that says, no, you can't legislate specifically to help out this little impoverished pocket here or there. Now, as I say, on a philosophic plane, maybe we ought not to be in that condition. There are a few signs that change on that, but they're rather narrowly confined. For example, we've had quite a bit of legislation that's aimed toward helping out the Negro and his terrible background and try to get him out of it, and in the process, in a sense, we're hurting the White man in doing it, because we're using money to do these things, whereas if we didn't spend it there we might have it elsewhere. Indeed, the University of Washington Law School is in a municipal lawsuit right now, because we, in our good judgment, decided that we were going to let a certain number of Black and other minority students into law school. In doing so, meaning that Whites could not get in with respect to the number that we've let in on this other basis. Well, can we do it? Well, we've got a big law suit about this. We decided it was a good idea. I still think it's a good idea, but that seems to me exceptional. We haven't reached that point generally in our total society where we will say that that conforms to ideas as to how government ought to operate, and as of now, and I think for a long time as I see it, you're going to find the

same reaction out of the courts, which says, no, you cannot do this. Okay, now, the only way you can look at it, you can either say I'm going to be in good faith or bad faith about this, and in spite what the law is, I'm going to try to protect these people in some way, or simply look at it from the standpoint, alright, let's just draft this legislation, and indeed decide that what we're doing is to promote what I've called the good fishery here, quite independent of who it is that's conducted the fishing. The practical fallout in terms of the details of how you set it up may indeed turn out, in fact, to be substantially protective of this groups of persons, as for example, the determination made here that you're going to license present types of gear. I take it if you were really interested in a good fishery as the fellow sitting over here said, you'd go to traps, but somehow we're just not willing to go to traps, and the court isn't saying that you must go to traps. It isn't that the government must be the most efficient possible, but that it can decide to become more efficient and take steps toward it. That's different, you see. But in taking those steps you can decide, as he's apparently worrying in his own mind, does he even want to take the first step. Maybe in order to protect this amorphous class of impoverished fishermen he wants them at least to be that impoverished instead of destitute, so he leaves the fishery the way it is without taking the first step toward efficiency.

UNIDENTIFIED SPEAKER: This is basically our problem.

PROFESSOR FLETCHER: Of course, it is a question of how far you're going to go toward efficiency, because the more efficient you get, I suspect, the less it is that you're going to be able to be confident that a particular group of identifiable, ethnically and culturally,

are you going to help, because I suspect they're going to suffer.

MR. ADASIAK: I think, though, that the information that we've developed indicates really the choice that Senator Radar is wrestling with, although he really isn't recognizing the other side of it, is the choice between which of two evils he wishes to accept, because the problem of the increasing number of units of gear poses another threat to that same class of people.

PROFESSOR FLETCHER: Yeah, it's a question of which one gets it first.

MR. ADASIAK: And it's a question of, you know, which--you know, status quo will not--or no action at least, will not address the dynamics of the situation.

UNIDENTIFIED SPEAKER: We have this situation already in Bristol Bay where this class of people whom we are concerned is already almost wholly on welfare, except perhaps in the rare big year, and yet this class of people is very concerned that they--that nothing is set up which could result in their losing their privilege to participate even at their present level which does not provide them a livelihood.

PROFESSOR FLETCHER: And, yet, in terms of what they do have coming in, it's probably a hundred percent if you leave out the amount that comes in because subsistence programs from the government, welfare payments of some sort.

UNIDENTIFIED SPEAKER: Yeah. What these people are hoping for, I feel sure, is--in fact, well, it applies primarily to Bristol Bay and to some extent in the Cook Inlet area, and perhaps Kodiak where we do have problems of too much gear at the present time, and in the other areas of the State where we may not have too much gear, but we do have predominantly resident fisheries. There we're

hoping for a maintenance of the status quo, but in Bristol Bay now, where we have a large non-resident participation, they look to this commission and saying, okay, we want to see legally constituted a commission which can, by hook or crook, insure that we--that our position is somehow bettered. Now, legally perhaps, you can't do it. Isn't it true that there are such commissions, perhaps in other aspects of our society, which indeed are going it, legally or not?

PROFESSOR FLETCHER: None come to mind. Maybe there are.

MR. ADASIAK: Being as a practical matter, the first time the commission tried to do anything like that, if the--assuming the statute itself was not attacked, and it will be, one of the cannery's is going to take a group of Seattle-based fishermen as plaintiffs and run in and sue, and then the whole thing goes down the drain again, and this is the problem, you know. If you want to put something together that's going to make the people happy, we can do it, and they'll be real happy and they'll read it and say, gee, that's great, and then it'll go down the tubes in the court.

UNIDENTIFIED SPEAKER: No, that wasn't quite what I was saying, I don't think. Let's take a hypothetical situation. Okay. The statute is set up, it's impeccable, it can't be faulted, it meets whatever charges may be made against it.

MR. ADASIAK: That's what we're after.

UNIDENTIFIED SPEAKER: Right. Okay. The commission set up--established by this statute proceeds to view the fishery and says, oh, we've got too many people here. We've got to cut this down. Alright, in doing this it reduces the fishery with complete impartiality. Okay, some people say, not so, you cut out ten non-residents, you've

cut out nine residents. You made a ten percent gain somewhere along the line.

UNIDENTIFIED SPEAKER II: I want to know how they came to that. Did they do it by law.

UNIDENTIFIED SPEAKER III: What kind of criteria are you applying?

UNIDENTIFIED SPEAKER I: Well, the criteria that are in the bill. The criteria themselves are impeccable, but somehow or other the commission applies them in such a way...

PROFESSOR FLETCHER: If you indeed can show in your commission that they did take this into account, applied them, and shall I say, just happened to come with a balance favorable to the residents, I suppose it's not challengable. Now, there has been some cases emanating primarily from the South in racial discrimination problems where, despite the application of decent standards, the fact is that no Negro has ever done whatever it is, served on the jury or some other thing, and pretty soon the fact begins to predominate over what they say they've been doing, and you don't believe them, but takes in a pattern, you see, before you can establish that as something that you can infer as a factual matter. Now, I would suppose if this persists for very long that you're going to get an effective challenge by the Seattle-based fishermen. He's going to say, okay, you're telling me you're applying these standards and they're great patterns, but I don't believe you and here's proof.

MR. ADASIAK: Maybe we could switch the focus to something I discussed with Senator Palmer and he encouraged me to pursue, that is that you said, you felt that the features of the various drafts addressing themselves to transition were fairly well developed, but that the

long range aspects were not. Could you expand a little bit more on what you think legitimate long range objectives of the State would be so that we might crank in a few fact situations and see how they'd work, so that maybe this afternoon when the Committee gets back there will be a little something that helps to fill in what you've identified as a whole in the bill so that they can see a few of the options that might be there.

PROFESSOR FLETCHER: Well, it seems to me that you've got, at least as I see it, three fairly well identifiable, and I've already mentioned these, but I repeat them. Three fairly well identifiable legitimate kind of basic objectives that you can be concerned about. Two of them are perfectly obvious, and that is to say you can be concerned about what loosely comes under the heading of conservation of the fishery. That is that the better existence, or at least conservation, of the fishery, the utilization of it, the physical-biological type thing, this has lots of subheads in terms of escapement, and I don't know, all manner of things. In addition to that you can look at and promote, take reasonable steps to get to, better methods simply to catch what's there to be caught. So, anything that promotes better gear or better detection of where the fish are, I don't know, anything of that nature's fine. The third one is the most important one because it seems to me to have most of the ramifications that pertains politically and different ways upon the people. That is, that as a legitimate concern of the State you can say, well, we've got certain basic products of this State, particularly producing states that have resources, as to which we can take steps to make sure that we have an economically healthy production system with respect to that. You've got a resource

that in this case is renewable. It's one that at the moment may be in...

(End of tape)

(Tape II - CSSB Work Session - 2/22/73)

PROFESSOR FLETCHER: ...product. I draw particularly on a very interesting Washington case that I discuss in this pamphlet here concerning apples here. Washington really was pretty rough on the people that grew red apples. They made them call certain apples culls that there was nothing wrong with them at all, but the reason it did so was that apparently what persuades the eastern purchaser to buy apples, particularly red apples, is how red they are, whereas if it's a yellow apple the color is not so important, so the yellow apple producers in Washington were permitted still to have certain apples grade B that they put in boxes. The red man had to take his second grade and call them culls, and put them in cardboard containers, or some darn thing. Anyway, the red man was suffering. The court said that's alright, not because you're promoting the health of the Washington people in any way, except economically, but this is just a better maintenance of a Washington industry. You're doing better in the foreign market, and I'm sure that Alaska could do the same with its fishery. It can shape it in such a way that it's putting out a good product, a competitive product, and so on. Now, I don't--I can't go any farther with my list. In the long run you've got to be furthering one of those. Maybe there's something I haven't thought about.

MR. ADASIAK: You mentioned also, I believe, although I'm not sure whether it was in connection with this list of basics or not, something about the safety of the fishery.

**PROFESSOR FLETCHER:** Yes, although I kind of put that into my secondary category. It's a kind of an incidental, that if you're going to have people out there fishing, obviously you can take steps to make sure that they do so as a manner safe to themselves, and of people who might be out there along side of them. So, surely. Now, notice that what flows really from many of these basic considerations is that you can take steps to promote the economic wellbeing of the participant, because if you do he's better able to do a lot of these things, and I mentioned the milk industry as the prime example of that, where you're not really so much concerned about the dairy farmer and how much money he makes per se, although maybe some legislators have dairy farmer constituents. The legitimate government position is that we want a healthful product. Now here you've got a lot of things which will be promoted by somebody who can afford to do this. You can promote better gear by somebody who's got the capacity to buy better gear, and so on, or to experiment, buy a new wench, or whatever it might be. So, you can take steps to see to it that your fishermen make a lot more money than they make. You can do that by a lot of things. You can make them--if economically you think it's going to work, you can make them independent of the processor. I don't know how you can undo it, but let's suppose that you don't make them so much beholden there, because they'll do better if they've got a better bargaining position in terms of how much they're going to get for their fish, so you can set it up on--well, for example, you could set up a governmental bargaining system that said, the way we're going to decide how much the processors pay for fish is that we're going to have it governmentally prescribed. That wouldn't be

so (indisc.), politically we got there, but you could support something like that, or you could take other steps that were aimed at that. You could say that no cannery shall finance any fishermen. You may not get any fishermen to fish if you don't, but anyway, you could do something like this in terms of the basic law that's evolved.

MR. ADASIAK: That's all right?

PROFESSOR FLETCHER: Sure.

MR. ADASIAK: You've got to give the cannery grandfather rights for the debt that's gotten out, so that he can collect them?

PROFESSOR FLETCHER: I suppose you would, yeah. But in the long run I think you could take, I think, almost any reasonable step to say that this particular group of persons, because we want them economically healthy, is to have some protection or assistance in arriving at what their product is. I'm not proposing that you set up a commission that sets the price of fish, but I don't have any worry but that if you did it would constitutionally stand up.

MR. ADASIAK: Uh-huh.

UNIDENTIFIED SPEAKER: Professor, could I interrupt you. We have to leave and I'm very glad to have met you.

PROFESSOR FLETCHER: Well, I'm please to have met you. Hope it's doing some good.

UNIDENTIFIED SPEAKER: Maybe it could go up (indisc.).

PROFESSOR FLETCHER: Fine. Do that.

MODERATOR: Professor, I had two questions that I wanted to go over with you, and I'm mainly requesting an opinion from. I don't know whether you've really had time to really look it over or not, but on the transferability have you arrived within your own mind an opinion

as to which is the better way to go, free transferability or non-transferability, assuming that by either method you would legitimately further legislative objectives?

PROFESSOR FLETCHER: The short answer to your question is no. I wish I could have more confidence...

MODERATOR: I guess what I'm asking you is what in your opinion would be the most workable...

PROFESSOR FLETCHER: I don't know. I wish I could decide even that one. Liquor licenses, you know, have--I think this is fairly typical, Washington is certainly this way, have presumably no value per se, there not transferable, but you almost inevitably get into difficulty if you kind of defy economics, because the fact is that a person who has a liquor license to conduct a tavern does have something of value, and what's finally worked out, and it really didn't take all that long to work out, the person who wants to sell a tavern makes his deal, a broker and (indisc.) somewhere, like selling out you get an earnest money contract and so on, but it's all wrapped up in this proposition that, okay, now you the purchaser, you apply for a license for you, and there they actually transfer the licenses, not a new license in a sense, it's a transfer of the old license. And mind you, you've got to qualify so the liquor board will assume in good faith and comes out and decides whether the purchaser is worthy, but there are all kinds of actions held up on an escrow basis held up until the transfer's approved, and the dollars that are involved are reflective of the fact that that transfer's going to be approved. He may sell the fixtures, and he'll have another grand statement item under goodwill, but the relation of the value of the physical assets to what's the goodwill is all out of proportion

except as includes the idea that the new guy is going to get a liquor license, so you could come up with something which says the same thing about your fisheries' licenses and it would, in a sense, not mean anything. Now, whether you could obviate that by not allowing that type transaction, but simply tell the fisherman who wants to get out that his only option is to turn in his license, and then we in our good judgment and this great big pool of people over here, and we're not going to tell you who, we will pick out somebody who gets it and would hand it to him if he pays his modest fee for it. I just don't know whether that would work or not. I'm a little skeptical as to how you'd make that operate. If you could, maybe you would avoid this idea that this license has got all it's got. In a sense, whenever you go against a kind of reality situation, somebody's going to work out some way to approximate what's really at stake. I just wouldn't have any confidence in your capacity to say that they're not transferable, that's all.

MODERATOR: Well, this gets it right back to reality really quick, because we have some real fears on the part of the people who might be counted in at this time. They want to be sure that they can transfer this thing to the members of their own family who follow after them. Now, I think we're going to have to deal with this, because the bill is certainly not going to be approved, approved of, by the constituency if there's--if this thing were to return to the commission and be up for grabs by this vast conglomery system or something of that nature. They are not going to buy a lotter system.

PROFESSOR FLETCHER: Well, if that's political reality, then I suppose you'd better tackle the question as to whether you're going to permit that kind of transfer and not others, and as to that I've

got a fairly quick and fairly confident reaction that it's no. I don't think you can set up a system where it says that it's transferable but only to your son, or only to your grandchild, or something like that. As sure as shootin' as soon as you get that there's going to be somebody who comes in and says I want to transfer it to my brother. He's not on that permissible list and he's been a good a fisherman and, boy, you're in trouble.

UNIDENTIFIED SPEAKER: Have you discussed the 90 percent tax?

MODERATOR: No, we haven't got into the specifics. That what I was about to mention, under either system maybe we're losing sight of how it's actually going to reduce gear. In other words, how it's going to actually reduce the fishery, the entrants, the numbers of people that fish. If it's not transferable, the guy will just hold it until he dies. If it is, it will continue to be passed on. How is attrition to take place? One of the ideas that's been banted about is a tax scheme whereby there would be 90 percent tax on sales--on transfers to--with some other person, and setting a lesser tax on transfer to the commission, but...

MR. DANIELS: ...75 percent tax on transfer to the commission. Is that-- someone just pointed out that might be called a confiscatory tax, I don't know. Is it, or would have any reservations at that level?

PROFESSOR FLETCHER: Well, the label suggests that besides it's confiscatory, you can't do it, so the real question is, can you.

UNIDENTIFIED SPEAKER: Could I ask a question. Could this be related to land, like the Homestead Act or is there some precedent for limiting the amount of acreage a person can own, like then you couldn't collect an over-abundance of licenses. You're talking about encumbering being a big problem. If a person could only own so

much, couldn't he only encumber so much as well?

PROFESSOR FLETCHER: Well, we succeed in restricting what people can do with respect to things they own, and we restrict them in very many ways, some of which are very severe. I earlier said I had some worries about saying to a person, you can't mortgage, you pledge, it can't be reached by execution, and so on, and yet, you can sell. I would suppose that probably that sort of restriction would hold up as against constitutional challenge simply because I don't see any basis on which the challenge would be successful except as a deprivation of due process and property without process, and it seems to me that we've got enough precedents that tolerates all manner of interference with ownership of property, that you can probably get by with that. That that would be alright, to restrict this person, and my concerns here would be more practical ones on which I'm no more qualified to speak, and perhaps less than the rest of you, and I don't know how it works. Maybe it would be that you'd get where you wanted to by this sort of thing. Here on the proposition of taxing, generally speaking, you can tax anything you want. Restrictions come from your State commerce clause which I don't see as being a major difficulty here. They come from the protection, but we don't know if we're going to be treating everybody equally on that. In a way all you're saying is that you put this much of a tax on this transfer, you're really saying that we'll allow you to collect only ten percent of what somebody's willing to pay a new license. We'll give ten percent to you and 90 percent to the State. I suppose that would be defensible in constitutional terms, but after all, the State has a great interest in this, and a great investment, and could charge

for these permits.

MODERATOR: What we're trying to get around there is Senator Radar's objections to this windfall to the first generation, and rather than have the windfall to the first generation of fishermen, have it revert to the State in the form of taxes.

PROFESSOR FLETCHER: I think that's all right. Suppose you said, for example, that don't put it in the form of tax at all. You've simply said to a person who's a license holder that any time you want to get out we will pay you ten percent of the fair market value of what you've got, and then you told the person who wants to get in, it's going to cost you a hundred percent of the fair market value to get in, so you just give us the money and we'll turn around and give ten percent of it to this fellow who's coming in. Now, you've worded it differently, because you're going to let the ten percent go directly, but I think you'd rationalize it this other way.

MODERATOR: Would it be advantageous to word it as you have stated it?

PROFESSOR FLETCHER: I think it would, but I don't know what... It's a kind of a spur-of-the-moment reaction, I think I would, yeah.

MODERATOR: Your response there put it in this probably much more acceptable language.

PROFESSOR FLETCHER: I don't really worry about the fact that the State might decide to charge people for these licenses. I think that would be all right, and if it can start from that premise, and thereby get to justifying this kind of a thing going.

MR. DANIELS: How do you determine who is eligible, and this is free transferable again, now, or does the State have anything to say?

PROFESSOR FLETCHER: Well, I think the State can take a wide range of

possibilities here, assuming you've got a limited number, you could take the position that you don't care. Anybody could them, first come, first served, or any person who wants to buy it from anybody else, that's fine. Your only questions that start creeping is when you start--when the State starts to say, well, no, only certain types of people, certain types of operators, and then you have to look at it in terms of, well, what are you legitimately trying to promote, and here then, you come back to this long range objectives that I talked about. As long as they're reasonably calculated to promote those objectives, fine, and I would exclude something that I think is presently in the minds of some of the drafts here. I would exclude whether the applicant is, or will be, or has been, economically dependent solely upon fishing. It seems to me that that's a pretty hard one to defend, so just because a crewmember, or something somebody called a second son, comes in and says, I want a license, and the reason I'm entitled to do it is that I don't have anything else to do in life, I don't think you can give it to him on that basis and exclude another guy who's just a good a fisherman as he is.

MODERATOR: You're talking here, now, just on the long run and not the...

PROFESSOR FLETCHER: This is the long run. I'm not talking about the transition.

MODERATOR: What's wrong with the idea that we're creating a property right, and the ones in a will are inherited or given...

PROFESSOR FLETCHER: I don't think there's anything wrong with that as long as the same capacity is given with respect to intervivalist (sp) transfers, and in terms of whether the person to whom it's given has to meet the same standards as any person to whom it might be

otherwise transferred. In other words, incident to property, of course, unless restricted for some other reason you could say, sure, you could give it to your child by will and we'll be happy to have him have it if he has to meet at least as stringent requirement as anybody else, but you can't say that you're entitled to have it just because you're the son.

MR. DANIELS: I was wondering on the tax, the 90 percent, 75 percent tax idea, or as you put it, without using the term tax, what if somebody really wanted a license bad and they wanted to stimulate someone to sell their license and offered him money under the table? Is this something that's likely to occur under those conditions? Is there any way to avoid it?

MODERATOR: Well, Phil, we all know that it is likely that it will occur, and that's almost--that's getting down on the detail at this point.

PROFESSOR FLETCHER: It seems to me that this type of consideration points toward the desirability of a transferability system unless you're going to be willing to go completely the other way which says that the person who wants to in effect buy out a particular fisherman over here to tell him, look, you haven't got any more chance than a hundred other guys. Your name goes into the pool and we're going to draw them blindfolded, and if you happen to come up with it, fine. If you're willing to go that far, then you can avoid this type thing, but if you--I don't--it seems to me as a practical matter, if you fall very much short of that, you're going to get the under-the-table type thing, or the in effect fair market value attacked as between two individuals transacting business, and if you're going to do that I think you might as well let it be out in the open on some sort of a free transferability basis. Now, you might route it

through the commission so that the dollars come into the commission, and the commission gets a cut, because there is, in a sense, a State interest also, a dollar value involved.

MODERATOR: The biggest value of transferability is with free transfer, any form of free transfer, where these things do have a value, is-- it's been the Committee's concern, and their major concern, and primarily Bristol Bay, as an example, to try to balance some amount of paternalism on the State with free enterprise on the other end of the scale, and to try to protect these people that are really most dependent on the fishery from economic coercion, either directly from the industry, or from other individuals in terms of, oh, it's a long, cold winter, and this piece of paper is ready cash, and perhaps the person that has it doesn't fully understand that when he sells that he sells his right to the fishery. This has been the major problem, how to adequately, legally protect these people and still stay within the framework of a legitimate legislative objective.

PROFESSOR FLETCHER: I think there's some mechanical thing that you could do that would tend to protect, and that they can't sell it the way he'd sell a sack of potatoes, he's going to have to route it through the commission, you've got to get the new man to be approved, and your waiting period, and various other things that you could put upon the machinery side.

MODERATOR. Right. But if on the other hand, and it's something that hadn't even entered my mind and it hasn't really entered the Committee's mind until just the other day, is the fact that even though there's this waiting period there can still be a contract signed and the money can be presented right now, and he has sold his right, he does have instant money. And this is why--I know

Senator Palmer was, you know, asking the question because this is such a major problem at this point if we can essentially have a moratorium period on transfer...

MR. ADASIAK: That's the question I was just going to ask, is whether, as a transitional measure, it would be possible to, let's say not illuminate transferability, but restrict it to hardship cases and allow the commission sort of extra authority during the transitional period, the practical consequence of which would be that it might give you a year or two to allow the people who, because of their culture, aren't quite acquainted with the new value of what they have time to get a little bit of a sense of what it is. Is that justifiable as a transitional device?

PROFESSOR FLETCHER: I don't remember the man's name who just sat here just a moment ago. He's just left, but anyway, he asked me, I think, essentially the same question when he was talking about whether you could freeze, and I said as a interim device, but I would make that interim pretty short. In other words, have it made purposely apparent that you were doing this incident to getting your total operative system set up and going it might be necessary to hold, and say you can't get out of the situation, we're not going to let anyone in, and so on, but I'd make that as short as possible, but it seems to me that if you have that in the context of a spelled out plan for operation procedure, fine. Now...

MODERATOR: In other words, saying that this shall be the procedure for transfer, except that there will be a two-year moratorium on this because, of whatever period, because of the other administrative duties required of this commission.

PROFESSOR FLETCHER: That's right. Sure, and that by the next session

of the Legislature, the commission is to come in with proposals. I'd put that right in the statute that they're to come in with proposals for detailed regulation concerning--detailed specifications concerning transferability, or something like that. I'd pin it down as much as I could and still leave myself room enough if you felt that you had to have it to develop something you haven't really decided on yet.

MODERATOR: Right.

MR. DANIELS: By way of conceptually outlining what that would be, you would have the general outline of how you were going to handle transferability, because you're leaving a really practical detail out.

PROFESSOR FLETCHER: I think that's right. I think that--I think it would be an excellent thing to do to decide right now whether you're going to permit transferability. I think you ought to resolve that one. I wouldn't leave that up in the air, because if you leave it in the air then you're asking for trouble at the end of saying, you know, you're just protecting the people who are right there now, and everything else.

MODERATOR: How much latitude does the court give in this good faith area?

PROFESSOR FLETCHER: Well, you look over quite a range of decisions as to the context in which it comes out. The hazard here is very similar to the hazard that shows up in the way where the state's interested in some sort of protecting the local merchants type thing, where the argument is that it's an interference with interstate commerce to have this type of regulation, because all it's really done is favoring the local guy. The court's attitude has been in most of those to be fairly willing to assume good faith, that the

bad faith ingredients have to show through fairly strong like. If you can come up with some fairly rational like explanation that's on the legitimacy side, this has to (indisc.) for this reason, that your chance of success is pretty good. On the other hand, the moment you say that you have to realize there are going to be some cases, and I can point to three or four where the court has say, no, it's just perfectly apparent that you are protecting the local butcher, or the local whatever he was.

MODERATOR: Alright, well, in this case we're protecting a class.

PROFESSOR FLETCHER: A local...

MODERATOR: Not a local.

PROFESSOR FLETCHER: Not a local, but a presently existing class. Your problem is not localism here. Here it's classifications of persons that was causing the problem.

MODERATOR: Right.

UNIDENTIFIED SPEAKER: In this connection, I gather that you do feel that it would be wise to strengthen the whereas section, and develop a case to some extent as to the reasons why this legislation is being proposed.

PROFESSOR FLETCHER: I'm not sure that the statute itself will be helped to recite these things. It might be. The really critical thing is what the statute provides. In other words, what in fact is going to be the operative effect. What have you said as to transferability? And what have you said as to as to who's to be qualified? To be a new entrant, and so, or to be an eligible transferee. Those all point toward legitimacy, towards furthering what I listed here as three legitimate objects. Then you're in pretty good shape, and the fact that you had to have an interim period, it's all right.

If you don't spell them out and you leave--and the more and more discretion you leave to the commission without telling them on the basis they're to operate, the more you encourage the challenge that you're really doing the bad thing. You're protecting this local class of people or this presently existing class of people, so I would make sure of my detail, and I would be tempted to put in a fair amount of detail in my statute on that point. Recital business, I'm not sure that you help yourself. Maybe you do, maybe you don't. I think you should have your record made and have it available, and now, I take it your Legislature doesn't have official committee reports. You don't make a record, a legislative record.

MODERATOR: No, they do not now.

PROFESSOR FLETCHER: Then the sort of thing you've got to have is what's in this black covered--the Governor's report type thing. You've got to have a letter from so and so to so and so, something of this nature which comes through to say that you've considered this, and these were the factors that were important.

MODERATOR: Right. This can be done. It's quite common to have a legislative letter of intent that covers...

PROFESSOR FLETCHER: Whatever your mechanism is, that I think is just as good as a recital in the statute itself, but I don't feel strongly about it one way or another.

MR. ADASIAK: You indicated earlier that, if I interpreted your remarks correctly, that you felt some sort of compensation feature was essential to this bill. I don't know whether I'm restating that too strongly or not.

PROFESSOR FLETCHER: I'm kind of two minds about it. There's no question

but that compensation to the person who has to give up would be extremely helpful. It will avoid the argument of deprivation of property without due process. If you did not have that, I would still be willing to take the case from the government's side, that is to say that you can make a pretty plausible argument that says, no, this is just like a lot of other things the government where you just happen to lose, and of course, we do. We lose every day. They changing the zoning where I live and I can't certain things and I've lost. I don't get any compensation for that. This in a sense, too, may have some necessity or need about it look at how much you're talking about, how well are you going to compensate the person. If you give him, let's say, the value of his boat, and you value it as a boat without a fishing license attached to it without an entry permit, that probably isn't a heck of a lot of money, but that may get by, but gee, if you give him the equivalent of what the value is that you give to the fellow who gets an entry permit, then I don't have any question at all. You're clear sailing. Nobody's going to be able to challenge that one at all.

UNIDENTIFIED SPEAKER: Well, Professor, this brings up a very, very real problem and that is the money angle, where this money's going to come from. It's either got to be appropriated over there, or over a period of time those who receive this permit ante up to the kitty through some tact, and enable this buy-back, and if this is the case, then the amount of decline that the commission is going to be able to put into practice is going to be very, very slight, and it's going to create an interim period of many years, instead of this desirable interim period that you spoke of being rather short.

**PROFESSOR FLETCHER:** Right. I don't know that the concern for the interim period's being short is not met. I've got too many negatives. It seems to me, the problem with the interim period, and my feeling that it ought to short, is that it is those characteristics of the interim period in which you say to the person he cannot transfer or that nobody else can get in, or that we aren't start issuing new permits until three years from now. That's bad because it looks as if you're simply protecting the person who's presently fishing and saying nobody else gets in, but if you obviate those and provide for free transferability fairly soon, and set your mechanism for getting the new people determined as to who they're going to be, and so on, so that you can get to the long range system fairly quickly, then I think you've gotten around the trouble. Now, in fact, it may turn out that you don't get very many new applicants because you can't--or you won't get enough money from the Legislature to buy them out, to buy out the old. It seems to me that's a--unless, and I doubt that you could do it, unless you could label that as a part of a concerted effort on the part of the Legislature to do what they're not supposed to do, that is, a deliberate effort to keep the number of fishermen the same, and keep the exact people fishing and nobody else, then that it's all right. In other words, if the Legislature does the best it can and spares \$200,000 every year to do this instead of six million or whatever it might do if you really wanted to get your ultimate objectives immediately, then I think you're all right. In other words, reasonable efforts toward getting there, even though they might have to be slow in the first place, they'll probably get high.

**UNIDENTIFIED SPEAKER:** Especially with the pipeline situation being what

it is.

PROFESSOR FLETCHER: Yeah.

UNIDENTIFIED SPEAKER: No, it just isn't realistic to expect much money right now.

PROFESSOR FLETCHER: Yeah, I suppose that...

MR. ADASIAK: Rather than apply the standards that were set up in the Governor's bill of past participation and economic dependence, and present ability and attempt to fish, if, in establishing your threshold level for all of the people who got entry permits...

PROFESSOR FLETCHER: Now, we're talking about the long run.

MR. ADASIAK: We're talking, no. Right away.

PROFESSOR FLETCHER: Oh, the immediate. Alright.

MR. ADASIAK: If you were to take the approach that we are going to identify a class of people, all of whom will get entry permits, and then some of whom will be bought out down to your optimum level, what becomes--well, certain things are unworkable, I think, from a practical standpoint. For instance, if you were to take anyone who has fished two out of the last ten years. That becomes unworkable because, I think, you end up with something like 28,000 people, and your optimum level--well, your actual level of gear licenses right now is about 9,000, and so just to get down to where you are, you've got a long trip. The financial burdens are ridiculous. How close can you go toward the other end of that. The Canadians, in their plan, simply said, anyone who's fished in the last two years, and, or rather anyone who has fished in the two years, has a boat under construction, or can demonstrate special hardship circumstances. And those were their standards.

MODERATOR: Well, they had a standard you had to have landed so many

dollar value--or so much dollar value worth of fish, also.

MR. ADASIAK: Yeah, you had to have landed a certain amount of fish...

PROFESSOR FLETCHER: As a measure of whether they'd been fishing.

MR. ADASIAK: Yeah, you had to have landed fish in the last two years.

They started out saying just salmon, but they had to get away from that, and they included halibut as well, but at any rate, as the Canadians also put in their whole limited entry program by fiat. They have sentences in law, which tells the Minister of Environment, do it.

PROFESSOR FLETCHER: They can get away with a lot of things we can't.

MR. ADASIAK: And, so, what I'm--my question is, could the Legislature establish an initial level, a threshold level of participation from which a buy-back program would operate by taking a standard of, say, participation in the last two years, plus hardship and boats under construction.

PROFESSOR FLETCHER: Sure they could. I wouldn't be concerned about it.

MR. ADASIAK: But then, you know, it's--then you just get a practical question of how you're going to fund your buy-back program and get down to where you are.

PROFESSOR FLETCHER: Yeah, I think so. It doesn't--on the basic proposition which on this limited entry and the necessary concomitants of it, I don't really have concern. It's how you do it that's the problem, and it seems to me that if your proposition is that we have to get to a certain, and we have to get there within a certain time, and the statistical base tells us that the only way we're going to do that is to say that only those who meet these standards of past performance are entitled to the compensation as in terms of being bought out, that that's all right. Your only kind of

power limit is that I think an outer one, that eventually I suppose you run into this somewhat disappearing--if this had come up 70 years ago you'd have had a different problem--disappearing idea that government can't touch whatever it is that the fellow's doing because he has a kind of constitutional God given right to do it, and you have to pay him so many dollars if you tell him he can't. We don't take that position constitutionally speaking any more, and even when he's got property that's involved, it has to be a pretty aggressive, aggressive (sp), sudden total taking of property before you say that there has to be compensation, so I think any reasonable effort of made that somehow fairly measures a substantial degree of participation, as that type of system does, seems to me the (indisc.).

MR. ADASIAK: The Canadians also divided in their boats that they left in, they divided them into two categories, landings over 10,000 pounds and under 10,000 pounds. Those under 10,000 pounds they gave what they call a B license. A B license is good for ten years after which you're just out of the commercial fishery completely, and those boats are not eligible for buy-back, it's only the A license boats with the bigger landings that could be bought out. The others are just given a definite life span.

PROFESSOR FLETCHER: The Canadian system had a two-stage buy-back in the initial inception of the program, did they right then buy back any?

MR. ADASIAK: No, they took them--they classified A and B licenses, but they didn't really get around to buy-back for about two years.

PROFESSOR FLETCHER: Until they had a source of funding that was coming from licensing, or something of that sort?

MR. ADASIAK: Yeah, they set up a licensing fee schedule and used that as a source of funding for their buy-back, but is there any problem if, instead of compensation for some of the vessels in this class? I mean, we might--we run into a numbers problem after a while, depending on whether you go to the last two years, the last three out of five, or whatever it is, is there any problem in defining a category for which no monetary compensation would be provided, but for which a fixed span of additional participation in the fishery is allowed. Is that a legitimate thing to do?

PROFESSOR FLETCHER: Seems to me that's the height of reasonableness.

MR. ADASIAK: So that we wouldn't have any problem there. The question is how you define that class of boats.

PROFESSOR FLETCHER: The concerns that you...

MR. ADASIAK: Or class of participants, rather, in this case.

PROFESSOR FLETCHER: That's right, the concerns you have, I think, are not in terms of sort of the total necessity of getting your total numbers down. I think you can deal with that with a fairly large amount of discretion, but with--in terms of different classes of people, I would--it gets a little sticky and hazardous to say that, well, the poor people are entitled to more, or the rich ones are entitled to more, or the Scandinavians are entitled--something of that sort. You get into problems of that nature, and if you can steer clear of them, then I don't see that there are any problems.

UNIDENTIFIED SPEAKER: Can I say here that apparently we could do legally what we cannot do socially.

PROFESSOR FLETCHER: This is very frequently the case. Constitutional law in economic matters is just generally speaking very tolerant. There's been a lot of judgment on these things. It when you get

personal that you get into trouble with the constitution.

MR. ADASIAK: I'm not proposing that we do any of these things. I'm just exploring different alternative possibilities which I'm sure this Committee and other committees might want to consider so that we get the benefit of some of your thought on it. Am I correct in my assumption that if the State were to follow the system of only those people who fished the last two years, et cetera, get in that it does that to the exclusion of the other set of standards of economic dependence, past participation, et cetera?

PROFESSOR FLETCHER: You say, would it be permissible...?

MR. ADASIAK: The one operates, but the other doesn't, is that... My assumption is that you'd have to make a basic choice and if you chose the last two years route, you could not use your other standards, whereas if you chose economic dependence, past participation, ready, willing and able, that gets you out of the last two years, or can those two be combined?

PROFESSOR FLETCHER: It seems to me they could combined so long as in the combining of them you make sure that you have not, in practical effect, some up with something that's in the depravitive zone of some sort of a personal preference, favoritism treatment, but I think that you could legitimately consider all of them. You see, what you've done in your first mechanism is really to come to some sort of way of evaluating present investment, and I think if you can look at present investment not just in terms of how valuable is the boat that's tied up at the wharf, but what he's been doing with it. If he hasn't used it for five years, I don't think that he thinks that's worth as much as a fishing boat. So, I'd pay the guy who's been fishing, pay him more because I'm compensating

for what he's presently got invested in that operating boat, then in addition, it's going to be harder on some than on other. The guy who's whole livelihood is derivative from it, I think I'd be more willing to let him stay, and the first instance not. One of the purposes of grandfather clauses is to alleviate hardship, and as that varies among people, you can differentiate, so the guy who's got himself another job and can live without it, why, I don't worry so much about him, and legislatively tell him that he can't fish.

UNIDENTIFIED SPEAKER: You're allowing him the prerogative of getting back in.

PROFESSOR FLETCHER: Oh, yes. Now, there's always the question of what your doing in terms of preserving status quo of taking care of the people who are not engaged.

MR. ADASIAK: Yeah, this just decides in the beginning who gets the chips.

UNIDENTIFIED SPEAKER: If I may. I may have missed something when I got the coffee, but you're saying that essentially, then, that we can determine initial entry criteria much as we have, based on economic dependence, past participation, this sort of thing.

PROFESSOR FLETCHER: And then crank in some sort of compensation specifically if you want in terms of what he's got invested.

(End of one side of tape)

(Committee members resume)

CHAIRMAN: Alright, yeah.

MR. ADASIAK: What he was exploring was the possibility--Tillion's proposal for buy-back ideally would be to establish a five-million-dollar, ten-million-dollar fund, which would work as a revolving

fund.

CHAIRMAN: Listen, don't let me screw up your conversation. I shouldn't have gotten into it.

UNIDENTIFIED SPEAKER: No, this is where we were.

CHAIRMAN: Some son of a bitch that comes in after you're all through with it and puts you back where you started.

UNIDENTIFIED SPEAKER: We're just very glad you came back.

MR. ADASIAK: Tillion's proposal for buy-back would establish, say, a five-million-dollar fund and money from that fund would be used to buy people out of the fishery, and the people that remained with similar entry permits to the type that we've bought back would be assessed, what it cost to buy him out, and they would pay the money back into the fund, so the State would eventually lose no money. It would be just there to be handled around, and the general feeling that we've gotten is that the Legislature isn't going to set up five million dollars for that sort of purpose. There's just no chance the way things are financially, now, so Phil was exploring an alternative whereby through gear license fees, about a million dollars a year could be generated and that you could use that million to pay for debt service on about a twelve million dollar loan from a bank, and use the twelve million dollars to fund the buy-back program the same way, and I'm not sure but that looks like an end run, and somehow it won't work, but I'm quite clear why. This is generally where we were in the discussion.

UNIDENTIFIED SPEAKER: We have a prohibition against dedication of tax funds for a special purpose.

MR. DANIELS: Now, what if this weren't. I mean, is there any way if you have an assessment that a particular group of people, and in

case fishermen, were paying. It's an unusual tax in the sense that it hasn't been deemed necessary in the past. It's strictly for the purpose of buy-back. Is there any way that can be somewhere in the special fund.

SENATOR RADAR: Well, we have an exception. I was just going to say, in our--I'm not sure about this, but it kind of rings a bell, in our King Crab Association, I think that that association has the right to assess its members, and they use the funds themselves, and I think there is some State sanction to that assessment, sort of like a pact, they issue the proposal themselves, they use it themselves, but of course, it's very minimal compared to this, because all it's for, I think, is to put that fund into a little kitty to do some advertising on King crab or something, quality-- I don't really know whether that has a useable idea there or not, and I'm not sure that that's constitutional either. It's just it's been so minimal that nobody argued about it, that's about the size of it. That where we get into so much bad ideas here, they'll be doing this someplace else, well, I guess nobody's ever argued about it.

PROFESSOR FLETCHER: Do you get any problems here of, oh, the sort that comes up with our port districts, these blighted area problems, or solutions to blighted areas so-called where the government money is used to buy a land and then all they do is to improve it and sell it, or they will lease it to somebody else, the ports, for example. They'll spend a whole lot of money in setting up this beautiful land, and then they'll turn around and lease it to so and so company to put up a big building, and some people have argued that that's not legitimate use of state made, that we've made the

grade on it, of course, we've approved it, but there was always that concern that this was not strictly a government function to be doing these things. It seems to me, that perhaps is in the background of this whole that you're going to buy out the excess gear, but I just assume that it would not prove to be much of a hurdle, that you'd get past it. It seems to me it's a highly important government function to reduce the fishery, the amount of gear that's operating, and it's one way to do, and perhaps even a necessary way in terms of outer limits that you maybe have to pay something to these times, so it's legitimate.

SENATOR RADAR: Probably the easiest way would be to set up an additional tax on the fishery for some various ways that we think are equitable and just say, well, that's true, we're going to spend so much money but we think it'll--the proof is through the tax. It's not trying to make a direct transfer, you know, it would be in a separate fund, or...

PROFESSOR FLETCHER: The context in which this started out here was really that of how you might circumscribe or control or have money handled incident to transfer of licenses, that if you could anticipate the person who, let's assume a transferability capacity. A person who's about a license really would not be dealing solely with the immediate transferor, but would be dealing with the State. There's some problems with whether you could have under-the-table things in addition, but assuming that you could control that aspect of it, you could take part of the money, and part of it go to the transferor of the license, the previous holder, and then that part that comes in, I suppose, could be used for any purposes, and that incident to the total program, among which would certainly be the capacity to buy out other gear

that's presently out there operating if you want to cut down on it, but as I was pointing out, that may in the long run may be an operative system, but it doesn't put any money in the kitty right now, and you need kind of a start-up fund. At least in my thinking we'd arrived at where we were.

UNIDENTIFIED SPEAKER: You indicated that there are several areas of the bill that haven't--apparently haven't been discussed yet that you feel very queezy about.

PROFESSOR FLETCHER: There were a few points like that. Maybe I can look at them over the lunch hour. I don't think they were just terribly important, but there were a few places where I felt that something should be done. I did have the feeling that, oh, as I guess I've said, that we could do better, and ought to do more, with respect to some criteria for future holders of permits that are distinguished from who it is you decide to have it now. I think in both terms of selling out that you are going to permit new holders and basis on which ought to be better handled, and I would-- as I said, the idea of who was a part-time fisherman, was something I'd gotten the wrong impression about and I would like to think about it a little bit longer in terms of whether that should be a criteria for who gets the license in the future. I'm having trouble seeing it, actually, as being rationally related to what I consider to be among the legitimate objectives (indisc.).

UNIDENTIFIED SPEAKER: This is something that I feel sure the Committee itself, when they come back this afternoon, would really appreciate hearing your remarks on.

PROFESSOR FLETCHER: It's going to be kind of spur-of-the-moment with us, because as I say, I had a misapprehension as to what a part-time

fisherman was.

UNIDENTIFIED SPEAKER: I don't mean necessarily that, but this business of the criteria for the long term.

PROFESSOR FLETCHER: Oh, yeah. Well, I've got some, I guess, fairly simple ideas on it. I think as long as they relate to what I conceive to be legitimate objectives that I've listed here, they're all right, but except as to them, I don't think they are unless you could come up with another objective I haven't thought about. So, ones that are aimed at economic well-being of the fishermen as such, I think we're all right. I think there's a manner of things that's (indisc.) that they've got a reasonable (indisc.). You can make them economically well off in terms of their bargaining power with the processor, for example. They could take steps that they're not beholden to them. I'm very, if I say it's upset it's the word, I don't know how you get around the cold, practical fact that apparently is the case in many instances that the cannery itself finances the fisherman, a kind of a grub stake operation. Is that pattern going to continue? Is that the fisherman's last destine to be wrapped up with him that way?

MR. ADASIAK: The canneries were protesting only yesterday to me that they really didn't want to be in this financing operation and would just as soon get out of it if they could, but that banks won't touch most fishermen, and as a result, this is what the industry said yesterday, anyway, they're borrowing money at eight and nine percent, and loaning it to the fishermen at six percent and less, sometimes down to zero...

PROFESSOR FLETCHER: And they get (indisc)by the fact they get the fish, and they get a contract from each fisherman, is that it?

MR. ADASIAK: Just a guarantee that they have enough fishermen to provide

them with the fish.

PROFESSOR FLETCHER: Have you ever tried to buy a fish from a man who's out fishing, as I have. You sidle up along side of him and say, would you sell me a fish. He kind of looks all around, okay.

(Laughter)

M R. ADASIAK: So there is a problem and part of the concern with free transferability is that the cannery may just tell us all, alright we'll buy your permit for you. We'll give you the money for that, but get a hold on him through his boat and a few other things.

UNIDENTIFIED SPEAKER: Yeah, the industry here has them pretty well tied up. If they don't own the boat they have a store account, and as part of the contract in the store account that boat is also there and it's...

PROFESSOR FLETCHER: Yeah, and if you don't break this I don't know what good it's going to do you to say that the license can't hypothecated, because you end up with the same practical result anyway.

SENATOR RADAR: Well, we've talked quite a lot about funding in the fisheries' loan fund. To try to make money more available in some of these areas, and that's to alleviate some of the problems, I suppose.

MR. DANIELS: I thought that was rather interesting. Didn't I understand you to say earlier that you could pass legislation banning the canneries from loaning money to fishermen?

PROFESSOR FLETCHER: I suppose you could. Whether practically you could and make it work, I don't know, but I think in terms of constitutionality you could say the economic plight of the fisherman as a whole, as an

industry, not because of the present people, but that their economic sense (indisc.) has to be added to.

MR. DANIELS: And didn't I also understand that you thought it might be possible to protect the fishermen by having a price control committee?

PROFESSOR FLETCHER: Sure.

UNIDENTIFIED SPEAKER: How can we do this when you're dealing with people from two different states, or three different states, you know, when somebody in Washington might loan somebody in Alaska money, or somebody in Washington money to fish in Alaska.

PROFESSOR FLETCHER: You mean how you could practically enforce this, or in terms of power, legislative power. I suppose the out-of-state lender does pose somewhat of a problem. Certainly if you had both an out-of-state lender and an out-of-state fisherman, you'd have some trouble. No, maybe you couldn't. Locally I think you can bring it within the reach of constitutional power, your problem is geographic.

UNIDENTIFIED SPEAKER: Would that be, then, hurting your local fishermen?

PROFESSOR FLETCHER: It probably would.

MR. ADASIAK: I have a somewhat related question, and I'm sorry but I have to leave. I've got another appointment. Some of us have been kicking around the idea of, in places like Bristol Bay, setting up fish brokers. Right now your fisherman deals directly with the canneries and there's no real price competition among the canneries. There competition among the canneries for the fishermen, but the fish all end up being the same price, or almost the same price, and we thought if there were a brokerage so that the fisherman sold to the broker and the broker to the different canneries, that

that would open that up and produce a better price for the fish. A couple of people from the industry yesterday, when I tried that on them, Jay Gage in particular, said that that would be a violation of anti-trust.

PROFESSOR FLETCHER: I'm not qualified to say whether it is or not. I don't know.

MR. ADASIAK: I was just wondering, because it seems to me that if you set up a broker, or if necessary, more than one broker to function on the bay, and run the tenders and collect the fish and do the same thing in other areas, that that might be one of the things that sort of loosens the economic bonds that presently exist between the fishermen and the canneries. I wondered whether you saw any legal problem with that sort of operation.

PROFESSOR FLETCHER: Anti-trust is something that I know almost nothing about, and I can't tell you what the laws would say as to that. I'd have kind of a gut reaction to it, but that's all.

UNIDENTIFIED SPEAKER: According to a marketing study that's been and the feeling, at least of Alaska Legal Services, apparently they're not going to remain viable for very much longer with the present O.E.O. cut, but if they do apparently they feel that there are grounds, even at this point, and they're not through with their investigation for anti-trust action against the canneries, so they're not in any position to cast stones, I don't think. They're terrifically, vertically integrated.

MR. ADASIAK: Also on the other side of that is a few opinions which indicated that there was still substantial competition between the companies.

UNIDENTIFIED SPEAKER: Well, that depends on what constitutes a company.

MR. ADASIAK: Which saved them from that particular problem, so I guess it can still be researched a little more.

UNIDENTIFIED SPEAKER: Allen, we'll see you later.

CHAIRMAN: One of our--maybe we haven't discussed this, I don't know, but as you know from reading the cases of the government of Alaska, that it would have no hesitancy at all to try to cut out the outside fishermen, and that's (indisc.) a little bit because we have Bristol Bay as example. We have people from Anchorage now who are really as offensive to Bristol Bay as even you guys are to Seattle, almost, you know, not quite because we finally come together in the Legislature. The Seattle fellows still don't have any reputation here, but--so you know, you can pick on Seattle with relative punity, of course.

UNIDENTIFIED SPEAKER: Even worse than Seattle is San Francisco.

UNIDENTIFIED SPEAKER: That really hurts.

CHAIRMAN: You know, we really--of course, all you have to do to develop that sort of prejudice in favor of these is to go over there and look at the absolutely deplorable straits that those people live in, and we all, when we get through talking, feel the resource has been theirs and their way of life, you know, and it isn't three or four generations ago. It's not like the Indians trying to take back over Alcatraz, for Christ's sakes, and it's still right there, you know. And it's still right there, you know. You have a lot of people that really English is a second language, and where you'll have complete communities where the average adult education is the third grade, and I'm talking about a Bush third grade which is likely to be barely first grade level, you know. You're talking about people who are not readily mobile, and yet they have all the needs of a cash economy, and all the desires for health and welfare and

palatable foods, and warm clothing, and not the subsistence way of life, you know, because it's a hard life and you die at the age of 33, and the third child or something, you know. I mean, it just-- and we have that group of people there which on top of everything else we get into this free transferability, we think that if by tests of interest, or certainly ability to handle the fishery, or a lot of things, they're not going to meet the test as well as their competitors.

PROFESSOR FLETCHER: That's right, and some guy coming up here with a brand new boat, and a lot of stuff, he's...

CHAIRMAN: Under any kind of a rational and fairly administered test the very people that we care the most about are going to be cut out of it almost as a certainty.

PROFESSOR FLETCHER: I was talking during your absence on a kind of philosophic level on this point that our constitutional law is, in a sense I think, behind the times a little, because we have... I'm going to take this opportunity if you'll tell me where the men's room is.

CHAIRMAN: Right behind you.

PROFESSOR FLETCHER: Oh, right behind me.

CHAIRMAN: You open the door.

UNIDENTIFIED SPEAKER: Are we back to the point of admitting that we're talking about salmon.

(indisc.--simultaneous speech)

UNIDENTIFIED SPEAKER: When I was here last time you guys were talking about fishery resources and in planning them, and (indisc.).

UNIDENTIFIED SPEAKER II: What it boils down to, you know, it's up to the commission to designate those species, there concern about it.

UNIDENTIFIED SPEAKER I: All the criteria that we're talking about and all the figures that we're talking about, everything relates specifically to salmon.

UNIDENTIFIED SPEAKER II: Right, but you know as well as I do that there's going to be a legislative letter of intent that salmon will be designated first, and salmon will have the highest priority, and therefore, you're talking probably at least years just for the commission to implement a program for salmon, much less anything else, a workable program.

UNIDENTIFIED SPEAKER I: I'm just wondering if it wouldn't be easier to make the bill work for salmon if we designate it for salmon.

(Indisc.--simultaneous speech)

CHAIRMAN: One of the problems is that if you make it only for salmon, there's going to be a lot of...

UNIDENTIFIED SPEAKER I: But this is the big problem. The salmon is the biggest problem, isn't it?

CHAIRMAN: Right.

UNIDENTIFIED SPEAKER I: It just seems to me that this would be a lot easier to work with if we were talking--if we knew we were talking about salmon.

UNIDENTIFIED SPEAKER II: We do. We are.

UNIDENTIFIED SPEAKER I: (Indisc.) right on the sidelines.

UNIDENTIFIED SPEAKER II: Yeah, we're talking about salmon even though it doesn't say salmon. Evidently, we can't do this without (indisc.).

UNIDENTIFIED SPEAKER I: Well, there's going to be some (indisc.) on the people who are going to want, you know, a herring fishery, or a halibut fishery, or something.

UNIDENTIFIED SPEAKER II: This is a big problem, it seems to me.

UNIDENTIFIED SPEAKER I: We ought to say, if we're not talking about these fisheries--if I'm talking about fishery resources and I want to do a lot of generalizing that I wouldn't do without talking about just salmon, it seems to me.

UNIDENTIFIED SPEAKER II: Well, maybe we've got time to do this in the future, because obviously, anything that the Legislature does this year is going to be upgraded when they come back with further reports.

UNIDENTIFIED SPEAKER III: Yeah, that's about all I was saying is that we're looking once this statute passes you're looking at a minimum of two years before the commission probably will even be able to establish entry levels, maybe in Bristol Bay. It may take them that long because.

UNIDENTIFIED SPEAKER II: Because of the extreme complexity of this problem, I'd like to see the thing regarded in its, perhaps its simplest terms here, because it's going to be difficult to, shall we say, sell to everybody, even at the very simplest in terms of reference.

UNIDENTIFIED SPEAKER I: I have a question of Dr. Fletcher here. On this grandfather approach, you mentioned in the transition only that, by saying such resistance to change, amiability to train. I work for the University here in the Southeastern area, somewhat in South Central, and I can pick out dozens examples of people who in 1968 were in other professions (indisc.), and with the fiasco we had on limited entry proposal then, that since kind of phased out their other interest, being totally, or more or less totally, fishermen.

DR. FLETCHER: You mean phasing from being fishermen into something else?

UNIDENTIFIED SPEAKER I: No, from being something else into being fishermen.

They already have the other thing, they already have the other capability for being in other sorts or employment, but through their own volition they are fishermen.

UNIDENTIFIED SPEAKER II. There's nothing wrong with that, but when we looked at the grandfather clause, we looked at that approach, resistance to change, amenability to train. At least in South Central and Southeast. I can't speak for the bay at all. It just seems that these are some of the best fishermen, some of them. They're some of the real producers.

SENATOR RADAR: Here's a man. What are you? You're a what? Psychology major, Master's Degree, Philosophy major? Came up here, got interested just like a lot of people do, thought that fishing was a hell of a way of life, and in three years, why, he's what they call a highline fisherman. Now, I'd say that man's a pretty serious predator.

(Laughter)

PROFESSOR FLETCHER: This brings us back to your description of quite a great many of these people.

SENATOR RADAR: Put a bounty on him, huh?

PROFESSOR FLETCHER: I was saying that our constitutional law really hasn't kept up with some of the thinking today. Every now and then we try governmentally to help out a group of people who've had a rough time of one sort or another. So, you appropriate some money, you set up a special training program. Up until recently the Federal government has been willing to spend quite a bit of money in the central area in Seattle, for example. A lot of the Blacks in there don't know how to do anything else, and one of the reasons is that they've never had any education in anything other than in how to

be a common laborer. Those have not been really challenged from a constitutional standpoint, because the rest of the society hurts only in the sense that it's using these dollars to do it, but as you carry programs like that a little farther, and I have a very personal one that's operated in and I was describing it before, as, for example, entry into law school where in our university we have space for only so many people to get in and we've got something over ten times as many applicants as we can take. We decided that the Blacks and the Indians needed to be lawyers, and that despite their not measuring up the standards that we use to the Whites who were applying, we were nevertheless going to let the Blacks in up to a certain number. I don't know whether you're aware of all the litigation we got into a law suit about, it's still pending, as to whether we can do this constitutionally. Well, in an abstract sense, we can't, you see, because we're favoring one group and we were clearly picking them out. We're hurting the White man and we're helping the Black man, yet I feel strongly that we're doing the right thing in terms of my conscience and how I want the government to be operating, and yet I must confess I've got a little constitutional law to worry about, and I think even on that point we can make the grade and sustain what we're doing, but it's troublesome, but it seems to me, broadly speaking, we're no where near so far on as we are with respect to racial matters in being able to do that. I can say to the Blacks with respect to treating the Blacks better than I treat the White man in one sense, but I'm really not, I'm just making up for my past sins that we've kept the Black in such a terrible situation even since the Civil War that it's about time we did something to bring him up, and it's our fault that we've kept

him there, but that's an exceptional bit of argument that has to be brought to bear in order to come to that result. Our philosophy otherwise has not been that. We've had a kind of economic determinism that said that, you know, if you can't making a living fishing, get out. Let the thing be automatically determined and the government is not supposed to try to alter that, especially if you hurt somebody else in the process of doing it, and I'm afraid we're still in about that position constitutionally, even though it seems desirable to do it. You can start there.

UNIDENTIFIED SPEAKER: Well, it seems to me that on the face of this bill as it stands now, it's certainly fair for initial entry levels, but as applied, really when you start concerning economic dependence, you're--especially economic dependence upon that fishery, the Bristol Bay fishery, the area fishery, you are, you're very definitely favoring your local residents. Now, does this raise a...?

PROFESSOR FLETCHER: I don't know. I think your saved on this one because of the interim measure. I think you can do it, because it's been recognized many times that the hardships incident to change can be alleviated. You can do it in one way to pay somebody for getting out, and in another way you can say you don't have to get out. As long as you live you can stay in there. It's that you can't pass it--that you can it down to the next generation, we won't let you do that, but at least as long as you're around and you want to keep fishing, okay. (Indisc.) that sort about chain dentistry that I'd discussed in that... The same idea, you see. So, it doesn't mean that eventually you don't have to. In a way it's something like this ten-year business about the class B boats in Canada. Give a reasonable time, but figure okay, ten years

is all you've got and you'd better be getting ready to do something else. So, on an interim basis, fine. I'd do all I could to help these people, particularly the ones who aren't in the position at the moment to do anything better, or different.

UNIDENTIFIED SPEAKER: So, then, we come right back to transferability and how do we, with a legitimate legislative objective, such as economic efficiency and such, protect these people that historically have been uneconomically, or inefficient economically...

PROFESSOR FLETCHER: If you want to live dangerously, take the bull by the horns and just say, we're going to protect this class of people, and see how far you get. I don't know whether you'll make it or not.

UNIDENTIFIED SPEAKER: That's almost kind of asking to be shot down.

PROFESSOR FLETCHER: Yeah. You might make it. No, no, that's right.

UNIDENTIFIED SPEAKER: We're great prospects for suspense.

UNIDENTIFIED SPEAKER II: Particularly with Land Claims just having gone through.

PROFESSOR FLETCHER: The what?

UNIDENTIFIED SPEAKER: The Land Claims Bill.

UNIDENTIFIED SPEAKER III: The Native Land Claims Act which theoretically extinguished all such...

PROFESSOR FLETCHER: I meant to ask you a quite collateral question. To what extent is your fishery affected by Indian treaty rights, and so on? Does that complicate the picture?

UNIDENTIFIED SPEAKER: No, we have had historically--well, practically no reservations

(Simultaneous speech)

CHAIRMAN: Well, but it's one-tenth of one percent. Minimal. We do have a couple.

PROFESSOR FLETCHER: Yeah, I see.

UNIDENTIFIED SPEAKER: One technical question. Now, here in the State statutes there's a severability clause. Does this apply--is there any--in other words, if this is tested on the Federal level we stand a pretty good chance, as I understand it, of losing the entire statute.

PROFESSOR FLETCHER: No. What gets tested--I'll have to qualify this later--but what gets tested is what is particularly being done to the particular litigant is constitutional for the State to do, whether it's unconstitutional, and he will be saying that I am being treated in a particular way that's different from somebody else, where my property's been taken, and suppose the State loses. What the State loses is to say that you can't do that to this guy. Now, you may take it as telling you something broader which says, that fellow over here who hasn't sued you yet is **not** much different and he'll probably win, too, so you'd better clean it up as to a little bit broader than just this one person, but it doesn't say, and your whole statute's no good. Now, once in a while you'll find a case that just kind of purports to say that the statute's no good, you might as well throw it all away, but it's a rare case. It comes up occasionally in some free speech cases, but this type of thing isn't likely to incur that type of a decision, so what you would get would be a determination that, well, insofar as whatever it is. Your scheme for deciding who gets to stay in. That is, the initial proposition is wrong. It doesn't mean that your long run thing is bad at all. Maybe you'd be all right. And nobody writes a letter to the legislature from the court saying your statute isn't good. That isn't what happens.

Your statute's still on the books, and your only proposition is that you've got a court decision that one man has won a law suit, and what people do here is just kind of predict the future and say, well, we'd better clean up our statute, because if we don't maybe somebody else will sue us and will come to the same conclusion. So, severability is in a sense kind of built into every statute whether you recite it or not. You aren't going to lose the whole thing unless somebody comes in with the kind of argued position which attacks the whole thing.

UNIDENTIFIED SPEAKER: Essentially which would be the framework and the legislative purpose and findings.

PROFESSOR FLETCHER: Well, suppose somebody were able to establish, which I think could not be established, that the whole idea of limited entry system was unconstitutional. Well, then, in that case your whole statute might indeed go down the drain, but I don't think they'd win on that one. Your only vulnerabilities, I think, are as to the implementing provisions, and as to them I think there's going to be some separably challengable and you aren't likely to get any one person in there that's going to be able to say the whole scheme is no good, unless he attacks the basic proposition.

UNIDENTIFIED SPEAKER: Very good, thank you. That puts up a lot of questions I had in my mind, because this has been kicked around and bantered around quite a bit.

PROFESSOR FLETCHER: Yeah. I think I'm right on that. I feel fairly confident of that.

UNIDENTIFIED SPEAKER II: Has the record been provided with the copies of the last attempt--all that.

PROFESSOR FLETCHER: Yeah. I must say I haven't read this last rendered

version as carefully as I might have yet.

UNIDENTIFIED SPEAKER II: No, I was speaking of the Hickie and (indisc.) limited entry and all that.

UNIDENTIFIED SPEAKER III: Oh, no. We have a '68 decision here in the State. We have copies of the court decision.

PROFESSOR FLETCHER: I was aware of it, and I was going to get over here early enough to ask you if I could read it.

UNIDENTIFIED SPEAKER III: We do have copies here.

UNIDENTIFIED SPEAKER II: Why don't we (indisc.) copy of that, then get in the time after lunch, perhaps.

UNIDENTIFIED SPEAKER III: Yeah, what happened is the--it was appealed to the District Court and the District ruled, and it was appealed and sent to the Supreme Court, and the Supreme Court sent it back to the State Superior Court, who found that it was arbitrary and capricious.

PROFESSOR FLETCHER: Under the State Constitution?

UNIDENTIFIED SPEAKER III: Under the State Constitution.

PROFESSOR FLETCHER: Yeah. And since that time you've changed...

UNIDENTIFIED SPEAKER III: We have had a constitutional amendment. But they still--the way the decision was rendered, I think even under the current change in the State Constitution, the Court would find the same way again.

PROFESSOR FLETCHER: Where the same statute in that?

UNIDENTIFIED SPEAKER III: Right. Right, because it was a limitation based on one or two years previous experience in the fishery, and it was questioned on the basis that, you know, an individual could be fully competent having not fished in that particular area.

PROFESSOR FLETCHER: And the Court felt that that was not sustainable?

UNIDENTIFIED SPEAKER III: They felt that it was arbitrary and capricious.

PROFESSOR FLETCHER: That's a little harsher than I would expect.

UNIDENTIFIED SPEAKER: I will make that--copies available.

PROFESSOR FLETCHER: This went--this was the Alaska Supreme Court?

UNIDENTIFIED SPEAKER: Superior Court.

PROFESSOR FLETCHER: Was it carried up after that?

UNIDENTIFIED SPEAKER III: No, that was the end of it. Now, apparently, there's a lot of feeling by various people here that the State didn't pursue the case as well as they could have, and perhaps the State could have won that case.

UNIDENTIFIED SPEAKER II: There was--this one statement when the Supreme Court remanded this back down, there's one statement in there--Mike I think we'll have you sent out in a minute--that bothers me where it's stated, the ability of the individual to go fishing was a fundamental right. What's that extenuating words...

UNIDENTIFIED SPEAKER III: No, this was not the Supreme Court. That language was the Superior Court. They believe, and they said, that they could not--this is District Court--Superior Court...

UNIDENTIFIED SPEAKER II: Where's the Superior Court decision?

UNIDENTIFIED SPEAKER II: Here's the Supreme Court. I'm almost sure it's not there, but the...

UNIDENTIFIED SPEAKER II: Okay, you're right. It was one of the other courts...

UNIDENTIFIED SPEAKER III: They felt that the State question should be answered first. Yeah, the Superior Court says the common calling of fishing is a fundamental right and cannot be limited arbitrarily.

PROFESSOR FLETCHER: Well, that's a kind of inconsistent assertion, really.

UNIDENTIFIED SPEAKER II: On this thing, it was very disappointing to some

of us who sat way back where we couldn't do anything, and just watched, that the second team was put in at the State on this thing. You weren't associated in anything so I can speak (indisc --simultaneous speech). The A.G.'s office down here has long had a tendency of throwing in guys in Fish and Game matters before they're able to swim. They're still wet behind the ears, and they send them up against the top legal brains available anywhere.

CHAIRMAN: That's not Fish and Game, that's every place.

PROFESSOR FLETCHER: A.G.'s offices have trouble, sure.

CHAIRMAN: Sure, they have a lot of young fellows, and they're up against well-paid industry guys that have 30 years of experience and it's just a pit of minds, you know.

UNIDENTIFIED SPEAKER: It's a tough position to be in.

CHAIRMAN: I doubt they threw it, although I have heard that accusation made, that they really did. But that frequently happens. I guess we could if we wanted to make ourselves a system which would give us a first class fishery, we could go a limited entry, have these transferable before anybody could even buy one of the licenses it had to show that he can financial ability to fish, and also to stay out in the three years of four that are bad. I just--I can't even get over that minimal hurdle in this problem, myself, is that we agree that we have to have enough fish, fishermen and gear, to harvest the big year.

UNIDENTIFIED SPEAKER: Well, we touched on this while you were gone John.

CHAIRMAN: Well, did you come to any...

UNIDENTIFIED SPEAKER: We've got a little difference of opinion here, in all honesty. The--we don't have to have so much more gear in that big year than you can get by with in the smaller year. This is

something that's been sold.

CHAIRMAN: Okay, what's going to happen if the economics enter the class that we're trying to protect here? You're going to keep the same number of people in it and they're going to have a third of the fish. Maybe they can still all fish then.

UNIDENTIFIED SPEAKER: I'm not sure I make the connection here now. Sure, they'll be there even in the poor year. What happens in the big year, their going to get these tremendous inflexes of speculators from back east, have no business...

UNIDENTIFIED SPEAKER II: Do you have any lunch plans?

CHAIRMAN: No, I guess not, why?

UNIDENTIFIED SPEAKER II: Would you join us?

CHAIRMAN: Oh, sure. Okay. Yeah.

UNIDENTIFIED SPEAKER II: Yes, he will.

PROFESSOR FLETCHER: Speculators. You mean, somebody comes out here. Where does he get a gear and boat, and stuff?

UNIDENTIFIED SPEAKER I: Oh, he maybe makes it in his garage and pulls it on a trailer from Michigan.

PROFESSOR FLETCHER: He's out there with the gillnetters, is that it?

UNIDENTIFIED SPEAKER: Yes, and his net's in the water and it's catching fish, because in the good year they're there. If this bill accomplished nothing else, it would cut out that sort of entrant.

CHAIRMAN: You see, in the sideline, we have this kind of a problem, too. From the point of view of the cannery workers, the business sense, and the economics of the operation of the cannery is to have a regular cannery crew which comes from Seattle or San Francisco that handles the year in the normal run, and then use your local people on the good year to fill in a surplus. To do it otherwise, you can't

bring people up for just the surplus year, you see. And, of course, that has just been a--just wrangle people, and they've tried to form unions, and you know, all sorts of things. Here's a fisherman that can't make a living fishing and his wife can't even get a job in a cannery drawing the same wages as somebody in from Seattle or San Francisco, or some place like that. Historically, they're Philipinos, primarily. (Indisc.--simultaneous speech) For rank of discrimination, because they kept the Alaskans as the (indisc.). They never get into the main stream, but just to take the temporary expansion, and of course, they have a big, but they only need temporary help maybe for four days. Well, they're right there, see, so you don't use those people as your regular crew. And you have all of that built up in the history of this thing. It's understandable. (Indisc.) In some ways it's almost an explosive type of thing, and here these people, they can look at the catches, you know, the multi-billion dollar industry there, right here in our river, and there ain't nobody that gives a damn about this place except a week before that season that place fills up, and a week after it's gone it's empty, and the people here have been surplus labor to the excess needs of the cannery, and operating the third-rate boats, and money went South. But it's the competence of the South, and the economic abilities in the South, and the whole works.

PROFESSOR FLETCHER: Well, those are tough ones. The only alleviating possibility, it seems to me that's clearly within the range of constitutional validity, is that I see all manner of availability from the standpoint of constitutional limitations. There might be of mechanisms to improve the economic strength of the fishermen

as a group, independent of where they may come from. I was suggesting something that might not be politically feasible, but I would assume that the State could set up a commission which simply set the price of fish. (Indisc.) cannery (indisc.) or the fisherman, depending who got the short end of it.

SENATOR RADAR: Of course, you see our difficulty in that is, and I don't know how factual this is, but following our marketing trend, salmon is in competition with tuna and other fish, and the apparently the, I forgot what they are, the demand for--which means the price is very different, very important, and there will be a switch (indisc.) which means that you can't pass this thing through to the consumer. Now, salmon caviar has...

PROFESSOR FLETCHER: That's what salmon is that...

SENATOR RADAR: That's what I've been told.

UNIDENTIFIED SPEAKER: I thought it was in such demand you could get anything for it.

UNIDENTIFIED SPEAKER: This is what we are...

(End of tape)

(Tape III - CSSB Work Session - 2/22/73)

CHAIRMAN: The commission. That the commission can put it out of commission, out of operation, and we will have reduced gear. Therefore, the transaction is going to go through the commission. If you wish to sell to Senator Radar you can do so, but the State's going to retain in its possession 90 percent of the sale price. On the other hand if you sell to the commission, and the commission retires that permit, it's going to retain only 75 percent of the sale price or some such figure, therefore--

UNIDENTIFIED SPEAKER: Can they do that?

CHAIRMAN: Well, yes, that way we can't, and therefore, you'll come out with a bigger chunk of the money when you sell your permit if you sell it to the State so that we can retire it, rather than if you sell it to an individual and it stays in the fishery.

UNIDENTIFIED SPEAKER: Some tax break, essentially.

UNIDENTIFIED SPEAKER II: On that (indisc.). Is there a way, speculatively, a way to create this entry permit without creating a private property fund?

UNIDENTIFIED SPEAKER III: So that, in fact, the license has no value?

UNIDENTIFIED SPEAKER II: Well, I mean, it's \$50 or something like that, but I mean no real floating value.

PROFESSOR FLETCHER: It seems to me that's an economics question, rather than a law question, but I can devise a scheme, I suppose, if the economist will agree with me that it's going to work that way. I'd be a technician rather than an economist.

CHAIRMAN: Well, isn't your lottery the perfect example.

UNIDENTIFIED SPEAKER II: I was thinking as far as transferring these around, or giving them to somebody, like (indisc.) if 90 percent was only 90 percent of \$50...

PROFESSOR FLETCHER: All you have to do is make it of no value to the person who thinks he might get to fish. To make it of no incentive at all to somebody who'd like to fish, to be able to walk up to any fisherman that is now fishing, and say, I'd like to get your license, and that fisherman answers him truthfully, nothing I can do about it. The only way you can get a license is to go down to the commission and ask them. He says, well, I'm willing to pay you, and he says, there's no way I can get my license over to you. Now, in fact, you can put that into actual operative law,

then you've got to explain where indeed there is no market, except as he's willing to deal with the commission in which case the commission is about to give him a license or sell it to him. Now, mechanically we can set that up, and the idea of a lottery appeals in what you might draw, something of that sort, and a requirement on that fellow who has the license that says to him, look, if your license is going to be used at all, it's you who has to use it, when you die that's the end of it. If you want to quit you can hand us your license, but it has no value. You can't give it to anybody else, and in nobody else's hands will we recognize it. We'll arrest the first man who starts to use it to whom you may hand it. Now, in fact, you want to put your law on him in those terms, sure, there's nothing unconstitutional about doing it that way, but I think you have to decide the economics of it, if it works that way, and that you want it to work that way, but I think mechanically you could set it up, sure.

CHAIRMAN: And, of course, we get back to the problem, that doesn't provide any incentive to turn over, but may be natural attrition by itself, mortality, the transient nature of Alaskans residents, a large number of them, and some of these things, it may be a fast enough rate of attrition.

UNIDENTIFIED SPEAKER: I was just kind of under the impression before that there wasn't hardly a legal way to get away with this without creating some property right. This is what had me confused.

PROFESSOR FLETCHER: I don't think that necessarily you have to view the capacity to fish as something that has to be saleable, has to be compensable, if you do it, something of that sort. If you'd ask this to a lawyer in 1925, he probably would have given you a

different answer. In fact, he would probably give you a different answer to whether you could have a limited entry system at all, because in those days the general philosophy was, and the Supreme Court reflected it, that everybody had a constitutional right to engage in any so-called common callings, and you didn't dare take it away because it was hardly even restricted. And I think we're past that era. We're quite persuaded to take it in view of this tremendous biological, economic data that you can back up your ideas that a limited entry would put very substantial controls in the hands of the State could clearly pass, as against that type of argument, as I say, 50 years ago would have been a pretty persuasive argument.

CHAIRMAN: (Indisc.)

UNIDENTIFIED SPEAKER: I think this pretty well tells the State where to go this route.

CHAIRMAN: Which route?

UNIDENTIFIED SPEAKER: Of saying, okay, no, the thing has no value, and thereby the individual who holds it loses all control over who comes next. Don't you think that this thing is less palatable to Alaskans than perhaps going the other route and making--allowing a property value, and allowing the holder to determine, in some extent, who he can sell that to.

CHAIRMAN: Well, if you're asking me, I think, yes. I think the answer is yes. It's far more palatable if you do get a property value, and allow him so say into who it goes to, even though the State may step in and take nine percent of the value that it has. Do you feel that way?

UNIDENTIFIED SPEAKER: I agree.

CHAIRMAN: Do you feel pretty strongly that way?

UNIDENTIFIED SPEAKER: Personally, yes. Well, I would say this, that the people whom I represent would totally disown the idea that they had no control over who receives it. This is a sometime thing. In one aspect they don't want to see it go certain individuals, but they do want to be able to have a control that goes to another group of individuals. In other words, the ones who follow after them, rather than perhaps gradually an attrition that would accumulate in behalf of the non-resident.

CHAIRMAN: Well, and really, where is the difference between that and your liquor license situation, or your pinball machine franchises, and so on? There's no difference is there? At the present time...

PROFESSOR FLETCHER: The only substantial difference, really, is that in, I think most instances, with pinballs and various other sorts of franchising licensing operations, the State doesn't perceive that it has anything important to sell, it doesn't take any part of the proceeds. This way, now, we're thinking of it in terms that the State's actually contributing to what it is the new license he gets, and therefore, it's to be compensated.

CHAIRMAN: But I think you can think a little bit further on that, and I wonder if the State doesn't have something to sell here.

PROFESSOR FLETCHER: Oh, indeed, I say it does.

CHAIRMAN: In the terms of a liquor license...

PROFESSOR FLETCHER: Oh.

CHAIRMAN: ...the people itself, the people that are there as customers.

PROFESSOR FLETCHER: Yeah, well, sure. I'm not saying it couldn't, but I don't think they do.

CHAIRMAN: Yeah.

PROFESSOR FLETCHER: I don't know of any state that does.

CHAIRMAN: But they certainly do allow the fellow that has the liquor license to decide who he is going to sell it to, and they keep everybody else out.

PROFESSOR FLETCHER: They have to pass on him.

CHAIRMAN: It seems to me like there's a very strong similarity in the circumstances there.

PROFESSOR FLETCHER: Yes. As I say, the only distinction between that and this is that, and I think quite justifiably it's present here and could be argued to be present in the liquor cases, is the State has something of value and associated with it and can be expected to get some of the compensation that's involved. I don't think that changes the pattern any.

CHAIRMAN: In one case the State is offering the fish that they have available and so that's where the State's interest. In the case of the liquor licenses and the State actually in effect saying, here's a certain number of people that we offer to you as customers.

PROFESSOR FLETCHER: In a way, although...

CHAIRMAN: Is that carrying it too far?

PROFESSOR FLETCHER: Yeah, a little bit. Those resources have their own peculiar legal history. It started out, you know, with the king owning everything and then you kind of perpetuated what had originally started as fact and myth now, and we still think of it sometimes in those terms, so the difference in background would explain some difference.

CHAIRMAN: Yes, I understand. Allen. I'm sorry, Lowell.

SENATOR THOMAS: Bob, I was just trying to ask a question about the determination of fair market value. Do you think this really can

be done so that the fellow who wants to sell can't just get his friend to keep escalating the thing more and more, and making the commission always meet the cost?

CHAIRMAN: Oh, the commission's not going to bid. These people will arrive at a--at their own decision as to what it's going to sell for. Now, the buyer or the seller, and the State just takes the 75 percent of it or...

SENATOR THOMAS: Now wait a minute. Suppose the seller goes to a friend of his who's a buyer and says, look, you offer me X amount, because then the commission is going to have to meet that price, so you'll never have to pay it, and I'll just raise it up.

CHAIRMAN: I think we have the experience of the British Columbia fishery to guide us a little bit there. I'm told that there are enough of these boats advertised in the paper--enough of the these things advertised for sale that they can make a pretty fair approximation of the market value simply because of the open market transactions and I think there would be enough of these being marketed between individuals that had arrived at their own price, that this would have--and any he sold to the commission would have approximately the same price. I can see no reason why one permit would have any greater value than any other permit. They all allow the buyer to do exactly the same thing, so each permit really should have the same value in a fishery at the same time.

PROFESSOR FLETCHER: Each type of fishery.

CHAIRMAN: Yeah. If it's a drift gillnet permit in the Cook Inlet fishery on July 1, of '72 they ought to all have the same value theoretically. Now, we need to do a lot of thinking. Yes, I agree with this.

SENATOR THOMAS: It would never do for the commission to fix that.

**PROFESSOR FLETCHER:** No, no. Presumably this is based on the market, and he's got his finger exactly on where he's prying the market. He just goes out and finds people who are dealing in arms-length and there you are.

**CHAIRMAN:** John, go ahead.

**SENATOR RADAR:** Well, but they're going to have different values depending upon what gear they're going to be fished with. Is this going to be a permit to fish the fishery or just a permit to fish particular gear?

**CHAIRMAN:** Gear. The permit is for gear, individual gear for individual areas.

**SENATOR RADAR:** So a man, once he gets a permit, he's limited to the gear that he buys a permit for?

**PROFESSOR FLETCHER:** Until he buys a different one.

**CHAIRMAN:** It provides that he can transfer, but there are--I mean, through the commission, but there are stipulations there. You can't go from a set net to a seine, which may have five times the harvest capacity.

**SENATOR RADAR:** Can he go from a seine to a gillnet or a gillnet to a seine, or something?

**CHAIRMAN:** Well, set net is a gillnet. You could--I imagine there would be very little difficulty in going from a set net to a drift net or for a drift net to a set net, but that's one of the details that we've been talking about earlier that we haven't fleshed out really. Allen, what is the Governor provide in his bill in this respect? What was your plan there?

**MR. ADASIAK:** Our plan was that the commission could put together regulations that would allow, within a given area, a relationship

to be established between different types of gear, so that essentially three set nets or five set nets equal one purse seine. Now, there is, in my own mind, a gap in (indisc.) in that there is no provision to explain how a man can hold more than one entry permit for the same type of gear in the same area, since he has to be the one that fishing, and theoretically he would have to accumulate permits for five set nets in order to trade them in on one purse seine, but I think there's a way around that. Excuse me.

PROFESSOR FLETCHER: Well, I understood that your system contemplated that the permit holder himself personally fished, so he really cannot accumulate any more permits than what anyone has for that one bit of gear, and if he wants to move from a gillnet to a seine and the ratio is one to five, I would suppose you're going to have to do it on some sort of a priority of sign-up so he gets on the list so that when five gillnetters have quit, or somehow you've retired five, okay, he's the next in line for a purse seine.

MR. ADASIAK: Yeah, we envisioned as I say--this is a rough spot because the intent of that section of the bill allowing for corresponding values and the different types of gear to be established is that a man could upgrade and yet the total efficiency of your effort would remain the same, and as I thought it through, what you would do would be to modify the bill so that although the man could only fish one unit he would essentially buy others and the commission would hold them for him, so that they'd be out of the fishery, but if he wants to use his capital that way in order to accumulate enough and trade it in for a seine permit, that that would provide a mechanism where he could invest his money and then switch to a different type of gear, and with this kind of mechanism put into

the bill, I think you have sort of a market incentive for what the Canadians call a rationalization of the fishery. Eventually, dependency is going to be for people who look around and see who's doing the best and try and move into that kind of gear, and you keep a level on actually your efficiency in a way, so that your total harvest isn't affected, but you switch into different types of gear that are most advantageous in an area. All of this happens over a period of years. It isn't done legislatively.

CHAIRMAN: Tell me something. In the Governor's concept, how many set nets does it take to equal a trap?

(Laughter)

MR. ADASIAK: I think that that's sort of like introducing the concept of infinity or dividing by zero.

CHAIRMAN: Val (sp) you're puzzled. Go ahead.

VAL (sp): I have a question on the whole idea of transferring from one type of gear, relevant here to the Southeast situation where I came from. We don't fish the same area and the same kind of gear. We fish a purse seine in a completely different area than we fish a gillnet.

CHAIRMAN: Well, there's nothing--okay, that's a different problem, and I think, isn't that approached from the standpoint that there is no reason why an individual if he wants to go into a different area can buy a permit for that area, he can do so. He can't fish them both simultaneously, but if he wishes to hold two different permits for different areas, why, no problem.

VAL (sp): But, why do (indisc.) purse seine, and then wanted to go gillnetting.

CHAIRMAN: Do you get three gillnets?

VAL: Do I get to run 900 fathoms of gear or...?

PROFESSOR FLETCHER: Well, you could just do it more (indisc.) money in your pocket is incident to the transfer, just surrender and get 75 percent.

CHAIRMAN: Yes. Phil.

MR. DANIELS: I'm a little bit curious about--there's been reference to the State's ownership of the fish, or that they're transferring property rights to the fishermen, and I was interested in the opinion that you had written me previously. I was just curious. I mean, are we talking about fishing (indisc.) of ownership by the State? In the Missouri versus Holland case I'd understood that...

PROFESSOR FLETCHER: No, I don't mean to suggest that that's a presently very durable, or viable, idea. I think you can realistically, assuming you want to give it those attributes, talk about owning a permit, and it's an intangible, just like you'd own a share of stock, but the State doesn't really have the fish to sell per se. I think the State, however, has the capacity to sell this license, this permit. It, I suppose, constitutionally would be limited at how much it could charge for it in some sort of a very rough measure as to what it was supposed to represent. Presumably we're within the ball park on that, and once you've met that I think your there, and I think you can, as we did a moment ago, perhaps distinguish between the background of natural resources as saleable and ordinary businesses that don't utilize natural resources, by saying that historically there had been a concept of ownership, and say this gives you a little bit more basis upon which you can assert that the State has something saleable, whereas it might not be able to take that position so much with respect to the liquor business, or

the shoe business, or something like that. It isn't a particularly useful distinction. Certainly there are all manner of licenses that the State charges very substantial sums for that don't have this same natural resource background, license fees for operating taxies are frequently very high. I guess others are, too. So, it isn't a particularly useful one. You'd have been better off not to have thought of the differences when you talk about liquor licenses. Someone's ideas might be better than mine on that.

CHAIRMAN: Yes, Joel.

JOEL: Professor Fletcher, this morning you seemed to indicate that throughout this whole concept and throughout the actual drafting of the bill, that it would be more of a comfort in your mind to have the final product as tight and detailed as possible. In other words, you favor of the idea of not giving the commission a whole lot of discretion in setting up and elaborating on this scheme further. Do you--a bill which would set out as clearly as possible the (indisc.) provisions of detail would be more appropriate and acceptable.

CHAIRMAN: Senator Sackett.

PROFESSOR FLETCHER: Insofar as establishing the legitimacy of what you're doing is concerned, I think that's probably true if, in fact, those details are ones which are reasonably related towards the promotion of the legitimate objectives. Of course, if you've got some bad ones in there, there could be equally strong going the other way. Now, this doesn't tell you, however, that in balance you necessarily want a bill full of detail. Obviously, many situations are going to exist in which it is better to have a lot of administrative discretion, and surely there will be several aspects of this program as to which it is better, and I wouldn't let this other consideration

lead you to the point of wiping out all discretion. That would be a mistake, and all I can say is that I think that the more detail that you have in there that does legitimately further the good objectives, it just makes it a little bit stronger from the standpoint of whether the court will perceive what you're doing as being all right as distinct from not being all right.

CHAIRMAN: What about this matter that we discussed just a few minutes ago about the movement from one type of permit, or one type of gear, to another. If this something, in relationships, that we could, without much difficulty, leave with the commission to come in with recommendations on that.

PROFESSOR FLETCHER: I would think so.

CHAIRMAN: It's not too vital to the...

PROFESSOR FLETCHER: Unless there's something I don't appreciate in the facts, it would somehow have some favoritism overtones in it. Short of that I can see no reason. It might be better to let the commission to develop it.

CHAIRMAN: Okay. Let's look at another method of transferability then. Let's try to put it all, I mean, the whole scheme into focus here. Suppose we did not have any property right. We depended on our attrition through natural causes, mortality, sickness, movements away from the State, and so on, to decrease the amount of gear. We've provided no incentive to increase that rate transfer. Do you see any difficulty with this requiring too long a period to get down to optimum levels, so that our transition period is too long? Let's say that the commission establishes an optimum amount of gear necessary on the basis of consultation with the Department of Fish and Game the Board of Fish and Game, those people setting up the

optimum amounts and the statute says, okay, we'll let everybody in that's in now effective'y, and we'll depend on natural attrition strictly to get down to that point, but the thing has no value, you can't sell it anybody. After we get down to that point, then the commission will make those permits that subsequently become available through death, et cetera, available to members of an applicant pool through a lottery. Is this a viable...?

PROFESSOR FLETCHER: I think so. The only hazard I can perceive in it is one which would have to be pretty extreme, some such proposition as you really didn't mean what you said, that wasn't--that you weren't really interested in getting down there, and you let so many initial entrants in as if you didn't have the scheme in the first place, but short of being at that far end of the line, then I don't think you can see any trouble.

CHAIRMAN: John.

SENATOR RADAR: How shall we describe that point at which we're going to open it up, at which point we're going to quit relying on attrition and then have a free entry, so to speak, through a lottery or something else. How would you describe that point at this stage? I fear there will be a tremendous pressure on this commission to keep attrition going forever, no new entries coming in to the extent that they have political clout, economic clout, and they will have both of those in this State. Then there's going to be a constant narrowing so that finally this resource will be owned by a very, very few people, so to speak.

PROFESSOR FLETCHER: This would lead you to have set your standards for what was optimum as being very few fishermen, because you want to postpone that evil day as long as you can.

CHAIRMAN: The evil day of when you start letting new people in, you mean?

PROFESSOR FLETCHER: Yeah. Right. This assumes that whoever set this up really wanted to protect the people now in it, and I'm going to let anybody in only if I have to, and as far away in the future as I can get away with.

SENATOR RADAR: Well, that will certainly be the attitude of the fisherman who would end up with the rights there, you know, but from the point of view of the entry then of the public, selling the bill at this time to people, if there is no defined entry point with which we're going to say this will again be open to the public.

PROFESSOR FLETCHER: Well, I've got one kind of quick reaction from a mechanical standpoint. You might have some sort of a ratio system that for every two which you acquire through attrition, one becomes available to the pool.

SENATOR RADAR: Starting from the first.

PROFESSOR FLETCHER: Right from the beginning, so that you're making kind of half time towards your goal.

SENATOR RADAR: So that there's always some entry.

PROFESSOR FLETCHER: Yeah. That would certainly alleviate the problem, and not tend to insulate you from this charge that all you're doing was trying to protect the present fishermen.

CHAIRMAN: I'm sorry, I missed out on that. How did you--what was the solution to that problem?

PROFESSOR FLETCHER: Well, it's a very top-of-the-headish kind of a one. Suppose you set up a ratio which said that for every two or three, or whatever it is, number that come in by attrition you will have one available for immediate issue as to a new entrant.

CHAIRMAN: I see.

**SENATOR RADAR:** I think that's real important, too, because that means a guy right now who wants to get into the fishery knows he's not going to have to wait 25 years, or 10 years, that there will be a limited number available at all times, and then, presumably, when you get down to what we are going to call the optimum figures, then as there was attrition, one for one. Go into the applicant pool and up for a lottery. That would be open, so to speak.

**PROFESSOR FLETCHER:** Yes. The more I think about it the more it does seem to me that you might really ask for some trouble if you insisted upon moving from a very substantial number in terms of how many are presently you're putting in down to a very much lower number and insisting the only way you're going to get there is by attrition. That might sound too much like favoring the present people.

**SENATOR RADAR:** Now, again, can you think of any way to define this point as which you will be a hundred percent...

**PROFESSOR FLETCHER:** Oh, I think that's kind of a biological, scientific, economic figure. You're going to have to have the Fish and Game Department tell you what that number is.

**SENATOR RADAR:** Aren't we going to have to decide how much--what's the economic livelihood supposed to be of a fisherman?

**PROFESSOR FLETCHER:** No, no. The threat ought not to be your determinant. You're much stronger--well, I guess I'll back up on that. It should be a combination of at least three factors. Your biological escapement problems and so on, how many people you can effectively have out there and still get what you want by the way of sustained and increased yield, and so on, quality of your product, its capacity to compete on the market, how much is it costing you to catch fish and sell them compared to what it takes somebody that fishes for tuna to

compete for the same protein market, what your sort of economic health of the fishery generally is in terms of fishermen. Those, I think, all have to be fed in to deciding how many entrants you want actually in your fishery. Now, presumably, you can arrive at that today as to what you think would be right, although you might want to change it from year to year as new information comes in or as the facts of fish life and economic life change, but I think you should have a goal and one that's in a sense somewhat independently determined in the sense of being independent from the mechanism by which you're going to get there. It isn't that you're so much interested in the economic situation of any one particular person as you are of this sort of total welfare of the State proposition that really tells you how many units you want fishing.

SENATOR RADAR: I still have the problem of visualizing how we're going to say this in the bill. Presumably, we don't want to put a figure right now, do we?

PROFESSOR FLETCHER: Well, as I understood the bill, the proposition was that the commission was first to determine how many units were to be fishing as an optimum proposition. Am I right on that?

CHAIRMAN: Well, that's--under the original bill this is right.

PROFESSOR FLETCHER: Yes, and then they were going to issue that many licenses, and now...

CHAIRMAN: Yes, but we've...

PROFESSOR FLETCHER: But your modification was to say, no, we won't be there today or tomorrow and what we have to do now is to go back and probably let more people initially than we would really like to, but the goal will have been set, won't it?

CHAIRMAN: Yeah. I--the goal is set there by this consultation between

the Department and the Board and they arrive, using zero biological methods, statistics, et cetera, they arrive at this point, and I'm not sure that that necessarily changes. Now, is your point that it needs to be delineated specifically for each type of gear and each type of area in the original bill?

SENATOR RADAR: You're going to have a tremendous pressure from the holders of the permits to keep squeezing down the number of permit holders so that their income will increase, much as you have lawyers from time to time flunk out, perfectly qualified candidates, not as a matter of public protection, but as a matter of limiting entry and scarcity enhances their own value. You're going to have that pressure, and you could very well have that abuse. If you couldn't-- if you don't define it pretty well as to when this point is reached, if we can define it. I don't know how to define it either. I think if you talk about the ingredients of the definition, you'd talk about the ingredients, the considerations, you have to work through to make that decision, but finally you get down to this, too. One of the primary functions of this is to relieve the economic distress of fishermen. Alright, we're going to have to decide then at what point have we decided that the economic distress of fishermen is relieved, and so I say to you, is that \$20,000 a year? With a \$20,000 investment, and \$10,000 a year with a \$10,000 investment, \$50,000 a year with a \$50,000 investment, or don't we--aren't--we have to decide when they're no longer economically distressed. In fact, it's bad enough that we can have some new guys come into it and share in this resource.

CHAIRMAN: The language that we have attempted to use in one of these proposals was that amount of gear necessary, fishing on the average

of a five-day-a-week basis, to orderly harvest the maximum run expected.

SENATOR RADAR: That regards the economic welfare of the fisherman.

CHAIRMAN: Well, I think that automatically follows.

SENATOR RADAR: I don't think it automatically follows. What you defined is the most efficient, or enough to harvest the resource. Our problem here is not just...

CHAIRMAN: In an orderly manner. In an orderly manner, and that becomes extremely important, fishing on essentially a full-time basis, five-day-a-week basis.

SENATOR RADAR: Well, let me ask you this. If 25 fishermen making \$100,000 a year could harvest this resource, is that the ones that end up with it then? \$100,000 a year each? Could orderly harvest it with the type of equipment they have? Is that what you're saying? You could very well be. You make the boat big enough so the seine's big enough and you can have ten people. You know, you could get back to fish traps basically. If the equipment was good enough, it wouldn't have to be a fish trap, but it could be a net that goes from here to there. One of the purposes is the economic distress of the fishermen. We've got to define when that distress terminates, or else it means that this class of people will continue to have it cut down by attrition or otherwise until they have an open-ended, they own the billion-dollar resource.

CHAIRMAN: Okay. Well, let's read this language then. The optimum units of gear for each type of gear, and for each administrative unit, shall be--or each administrative area, shall be established by the commission based upon: one, the number of units of gear that will result in a reasonable average rate of economic return to the fishermen participating in that fishery, considering time fished

and necessary investments in vessels and gear. Two, the number of units of gear necessary to fully harvest the allowable commercial take of the fishery resource during all years in an orderly, efficient manner based upon sound management techniques.

SENATOR RADAR: What was your first one again? Read that first one again.

CHAIRMAN: The number of units of gear that will result in a reasonable average rate of economic return to the fishermen participating in that fishery.

SENATOR RADAR: Okay. Eight percent on their investment.

CHAIRMAN: Considering time fished and necessary investments in vessels and gear.

SENATOR RADAR: A hundred dollars a day, or ten percent on their investment. It's a risky investment, you've lost 12 percent maybe on your investment, plus \$100 a day, carpenter can make, what, \$12 an hour, or \$10 an hour?

CHAIRMAN: Now, let's consider the carpenter can work 250 days a year...

SENATOR RADAR: Well, then how much a day?

CHAIRMAN: Well, I don't know.

SENATOR THOMAS: Well, you've got very few days actually of fishing, too.

CHAIRMAN: That's the point. In a normal season any more there may be eight or nine periods.

SENATOR RADAR: Well, that's where you get difficult here is to what extent are we going to say then, that the economic distress of the fishermen. Does that mean that he has to work year round, that he has to go to Anchorage if he doesn't have anything to do for six months, that is he can sit on his duff and draw employment compensation and--or do nothing. Then he gets \$20,000 a year for working in the summer.

CHAIRMAN: Let's go to Don. He's got some help for us.

DON: This is a personal opinion perhaps, but I relate back to the time you put into the fishery, is that you work on your gear, and the fishery, you tie up three months in the fishery, well, maybe give the guy another month for a vacation or something, you know, but at the most that's only a third of the year. You shouldn't expect that percentage of a reasonable income. I mean, on your average of all your fishermen, I wouldn't think.

SENATOR RADAR: Well, then you won't have any such thing as a full-time fishermen, then.

DON: (Indisc.--simultaneous speech) there's lots of fishes to fish in the ocean besides, you know. Lots of other fishes to fish?

CHAIRMAN: Lots of other fishes to fish.

UNIDENTIFIED SPEAKER: In our area, John, they can go from one type of fishing to another.

SENATOR RADAR: Yeah, in some areas that's true, but, you know. In most areas you have the salmon run and that's it.

CHAIRMAN: Therefore, the return has to be greater I would assume, then, where you have only the one run that can't be fished, the return for that run greater than in another area where you have many runs that you can fish one after another.

PROFESSOR FLETCHER: One of the things which I think is easy to forget-- let me start again. One of the principal bases upon which you can say that it's legitimate for the State to see to it that the fisherman has a decent income is that it leads toward a better fishery as such. You've got better gear, be willing to experiment, various other things that will improve the total picture, and indeed, I have trouble thinking of any other justification for devising a

program which makes it economically good for the fisherman to carry out fishing under this particular program. This excludes as being a good reason simply my desire that everybody ought to have a decent income. I think that there's just too much, there's no law standing in the way to say that our principal, or even a very strongly guiding factor that leads us to adopt a particular program, is that we want this group of people simply to have enough money coming in. We haven't reached that point. Our whole philosophy about what people do from day to day is each man, each person, for himself, sink or swim until you're really in trouble in which case we'll come in with some help by way of welfare or hospitalization, or some of these other things that are kind of in between (indisc.) such as Social Security, Medicare and so on, but you cannot devise your economic system on the basis of--well, for this particular industry because you want everybody to make a decent living out of it. I don't think the court will take that, and if that is as apparent--surely, if that is the dominant thing that you're doing I don't think you're standing much chance of success of challenge. The other people are going to say, well, government doesn't take care of to see that I earn a decent living, and what are you doing it for these fishermen for, and I think that that argument might just very well strike down the program, and this leads me back to say then that you have to set this up as being interested in and promoting the welfare economically of the fishermen as that in turn leads to certain things that are good for the people as a whole. That is to say, Alaska's got a great product here that ought to be able to compete on the market, therefore they should have enough money that they've got--that they're developing a good fishery

technique, good systems, better boats, whatever it is, and they can do that only if they make a decent living out of what they're doing, because then they can afford to do these things that will improve the product--catch more fish, build up the fish runs, whatever it is, but it's got to be related to that broad basis. So, that makes it, it seems to me, an almost immaterial factor, although not quite, to say that you're going to stop in deciding when it is we've got few enough fishermen, simply to say, well, everybody's earning so many dollars a year. That isn't the point. The question is, are these fellows earning enough so that we are not promoting these other values that we want to a sufficient extent? Have they got enough money that they can expand? Have they got enough money so that they can have decent boats, so that they can have safety equipment aboard, and various other things, you see, that have to do with total welfare as distinct from just the bald proposition that he's making a decent living. Now, that rather tells me that--well, no. There are, of course, in addition these other things that are of the so-called scientific nature, the biological problems of escapement and so on. That then tells me that what your determining body must do in deciding what the total number of, or how few the total number of licenses really can be is really periodically. If you require them once a year to publish the figure, or to make a determination, or something like that. It's the sort of thing which will vary from time to time. They either find out more or as the fish increase in number, or as some disease wipes them out, or something like this, it's nothing upon which you can say today it either has to be 670, or anything else, and surely, you can't put it in terms of how many dollars income that a person's supposed

to be earning. It seems to me that's an illegitimate concern per se as such, you see.

SENATOR RADAR: Is it inherent, though, in this system then, that you will basically keep closing the system until all people within the system really own the big boats, that have the most efficient gear. I mean, does the day of the skiff and that sort of thing would be-- mainly because it's inefficient, it's not as efficient as the other gear. Is that...?

PROFESSOR FLETCHER: No. In a way I have to weasely about this. Just because the State can go ahead and arrive at the most efficient way of doing something, doesn't mean that it has to. I suppose Alaska could go along here with no limited entry system at all, and it's certainly not unconstitutional, and you can do whatever terrible things that's going to produce by doing nothing, and you can approach cures to tha and gradations. You don't have to come to the optimum number, and indeed you may have some concern of whether efficiency is what you really want in life. Maybe you don't. There are a lot of societies that I think are almost deliberately inefficient so that they can have everybody out carrying rocks around in the shoe baskets, because it keeps everybody busy. It doesn't give them any time to think about how bad off they are, and if you want that kind of society, fine. You can stop shor of a hundred percent efficient, so stop short. That's what th's group-- one of the things I would suppose this group ought to have in the back of its mind, saying well, the major improvement. This year we'll set the number at 159, not that we couldn't go down to 260, but that's just too far, so stop. We'll put all that in the statute, that would give them pretty wide discretion and not spell

it out in great detail and just let their common sense then them  
that there comes a point at which you don't say...

(End of one side of tape) (The following is apparently during adjournment)

PROFESSOR FLETCHER: ...take care of alleviation of hardship for the  
persons who are presently there.

UNIDENTIFIED SPEAKER: This looks to me like a tremendous advantage, or  
something that parallels what we're trying to do here.

PROFESSOR FLETCHER: That's why these grandfather clauses get attacked,  
but they manage to survive because they put in there the additional  
ingredients that the government can legitimately take into account,  
the hardship incident to transition.

UNIDENTIFIED SPEAKER: Are you soaking this all up so you can explain it?

PROFESSOR FLETCHER: But they have to be calculated to do that rather than  
calculated to perpetuate a class of people (indisc.) in the future.  
It has to be tied to that, and I say you surely must stop short  
of saying, and this guy can transfer his license to his son, or to  
his wife, or something else.

UNIDENTIFIED SPEAKER: Well, I'm in the unenviable position of working  
for the Bristol Bay Native Corporation here on this thing, and in  
all honesty, it looks to me as if the advantage that can accrue to  
them is greater than the disadvantage, and yet they're asking for  
the whole pie. They want the advantage without any possibility of  
being phased out through their own inability to compete.

PROFESSOR FLETCHER: I just don't think you can get there.

UNIDENTIFIED SPEAKER II: One question--specific question that's been  
brought up in committee discussion and there's a draft prepared,  
a proposed transferability draft, which includes a section which  
is to be a voluntary trust holding by the commission of these entry

permits, and I know Joel asked me--he's the fellow that's sitting here, and he's the attorney that will be...

PROFESSOR FLETCHER: A trust for what purpose?

SENATOR RADAR: Spendthrift trust, really, to hold the license so that they couldn't participate it or sell it.

UNIDENTIFIED SPEAKER II: We're not even sure it's going to accomplish what it needs to because it's in actuality a cooling off period. They may be afraid because of bureaucratic red tape to even put it in in the first place, and if they can get it out very easily, it's not accomplishing what you want.

PROFESSOR FLETCHER: (Indisc.) the piece of paper at the end, but it's an economically valuable thing (indisc.)

UNIDENTIFIED SPEAKER II: Contractual sales.

(Portion of tape indiscernible)

PROFESSOR FLETCHER: In the period after the Legislators left we talked about transferability, and I must say I was (indisc.) thought very much about it, but one of the, it seems to me, important realities (indisc.) attempt to say that you can transfer is that for something that indeed has a value, one way or another you end up with almost equivalence of transfer and such. I'm thinking of our liquor licensing system, and maybe yours is the same way. A person who buys and who wants to sell his tavern, of course, has of course got some fixtures that are worth a few hundred dollars, at least most of the value is in that fact that (indisc.). Well, he can't sell to just anybody. A new person has to get approved by the liquor board, and we normally say the license has no value, but the fact is that the tavern may sell for 25 or \$30,000 and you've got \$500 worth of fixtures, and so they set up on an escrow basis, (indisc.) and so you end up having

a sale of that license.

SENATOR RADAR: A franchise.

PROFESSOR FLETCHER: That's right.

SENATOR RADAR: The public utility company has one, you know.

PROFESSOR FLETCHER: Yeah, same idea, and it's often hard to avoid that.

SENATOR RADAR: It's almost carried on your books as goodwill or something like that.

PROFESSOR FLETCHER: You know darn well that's where the value really is.

SENATOR RADAR: No, you have essentially the same problem.

PROFESSOR FLETCHER: And maybe it's better to recognize that you've got an element of (indisc.), unless you take some real steps to say that it has none, and my only thought from a mechanical standpoint is how in fact you could say the thing has no value to an effective purchaser is to put him in a position where he has no confidence at all that he will be the prospective purchaser, and that's why making this pool idea really operates. If whether he gets it is determined by chance, whether his name is drawn compared to a thousand, maybe he won't pay, but unless you're willing to go to that it seems to me you are in fact, in reality, going to have a thing of value, and (indisc.) transactions.

SENATOR RADAR: Yeah, you discussed bring them back to a pool and then either by lot or otherwise, distributing out of the pool among the presumably qualified...

PROFESSOR FLETCHER: Right, but you're going to have to have a good pool there so that he, this individual that would like to get it, doesn't have--has no confidence at all whether he'll make it. I suppose even then he might wager what the odds are.

SENATOR RADAR: You say you think that the--I don't want to argue the

fact, because I don't know the facts like you do, but on this year if we have three times the run that you do in the other year, you don't think that's really a problem particularly? You mean if they don't make a good living every year, all the fishermen would, or what?

PROFESSOR FLETCHER: Well, I think if you could reduce the amount of gear where they would make an acceptable living every year and still not have to increase it substantially for the big ones.

SENATOR RADAR: So the acceptable living would be what? \$20,000?

UNIDENTIFIED SPEAKER: Well, our runs are at such a depressed point right now it's going to be a good many years before we have to worry about this big year.

SENATOR RADAR: When you worry about this, what you going to do?

UNIDENTIFIED SPEAKER: Well, in the big year. Well, I'll stop. I have to take a little while. Let's say we've got a catch of 15 million and now...

SENATOR RADAR: It's two or three times. That's a small year.

UNIDENTIFIED SPEAKER: Oh, yes. The magnitude is much, much greater.

SENATOR RADAR: Well, my problem is this. If you're trying to avoid economic hardship in the oif year, rather than encouraging people to fish in the bad years we ought to discourage them from fishing and they ought to be rewarded for letting their gear sit on the dock, or on the beach.

UNIDENTIFIED SPEAKER: That's a good enough point.

SENATOR RADAR: That makes for a part-time fisherman then. But you need-- the fact this fishery is, you do need a glut of people and equipment for that big year that you don't need the rest of the time.

PROFESSOR FLETCHER: Isn't that a good idea? In other words, have part

of your revolving fund used for sort of a fallow land approach.

SENATOR RADAR: Yeah, I guess you could do something like that. Just pay a guy for not fishing.

PROFESSOR FLETCHER: You may not pay him quite as much as he would make if he did fish, but it's some kind of a compensation, even as to permit holders. On permit holders just say we're going to determine by lot this year who doesn't get to fish. Say we'll pay you 50 percent of what the other make.

SENATOR RADAR: Course, from a conservation point of view, see, that's really the critical time.

PROFESSOR FLETCHER: Yeah. Those years you'd like to build up the fishery.

SENATOR RADAR: Right, and all the arguments about gear and control and everything else are effective. They don't really mean anything in the big year.

(Committee work session resumes)

CHAIRMAN: The best thing to do would be to see if you have anything further that you'd like to lead off after your consultation since our meeting that ended about ten o'clock.

PROFESSOR FLETCHER: I think the only ingredient that got into our discussion after we adjourned this morning was more detailed discussion of transferability. As I mentioned, I think I came up here without having thought very much about the problems that were associated with it. I don't know that I'm any farther along really, having discussed it more, except perhaps to kind of define what politically (indisc.) as to the distinction of what's constitutional. The more I thought about it it seems to be almost devoid of constitutional problems, irrespective of which way you went about the transferability.

The only considerations that seem to me to bear in upon that from a constitutional standpoint has got more to do--might just turn out to be just incidental aspects of your transferability program, and perhaps I suggested some of those already. I felt, for example, that if you adopt a system for determining new entrants after you get into your long operation which measures persons by skill, or capacity to be good fishermen and who isn't just mechanical skill, (indisc.) and do not provide transferability generally that I think you could also not provide transferability for members of their family. I think that once you get past the initial stage of sort of taking care of the people against whom this might hardship in the exception, once your past the transitional stage, that you cannot be concerned--I hate to put it this way--for people as people. In other words, in terms of their kind of personal setting, and if you're going to have transferability at all you've got to have it on a basis that is calculated either to put into the qualifications that tended to measure the capacity of the people who contribute to the fishery, or to have it indiscriminable, just anybody. (indisc.) transferability system we want. When that (indisc.). I don't see any constitutional problem.

CHAIRMAN: Mike, do you have rather, concisely delineated the several different options of transferability, and we might take this opportunity to just ask about constitutional problems with the various ones so we would then have the option of, if they're all equally saleable, and which way we want to go.

MIKE: We have--each member of the Committee should have (indisc.) (indiscernible) (long pause)

CHAIRMAN: Well, okay. I'd be willing to look at the first one under

summary of comments. Free transferability through the commission.

In this case we're not setting up an applicant, correct? Therefore, those who are eligible to buy do not have to meet any qualifications other than having the money to do so, or arrange the financing to do so, except that the commission does handle the actual transactions.

SENATOR RADAR: He's the recorder, is that all? Who's got...

CHAIRMAN: And I suppose the real reason for having the commission do this was to give them an opportunity to counsel to the unsophisticated, counsel with the unsophisticated, urging him to consider what he's doing, making sure he knows what he's doing before he even sells away his birthright, so to speak.

UNIDENTIFIED SPEAKER: Even more so--these were summaries from the previous work session. It was pretty much the feeling this would give the commission the ability also to make sure that the transferee has the ability and intent to participate.

CHAIRMAN: Okay, now, one question that has been brought up in the past was if we defined certain qualifications that an individual must meet initially to get into the fishery, what are we doing to our overall picture if we don't require some sort of similar requirements, or qualifications, for the fellow that comes in purchasing the license. Is there any problem there that you see?

PROFESSOR FLETCHER: If the basis on which you have determined those who are to participate initially and giving certain ones of those what I might call preferential treatment, although it happens to be a quote, if it was solely done in order alleviate what otherwise would be a hardship requirement, then what they did with what they got after that is in a sense of no concern of yours. If they want to sell that out and kind of give them present value for it by getting

dollars now instead of fishing for the rest of their lives, but I suppose that's up to them. But if in addition to determining who got your initial entry permits you also said, well, we're not going to give you this permit just because it would be a hardship on you, but because you're a good fisherman and because you have a present intent to continue, then to the extent you were using the standards that determine who you wanted to be fishing I would suspect that you would have to apply those to the same people who would be coming in by purchase into the future, so that you'd have an equal application of standards as to all persons that would then be fishing.

CHAIRMAN: Well, this is not necessarily a case where you're applying different standards because it is the transitional period.

PROFESSOR FLETCHER: You would be applying different standards to give them, in a sense, compensation or alleviating consideration, because of their past, their investment, whatever it may be. Now, the only problem I see is that to the extent that your additionally requiring them to live up to certain standards for future behavior, that someone who could not meet those standards and therefore, didn't let in in the first it's plain that you didn't require the transferee from the licensee to have the same standards.

CHAIRMAN: And so if I may make it's sure it's clear in my own mind, the question has been before, we might have a constitutional problem if we tried to limit it to a group of applicants that we set up standards for. What you're really saying is that the reverse may be true. We may have some problems if we don't utilize the same standards to a certain degree.

PROFESSOR FLETCHER: Yes. I think, on the other hand, that it's what

you do. Suppose you said to yourself, and I don't know whether this is wisdom or not, but suppose you say, we don't care who fishes. Anybody who can put himself out there and fish is all right. All he has to have is an entry permit. How are we going to control how many we have? If we don't get any (indisc.) and we're out there being perfect novices it would be all right. If you take that position, then you could say, but as to who gets the license in the first place, we're going to measure that in terms of hardship and give it only to certain selected people based upon a lot of factors that have to do your (indisc.) situation, their background and considering their past, and if you let that be the only determinant as to who gets the first license, then you can have a quite open basis thereafter, but you've not, you see, insisted upon any present continuing capacity to fish when you decided who was to get that first entry permit. You want to go that route, then sure.

CHAIRMAN: Okay. Well, alright, now I'm at the bottom of the page, and I don't know that he's talked about moratorium right now. John, go ahead.

SENATOR RADAR: Make sure I understand you. If you require competency tests as an addition of an original permit, then you'd have to keep that if it's transferred?

PROFESSOR FLETCHER: So long as you had those original persons having to continuing to meet that, yeah.

SENATOR RADAR: How about (indisc.) make a part-time engagement in the fishery, a test for excluding people in the original go around. Does that mean that we have to continue using that sort of a...?

PROFESSOR FLETCHER: It seems to me that that's a measure solely of how

hard it is going to be upon the persons to institute the system.

SENATOR RADAR: What is the qualifications then that we can discard as to either continued holding or the second generation of fishermen, we would only have to do those which immediately rate the present hardship in instituting the program. That's the grandfather rights, so to speak.

PROFESSOR FLETCHER: Yeah.

SENATOR RADAR: Then we could discharge the rest of it. We can get rid of those qualifications. It's unreasonable, for example, that the second generation of fishermen to give a license based upon their previous fishing when they didn't have a (indisc.), they couldn't fish.

PROFESSOR FLETCHER: The more I thought about it, this, in terms of, the apparently the accurate definition of a part-time fisherman I think you'd have a hard time sustaining a distinction based on terms of present capacity, contribution of the economic welfare of the State, to exclude the so-called part-timer. He takes just as much time to fish as the guy who is out there that his livelihood is dependent upon. The fact that he's doing it in addition to another job, I think it's pretty hard to exclude him on that basis.

SENATOR RADAR: Well, are you saying then that--I think you are saying that in our initial go around we aren't going to be able to do it on the basis of part-time to full-time.

PROFESSOR FLETCHER: No, maybe I fairly (indisc.). I think in terms of deciding how hard it is upon some persons who have present association with fishing to institute a limited entry system you can legitimately concern yourself with the hardship in individual cases, and that one of those individual cases which seem to me a

harsh one is the fellow who's wholly dependent on fishing, so we as to him, we'll continue to fish. On the other hand, the guy who was not wholly dependent upon it you could justify as to him, sorry, you're out, just because it isn't going to be so hard on you as on this other guy that we're entering. But then it had to do with determining who got to be in a sense grandfathered in, but it does seem to me that with respect to persons thereafter who want to come in, but who haven't entry permits, that you can't use that distinction, because the only basis for using the distinction was to alleviate hardship. Now I said what I wanted to say.

SENATOR THOMAS: I'm glad you pursued it, because it finally cleared it up in my mind, too.

PROFESSOR FLETCHER: Only I didn't state it fairly the first time around.

CHAIRMAN: Well, alright. But, while saying that requirement can be done away with, those of experience and ability need to be retained. If we had them in the first then we need them in the second place to a certain degree.

PROFESSOR FLETCHER: At least if--well I'm a little uncertain here. Surely in the first year or so after you started this system, if as one of the ingredients in deciding who was to get an initial entry permit you included the test of present capacity to fish, skill and so on, that you see has all the characteristics of, well, who fish off in the indefinite future, and on that basis you said somebody who did not have that skill, even though in other respects he qualified, sorry, you can't fish, you don't get a license, then at least for some substantial period of time, I should think that that person who was excluded back there could complain unless you continued to apply that kind of a standard to new entrants. Maybe

there would come a time at which he could no longer complain, or as a practical matter would not, (indisc.) it seems to me for a while anyway, you'd have to adhere to using that, either that or say, well, we've changed it for everybody, but then what do you do about the guy that you grandfathered in on that basis. You can hardly tell him (indisc.). So, I think the practical answer would be that you have to continue (indisc.).

CHAIRMAN: Okay. Well, we may want to come back to that one later. Let's--you've indicated that there is really is no problem with a moratorium if we've got an overall scheme that shows what's going to happen on down the road. Is generally what your...?

PROFESSOR FLETCHER: Yes, and the closer you come toward actually having that scheme in greater detail and the permanency, the eminence of it, the greater you stand a chance of making that hold.

CHAIRMAN: Alright. The third one on this page then is where we're talking about free transferability through the commission, or limited transferability, but at least being able to sell to another individual, the individual of the owner's choice, but with a substantial portion of that market value, or that value of the permit going back to the commission, or to the State. Using this scheme as an incentive so that the person will sell to the commission he retains more of the value than if he sells to a private individual, and thus, again, have an incentive for voluntary attrition. We've talked about it in terms of a tax. Your thinking is, if I understand it correctly, that it would be better to get away from the word tax. It really isn't a tax. It's a value the State has contributed, and the State has a reason to retain some of it.

PROFESSOR FLETCHER: Yeah. I have kind of a gut reaction to it.

CHAIRMAN: Yeah, right. But you see no problem constitutionally with this approach that there could be this differential between the share retained by the State and it's sold to the State, and the share retained by the State and it's sold to the individual.

PROFESSOR FLETCHER: The only complication I can see is the one a few moments ago in a (indisc.) conversation about it. What you do with the gift.

CHAIRMAN: Well, I don't think you can have a gift.

PROFESSOR FLETCHER: Well, that's a question. Can you?

CHAIRMAN: Well, I don't know.

PROFESSOR FLETCHER: And if you did how would it measure up with the proposition that everybody else who wants to transfer (indisc.) some of this substantial slice that the State gets out of it.

CHAIRMAN: Well, I'm assuming that there would be no gift. That if a fellow wanted to pass this permit on to his son, why, the father would have to pay the same value for the permit or the value received if he were selling to anybody else, the same tax, or call it what you will, that this is the only way that it would be fair and equitable.

PROFESSOR FLETCHER: Would you permit the transferee to transfer (indisc.) insofar as the amount of money he would otherwise get to make it a gift. He could get around you, of course, (indisc.)

CHAIRMAN: You mean the ten percent.

PROFESSOR FLETCHER: Yeah.

CHAIRMAN: I don't know how you'd have any hold on that.

PROFESSOR FLETCHER: So in effect you could make a gift of his ten percent.

CHAIRMAN: Of his ten percent. That is, he could make a gift of any of his other property or value to his kinhood if he desired.

PROFESSOR FLETCHER: No, I don't see any problem with that. It seems to me it all right, because it seems to me the essential thing here is that what the State has is something itself which is of substantial value. It's what's led me to say that I don't think it should be viewed as a tax so much as a three-party transaction in which the State is selling something, the individual transferor is selling something, and the transferee is dealing with two fellows, really.

CHAIRMAN: On page two when we talk about restricted transferability through the commission to an applicant pool, we're really back to where we were awhile ago in number one, I guess. Item number three here says, depending on qualifications could create a closed class if not made of non-residents. Do you see any closed class problem with this requiring that anyone who purchases a permit be a member of an applicant pool through experience or a training program. I guess you already really responded to that.

PROFESSOR FLETCHER: (Indiscernible)

CHAIRMAN: Okay, and the last one then is lottery, and remember your analysis from the other study, I believe this was top of the list as far as ultimate fairness is concerned. Any other proposals under transferability? Anybody else have anything on transferability you want to bounce off us, our guest? Al.

MR. ADASIAK: I have a question on the point (indisc.) You referred a couple of times in talking about new entrants once your initial (indisc.) new entrance subsequent to that, being subject to some sort of test of skill as qualifying for what (indisc.) characterized as (indisc.). The other idea which is in applicant pool consideration (indisc.) is qualification by experience, not by skill, ten years (indisc) except insofar as you might. Do you distinguish between those two

types of tests for qualifications...

PROFESSOR FLETCHER: Between the two?

MR. ADASIAK: Yeah. Is there any difference between the type of skill test that you're talking about and the requirement for an experience requirement for that applicant?

PROFESSOR FLETCHER: The question is not whether you could have some sort at all (indisc.) qualifying requirements. I assume that you can so long as they're reasonably (indisc.) as far as producing efficient, safe operating fishermen. Our only question is that (indisc.) gradations of likelihood on being viewed as contributing to this ultimate goal, particularly the ones that you're suggesting. How do they measure up. (indisc.) take the skill is clearly so. One of the hazards it seems to me here is one that factually can be at least alleviated. I would suppose that somebody who's sole goal in life was to protect the Alaska resident fishermen could under standard which was derived in terms of experience, in effect say that only somebody who has lived for 50 years has got enough experience to know how to fish. (Indisc.) this was given more credence although it was not upsetting our (indisc.) suggestion (indisc.) that our host was describing the vagaries of the delta of one of the rivers 13 miles off shore (indisc.) I suppose that somebody who lived there all his life, he might very well be a better fisherman than somebody who's just come up from Seattle and every bit as good a gear and fished for as many years and been very successful in Puget Sound, and perhaps there's some legitimacy to say, hey, you've got to be raised in this river delta before you can fish here. There's a little hazard there, you see, because it begins to look as if you aren't really so concerned with (indisc.)

Now, you can't rule it out, because as I say if (indisc.) probably put forth and indeed entertain with good faith the idea that you really should have lived here all your life in order (indisc.). I just say that some people might not believe you, especially if you put in front of a judge in Washington D.C. and he's never been out here. He just can't imagine that that could be so, and therefore, your being (indisc.). So, it simply a hazard, it's an invitation to trouble. Alright, I would let my detail depend upon how strongly you felt about this. If you really felt that you wanted to (indisc.) every boat in Alaska and every boat (indisc.) fishing, why, alright, you've got a small burden on your hands, that's all. There's a very stainless case (indisc.) involving (indisc.) from the Mississippi River in which the pilotage commission (indisc.) consisted solely of pilots who over the years turned out to be (indisc.) get to be new pilots were their cousins and relatives and friends. The court sustained the State in running that system being the determining one on just this kind of (indisc.) showing. The only way to know how the Mississippi (indisc.) came down that delta was to live there all your life. (indisc.) the very tip end of the delta region and they knew about and so they were the good pilots. That's a pretty strong case. I mean, it's a pretty weak case in relying on future predictive decisions. It's kind of a (indisc.) determinative case rather than the mainstream (indisc.)

CHAIRMAN: Would you run into the same thing if you depended on a two or three-year experience factor. In other words, to be eligible for this applicant pool you must have worked as a crewman on one of these boats in that district with that kind of gear, for two, three years, something of that nature?

**PROFESSOR FLETCHER:** I think any time you require the experiences to be local, you would invite hazard, unless you lessen the period of time that's required (indisc.) your in better condition than if what you finally said was, well, if you've been on any commercial fishing venture, no matter where, why, you'd have no problems at all, and I wouldn't rule out doing it that way if you can sell the proposition.

**CHAIRMAN:** Do feel strongly that we need to have an an/or situation where it's experience in the fishery or an approved training course of some sort. Do you think that approved training course is an option, is a strong necessity in order to make this thing hold?

**PROFESSOR FLETCHER:** No, I think it would simply be a factor favorable towards (indisc.) not a requirement, so much as it's (indisc.) with respect to some areas (indisc.) a lot more local knowledge.

**CHAIRMAN:** It seemed that in the court's decision on the 1968 statutes, one of the things that they especially pointed to was the possibility or the probability of the skippers on the boats deciding who went with them and who did not and therefore, they, in effect, could limit who would eligible, and that this, by it's very nature, was unconstitutional. That's the problem (indisc.) I guess. I don't know.

**PROFESSOR FLETCHER:** I wouldn't want to be that absolute about it. These are (indisc.) These are all matters of degrees. They're so highly individualistic that I can imagine in some situations (indisc.) in the hands of somebody who had been raised as a crewmember (indisc.). About all you can say is, yeah, sure (indisc.)

**CHAIRMAN:** Yeah, I think we'll involve the rest of you in this, too. Dave, go ahead.

**DAVE:** (Indisc)

**PROFESSOR FLETCHER:** Sure, your chance of getting by this kind of challenge increases, particularly if you've broadened to include the entire Pacific Coast, why, no problem.

**CHAIRMAN:** Other questions?

**MR. DANIELS:** Would the courts, if this ever were tested in court, would they likely to use as one of the factors in their determination just exactly what percentage of outside fishermen were getting as compared with Alaska residents?

**PROFESSOR FLETCHER:** In the initial stages I would just rather guess not. There are instances, and most of this is in quite a different setting, I think I was talking about it this morning, wherein some of the problems involving racial discriminate it's apparent that statutes of a particular state are particularly neutral and the recital of the administrators doing the job is also perfectly neutral, but it turns out that there's never been a Negro on the jury or there's never been a Black man do this or to that over 20 years. Well, that becomes pretty persuasive that, in fact, the state is administering a policy on discriminatory basis, so I think you can abstract from that the proposition that if, as administered, it turns out that your system without any apparent explanation somehow coming out with dominant participation by residents, you're incurring (indisc.). This could be persuasive after a while, but surely not for some time (indisc.) how you would come out in the first couple of years (indisc.) particularly because of the transitional nature that you're alleviating hardship. Most of that hardship is going to be local hardship, too, so you could rather expect a fairly strong dominant local (indisc.) in your initial entry holders. (indisc.) relatively immune (indisc.).

MR. DANIELS: If you take the two standards that are included in the bill in its present form in determining who's out or in during the transitional phase, past participation (indisc.) Do either of these qualify as standards that might be used in the long term by way of determining who would be eligible.

PROFESSOR FLETCHER: I think the first surely can be defended as such, but I think the second one is almost as surely not be (indisc.). The extent of past participation seems to me to be factually related to the objectives that are wholly within the range of legitimacy in terms of the biological controls and so on (indisc.) and actively fishing, and when you issue a license you expect him to participate, so his past behavior on that hand is some indication as to whether he's going to do so in the future, but I think you could use that, yes. (indisc.) contradiction in terms (indisc.) talking about down the line somewhere and a new applicant comes in and you ask him how much he's fished in the past (indisc.) but you might ask him, well, did you come Seattle and have you been fishing down there, or some ideas as whether he really intends to be a fisherman or not. The basic question is what your going to do in the future. Your evidence on that can range over the topic we're talking about.

CHAIRMAN: Okay, maybe are at this point then. You rather strongly suggest that we have some divisions in the bill, one of them relating to the fact that we have a transitional period and we're doing these things in order to gain our ultimate objective, and then we have provisions applying to that ultimate objective. Okay, I believe you've indicated that using our criteria we can apply various criteria, or different criteria, to different section of the State,

because of the different situations we have there, so if we want to lock in one or two in Bristol Bay we can do it. One, two and three the rest of the State. Alright.

PROFESSOR FLETCHER: I would want these, however--now we're talking about the initial...

CHAIRMAN: The initial, right.

PROFESSOR FLETCHER: I would want those fairly clearly related to what I perceive to be the primary legitimate object...

(End of tape)

(A major portion of the second side of tape III was indiscernible due to background conversations on the tape)