

## **Vine Deloria**

Speaking to Russ Magnaghi's class  
Undated, no location or class number given

Good evening. I would like to give you just a touch of history on the ACE's organization. ACE was founded in 1977 by a group of American Indian scientists and engineers who sought to significantly increase the number of scientists and engineers in the nation, and to develop technologically informed leaders within the Indian community. ACE now encourages Indian students from all disciplines and has more than 90 Chapters nation wide.

Our guest speaker tonight has written several articles for the ACE's publication "Wind's of Change." The most recent being a six part series examining history and problems of Indian education. Vine Deloria is considered a leading Native American spokesman and a professor of American Studies and adjunct professor of law at the University of Colorado, Boulder. He was a speaker at NMU Spring Commencement where he was given an honorary degree. Vine Deloria has written over a dozen books on current Indian issues and histories, including the best seller "God Is Red," which comprised traditional Native American thought to contemporary society, "Custer Died For Your Sins," a historical manifesto on Indian policies, "The Trail of Broken Treaties, An Analysis of Indian Activist Movement," and "We Talk You Listen," a Native American viewpoint on the plight and condition of Indians throughout history. He has served on boards and counsels of numerous Native American Civil Rights, church law, cultural and poverty organizations, and holds many awards from legal, cultural, and educational institutions. He is a member of the Standing Rock Sioux Tribe of North Dakota. Vine.

This is supposed to be a class, I'd like to treat you as a class and discuss the treaty project I'm currently working on. Russ is helping me considerably with some of the documents from the Great Lakes and Spanish southeast. I think going over the treaty project, I can illustrate some of the problems you find in any current Indian issues, and maybe show you the applicability of historical research to current Indian problems today. I probably started this during the Wounded Knee Trials. The people in Wounded Knee protested the actions of the tribal government. They had that occupation for a long time. When they

surrendered in early May, the government charged the people who had been there with various crimes and misdemeanors. They put together a legal team and we had to defend the people charged with crimes. When the smoke cleared and boiled down, there were 212 indictments. 212 people charged. The final score was 4 people convicted because all of the pleaded no contender, which means they would not contest the charges. All of the others had not been convicted either through government misconduct, or because the government did not have sufficient evidence to get a conviction from the jury.

During the course of preparing for some of those trials, we had to work backwards, which was a very difficult thing. We had to take the defendants statements and project back into their actions to determine what their motivation was. So you had young Indians out at Wounded Knee who were charged with crimes who said they were trying to defend the treaty. Then you had to find out how much they understood of the treaty and there wasn't sufficient information to form a motive. It's not a question of whether you break federal law and if you have a moral motive and you're led off. It becomes more a question of whether your motive led you to believe the treaty law was superior to South Dakota criminal law or certain federal statutes. You had a very complicated question of jurisdiction. You then would have to trace through the treaty to find out what are the jurisdiction statutes. I devised half a dozen different kinds of arguments to try to present the case. The lawyers I was working with were much better lawyers than I was, very experienced at criminal law procedures. None of the theories I wanted to try out in court had a chance of being heard.

I would go to trials and be a historical witness and after both sides had examined me, then I would not be a witness anymore, I would join the defense team. In that way I was both a witness and a attorney of record for the Indian defendant. So I ended up arguing the circuit court case. In almost all of these we ran into the question of arranging the historical data in a certain way to reach a certain conclusion. The problem we had throughout the trial, we were bringing in very good attorneys from the east and west coast and they'd get out in South Dakota and Minnesota and be traumatized by Indian culture and they'd start acting like idiots as people from both the coasts are inclined to do. It got to be a real hassle trying to keep the attorneys from getting too exuberant. The rule of thumb in a law suit and day to day trial is you

don't ever ask a question you don't know the answer to. I would have to review what the attorneys were going to ask the Indian defendants. These people didn't know anything about the literature of Indian Affairs. They quite frequently took books that were not accurate and base their assessment of what Indian motives should have been based on that book. Their knowledge of Sioux history was totally incomplete. I went down to Sioux Falls, one of the first places, and spent most of the day with an attorney. The next day I got on the witness stand. We were supposed to review the question of whether the treaties were valid documents, valid legal documents. Therefore anybody charged with a crime could get on the stand and say there is a conflict of law here and I am obeying the treaty law, which is a good federal law and therefore I have no criminal intent, therefore you can't convict me. We went through discussing the number of treaties and suddenly the attorney gets very fancy and tried to prove fraud in the treaties. Since the treaties are your only defense, why would you want to prove that they're fraudulent. As you can see from the Thomas hearings, a lot of these law school educations are relatively incomplete. So he goes through the stuff I've already briefed him on and he wants to go to the Agreement of 1889. I had been pushing everyone to uphold that agreement because it has certain technical things I'll explain. Instead of asking me whether it's valid or not, he starts to recite this list of Sioux chiefs that did or did not sign that '89 treaty. I had made grimaces and faces and stuck out my tongue, everything that the judge couldn't see to get the guy to shut up and let me off the stand. He just got carried away with his own eloquence. So ??? signed the treaty, ??? signed the treaty, and ??? signed the treaty...I knew it was headed for disaster. Finally he said Crazy Horse didn't sign the treaty and I said no. Did Crazy Horse know the treaty was a fraud? I said no he didn't know it was fraud. He said, why do you think he didn't know it was a fraud? I said one reason may have been that he was killed 12 years prior to the signing of the treaty. That got the guy off the stage. The whole point we were trying to make kind of went down the drain though.

1851 was the Treaty of ??? in September in which all tribes from Fort Bridger to Sioux City and from the Canadian border to the Texas panhandle. The primary treaty of the Sioux Nation considered as a nation of a band of all of its representatives present. That will be very technical. In 1865, well in '64 Silington attacks the Cheyennes and massacres all the people at Sand Creek. The remaining Cheyenne go

up on the south branch of the North Platte and are allies with the Sioux and they tell the Sioux of the terrible atrocities. You ought to read the Sand Creek Massacre Hearings. Terrible body mutilations that I won't go into, but it will be on the final exam. The Sioux come down and kick the hell out of the settlers and they burned Jonesburg, Colorado. It was an incredible war in '65. This is a fight from central Wyoming clear on down to the Oklahoma area. So the government sends a commission in 1865 and they go up the Missouri River and they had a farming committee and stopped at every agency. They asked the Indians who had agencies to sign that treaty, as if having the agency will then guarantee the good behavior of all the Indians in the Big Horn Mountains. They go to Santee and are totally outraged because the Indians are going to Minnesota fights had been moved over to Santee, which is in Nebraska. These Indians, in three years, had learned how to read and write English. So they want the Commissioners to give them the treaty in English so they can examine it. The Commissioners were outraged because you can't deal with Indians who understand the English language because now look at all the objections they are raising. They got up to Fort Rice with a half dozen treaties. Those were regarded as jurisdictional treaties. This was going to establish who was responsible for deprivations committed by various bands of Indians, depending on what deprivation occurred. So those treaties do not stop the war in Wyoming or Montana. The government then puts together a peace commission in '67 and they go to the North Platte and sign some treaties, which are not ratified, and then they go down in the Kansas area and sign some more treaties which are ratified. In the early spring of '68 they come back out and stay at Fort ??? and that's where you have the '68 treaty. Everyone regards that as the big treaty. This is the thing that inspired people to go to Alcatraz and claim federal surplus land. There's nothing in the treaty that says you can do that. For almost a year Merv Griffin and everybody else thought they were helping defend the '68 treaty by letting Indians get on TV and say you can take over federal land. So there was even a group of Indians in Milwaukee and they did the yacht club so they could have the red sun in the sail. The '68 treaty then becomes the dominant treaty in the end of President Johnson's administration and the beginning of President Grant. The treaty commission was dominated by Civil War generals, but there are several civilians on the commission that turned their finger to make it a series of

peace treaties. This is the bone of contention today because this gives Sioux Nations vast parts of Wyoming and the right to hunt as far south as the Republican River in Kansas. So interpreting those agreements becomes extremely difficult.

After the Custer fight in '76, the government sends out a commission in September of '76 and forces a number of chiefs in the southern parts of South Dakota to find the way to the Black Hills. This was put in the form of a statute. In late February of '77 it was called an agreement. The '68 treaty has a provision that  $\frac{3}{4}$  of the adult males have to sign any document that refers to land sections by the Sioux Tribe. So there's a definite conflict between '76 and '78. The government then tried to force the Sioux to break up that big land holding. In '88 they passed the statute and send commissioners out to get the people to sign. Not enough people signed so Congress declared it null and void. In '89 they send General Cook who had just fought Geronimo and had a very good reputation as a fighter of Indians. He goes around and intimidates the people and gets close to the  $\frac{3}{4}$  amount so it was certified as  $\frac{3}{4}$ . We don't really know that there are  $\frac{3}{4}$ . It would probably be impossible to tell today. That was then sent to Congress and it was ratified. For all practical purposes, if you are talking about the Sioux Nation as a nation, a sequence of treaties. That's what we had to argue with back and forth. In '68 is the treaty everyone had heard about. Every defendant wanted to base their defense on it. Judge Nichols in Minneapolis wouldn't let us put the treaty in court. This would then be claimed by every Indian as the motivator. I was put on the witness stand and every time they would ask me a yes or no question I would start to lecture as I am tonight. Pretty soon Nichols said what the hell, hear the treaty. So he let us hear the treaty. The standard interpretation of the treaty, the prosecutors said can you swear for a fact that every Sioux Indian interprets the treaty the same way you do? I said no I can't, but I can swear that I've never met a Sioux Indian that thought the treaty had been upheld. The courtroom all laughed and that was the end of the prosecution.

Now if you're the average attorney or average historian, that's what you're going to deal with, those documents. In the course of ??? you run into those unratified treaties of the previous years. That leads me to conclude that these documents show preliminary intent of the United States ??? in talking about '68. I go through the minutes and the chiefs on the treaty grounds don't even pay attention to the

commissioners. They say here's my piece of paper. I start asking around and there was a little meeting in 1856. I found an unnumbered federal report, which means you run across it by accident. This is a counsel between the major Sioux bands, General Harne, and General Harne gives his people certificates that say so-and-so is a chief and another certificate says 6 members can be regarded as head member of the band. General Harne, according to US record promises the Indians will not be asked to sign anymore treaties unless the band brings those papers to the treaty commissioner. So around '68 and '67 you have the questions about what these pieces of paper are. In the records they are supposed to have certificates. The Indians talked to the governor about these certificates they were given 11 years before in which the government says you won't have to sign anymore treaties unless the head of your band is a paper holder. You've been certified and recognized by the government.

Getting from this, we determine who was on this counsel. One man from all the treaties in '65 was a person holding a piece of paper given 9 years before. So we entered that evidence and the judge ruled that we did not have to deal with the '65 treaty, which would have been a terrible handicap because they report giving US jurisdiction over the Sioux Indians. So through historical research we don't have to make any legal arguments when we went into court. I was on the stand at Lincoln and I kept eluding the '56 document knowing it was not an officially numbered federal report. The court can not take official judicial notice of it. If I go into court and have the 40<sup>th</sup> Congress first session committee report 256, all I have to do is refer to that reference and the court by law has to say I take judicial notice of this. This is an official US document and it can be entered into evidence with no problem. I have no numbers on the 56<sup>th</sup> document. I'm standing in Lincoln and begin referring to the Fort ??? meeting. The good thing about the US government is the majority of the US attorneys are from the bottom part of the graduating class. Usually the bottom 10%. They're usually Republican and dumber than hell. None of them have ever had more than one history course so they don't have a clue what you're talking about. You can just beat them by throwing out facts. They snap at it every time. The US attorney jumps up when I start talking about Fort ??? and says I want some official notice of what this is. I bumbled along. He says I don't want you referring to anything that you can't produce in this court. He said Your Honor I'd like to see this if it's a

federal document. He said so would I. I smiled and said I have it in my briefcase I'll get it right out for you. If I were to say I would like to introduce this unnumbered, unlettered federal document he would have said get the hell out of here. If the other side calls for me to produce something, then I have to do so. I get the government report of 1856 introduced. In order to argue the '68 treaty, I now had '51, '56, and '68 to work with. In order to counter whatever the government was going to argue, you would have to reproduce as best you could, the historical context that these documents were signed. You can't just reach into the archives and pull out documents. So I began to look for unratified treaties from about the same time period and with the same general formula. '67, '68 had about 13 treaties with the same basic formula. Utes, Cheyenne, Arapahos, Crow, Shoshones, Kiowa, Comanche, Apache, Navaho, the whole series. You can argue from one treaty text to another that the intent of the Indians and the government are pretty much the same. You can agree on what a probable interpretation is. I want to get more stuff than that. I kept searching the archives. I found out the peace commission, in early May, after it was signed at Fort ??? assigned its members to go to different places. A number of generals went across the mountains to Fort Bridger and they had the Shoshone sign. General Sherman went down and signed with the Navaho. What I discovered was the career of an employee named W. J. Collins, who had been an agent in Minnesota. He was sent to Montana. He had signed treaties in '68 with what used to be called the River Crow, ???, and Blackfeet. He made a bad PR mistake. He tried to get some white men indicted for killing an Indian. The good citizens of Montana, who were all Republican, wanted law and order, but they didn't want to ??? their rights, put a lot of pressure on. The indictment was dropped and W. J. Collins was discredited. He was asked to return to Washington. He had these treaties and documents and sent those to the peace commission. The peace commission didn't get in touch with him because of the stuff in Montana. So those documents laid there untouched. Some of them are in the back of ??? but a number of them aren't. They're simply national archives unratified treaties.

One set of documents has two possible legal statuses. \*(moves away from the microphone, can't understand)\*\* This is the most non-legal story of what really happened in those treaties. You take phrases out of those transcripts and put them together with '68 and say this is what the feeling was and

this is what happened. I decided very naively, that I would collect all the unratified documents that were never signed, basing it on the fact that the unratified treaties among the Sioux were basically instances where the US was trying to deprive Indians of legal rights by refusing to take the treaties any further. These things were signed in good faith. My initial research assumption was the US is hiding documents. I went to ??? and started going through various commissioners reports and by the end of my time at the Onditi Trials, I had close to 100 documents, unratified treaty documents. My wife was going to the University Library School and she took up the project and really put some time into the federal documents. We had about 230 unratified treaty documents. That made a notebook about like that. In '78 we went to the University of Arizona. It's tough to live in a foreign land run by morons, but I've been down there 15 years. In the course of my other research I found a treaty text that I did not have, so I put it with my wife's documents.

In fall of '86 I busted up my back so bad my chiropractor said I don't know how you're still in one piece. So it occurred to me suddenly that I might be mortal and not like the rest of you. It's a terrible shock. I had a vision one time that God said I could live until the Denver Broncos won the Super Bowl. It's going to be quite a long time. I'll show you the exercise I had to do. Back and forth, trying to draw back straight up. I discovered that Xerox motions are perfect therapy. I wanted to finish this anyway. So I wrote to some publishers. I said I'm wrapping up this treaty thing, I just have to Xerox about 10 more citations of treaties that I know about and I'll be done with it. I delivered a full manuscript in February. This was October, '86. I had a list of 10 documents I was going to go through federal congressional reports and be done with it. Now, in looking for those 10 I ran across about 25 citations to treaties I didn't know about. I thought well I'm certainly lucky, I'll just finish these. The more I looked, the more documents I found. I went in the library with a list of 30 treaties and I'd find 5 of them, but I'd find citations to maybe 15 more. So I looked a whole year. I was up to 400 and some documents. I had a list 11 pages long of documents I knew still existed. I thought this is ridiculous, only an idiot would continue this project. But you can't stop in the middle of it. The minute you stop in the middle, every historian that didn't want to do this project will come after you like gang busters. I've gotten on the tiger's back



and I can't get off. So I honestly worked just about night and day for about a year. I had about 500 and some citations for documents. I ended up finding a citation through a lost treaty with Virginia and the Chickasaw from 1783. In the footnote it referred to treaties in Pensacola between Spain and the Choctaws and Chicishaw. I thought as a novelty I should have a Spanish treaty. I started looking at it that there were a lot of Spanish treaties after the independence of the US and before Spain gets out the continental US. I then start running in to Spanish treaties going from Pensacola to the Bay area. I thought I'd collect what I can until I get my American treaties done and then be done with it. This had gotten to be a monster in itself. The result of that is I located 41 treaties between Indian tribes and Spain going from approximately 1777 to 1819 when the Spanish were thrown out of Mexico. A number of these relate to the Navaho, Comanche, and Apache and give very good evidence of international status and military prowess of those tribes. There are also some treaties that you could use to question the land titles around St. Louis and again around New Orleans. There are tribes recognized in those treaties that do not presently have recognition from the federal government. Under international political law, if you're a recognized political entity and some other nation takes over that territory, all your civil and other property rights transfer when the new sovereign comes. So there's another treaty that you could at least say, you should check out everything west of the Mississippi River in the New Orleans area to determine that those are valid land transfers under the King of Spain. Getting into Spanish treaties then got me into a treaty between the Russian fur trading company and the Pomos, where they buy the land for Fort Ross. Russ gave me another copy of the treaty tonight. This led me to inquire about Great Britain. I have in the neighborhood treaties between Indian tribes and Great Britain. I just gave Russ a site on most answers to get, which is the purchase of Green Bay, WI by Governor Patrick St. Claire in 1781 from the Chippewas. The Chippewas never did believe that the Green Bay Packers would be a pro football franchise. They sold the area very cheaply. The one document I have missing from the Great Lakes area. The Spanish treaties lead to the Mexican treaties. There's something like 81 treaties between Indians and Mexico. The last of these was 1875 which was 4 years after the US said it's not going to sign treaties with Indians. These are not Mexican treaties with their own tribes. These are Mexican treaties with American Indian

tribes to make peace so the American tribes don't go across the border and start attacking. They used to go on little shopping trips and they'd loot most of Mexico and take it to Texas where they could fence it with good southern Democrats and First Families of Texas. Then they'd go back down and steal more stuff and bring it up. They had the biggest trade going on. Occasionally I would run across treaties in which two tribes would sign with each other in the event of making peace or war or setting up commercial relations. The event of the treaty would be sponsored by the US and the US provided a secretary to write it down. I began to develop the category of inner tribal treaties. I started out with 4 basic categories- ratified treaties, unratified treaties, ratified agreements, and unratified agreements. There were 4 categories. I hope I'm at the end of the study now. I have 26 different categories. These are reasonably precise legal categories. There are a great many treaties that are suggested, negotiated in the field, signed by US Representatives and Indian tribal people. They were sent to Washington and Congress and the Senate rejected the treaty. If you just take that statement flat, you'd say that's depriving Indians of a great many things. In some cases they were, but in many, many cases, what those treaties testified to is a reasonably decent attitude by people in Congress that they're not going to allow the Indians be exploited by the guys under the treaty. In 1868 all these treaties that I've been talking about going on in Montana and Wyoming, made all kinds of rail road sharpies down in Indian territory and were putting together phony treaties that would allow rail roads to go through the lands of the five civilized tribes. And those treaties are stopped in Congress when it becomes apparent that there is land fraud being perpetrated on a small group of Indians. So you can't really say the unratified treaties are instances where US is attempting to deprive Indians of rights. You have to go treaty by treaty. About half of them, there's a very good reason for turning those treaties down. If they were to turn them into law, tribes would have lost millions of acres and millions of dollars. I have another category which is treaties rejected by tribes and hardly any Indians know this, but the procedure was once you negotiated a treaty it was sent in to the Indian Committee and they'd examine it and make amendments. They'd send it to the Senate floor. The Senate would then vote on it and they would usually approve the text that was articulated in the field. If they did not, if they changed the wording on it, it was a policy of the United States to send that new text

back out to the tribes to get their approval. A lot of times when they sent that out, the amendments they made was to reduce the number of years to be paid. They'd tell people originally that they'd give it to them for 500 years and then Congress would cut out the two 0s. It made a little difference in capital investment. They'd send it back out to the tribes. The tribes had the option of saying yes or no. Very few Indians realized that the treaty ratified by the US Senate becomes a legal document. But if the tribe rejected it when it was brought back out to them for their approval, it was regarded as null and void. That's extremely important. This was one of the things I told the Menominee's before they went for restoration. I told them don't ever let any Indian tribe, no matter how discouraged it is, make any final agreement with the US that they don't like. History is clear that if you totally reject it, the government may enforce the law on you, but you can later go to court and get tremendous compensation. One category is those treaties that were rejected by tribes that became null and void. There's enough to make very good arguments to make protection of natural resources. In no way can any court look at all these treaties and the historical documents and say well these are ratified treaties, therefore the Indians have to live by them. Because historical records show that the Indians rejected this and we'll have to go out and let it calm a bit. We'll go out in another couple years and try to get them to sign another treaty. If you were to take the treaty history of any particular tribe, you'd find something like the Sioux and have all these treaties listed and right along side them put an equal number of documents that are not ratified, or were ratified and the tribe rejected the ratification amendments and said these are no good. The next generation of attorneys and scholars really have to dig in this very technical legal question of what happens when you're supposed to get annuities you have later rejected.

**\*\*SKIP IN TAPE\*\***

About 1870, the government began massive support of railroads. Part of the tactic for getting railroads through reservations was to allow the railroad to come and negotiate with the tribal leaders on behalf of the right of way to use wood or coal or whatever resources. I have in the neighborhood of 50

railroad agreements with tribes. I think these are going to be the most explosive part of this treaty study when I get it finished because in a number of these the Indians get minimal payment or no payment at all. In the Oneida reservation they give up a good right of way across the reservation to the Green Bay Lake Pepin Railroad and they don't get a dime. While you can't sue the railroad, you can sure as hell sue the US government for that. That is such a flagrant abuse of authority, to allow a railroad to come inside a reservation, negotiate with the tribal leaders, and get nothing from the use of their land, you have to figure the damage from the time the railroad was built and hopefully interest from that point forward. I have a copy of that agreement to Norbert Hill, some of you know. He told me there were about 200 AC members here and I only counted 4 in the audience. I don't know what Norbert is going to tell the Oneidas when he flashes that document. It came from the Dead Sea Scroll and give the Oneidas title to Israel or something. I'm beginning to see he exaggerates a bit.

Finally I have a crazy category, which is treaties with individuals. At times, people would become such favorites with Indians that the Indians would sign a special deed or treaty on behalf of a person and give them tracts of land. As far as I can determine from the historical record, it is simply a matter of how much political influence you had in Washington DC whether that was a valid land title or not. The agents in Minnesota would frequently, as they were leaving their post with the Sioux, get the Sioux to sign pre-set land contracts, giving them large tracts of land. One of them was put through in 1820 and the Commissioner didn't catch it and it became valid. The next year they tried it again and the Commissioner caught it. They put into federal law that you could not have these transactions with Indians. Julian DeBuque got what is now Dubuque, Iowa from the Fox Indians for a couple medals to hang around here, and probably a couple bumper stickers. Hopefully I'm on the downhill side of this study. I've taken May 1, 1775 as the point for which to start the study. Another very exciting document that I've found prior to '75 that I've just put in my files for some kind of future reference, and I'm going to take the study to the present time. When you look at Indian diplomacy, you come to a strange situation. The resolution of 1870 says that we will no longer make treaties with Indians as independent nations. That is followed by 40 years of Congress making treaties with Indians as if they are independent nations, except calling them

agreements. I got enough citations from commissioners of Indian Affairs, from the commissioner sent out to sign treaties, from the people on the floor of the Senate asking for ratification, every single one of these people says that they have signed a treaty with the Indians. The treaty making period goes to 1911. The last one was with the Mountain Utes. It's a section of land to be used for Mesa Verde. It occurred to me that I'm going to be doing a major historical essay describing how all this goes. But it occurred to me that at that point there were still enough Indians alive that if you went into court, if you had original treaty signers, you could go to court. I've gone through the records for the Lumbee Tribe where they had a fishing rights controversy at the turn of the century. They put people on the stand that had actually signed the treaty and helped them walk out the boundaries. The judge threw out the Indian testimony saying that the Indians were biased in favor of the Indians. You can tell I don't respect law a whole hell of a lot. The government didn't want to risk too many law suits while those original Indians were alive. What they would do is pass laws and then have the agent go out and hold a big counsel for the Indians and feed everybody and ask them to consent to that law. It was always kept on an informal basis. You can go to the Congressional ??? Service and get the Congressional reports that deal with the Indian property after 1900 and find records of these counsel. The big villain James McGlaughlalin who went from place to place trying to get Indians to cede the land. In no question, the whole thrust was to get the Indians to agree and obey a federal law that had been passed dealing with their reservation. It occurred to me that I should take this study right up to the present time. When you do, then you find yourself...the thinnest two decades I have are the 1920s and 1930s. I'm trying to track down are tribally negotiated grazing leases and mortar rights contracts that local people, or in the case of Los Angeles, the city of Los Angeles, made with Indians on a reservation to take some of their natural resources. These are negotiated instances. It's harder than hell to get those instruments because if you have a copy of them and raise it in the right legal context, what you're talking about is a multi-billion dollar lawsuit against the major corporations and municipalities in the country. There are a series of water contracts I've been trying to get between Los Angeles and the Owens Valley Paiute. This would blow southern California right off the map to see these unsupported negotiations of water rights. Looking at the whole historical record it's

clear that the US has always used a form of diplomacy to deal with Indian tribes. You come right up to termination and the thing they want most of all is for Indians to consent to termination. There's all kinds of manipulation. There are meetings held in the middle of the night and misunderstandings, anything so that there is some kind of document saying the Indians agreed to this. A lot of times if they agreed to anything it was something they thought Congress was going to do for them, not to them. You then get up to modern times and the settlement acts of today fit perfectly in the pattern of diplomacy. I'm including the settlement acts of today, which are when tribes, states, and federal government avoid litigation by having a negotiated settlement over land, fishing rights, over child adoption, zoning, you name it. I think I can show that from May 1, 1775 to the present a consistent pattern of Indian diplomacy. Then in the case, that history will allow you to introduce all kinds of legal arguments, many of which wouldn't be, since Congress cannot unilaterally do anything with Indian lives and property without the permission of the tribes. The tribes have vast authority in their own sovereignty in dealing with states and with each other. I think I have in the neighborhood of 60 intertribal treaties. It could transfer citizenship, water rights, hunting rights on an intertribal basis, without the permission of the United States. The thing opens up a lot of flexibility. I now have in the neighborhood of 800 documents. It's somewhere in the neighborhood of 2,400 pages on the computer, this is without any introductory material or anything. I hope to finish it this coming year. If it snows a lot in Colorado and I can't make it to school then I can finish this off. A number of foreign treaties I'm just going to have to say "text not available at the time of publication," because I can't hold up 4 volumes while I'm trying to get some anthropologist in Mexico to translate 2 pages of text for me. I'm closing in on a number of things to finish off this thing.

To say without bragging too much, I've read all the books dealing with Sioux Indians. I collected all the treaties. I have about 7 more documents than all of those books combined. The same way with the Apache, Comanche, Navaho, Cherokees, just about any tribe. I have more documents now than all the other authors put together. Sometimes you back into things that you never suspected. I kept running across a group called the British Band of Sacks. I've gone through British records and couldn't figure out who these people were. Then I went through American military records and every now and then they

would refer to the British Band of Sacks. Do any of you know who this group is? It's Blackhawk's band. He was pro-British right up until the end. He used to go to Fort Maulden and get advice and supplies from the British. If I had the slightest inkling that this was Blackhawk's band, I could have approached the historical research problem with one punch of the computer. But with these obscure documents you find very hazy records and think this is some kind of phantom that came and went. So I have run into documents coming in the back door. It takes an awful long time to find out what the document I have means, then I happened to talk to somebody who's an expert on the Kickapoo or Seminoles and they say oh that's such and such. Here I've discovered that I have built almost a detective context in which to examine it and there really is about 30 books written on this treaty and the chief that signed it, if I only knew what the hell it was in the first place. So that's one of the frustrations of dealing with the treaty thing.

I can see how this collection can radically reorganize federal law. When you're this close to the end you suddenly realize the power of historical research gives you. If I say a certain thing is true, people are going to have to take my word for it because I've got 2,400 pages to back it up. If they're going to prove me false, they'll have to go to a library and get 2,500 pages to show they're right. I'm very happy to be at that stage of conclusion now. I certainly wish when I was your age that I could have a really good course in archives and historical method because a lot of the stuff I do is just ad hoc. It takes me many more hours to do my research than it does younger people, not because they know computers. I don't think computers, they're a preliminary research. You really have to go into the archives and dig it out yourself. A lot of younger people know all the source materials, all the indexes to historical journals, they know who the great historians are and what is accepted and rejected theories of history a long time ago. Those are the things you need to know to do this kind of research. I've been lucky, but I have put in twice as many hours as anybody else trying to do this kind of thing. If I had proper undergraduate training, or if I'd taken it seriously, I could have saved myself years and many hours of midnight oil. I think that the next 25 years would be the golden age for people writing Indian history. There is much material available. The material that is published at the present time is highly inaccurate. A lot of books that we

consider good, if you dig into them you find out that these people really don't know too much about the subject. What they've been doing is copying each other's interpretations. I have a number of friends who are well known historians and I've used some of their books. They assured me that certain documents were not in the national archives and I found the documents and I realized that those people had stolen footnotes with other colleagues without ever going to federal archives to check and see if there was anything there. From time to time I just embarrass the hell out of these people sitting in a bar and I say well this footnote of yours in such and such you say is not an existent document. I'd be glad to provide it to you for ten cents a page.

Let me conclude, I'd like you to ask questions or give comments. Or if you know of any remaining documents, it's going to be fun when this thing is published. I'm going to have phony documents in my sports coat and then when I go speak someplace and people act funny I can say you know I do have the deed to your town. It will totally traumatize them. Let me see if there are any questions.

I want to commend you for all your searching and efforts and your career on behalf of the many people that have come first of all. The other thing I'm curious about is what is the status of the report that upheld the 1868 treaty in the Dakotas and what is the status of the Dakota nation in regards to that compensation? The last I heard about it a few years back, all the bands voted unanimously to reject payments. That's the last I heard.

Well that's a sordid history. The Sioux originally went to court in 1920 to try and litigate each of those treaty articles. It took 20 years and the court used very rigid rules of evidence and denied everything. By the time the last decision came down the Indian Claims Commission had been established. There was a question of could you follow Blackhill's claim in the Indian Claims Commission or was it erased based on what happened in the court of claims. My best interpretation of that is since the only remedy would have been article by article payment for services not rendered, it was



thought you could go into the Indian Claims Commission and file the same suit for the Blackhills without having to litigate. The government promised a school teacher and a school house for every 30 children, allotments, farming utensils, all these things. That got in the Indians Claims Commission, bounced up and down until the 1980-81 decision. By that time in the early '60s ??? had gone to the Claims Commission and said we want to take the Blue Lake area out of the claim. We want to go to Congress for that. You decide the rest of the claim. They ended up splitting their claim to land restoration and cash. Congress bought the argument and gave the Blue Lake back. Then a number of tribes followed and said they wanted land back. This raised the question in the eyes of the traditional Sioux, what the hell are we sending lawyers to get paid for the Blackhills, we want the land back. 44,000 acres in New Mexico for the Pueblo. It's another thing to say 17 million acres in western South Dakota. I can assure you as a fact that we're going to have all that sometime in the next 30 years. All the whites are going bankrupt out there. They're leaving. All we have to do is sit there and get all that. But in legal terms, could the Sioux at this point in the litigation say we want the land back. They instructed their attorneys that they wanted the land back. The attorneys were very paternalistic Washington attorneys that handled the case for years and decided that they knew better than the Indians so they told the judge to close the case and award the decision in defiance of their clients wishes. That raised the whole question of going to the Supreme Court. Indians then said we don't want to take the money. Just leave the money in the US Treasury and we'll figure out what to do with it. In '84 and again in '86 we had pretty good meetings in trying to work out a resolution on this. We were just at the point where we had close to tribal unanimity, very congenial committees meetings and everybody was deciding what they were going to do. They were going to then ask the government to give part land and part cash. A strange creature appears in South Dakota named Phil Stevens. He alleges to be the great-grandson of some Sioux chief and he is a sub contractor for southern California missile system and he's made something like \$100,000. He starts throwing money all over South Dakota. I personally and publicly think he was a US military plant designed to disrupt the Sioux because he got all the greedy Sioux arguing about money. All the consensus broke down. Every time it looks like we're going to get a consensus, out of no where this guy shows up and promises

everybody all kinds of things. Part of the problem with this guy showing up is there are a lot of con men in the Sioux tribe. I know you Chippewas don't believe that at all, but there really are. The minute they saw this millionaire running around South Dakota they decided they were going to take him. Millionaires become millionaires because they take you not because you take them. They're making a big fuss over the guy and name him chief of all the Sioux. They try to hold a ceremony at Pine Ridge except the people at Pine Ridge didn't want him the chief of all the Sioux so they had to go to Rosebud and make him a chief of all the Pine Ridge Sioux who wouldn't let him on the reservation in the first place. It sounds kind of like Dallas doesn't it? Sometimes I think these TV sitcom people are spying on us and then writing about it and putting white men in instead of Indians. This guy goes out and says if you turn over the money you have in the treasury to me to use as a campaign fund to get this done. I will guarantee that every white person within the original occupancy area will pay their income taxes to you and not to the federal government. Is that wild? It's a really nice feasible project to help inter race relations. Go tell some redneck Montana rancher that he's got to take his tax money to Pine Ridge in person rather than give it to the US Government. Why would people buy stuff like that? It's not logical or reasonable. Anyone with half an ounce of sense about the Internal Revenue Service, they're not going to allow people to tax anything. But the people of Pine Ridge and other places bought it. They asked Senator Bradley to introduce this bill to do this wholly premature. There was no consensus or anything. Then we went through a year where people did ceremonies. You won't believe this, but every person did a ceremony where the spirit told them they were going to save the great Sioux nation and they should do such and such thing. So we had a whole summer where saviors were a dime a dozen running around with all kinds of schemes to do stuff. We're trying to work through that. You'd think these guys are all Democrats the way they grab something self destructive and run as far as they can. So we're trying to cool everything off. Bill Bradley took a bad rap because he introduced the bill the Indians wanted and everybody jumped all over him. The current governor of South Dakota has tried this reconciliation, but he hasn't put any emphasis on it. He didn't want to dig into any questions. Senator ??? is a commissioner to investigate this and the South Dakota Senators are afraid the history will come out and people will have to deal with

it so they don't want a commissioner. There are people coming up all over the place in South Dakota suggesting something. My best advice to people is to just let it cool off. Leave the money in the Treasury. Don't take any money. Let the situation completely cool off and let some of these morons die. Get rid of some of the leadership, Indian and white, and let those people get out of leadership position and start all over.

What I think I can show in this introductory essay to the treaty study is that you can set up a commission that would negotiate the relationship of the Sioux Indians with the United States. I think it would be much more important to negotiate the right to run your own schools than it would to get money back. Or the right to get certain zoning or additional land within the reservation and the right to rebuild small communities on the reservation based on the family. There's all kinds of things we can negotiate over a period of time. My advice would be that if you could learn to negotiate with the Sioux of South Dakota and the US government, negotiate all these other things, by the time you get to Blackhills the people would know how to work together and you could come up with a solution. I am politically hazardous in running to any place in the United States today and talking about negotiating a multi-million dollar operation. We have to educate people to do that. That's as close as I can come to what is going on over there right now. I'm flying over there tomorrow so I probably will see all the clowns that are doing this stuff. Any other questions?

How do you feel about the waste proposal?

I really don't know about the current pending things. You can't be in archives and on a telephone both. I rather would be in the archives than getting telephone calls of people saying, didn't you used to be Vine Deloria? How the hell do you answer that? I try to stay clear of that. The only thing with the Apache people right now, we may or may not have a conference on Apache treaties. I'm not a good enough attorney or have a long enough attention span to pay attention to local negotiations. I want to sit down with documents and make it possible for people to negotiate in a whole new basis. I want to do an Apache treaty conference. I have 51 Apache treaties Spain, Mexico, US, Texas, whatever. It has a whole new side to Indian diplomacy. There are really good non-Indian scholars on the Apaches all alive and

retiring about now. Before they all die it would be really great to get that generation of scholars together and have them all talk.

You started on the issue of Wounded Knee. I was wondering if you found the book "I Buried My Heart at Wounded Knee," did you find the contents of that book very factual? What are the chances of the recovery of the treaties that were broken through that period? Can the Native Americans recover from that loss?

Well the 1867 Treaty with the southern Cheyenne was supposed to pay reparations. When people have gone in for books at Wounded Knee the army comes in and says no no these were battles. When I finish my treaty I'm going to go back and look at the Custer thing. I just read an article that 4,000 Sioux Indians attacked General Custer. That is blatantly impossible. If 4,000 Indians, you need 4,000 horses minimum. These people are not going to run after General Custer. No Indian would be caught with only one horse. That's 8,000 horses. Then you have to find somebody to cook because all the young Indian men are going to do is sit around and wait for General Custer to get there. If you use 4,000 warriors as a basis and then add up all the things you will need to survive in this valley you're going to end up in the neighborhood of 30,000 horses and 15,000 people. He's going to be so crowded that General Custer couldn't get there under any conditions whatsoever. The dust clouds alone would blind him 30 miles away. I'm sick and tired of this thing, 4,000 Indians. There's a book called "New Sources of Indian History" by Stanley Vestal and he has a nice little essay in there you'll want to read. It's a record of a Sioux Indians. When they fought the white man they had to their advantage 8 to 1. They'd kill 8 whites for every man they lost. When they fought other tribes it was 4 to 1. Chippewas of course 30 to 1. So all you need to knock off Custer was about 50 mad Sioux Indians. Custer hit them around noon when these guys had just gotten up and hadn't had any coffee or cigarettes or anything. Sunday morning, so they had been up all Saturday night pow-wowing. You couldn't ask for a worse situation to ride into. There were no where in the neighborhood of 4,000 Indians. I hope that answers your question. What the question,

I'm sorry. I read that on the airplane and I thought God dammit I have to do something about this nonsense.

My question was (too quiet)

Yes it is. A lot of the quotations he has, I can show you the government reports that they are in. He does not make up hardly any of the dialog. A lot of that dialog is taken right out of government reports. The only criticism I have is he only used traditional sources to look in. There's some areas dealing with Captain Jack, Chief Charmo and Victor, and dealing with Apaches, he used the standard government sources, which is not inaccurate. It's just that if you're going to write on that, there are much better sources to use. So if anything, you'd say it's a very accurate mainstream history. If you took the same period of time and really dug into government sources and got into fort records, he didn't have very many records from forts. If you got into some of that you could have a much better book. You've all heard of the "Son of the Morning Star," which is supposed to have every possible thing on General Custer. I found two treaties Custer helped negotiate between Indian tribes to get them to settle down. Those are not in there. No existing book that I could find in any library that I could presently take and show you where a little more research would have made it a hell of a lot better book.

I was wondering if during your testimony and trials if there was an issue of the linguistic problems between the English and the Native American languages. In a lot of cultures there's no concept of proper names or ownership. Were those issues ever brought out in these courtroom discussions?

The place that has appeared most often was in the Pacific Northwest in regard to the medicine Creek Valley and other treaties with fishing rights. Part of the problem with translation is people want to start anglo-saxon concepts, and property is a pretty particular thing, and act as if you can transfer that concept straight across the cultures. There was a good anthropologist, Barbara Vang, who gave testimony on that at USV Washington. What she demonstrated, if you look at the Indian way of property, there's as much property ownership as anything else. But in the Pacific Northwest it's more like trade rights or

copyright. What you own is a process of doing things. Any Indian in those fishing tribes could take fish any time they wanted and wouldn't have any problem. Once you took the fish you then needed a great deal of assistance from family to preserve the fish as a food source. You had to smoke it or sun dry it or do something with the fish. The ownership of fishing sites was partially divided by the family ownership of the locations within the fishing site. Where the people would use the processes to preserve the fish. There's no question that there was individual property throughout the Pacific Northwest. You don't look at 15 feet on the riverbank. What you look at is 40 feet back over there, who owns the sun drying racks and wood that you're going to use to smoke with, who owns the smoking material, etc. You have to use that cultural translation in order to make the connection. Once you do that, a number of things then become clear. There's even a lot of questions when you go from Ohio, Indiana, Illinois, and Wisconsin, the question of could tribes share ownership. First you go around and the Claims Commission just made people take occupancy areas. If the Potawami's were here there couldn't be any Sack and Fox. We'll draw these lines here. If you do the same courses today, people understand Indian culture a lot more. You'd find that you could advocate occupancy and particular uses of land so you could have joint occupancy of land, but different uses. Some tribes might fish in an area that other tribes hunted in. Or they might both fish for different periods of time. You can probably, from the intermingling of social science, you can put together new theories on that. There's already a study out reporting to give outlines for figuring out monetary damages for the Navahos for US failure to fulfill the treaty of '68. They base it on what land the Navahos own and land, sheep, what is a community, what is responsibility. They're still deciding what they are going to do. That's a hell of a good field because you have a mix of about 10 different disciplines. You have to know a little bit about economics, demographics, a lot about history, enough about wild life management and grasses to put some value on it. I've got one Indian grad student I'm trying to push in that direction. Figure out what the buffalo were worth.

(Inaudible)

If you look in the transcript from the FBI files, bugging in the rooms when we talked about this. That would be much clearer. I'm sure we were... people want me to get my FBI file and I say why should

I put three white guys out of work by asking for that. I'll let them follow me to the end of my life and they'll get the whole thing. By then stuff I did that people thought was radical in '63 will be old stuff in '99 so they won't block it out. Some of this stuff is in briefs. They're very little...trial transcripts don't make a lot of sense. There's a book by Roxanne ??? about the great Sioux nation and I have an essay in there and some other people do too. That's probably closer to figuring out that theory. A lot of this was used for legal purposes and you remember it because you work through it, but you don't bother to publish it. No more questions? Okay then we're going to have a quiz.