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HEARING BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

ON

THE NOMINATION OF MARGARET HUNTER PIERCE TO BE
A COMMISSIONER OF THE INDIAN CLAIMS COMMISSION

OCTOBER 9, 1968

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INTERIOR NOMINATION

HEARING

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

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NOMINATION OF MRS. MARGARET H. PIERCE TO BE A COMMISSIONER OF THE INDIAN CLAIMS COMMISSION

WEDNESDAY, OCTOBER 9, 1968

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to call, at 2 p.m., in room 3110, New Senate Office Building, Senator Clinton P. Anderson, presiding.

Present: Senators Clinton P. Anderson of New Mexico, Frank E. Moss of Utah, Carl Hayden of Arizona, Thomas H. Kuchel of California, and Paul J. Fannin of Arizona.

Also present: Jerry T. Verkler, staff director; Stewart French, chief counsel; James H. Gamble, professional staff member; and E. Lewis Reid, minority counsel.

Senator ANDERSON. This is an open, public hearing by the Senate Committee on Interior and Insular Affairs on the nomination by President Johnson of Mrs. Margaret Pierce to be a member of the Indian Claims Commission.

The biographical sketch of this distinguished public servant has been printed in the Congressional Record. But, without objection, I will direct that it be made a part of these hearings as well.

(The document referred to follows:)

RÉSUMÉ OF MARGARET HUNTER PIERCE, WASHINGTON, D.C.

Personal history: Born: June 30, 1910, Weedsport, N.Y. Parents: Dr. Thomas Murray Hunter and Ruby Sanders Hunter. Religion: Protestant; member of Georgetown Presbyterian Church, Washington, D.C. Marital status: Divorced; one child; daughter, Barbara Hunter Pierce (14 years old).

Education: B.A. 1932, Mount Holyoke College, major in English composition and literature; minor in music. Junior year taken at University of Wisconsin. Summer sessions at Detroit City College (now Wayne University) and Syracuse University. LL.B. 1939, New York University Law School (evening division).

Employment: While in law school, served as law clerk and secretary to Ralph B. Plager, then tax attorney in the legal department of the Irving Trust Co., One Wall Street, New York, N.Y., 1935-41. Law clerk and secretary to Murray F. Johnson, partner in firm of Harper & Matthews, 70 Pine Street, New York, N.Y. General practice with emphasis on tax law. 1941-42.

Government service: After passing the examination given by the U.S. Board of Legal Examiners then (1942) required of all attorneys seeking Government employment, was employed as an attorney as follows:

September 1942-May 1943: Office of Alien Property Custodian, Real and Personal Property Section of the Division of Investigation and Research.

This position required the investigation of the status of property suspected of being alien owned or controlled; to prepare investigation reports containing findings of fact, conclusions of law, and recommendations to the Custodian to vest or not to vest. After 3 months, was placed in charge of the work of 18 attorneys engaged in this work.

May 1943-June 30, 1945: U.S. Department of Labor, Office of the Solicitor, Davis-Bacon Section and Wage Adjustment Board (Building and Construction Division of the National War Labor Board).

At the end of first year here, as a staff attorney, was promoted to review attorney, supervising the work of 8 other attorneys doing work under the Davis-Bacon Act and for the Wage Adjustment Board. In addition, handled all correspondence relative to inquiries concerning the wage stabilization program in the building construction industry.

July 1 to December 1945: Employed in private industry.¹

January-October 1946: National Labor Relations Board; served as a review attorney.

January-November 1947: The U.S. Court of Claims; law clerk to Judge J. Warren Madden.

November 1947-November 1948: National Labor Relations Board; again served Board as a legal assistant to Board member Grey. (This was after the passage of the Taft-Hartley Act.)

November 1948-July 1959: The U.S. Court of Claims; served as permanent law clerk to the court. When junior law clerks were eventually employed, they worked under her supervision. Work involved research and writing in all phases of the court's jurisdiction. In July 1959, was appointed to the position of Reporter of Decisions and Librarian. In addition to writing the headnotes to the decisions and preparing the court's decisions, orders, and law digest for publication in bound volumes, devised a new law digest of the court's opinions, beginning with July 1958. (Compare the digests in the backs of volumes 140 and 150.) Prepared a card index system for the law digest, which is kept current. Reviewed all pending legislation, compiled legislative histories, examined law journals and called the court's attention to the articles of particular interest to its legal personnel, and assisted the judges, commissioners, and law clerks with research problems.

Bar memberships: Bar of the State of New York, admitted 1941; Bar of the District of Columbia, admitted 1958; Bar of the U.S. Court of Claims, admitted 1951.

Member of the District of Columbia and Federal Bar Associations.

Committee membership: Court of Claims Committee of District of Columbia Bar Association, presently serving as secretary to committee.

Military law committee of District of Columbia Bar Association.

Indian law committee of Federal Bar Association.

Senator ANDERSON. On behalf of the committee I welcome Mrs. Pierce and assure her of our interest in her selection and the services she will be called upon to render.

I should state that I am acting as chairman in the absence of Senator Jackson, who is necessarily absent from the city.

The Chief Commissioner of the Court of Claims, Marion T. Bennett, with whom I had the honor serving in Congress some years ago, is present to introduce Mrs. Pierce.

I see Commissioner Vance is here also.

Mr. Bennett, we will hear you. You may come on up now.

Mr. Vance, I know that ordinarily we would have you speak first for the nominee, but because Mr. Bennett has known her for quite a long time, we will let him go first.

STATEMENT OF MARION T. BENNETT, CHIEF COMMISSIONER OF COURT OF CLAIMS

Mr. BENNETT. Mr. Chairman, for the record my name is Marion T. Bennett. I am Chief Commissioner, U.S. Court of Claims. I appear here in support of the nomination of Mrs. Margaret Pierce to the Indian Claims Commission.

¹ During the period July-December 1945, was employed in private industry to write the Washington Report for a trade journal (plumbing and heating business). The articles dealt with the building and construction industry and legislation relating to that industry.

Mrs. Pierce has been on our staff at the U.S. Court of Claims for over 20 years. I have known her all that time. I have had a good opportunity to observe the quality of her work. I can assure the committee that this nominee is a highly competent lawyer, well versed in Indian law. We are pleased to see her considered for this preferment, but we shudder at the thought of losing her. She will be most difficult for us to replace on our staff.

She is presently the Court Reporter of Decisions and prepares the headnotes and law digest. She had many years of experience previously as an attorney in various agencies of the Government and as a law clerk in our court. She has drafted many memorandums dealing with the most complex questions, both legal and factual, in connection with Indian claims cases.

I know that your committee has long been concerned about the backlog of cases at the Indian Claims Commission. We have been concerned about it at the Court of Claims as well, because we get these cases on appeal from the Commission and we are criticized from time to time about the age of these cases, but we cannot do anything about it until we get them on appeal. Many of them are old before they get to us.

Mrs. Pierce, as a member of the Indian Claims Commission, because of her experience in Indian law, would be of great benefit to the court and to the Commission. I think that I can assure you with full confidence that she would be of great assistance to the Commission in helping get the wash out, so to speak, and to speed up the disposition of the cases on their docket, an objective shared by all of the members of the Commission, and one which she is peculiarly qualified by experience and abilities to facilitate.

I am pleased to present Mrs. Pierce, and either of us will be happy to answer any questions that we can that are proffered by the members of the committee.

Senator ANDERSON. Mr. Vance?

STATEMENT OF JOHN VANCE, CHAIRMAN, INDIAN CLAIMS COMMISSION

Mr. VANCE. Mr. Chairman, members of the committee, I am just here as a courtesy to my fellow lawyer, Mrs. Pierce. And I am sure that her nomination alone certainly, if she is confirmed, will be a real inspiration to the less than 2 percent enrollment in law school of ladies today. If she is confirmed, she will add some balance and style to the Indian Claims Commission.

Senator ANDERSON. Mrs. Pierce, we will be pleased to have a statement from you. Go ahead.

What is your desire on this court? How are you interested in the Indian Claims Commission?

STATEMENT OF MRS. MARGARET H. PIERCE

Mrs. PIERCE. I am really honored, of course, to be nominated for this position, and I hope that the committee will feel that I am qualified to do the work of the Commission and to help clear up their backlog. That has been the story of my life in Government service since 1942.

Most of my experience has been in quasi-judicial work, the analysis

of complicated records, exhibits, findings of fact, and decisions and usually the work of cleaning up a backlog.

I think I work well under pressure, and I like Indian work very much.

I would be glad to answer any questions that you have to ask me.

Senator ANDERSON. Now that you have mentioned a backlog, there were some of us who were worried about a person who later became Secretary of the Department of Agriculture. He had been Assistant Secretary of Agriculture.

In 1946, when the Indian Claims Commission was formed he wanted to talk about getting on the Commission. I persuaded him not to take the job with the Commission, and he became a fixture in the Department of Agriculture, Charley Brannan.

I told him the Commission was not going to last very long, but it is now stronger than ever and is going to the year 2000. I won't hold you to the year 2000, but do tell us what your general background is. Are you a member of the bar?

Mrs. PIERCE. Yes, I am a member of the bars of the State of New York, of the District of Columbia, and of the Court of Claims.

Senator ANDERSON. What are you going to do with this accumulation of cases? What would your hope be?

Mrs. PIERCE. My hope would be that we would finish by the time that Congress has suggested or, in fact, has said the Commission should finish. That is a hopeful "we." That is by April 10, I think, of 1972. And I will do everything in my power to bring that about and help my fellow Commissioners to do so.

Senator ANDERSON. Senator Moss?

Senator MOSS. Thank you, Mr. Chairman.

Mrs. PIERCE, you have been involved in legal work associated with courts or quasi-judicial proceedings for a good period of time in the Government. Is that correct?

Mrs. PIERCE. Yes, sir.

Senator MOSS. And during this period of time have you been confronted by a similar situation where there was great impatience to get the backlog moved along?

Mrs. PIERCE. Yes, I have, sir.

Senator MOSS. And you feel you have been able to contribute to moving it along during that period of time?

Mrs. PIERCE. Yes, I have.

Senator MOSS. I have great confidence in the resources of ladies and lady lawyers when they set their mind to get something moved. And if I felt that you had a set of mind that was to clean this thing up and get the backlog moved along, then I would vote for you with the greatest alacrity.

Do you think you have that set of mind?

Mrs. PIERCE. Yes, I know I have. I think Commissioner Bennett will bear me out on that.

Senator MOSS. I have a feeling that you do. And having heard Commissioner Bennett introduce you—and I have great confidence in him and his appraisal of the abilities of people—I have confidence that you can do a job on this. And perhaps to those four men sitting around there you might say: "Look, let's get down to business and move this thing." All right?

Mrs. PIERCE. All right.

Senator Moss. Thank you, Mr. Chairman.

Senator ANDERSON. Senator Kuchel?

Senator KUCHEL. Mrs. Pierce, when was the Indian Claims Commission created by statute, roughly?

Mrs. PIERCE. In 1946. I think it was August.

Senator KUCHEL. How many members are there?

Mrs. PIERCE. There are now five members. There were three then. There are supposed to be five now.

Senator KUCHEL. You have been for some 10 or 11 years Reporter of Decisions in the Court of Claims. How would you describe the duties of your office, as the Reporter of Decisions?

Mrs. PIERCE. Senator Kuchel, as Reporter of Decisions, I am responsible for bringing out, publishing, and editing, the decisions of the court and all the orders. I have to write the headnotes, which are the law notes to the case, and prepare the law digest.

When I took this job over in 1959 there had been no Reporter for over a year, so there was a year's backlog then. And at that time there was not a law digest in the sense as most of you know it. That is, in the back of each volume there was a heading which read "contracts," and that was all. You had to figure out whether the point of law involved a breach of contract or a claim under the disputes clause of the contract. It was not really a law digest. A pay case was just classified as a "suit for salary."

There was no law digest as such, just numbered paragraphs, with general labels, and I was asked to devise one, which I have done. I put the digest on a cumulative card index system similar to one that I learned to use at the National Labor Relations Board, and I have extensive cross indexes developed over the years.

The backlog at one time was almost 3 years of back volumes, and now we are current. We have a volume at the Printing Office now which takes in May and June decisions of this year. We don't have enough material yet for the next volume.

Senator KUCHEL. In your experience as a lawyer for the agencies of the Federal Government that you have enumerated, have you been called upon to act as a hearing officer in any of those capacities?

Mrs. PIERCE. No, Senator Kuchel, I have not. My work has always been in the decisionmaking process.

Senator KUCHEL. Thank you very much.

Senator ANDERSON. Senator Fannin?

Senator FANNIN. Yes, Mr. Chairman.

Mrs. Pierce, how long have you been a member of the Indian law committee of the Federal Bar Association?

Mrs. PIERCE. I don't know how long because I have not been active on that committee, Senator Fannin. I think it has been about 10 years.

I receive their communications, and occasionally they ask me for material. Mr. Flickinger, the chairman of the committee, asked me to be on it a number of years ago, and I told him I wouldn't have much time to devote to it, but they carried me on it as a member.

Senator FANNIN. I notice Mr. Bennett introduced you, and certainly his introduction and the background material which we have is very impressive as to your experience. I just wanted to know that you were well versed in Indian law. That is why I was asking the question.

Mrs. PIERCE. Would you like to know a little bit about my experience in Indian law?

Senator FANNIN. Yes.

Mrs. PIERCE. When I first came to the court, the Indian Claims Commission Act had just been passed, but we hadn't any cases on appeal yet. The court was then entertaining Indian cases under special jurisdictional acts, and I cut my teeth on the Alcea Bank of Tillamooks, which was a large case involving land claims in Oregon. I worked on that for Judge Marvin Jones, as I recall.

The next case involved land claims of the Rogue River Band. I was then the only law clerk to all five judges. It was a career position, and usually an experienced lawyer was hired for this work. The judges would turn over the difficult and heavy cases where a great deal of research was required.

From then on I did most of the Indian work for the court. When the Indian Claims Commission material began coming up to the court on appeal—we had not been an appellate court until the Indian Claims Commission Act was passed—the judges turned over this work to me to pioneer also. I continued to assist the court in most of the important Indian appeals until I became Reporter of Decisions in 1959.

Senator FANNIN. Thank you very much.

I have no further questions.

Senator ANDERSON. That will conclude the questioning.

We will take a little check back here.

Thank you very much.

Mrs. PIERCE. Thank you very much.

(Whereupon, at 2:40 p.m. the committee recessed, to reconvene at the call of the Chair.)

