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INDIAN CLAIMS COMMISSION ACT AMENDMENTS

GOVERNMENT
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HEARING
BEFORE THE
SUBCOMMITTEE ON INDIAN AFFAIRS
OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
NINETIETH CONGRESS

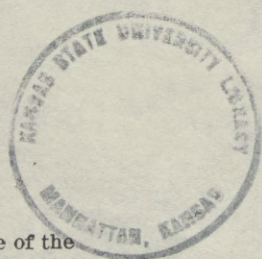
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FIRST SESSION
ON

S. 307

A BILL TO AMEND THE INDIAN CLAIMS COMMISSION ACT
OF 1946, AS AMENDED

FEBRUARY 15, 1967



Printed for the use of the
Committee on Interior and Insular Affairs

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1967

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INDIAN CLAIMS COMMISSION ACT AMENDMENTS

WEDNESDAY, FEBRUARY 15, 1967

U.S. SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 3110, New Senate Office Building, Senator George McGovern presiding.

Present: Senators McGovern, Burdick, and Hatfield.

Also present: James H. Gamble, professional staff member.

Senator McGovern. The purpose of the hearing this morning is to take testimony on S. 307, a bill introduced by Senators Jackson and Magnuson to amend the Indian Claims Commission Act of 1946. The bill is almost identical to S. 3068, passed by the Senate in 1966, but which failed of enactment in the last days of the session.

I should like to begin this proceeding by providing some background concerning the Claims Commission for the benefit of those who may not be familiar with it and for our new colleagues who have just recently become members of the subcommittee—Senator Hansen of Wyoming and Senator Hatfield of Oregon.

The Indian Claims Commission Act, as enacted on August 13, 1946, provided for the creation of a tribunal to consider and adjudicate all claims of Indian tribes, of whatever nature, that existed from the establishment of the Republic to the date of enactment of the act. Tribes were given a period of 5 years, that is, until August 13, 1951, within which to submit their claims; and the Commission was instructed to adjudicate those claims within a 10-year period from and after April 10, 1947, the date of the Commission's first meeting. It should be noted that over 60 percent of the claims filed were submitted in the last 6 weeks of the 5-year filing period.

During the time for filing, more than 800 separate claims were submitted to the Commission, and these were consolidated into approximately 590 dockets. Toward the end of the initial 10-year life of the Commission, it was clear that all cases filed could not possibly be tried, and by the act of July 24, 1956 (Public Law 84-767), the life of the Commission was extended for an additional 5 years. Again in 1961, the Congress enacted Public Law 87-48 to provide another 5 years of life for the Commission, bringing the termination date up to April 10, 1967.

We are rapidly approaching the terminal date, and I think it is fair to say that there is not the remotest possibility of finishing the remaining work within the next month or so. Therefore, it is necessary to make additional time available so that the Commission's work may be completed. As introduced, S. 307 would extend the date to

April 10, 1972. If this bill is enacted, the Commission will have had a period of 25 years from the date of its first meeting to hear these claims and submit its final report to the Congress. I think all of us who are knowledgeable about Indian affairs are distressed that the claims which the Indians have had for so long have not been tried. However, in fairness to all concerned, it should be pointed out that several circumstances and situations have arisen that slowed the pace of adjudication. For example, a few years ago the question of contingent fee contracts with expert witnesses arose, and until Congress was able to correct the situation the Commission's business came to a virtual halt. Shortly thereafter it became necessary for Congress to create a special revolving loan fund for tribes in order that they could borrow money with which to engage their expert witnesses to testify in their behalf before the Commission. Some little time was required to enact authorizing legislation and for the money to be appropriated and made available to the Indians.

So far as I know all of the major obstacles that contributed to earlier delays have been overcome, and I believe the work of the Commission will be noticeably accelerated in the coming months. One of the purposes of our hearing today is to ascertain how we might further expedite the Commission's task. We have asked the three Commissioners—Hon. Arthur V. Watkins, William M. Holt, and T. Harold Scott—to appear before us to give any recommendations they may have and to inform us of their accomplishments and of the workload remaining. The Department of Justice, which is charged with defending the United States in these claims matters, has representatives here and is prepared to present the status of their work and perhaps some suggestions for speeding up the whole adjudication process, including prospects for settlements.

We have invited representatives from the Department of the Interior who are prepared to tell us about the special revolving loan fund I referred to earlier and its adequacy to meet the needs of the tribes, and also to advise us about the status of Indian attorney contracts.

It is my understanding that some tribal claimants do not have counsel, and I think it important to know what steps are going to be taken to assure that they will be represented before the Commission.

The General Services Administration, which has responsibility for preparing accounting reports in response to allegations in the Indians' petitions, is also prepared to tell the committee about its work.

Without objection, a copy of S. 307, together with the reports from the Claims Commission and the various executive departments, will be inserted in this record following my remarks.

Under date of January 25, 1967, the chairman of this committee, Senator Jackson, sent letters to the Indian Claims Commission, the Department of Justice, and the General Services Administration, asking questions concerning the possible cause of delay in the final disposition of pending claims cases. We have received replies to these letters, and they will be included in the hearing record at the appropriate place.

I am sure that every member of this committee will agree with me that our objective is to find ways and means of getting the Indians' cases before the court at the earliest possible time. They have waited many, many years. If they are entitled to recoveries against the United States, the awards should be made as promptly as possible in

order that funds appropriated to satisfy those judgments may be used to improve the economic well-being of tribal members. This source of funds offers a tremendous opportunity for individual and tribal betterment, and any suggestions or ideas that will help in getting the adjudicatory process moving more rapidly will be most welcome.
(The data referred to follow:)

[S. 307, 90th Cong., 1st sess.]

A BILL To amend the Indian Claims Commission Act of 1946, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Indian Claims Commission Act, approved August 13, 1946 (60 Stat. 1049, 1055), is hereby amended as follows:

(a) After section 26, add a new section 27 to read:

"SEC. 27. (a) The Commission shall, as expeditiously as practical following the date of enactment of this section, set a day no later than January 1, 1970, for the trial of each claim pending before the Commission which, on such date of enactment, has not been set for trial.

"(b) If a claimant is unable or unwilling to proceed with the trial of its claim on the day set for that purpose, the Commission shall enter an order dismissing the claim with prejudice: *Provided*, That, upon motion of the claimant and for good cause shown, the Commission may grant a continuance of the trial of the claim for not more than six months. If, at the expiration of such period of continuance, the claimant is unable or unwilling to proceed with the trial on its claim, the Commission shall enter an order dismissing the claim with prejudice: *Provided, however*, That the Commission may stay the entry of such order of dismissal if the Commission finds that a final compromise of the claim is being negotiated in good faith by the parties. An order of the Commission dismissing a claim under this section shall be final and not subject to review by any court. The Court of Claims shall not have jurisdiction to hear or determine any action upon any claim which has been dismissed by the Commission under this section."

(b) Amend section 23 to read:

"SEC. 23. The existence of the Commission shall terminate at the end of five years from and after April 10, 1967, or at such earlier time as the Commission shall have made its final report to the Congress on all claims filed with it. Upon its dissolution the records of the Commission shall be delivered to the Archivist of the United States."

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 14, 1967.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: Your committee has requested a report on S. 307, a bill "To amend the Indian Claims Commission Act of 1946, as amended."

We recommend enactment of the bill, subject to consideration of the following comments with respect to the proposed new section 27.

The life of the Indian Claims Commission will expire on April 10, 1967, unless new legislation is enacted. The Commission was established to provide a forum for hearing and deciding all tribal claims against the United States that were in existence before 1946. Much time and money have been invested in the preparation and trial of those claims. It would be both wasteful and unfair to the Indian tribes to allow the Commission to expire before the process has been completed. The tribes are entitled to their day in court, and if they are not allowed to proceed before the Indian Claims Commission they will undoubtedly request the enactment of special jurisdictional Acts, which is a practice Congress sought to avoid when it enacted the Indian Claims Commission Act.

In our opinion, it is highly desirable to extend the life of the Commission for a reasonable period, and the 5-year period provided in the bill seems reasonable to us.

S. 307 also adds a new section 27 to the Indian Claims Commission Act. The purpose is to promote the expeditious disposal of the pending claims, and we are in complete agreement with that purpose. The Indian Claims Commission Act was enacted August 13, 1946, and all claims were required to be filed by August 13,

1951. The Commission was originally scheduled to expire April 10, 1957, and its life has been extended twice to April 10, 1967. It would of course be to the advantage of the Indians now living if their tribal claims could be settled within the near future.

The new section 27 requires the Commission to set each pending claim for trial on or before January 1, 1970. Claims are ordinarily tried in three stages, one each on title, value, and offsets. We understand that the 1970 date is intended to refer to trial of the initial stage of each claim, but the bill does not actually say so.

Although we do not have the data available to the Indian Claims Commission and the Department of Justice, we believe that this requirement of section 27 is too rigid. Rather than require that all claims be set for trial of the initial stage by 1970, we believe that the Commission might be required to prepare a trial calendar that would include all cases, regardless of whether they have previously been calendared for trial. This could be done by the following amendment:

1. On page 1, line 9, delete "set a day no later than January 1, 1970," and substitute "prepare a trial calendar".

On page 1, lines 10 and 11, delete "which, on such date of enactment, has not been set for trial."

The new section 27 then provides that if a claimant is unable or unwilling to proceed with the trial on the date set, the Commission must dismiss the claim with prejudice unless for good cause shown the Commission grants a continuance. Only one continuance for not more than 6 months may be granted.

We understand the reference to a claimant who is unable or unwilling to proceed with the trial to mean no more than a claimant who fails to proceed with the trial. The precise meaning of "unable or unwilling" is therefore not significant. You might consider, however, the following amendment:

2. On page 2, lines 1 and 8, change "is unable or unwilling" to "fails".

The prohibition against granting more than one continuance, and the requirement that the one continuance granted may not exceed 6 months, are drastic. Some provision should be made for further continuances for reasons that are beyond the control of the claimant. This could be done by the following amendment:

3. On page 2, line 7, change the period to a semicolon and add "and the Commission may grant further continuances when justified by facts that are beyond the control of the claimant."

Some tribes with claims pending before the Commission are not represented by attorneys. Before dismissing one of these claims we believe the Commission should consider carefully the reasonableness of the efforts made by the tribe to obtain an attorney. It might consider using the authority under section 13 of the Act, which provides for an Investigation Division of the Commission to search the claims referred to it, and if the facts warrant a further extension of time to obtain an attorney, the Commission should grant the extension.

The new section 27 also provides that a Commission order dismissing a claim shall be final and not subject to review by any court, and that the Court of Claims may not adjudicate any claim dismissed by the Commission. This provision would preclude the correction of arbitrary and capricious action, and is inconsistent with normal judicial processes which provide for at least one appellate review. We therefore recommend the following amendment:

4. On page 2, lines 13 to 18, delete the two full sentences.

We also wish to point out a possible fallacy in the premise on which the bill is drafted. The premise is that all pending claims could be disposed of in the next 5 years if the Indians were forced to adhere to a comprehensive trial calendar. The assumption is that the Government and the Commission would be able to perform their functions within that time-frame. That assumption should be verified. If the Government cannot be prepared to try, and if the Commission is not equipped to decide, all stages of the remaining claims during the next 5 years, your committee should be aware of those facts.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

HARRY R. ANDERSON,
Assistant Secretary of the Interior.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., February 14, 1967.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of January 24, 1967, requested the views of the General Services Administration on S. 307, 90th Congress, a bill "To amend the Indian Claims Commission Act of 1946, as amended."

The primary purpose of the proposed legislation is to expedite consideration and final disposition of all claims which have been filed against the United States under the Indian Claims Commission Act of 1946 and which have not yet been acted upon by the Indian Claims Commission.

The interest of the General Services Administration in S. 307 stems from the fact that much of the material relied upon by the Department of Justice and the Indian tribes in proceedings before the Indian Claims Commission is based upon original documents held in the National Archives. Since creation of the Commission by the Act of August 13, 1946 (60 Stat. 1049, 1055), letters have been received from the Attorney General of the United States enclosing copies of a total of 578 petitions which have been filed with the Commission and requesting that the Department of Justice be furnished accounting reports in response to the allegations set out in the petitions. Generally, these reports include an accounting showing the extent to which various treaty obligations have been fulfilled by the United States, an accounting of investments and trust funds, and in most cases a statement of gratuitous expenditures for consideration as possible offsets against any judgment which may be rendered against the United States. Such reports are presently prepared for the Department of Justice by the Indian Tribal Claims Branch of GSA's Region 3 National Archives and Records Service. Prior to February 28, 1965, the reports were prepared by the General Accounting Office.

Over the years some of these 578 petitions have been dismissed by the Indian Claims Commission but accounting reports on all the other petitions have been furnished the Department of Justice with the exception of 64 which are in the process of being prepared by GSA. With respect to these remaining 64 petitions we expect to furnish the Justice Department accounting reports responding to the allegations made in the petitions not later than June 30, 1970. Our tentative schedule calls for completion of the work on accounting reports involving 13 of the petitions by the end of fiscal year 1967, completion of the work on accounting reports involving 22 of the petitions during fiscal year 1968, and completion of the work on accounting reports involving 29 of the petitions in fiscal year 1969.

Section (a) of S. 307 would amend the Indian Claims Commission Act of 1946 by adding a new section 27 thereto so as to provide that (1) each claim not previously set for trial would be set by the Indian Claims Commission for trial on a day not later than January 1, 1970, and (2) if the claimant is unable or unwilling to proceed with the trial on that day the Commission shall enter an order dismissing the claim with prejudice, except that on motion of the claimant and for good cause shown the Commission may grant a continuance of the trial for not more than six months and may stay the dismissal if the Commission finds that a final compromise of the claim is being negotiated in good faith by the parties. With respect to the adequacy of the time element as well as the merits of the other provisions of this proposed new section 27, GSA defers the views of the Department of Justice and the Indian Claims Commission.

Section (b) of S. 307 would amend section 23 of the Indian Claims Commission Act of 1946 so as to provide that (1) the existence of the Indian Claims Commission shall terminate at the end of five years from and after April 10, 1967, or at such earlier time as the Commission shall have made its final report to the Congress on all claims filed with the Commission, and (2) upon its dissolution the records of the Commission shall be delivered to the Archivist of the United States. The General Services Administration concurs in this proposed extension of the existence of the Indian Claims Commission as well as the delivery of its records to the Archivist of the United States upon dissolution of the Commission.

In view of the foregoing and insofar as the responsibilities and functions of GSA are concerned we have no objection to the enactment of S. 307.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely yours,

LAWSON B. KNOTT, Jr.,
Administrator.

INDIAN CLAIMS COMMISSION ACT AMENDMENTS

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., February 16, 1967.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on S. 307, a bill "To amend the Indian Claims Commission Act of 1946, as amended."

The views of the various agencies concerned have been forwarded to the Committee. We are all in agreement that the life of the Indian Claims Commission should be extended and this Bureau would support an extension of five years.

The views of the Departments of Justice and Interior differ somewhat on certain of the provisions in the bill designed to expedite the presentation and resolution of pending claims. For your convenience the following points are in the same order as discussed in the Interior report.

1. We believe the bill should provide for preparation of a trial calendar, to be completed within some reasonable time period. We see no reason why one year would not be sufficient. The present provision in the bill directing that all cases be brought to trial by January 1, 1970, seems overly optimistic to us given the present state of preparation by some tribes.

2. We agree with Interior's recommendation calling for substitution of the word "fails" for the words "unable or unwilling."

3. We support the general idea reflected in Interior's amendment providing for further continuances. However, this should not be left completely open-ended. In our view, it would be reasonable to provide for continuance only to the extent that these could be granted and still allow time for the Commission to make a decision on the case within the five-year extension. We suggest for your consideration the following amendment to S. 307. On page 2, line 4, change the proviso to read as follows:

"Provided, That, upon motion of the claimant and for good cause shown, the Commission may grant continuances from time to time, but in no event shall a continuance be granted which will result in there being insufficient time for the Commission to adjudicate the claim on or before April 10, 1972."

4. Finally, Interior recommends deletion of the part of the bill which provides that dismissal by the Commission shall be final, and not subject to review by any court. We believe that the continuances provided by the above amendments in cases where there is good cause shown is a fair and reasonable way of insuring an opportunity to the Indians for their day in court. However, we have no objection to Interior's proposed amendment since a dismissal under this provision would constitute a final disposition of the claim.

Subject to your consideration of the foregoing comments, the Bureau of the Budget recommends enactment of S. 307.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

Senator McGOVERN. Congressman Ruppe, of Michigan, has sent a letter for inclusion in the hearing record, without objection, that will be printed at this point.

(The letter referred to follows:)

HOUSE OF REPRESENTATIVES,
Washington, D.C., February 14, 1967.

Senator HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: It is my understanding that on February 15, 1967, hearings will be held on S. 307, a bill to terminate the Indian Claims Commission.

I have a substantial number of Indian constituents in my District, according to the latest official census over 2,800 Indians of 3 tribes. Many of these Indians have claims filed before the Indian Claims Commission.

The Indians are concerned that the life of the Commission will expire on April 19, 1967, before their claims are concluded. I have assured them that Congress would not permit this to take place and I write this letter to convey their views and urge that the life of the Commission be extended for a period of time sufficient to conclude the business for which it was created.

Best regards and good wishes.

Sincerely,

PHILIP E. RUPPE, *Member of Congress.*

Senator McGOVERN. We have a long list of witnesses, and we will begin by hearing from the three Indian Claims Commissioners.

I am very happy to welcome our former distinguished Senate colleague, Mr. Watkins, who is the Chief Commissioner, and his two colleagues.

**STATEMENT OF HON. ARTHUR V. WATKINS, CHIEF COMMISSIONER,
INDIAN CLAIMS COMMISSION, ACCOMPANIED BY WILLIAM
M. HOLT AND T. HAROLD SCOTT, COMMISSIONERS**

Mr. WATKINS. Mr. Chairman and members of the committee, first I want to thank you for the very kind introduction and reception here today. I am sure we are all interested in seeing the task that was given to this Commission completed within a reasonable time.

May I say at the outset of my statement, I favor the extension of the life of the Commission for the number of years which has been named in the bill S. 307.

With respect to the rest of it, I will have some remarks to make later on.

Mr. Chairman, and members of the committee, it should be noted that since the Indian Claims Commission was created by an act of Congress which was approved by the President on the 13th day of August 1946, that there are many new Members of the Congress and of this committee who are not likely to have much background information on the Commission, the task assigned to it, and how it has proceeded to process the ancient Indian claims filed with it. Also, I think I am safe in saying that, in view of the tremendous workload Congress had before it year after year, very few Members, even of many years standing, have a working knowledge of the Commission and its operations.

I am led to make these observations partly by an incident which happened at the hearing held by the Indian Subcommittee of the Senate early in 1947 on the qualifications of President Truman's appointees to the new Commission. As the newly appointed Chairman of the committee, I sent notices of the hearing to all its members. Two veteran members made their appearance and wanted to know why we were holding such a meeting. When I explained the reasons for the hearing they appeared to be very much surprised that an act of Congress such as I described had been enacted. They said with emphasis that that was not the way to solve the Indian problem. They refused to stay for the hearing. Incidentally, these Senators were from States with large Indian populations. Later, it appeared that there was at that very moment a bill pending in the Senate to repeal the Indian Claims Commission Act. It was authored by another Senator from another State with a heavy Indian population.

Shocked as I was by this incident showing apparent lack of knowledge about Indian affairs, I nevertheless came to know years later

that such a thing was not only possible but could easily happen with numerous Senators and Representatives under similar circumstances. Indeed, after 20 years I find that, with the exception of members of the Indian Subcommittees, there are still many Members of Congress who are not very well informed about the Commission and its activities. For instance, I have been requested to answer numerous inquiries from Members of the Congress, and the public generally, explaining orally and by correspondence that the Commission is not a part of the Department of the Interior, or the Indian Bureau, but is a judicial arm of the Congress created for one special purpose: the hearing and determining of ancient Indian claims against the United States which came into existence prior to the approval of the Claims Commission Act on August 13, 1946. Also that the Commission is not an administrative agency; the only final determinations it can make are either awards in money to Indian claimants or dismissal of their claims outright. There is no middle ground.

Indians began demanding "their day in court" on their claims even prior to the Civil War. The Court of Claims was created to help Congress process private claims of American citizens against the United States which were filed with Congress pursuant to the first amendment to the Constitution which recognized among other things the right "* * *" to petition the Government for redress of grievances." This right was not open to anyone but citizens. Also, only citizens were eligible to prosecute claims against the United States in the Court of Claims. Indians as individuals were not citizens until made so by statute in 1924.

The Court of Claims could acquire jurisdiction over claims of Indian tribes or bands only by act of Congress. Each group had to seek its own act. A very limited number of Indian entities were able to secure these acts. Year after year many of them tried but only a few succeeded. So in 1946, Congress enacted the Indian Claims Commission Act which became effective on August 13, 1946. Its existence was limited to a 10-year period which ended on April 10, 1957.

It is not my purpose in this statement to go into the history of the Indian Claims Commission Act, nor to describe in detail the operations carried out in processing Indian claims, but I am led to make an objective statement about the Commission's problems in relation to the time needed to finish its task because there has been considerable negative discussion in Congress of the Indian Claims Commission Act and the operation of the Commission in its attempt to carry out its purposes. It appears there is considerable misunderstanding in just how the Commission operates in adjudicating the various claims before it. Some of the most important of these claims are based on the taking of land and the compensation paid for it. There are also important claims based on the taking of Indian lands without any compensation. I believe some general explanation of how these land claims are handled and how the subject of offsets comes into the procedure is needed. Several years ago I submitted a statement on the various steps in processing claims based on the taking of Indian land without sufficient compensation, or without any compensation, and on allowable offsets. I believe this material is apropos at this moment and should be of some help to members of the committee.

However, gentlemen, I do not intend to read this statement, which is an analysis of the various steps we take in connection principally with the taking of land; and also a statement with respect to offsets.

I want it to be a part of the legislative record, so I submit it as a part of my statement.

Senator McGOVERN. Without objection, it will be included as a part of the record.

(The material referred to follows:)

MEMORANDUM WITH RESPECT TO TYPICAL INDIAN CLAIMS CASE PREPARED BY
INDIAN CLAIMS COMMISSION

The typical Indian Claims Commission case, and the one which makes up the greater portion of the body of litigation that has not been adjudicated, or is yet to be tried before the Commission are the claims for additional compensation for lands taken by the United States by treaty or statute, and in some instances without the benefit of either. The majority of these land claims fall into the category of "treaty takings." In these situations the Indians have received some compensation from the United States for the cession of their lands. This compensation may take the form of money, goods, or services, or any combination of the three. The gist of the Indian complaint, and what gives rise to a cause of action under Section 2 of the Indian Claims Commission Act, is the inadequacy of the consideration paid when compared with the then fair market value of the ceded lands, at the time they were taken from the Indians. If the Commission should determine that this disparity between price paid and actual value is so great as to "shock the conscience" then the United States becomes liable to the Indian claimants for the difference.

This typical case is generally tried in three separate stages as follows:

I. TITLE

The burden is upon the Indian claimants to show that the tribe has a compensable interest in the subject matter of the claim. They must prove their title, in whole or in part, to the lands claimed by them. Indian tribes hold title to land in two ways:

(1) *Recognized or reservation title*, which is an interest in their lands that has been given to them through Congressional action, either in the form of a ratified treaty or by statute. It is a form of grant. The determination of whether or not the Indian claimants have "recognized" or "reservation" title is a question of law, which does not require the taking of evidence apart from considering the particular treaty or statute involved and if necessary the supporting legislative history or background.

(2) *Aboriginal or Indian title* is a form of title based upon and perfected by proof of continuous Indian tribal use and occupancy from time immemorial of all or a portion of the lands claimed to the date said lands have been ceded. The determination of the question of "aboriginal" or "Indian" title is always a question of fact. Consequently the Commission must hear evidence bearing upon the Indians' actual use and occupancy. A great deal of the factual proof is in the form of documentary evidence. However, because this matter of use and occupancy deals in early historical facts and indeed, facts that history does not record, a great deal of evidence is received in the form of expert testimony from such as historians, ethnologists, anthropologists, and archaeologists, and the like.

The Commission's determination of the title question does not, with one exception, adjudicate the question of the *liability* of the United States to the tribal claimants. The one exception, noted above, arises in situations where tribal lands have been taken by the United States without the benefit of treaty or statute and the Indians have received *no* compensation for such taking. In this situation the liability of the United States might be presumed after the Indians have received a favorable determination of the title question, since it is almost certain that the Commission will find in the second stage of the proceedings, the value stage, that the subject lands had some value even if only nominal.

II. VALUE

This is perhaps the most vital phase of the adjudication with respect to liability. Here the Commission receives evidence bearing upon the question of the fair market value of the lands to which the Commission has now determined that the Indian claimants have proven title. A determination must also be made of the acreage of the lands found to have belonged to the claimants as well as the question of the actual consideration paid, particularly where it involves goods and services.

The evidence on value is generally presented to the Commission through the extensive reports and testimony of land appraisers and real estate experts who are hired by the Indians and the United States as expert witnesses.

When the Commission has determined fair market value of the subject lands as of the date of their taking, as well as the amount of the consideration actually paid by the United States to the tribal claimants, it thereupon makes the proper comparison between the two items and decides whether there is such a disparity as to "shock the conscience," so as to declare the United States liable for the difference. If there is such liability, then the Commission enters an interlocutory order awarding X number of dollars to the tribal claimants subject to allowable offsets which the Government may set off against the award.

III. OFFSETS

After liability has been established in the preceding stage, and the interlocutory award in favor of the Indians has been entered, the United States, under Section 2 of the Indian Claims Commission Act, is entitled to present for the Commission's consideration all offset matters which it would like to claim against the interlocutory award. Apart from actual payments due on the claim and other legal offsets, the most prominent offset item involves an expenditure of either money or property made by the United States in behalf of the tribal claimant which is not made an obligation by treaty or statute. It is a gratuity which the Commission may or may not allow as a setoff after considering the entire course of dealings between the parties. However, there are certain classes of unobligated and gratuitous expenditures enumerated in Section 2 of the Act which as a matter of policy are not offsettable. For example, moneys spent for the removal of Indian tribes from one place to another at the request of the United States, moneys expended for agency administrative, educational, health and highway purposes, etc. Proof of the offsets is made through the introduction into evidence of voluminous detailed government Accounting Office reports, listing all such disbursements made to the tribal claimants over the years. Only those listed items that are subsequent to dates pertinent to the particular claim can be considered. All allowable offsets are deducted from the interlocutory award so that a net judgment in favor of the Indians can be entered. It is conceivable that in certain instances, the total value of the allowable offsets could exceed the amount of the interlocutory award, which, of course, would defeat the Indians' claim. This has occurred in several Indian cases which were tried years ago in the Court of Claims.

CONCLUSION

As a general rule the determination of the liability of the United States to a tribal claimant cannot be made until the value stage, or second stage, of the proceedings have been completed. It is not fixed by a favorable determination to the Indians of the title issue, except in those situations, few in number, where the tribal claimants received no compensation for their lands. The value stage is probably the most important adjudication for two reasons:

- (1) It settles the question of liability of the United States one way or the other, and if the United States is found liable, the award,
- (2) must be high enough to overcome the allowable offsets after liability has been established, if the Indians are to recover anything at all.

Attached hereto is a list of cases growing out of "treaties" or statutes of the United States which have been filed with the Commission.

Mr. WATKINS. Another matter which should be of considerable interest to members of the Congress is the fact that in carrying out its responsibilities the Commission has to work in cooperation with several Government departments, one court and possibly the Supreme Court, the Indian Subcommittees and Interior Committees of the Senate and House and the Appropriation Committees of both Houses of Congress. I think it will be helpful to look at some of the governmental entities involved directly and indirectly in the processing of an Indian claim against the United States.

Incidentally, I have not exhausted in that first statement the list of those with whom we have to cooperate. I think I should make it clear that unless we do get that cooperation, we cannot succeed,

because if they do not perform their part, it is almost impossible to go on with the work.

DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS

While in theory at least, an Indian tribe, band, or identifiable group may freely choose its own attorney, the written contract between it and its attorney must be approved by the Secretary of the Interior before the attorney can begin his work. These contracts are usually limited in time to 10 years. They can be renewed under the same procedure. A claim cannot be dismissed or compromised by the Indian's attorney without the consent of the Secretary.

Expert witnesses' contracts with Indians must be in writing and approved by the Secretary, and their fees are paid out of Indian funds or loans on deposit with the United States but largely under the final control of the Secretary.

In the matter of Indians' approval of compromise settlements, under the Commission's rules the Indian Bureau has some important functions to perform. In cases where the Indians are in the identifiable group category such as existed in the celebrated "California case" settlement it was the responsibility of the Bureau to arrange for and supervise, in full cooperation with the Indians, a series of meetings in various cities in California where the Indians could be fully informed and advised by their attorneys with respect to the terms of the compromise settlement. And then finally, the Indians were to cast their ballots at each of these meetings on the question of approval or disapproval. Even in the smallest compromise settlements from the standpoint of the size of the cash award and the number of Indians involved, this general procedure is followed so the Bureau has important responsibilities to perform. And may I, parenthetically, say that the services rendered and the cooperation given has not only been very helpful, but of the highest order. And it should also be said that there has been no evidence that the Bureau personnel has ever attempted to influence the Indians to vote to accept or reject the proposed settlements.

As a matter of practice the Commission sends to the Indian Bureau a copy of the Indian attorney's claim for expenses for its comment.

We have to pass on the attorney's expenses which could be allowable in these cases, and we always, as I point out here, at least give the Indian Bureau an opportunity to check the claim.

In some cases the Indian Bureau has found that individual Indians claim they have advanced money to the attorneys to help pay expenses, and the attorney, it is claimed, is asking the Commission to repay him out of the judgment awarded, without making any deductions for the money advanced. There is a case now pending which presents such a situation. We may have to send a Commissioner and a staff member to hold hearings on this claim and dispute between the warring factions of Indians which have intruded themselves into the expense claim situation. So there are many people in the Interior Department, beginning with the Secretary, who have some function to perform in claims matters.

THE DEPARTMENT OF JUSTICE

Justice is charged with the defense of the United States against the Indian claims. All defenses are available except laches and the statute of limitations. The Claims Act provides for the Indian's "day in court." Justice Department attorneys take their tasks seriously and each claim is thoroughly analyzed and defenses are set up where the facts and the law justify legal opposition.

Just how many supervisors, attorneys, secretaries, experts, et cetera, are engaged in the Indian Claims Section of Justice the Commission has no means of knowing. But there must be a considerable number. In the matter of a writ of certiorari to the Supreme Court we are advised that the Solicitors Office must approve such a move. It is understood that the Solicitor has a considerable staff which aids him in carrying out his duties.

GENERAL ACCOUNTING OFFICE AND GENERAL SERVICES ADMINISTRATION, INDIAN CLAIMS SECTION

In the last paragraph of section 2 of the Claims Act, it is provided that the Commission shall make appropriate deductions for all payments made by the United States on the claims and for other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U.S.C. sec. 250) and also for certain gratuities which under special circumstances may also be offset against any money judgment made to Indian claimants.

In connection with this subject it should also be remembered that most of the takings of lands by the United States from Indians has been by treaty or, in later years, by contract with Indians which had to be approved by both Houses of Congress.

The Indian treaties and contracts with Indians approved by Congress are in the National Archives for the most part. Very few cases can be adjudicated without the services of those who search the records in the Archives.

May I mention here, at this point, that the Department of Justice is charged, with, of course, setting up all the defenses and making any claims for offsets that are allowable. No progress can be made with offsets without getting the information from Archives, and if the section has not secured that information the proceedings will have to be held up until the information is supplied.

Now, it has a big job—I realize that. It was of course almost impossible to predict when the work started just when the cases would come to trial or which ones would be first. Someone had to be more or less in charge of the order in which investigations would be made. The Justice Department has fixed the order in which the claims would be audited.

Mr. Campbell, who was the General Accounting Office Comptroller at the time, stated he had between 60 and 80 people working in the Indian Claims Section and figuring salaries and general overhead the cost of the Section ran about a million dollars a year. That is something most people have never heard about—the immense task they had to perform.

When it comes to these accountings for funds appropriated by Congress, to see whether or not the Indians had a fair deal in land

cession claims, whether somewhere along the line the Government employees failed to get the money to them—that is a big job, and absolutely necessary to the progress of adjudication.

There are also a considerable number of general accounting claims filed by Indians with the Commission. The only evidence available for these cases is in the National Archives.

For many years prior to the creation of the Indian Claims Commission the Indian Claims Section of the GAO had been working on this material for use in the Court of Claims in Indian claims determined by the court under the various jurisdictional acts. This activity has now been transferred to the General Services Administration.

I think their representative will be here to testify today.

THE CONGRESS

Since the Commission is a legislative judicial arm of the Congress, organized to process these Indian claims, the relationship between the Commission and the Congress is a very close one. The Commission finds as a matter of practice that it is required to report frequently to the Congress through the Subcommittees on Indian Affairs of the Senate and House. We must also go before the Appropriation Committees of both Houses to get approval of our request for funds to carry out the work of the Commission.

When a final judgment has been entered in favor of any Indian claimant the Commission is required to report to the Congress the entry of the final judgment. This means not only the judgments in which an award is made to the Indian claimants, but also we must report all of the cases which are adverse to the Indians. These reports of awards are authority for the Congress to appropriate money under sections 21 and 22 of the Claims Act.

We have found as a matter of fact that a practice has grown up with attorneys representing Indians who are receiving an award, to come and get a certified copy of the judgment and then take it to the Treasury where it would probably be included in an estimate of appropriations to be sent to the Bureau of the Budget and by the Bureau to Congress.

We are convinced that this last method is not the proper one under the law. We found, as a matter of fact, that a large number of final judgments made by the Commission had not been reported to the Congress as the law requires; but gradually we are taking care of this situation and we will soon have all of these reported. So the law will finally be complied with.

As more and more awards are made to Indian claimants more and more interest is generated among other Indian groups not receiving awards but who have claims before the Commission. They want to know why their cases have not been adjudicated as early as these others. The claims were all filed about the same time, and they cannot understand one tribe getting a large award, and why theirs has not been taken care of also.

This situation has brought numerous requests from members of Congress to the Commission for reports on various Indian claims. For instance, not long ago we received a request for a report on the status of some 90 dockets. Naturally this required considerable

research and effort on the part of the Commission to furnish such a report. However, we promptly try to answer all congressional requests.

BUREAU OF THE BUDGET

It is necessary for the Commission to present its budget needs to the Bureau to secure its approval. In the event of legislation with respect to the activities of the Commission, the Commission is also required to answer inquiries from the Bureau of the Budget.

COURT OF CLAIMS (AND POSSIBLY THE SUPREME COURT)

All final judgments and interlocutory orders with respect to liability are appealable to the Court of Claims. Appeals are comparatively easy to take, so many cases are appealed. Appeal procedure from the time one is begun in the Commission to the time the court hands down its opinion is very complicated and has many built-in delays which are time consuming.

Even after the court hears the appeal and issues its opinion there are many moves a party can make in order to get a review by the Supreme Court. This means more delay, so that from the time moves are made in the Commission in preparation for an appeal, until all moves following the issuances of the court's decision to try and get the case reviewed by the Supreme Court are made, nearly 2 years, on an average, have expired. And if the Commission is reversed, then, of course, more proceedings are necessary to carry out the court's orders.

I had an expert lawyer trying to simplify these procedures so a layman could understand them. He started out by reading all of the rules on appeals of the Court of Claims and the Supreme Court and the Commission. He thought he would write it up in that fashion.

I said, "I am having a rough time understanding the appellate procedure, and I have had to live with it a long time."

Incidentally, we gave up, and hence this statement is a very general summary. If anybody wants to go into the rules, they can do so. Probably altogether it would take about 2 years on the average to get a claim through all appellate procedure and back in the hands of the Commission for further action.

For the most part we have been able to work in harmony with the various departments, the court, and with Congress over the past 6 years and we have taken some definite steps forward to expedite the adjudication of these claims. One of our most significant accomplishments was in the field of compromise settlements.

COMPROMISE SETTLEMENTS

Prior to 1960 the matter of compromise settlements hadn't developed to the point where a definite program had been outlined, except to follow the practice in the Court of Claims in the matter of Indian claims settlements.

I came on the Commission in August 1959. Shortly thereafter, the attorneys in dockets Nos. 225-A, 225-B, 225-C, and 225-D came to the Commission with a stipulation and final judgment for the Commissioners to sign. I was confronted with the request to sign the judgment immediately. I raised the question of procedure with re-

spect to compromises and suggested to my colleagues that a definite procedure should be set up whereby the Indians would have an opportunity to know about the proposed settlement and also have their wishes known with respect to whether or not the settlement should be approved. After some discussion I was assigned to the case and prepared a suggested compromise procedure. The attorneys were advised that they should follow the procedure suggested. Some of the leading Indian attorneys were somewhat indignant that this procedure had been adopted. They said they thought we were penalizing the lawyers.

It was claimed that even in the big *Ute* case, which was settled by compromise in the Court of Claims, that the signatures of the contract attorney and the Assistant Attorney General were all that were required on the compromise stipulation. Nevertheless, the Commission insisted that compromise settlements follow the procedure outlined in docket 225-A, B, C, and D, which became known as the "Omaha rule."

In 1941 when the Indian claims legislation was before the Congress there was some fear, because of the long and unfortunate history of Indian claims, that no matter how many times the claims were adjudicated they would never be settled permanently. This fear was expressed at that time by President Franklin D. Roosevelt in a letter to Secretary of the Interior, Harold Ickes.

Said President Roosevelt:

If Indian claims could be disposed of with finality through the establishment of an Indian Claims Commission, my attitude might be somewhat different. The past history, however, of these claims demonstrates the futility of any hope that this purpose would be thus accomplished. Final action by the Claims Commission would be no bar to the representation of the claim to the Congress by the dissatisfied Indians or their attorneys.

Senator BURDICK. Would you elaborate on that? If it is an adjudication and it is accepted, is that not a bar to future litigation?

Mr. WATKINS. I don't get just what you mean.

Senator BURDICK. You read from the statement apparently made by President Roosevelt, and then you commented that after the claim has been adjudicated by the Claims Commission and the consideration paid, it isn't a settlement.

Mr. WATKINS. That is supposed to be a settlement; yes.

Senator BURDICK. Isn't it in law?

Mr. WATKINS. No, I don't think—it does not prevent them from coming back again if the Indians did not succeed.

Senator BURDICK. I understand that. But do you know anybody who has come back successfully?

Mr. WATKINS. They haven't had time yet.

Yes; I do know some. A lot of these claims once upon a time had been before the Congress. Some of the claims we now have are back again. And some claims in the Court of Claims that were turned down for various reasons, have, of course, come before us again. None of these claims had been approved.

But I think President Roosevelt had a point.

Senator BURDICK. I mean if our machinery does not bring a complete adjudication to a client, what good is the machinery?

Mr. WATKINS. I want to point out that we tried to make it that way, in the matter of compromise settlements. I think you will get

the point and see why we laid down a special rule for compromise settlements.

Senator MCGOVERN. On that point—as long as that has been opened up—is there any case or any considerable number of cases where the Commission has made a ruling, where it has been appealed to the Court of Claims, where the Court of Claims has reached a different decision on it?

Mr. WATKINS. You mean between us and them? That happens frequently. Of course, they may have different views. They are supposed to review matters of law. We sometimes think they try the cases de novo on facts as well as law.

Senator MCGOVERN. They have overruled you in numerous cases?

Mr. WATKINS. Yes; and they send the case back and tell us to start over again in some respect. A lot of cases I could go into that would be very interesting. I am going to mention one. It's the *Sioux* case. An old lawyer by the name of Case, up in one of the Dakotas, who had been attorney for the Sioux Indians for many years, prosecuted it to a conclusion before the Commission. The Commission denied the claim. He appealed to the Court of Claims. The Court of Claims affirmed the decision of the Commission. Mr. Case sought certiorari to the Supreme Court. But certiorari was denied. Shortly thereafter Mr. Case died.

Well, some other attorney was employed by the Indians who went to the Court of Claims and convinced it the case ought to be reopened, so the court sent it back to the Indian Claims Commission for further action. It got there before I came on the Commission. And that case is before the Commission again for trial on its merits.

Now, if it had been white people's litigation, they would have been through, absolutely through.

In the *Omaha Tribe of Nebraska v. United States* (8 Ind. Cl. Comm. 392, 416-419, Feb. 11, 1960) the Commission outlined the following steps and requirements which should be followed in the matter of compromise settlements.

May I suggest to you in this particular case, the *Omaha* case, there was a part of the petition which set forth the U.S. Indian Bureau people—or the Government representatives at the time this took place—actually set up a bogus chieftain of their choosing and made a treaty with him, and ignored the real Indian chief. And that was one of the grounds for relief. So you can see why we were alerted by this particular case.

Now, the Commission outlined these steps and requirements which should be followed in the matter of compromise settlements. Ordinarily I would not read all of this. But you gentlemen are men who want to understand exactly what we are doing and why we are doing it.

Now, on the part of the petitioners—we said the petitioners had to do this:

The original compromise agreement should be signed by the Tribal Council Chairman or other officials properly designated to do so, by individual petitioners who are acting in a representative capacity, by all attorneys whose contracts of representation with petitioners have been approved by the Secretary of Interior and who have a contingent interest for attorney fees in the compromise settlement. Signed duplicates of the original agreements by individual petitioners and attorneys, and officials of organized tribes may be substituted as evidence of approval.

When the petitioners are all individuals acting in a representative capacity, and one or more of them become unable to act, either by death or for other reasons, then upon proper application the Commission will allow the substitution

of new petitioners who have been properly nominated by the Indian tribe involved. In the event one individual is the petitioner in a representative capacity, these procedures may be modified to meet that situation.

Deceased attorneys of record should be represented by their duly appointed legal representatives. Surviving attorneys of record should anticipate the necessity of meeting this requirement either before negotiations for settlement are begun or soon thereafter. This requirement should not work a hardship because distributions of the attorney fees and allowable expenses in any event are ordinarily paid only to the estate of the deceased attorney through the legal representative.

Now, what is to be done on the part of the defendant, the United States?

Compromise agreement should be signed by the Attorney General or someone acting in his behalf.

Other requirements were as follows:

Filing with the Commission a joint motion of the parties together with the original compromise settlement, praying for the approval of the compromise and for the setting of a date for hearing the motion.

On the date set an open hearing will be held by the Commission.

At the hearing both oral and documentary evidence will be received by the Commission.

The petitioners should present as witnesses: If an organized tribe is appearing as petitioner, the Tribal Chairman, the Secretary of the Tribe or Tribal Council, and in addition, any other Tribal members the petitioners desire to have testify. If petitioners are individual Tribal members who appear in behalf of the tribe, at least two should attend as witnesses.

The Commission will require evidence from these witnesses of what has been done by them or the attorneys for petitioners to acquaint tribal members with the provisions of the compromise agreement. Other appropriate information may be required.

The attorneys for petitioners and the defendant will be required to make appropriate statements with respect to the settlement.

Documentary evidence required will consist of resolutions from both the Tribe and Tribal Council approving the proposed compromise settlement; and authorizing their Chairman or other officials to sign and execute the compromise in their behalf. All proceedings connected with the calling and holding of the meetings of the Tribe and the Tribal Council shall be fully authenticated, as shall be the signatures of the necessary officials signing the resolutions and the compromise agreement.

A letter of approval of the Compromise Agreement signed by the Secretary of the Interior or by someone duly authorized to act for him is required.

The same procedures should be followed with respect to compromise of offsets when sums involved are substantial.

The foregoing outlined steps and requirements seem to be basic and necessary to carry out fully the purpose of the Act, but unusual and unexpected circumstances may exist, not anticipated at this time, which conceivably could cause undue hardships to the parties to a compromise agreement, if these procedures were rigidly enforced. If any such situations should occur, the Commission will hear counsel for the parties with respect to any modifications that may properly be allowed.

There was some opposition to the compromise settlement procedure in the beginning. I think it will be conceded now that the big consolidated *California* case could never have been settled by compromise without using the procedures adopted in the Omaha case. Even with that procedure which was followed carefully, a small minority of Indians tried to upset the settlement both in the courts and in Congress. Melvin Belli, a well known California lawyer, tried to avoid the settlement in the Federal district courts in San Francisco, in the Court of Claims, and applied to the Supreme Court for a writ of mandamus to compel the Claims Commission to allow him to perfect an appeal to the Court of Claims. He met defeat in all the Federal courts. The settlement withstood all attacks. Experts testified before the Commission that except for the compromise settlement that

case would have taken another 15 years to have fought it through to conclusion.

I insist, and I think I can maintain it successfully, that the procedure with respect to these Indian claims that are settled by compromise, giving the Indians a final chance to say whether they disapprove or approve and see that it is done properly, is one step that will contribute to the finality of these cases, and they will not be back again. Otherwise I think President Roosevelt could be absolutely right.

Senator BURDICK. Let's pursue that.

Mr. WATKINS, are you telling the committee that after a claim has been adjudicated by the Claims Commission, it then goes through all the appellate courts that are available to it, the Court of Claims, the circuit court, the Supreme Court, and in the end, when they have exhausted the legal remedies on appeal, the award is confirmed. You mean that does not bring a final adjudication?

Mr. WATKINS. Yes. But we are talking about compromise, that means by the agreement of the parties, not by the judgment of the Commission in its ordinary meaning.

Senator BURDICK. The legal machinery does permit you to settle a case?

Mr. WATKINS. Yes, indeed.

Senator BURDICK. Now, if you go to a compromise, is that based upon rules the Commission has set up?

Mr. WATKINS. The Commission has set up, yes. We had the power under the act.

Senator BURDICK. In the same case there, where you have reached a compromise with the party—assume the parties are properly represented by lawyers, and there has been acceptance by a majority of the tribe or whatever it states in your rules—has that determination ever been upset after the appellate procedure has been exhausted?

Mr. WATKINS. You mean where we entered a final order approving the compromise?

Senator BURDICK. Yes.

Mr. WATKINS. No. I believe when the Indians take part in approving the settlement that these compromises will never be upset.

Senator BURDICK. At least there is some finality.

Mr. WATKINS. Yes. But this is a matter of compromise. We think the greatest hope in getting this work done more rapidly is in the field of compromise. There is no reason, after we have made decisions on a number of cases in an area and after the matter of title has been decided, why they cannot settle other cases in the same area by compromise. And we have urged that.

Senator BURDICK. Either by adjudication that is made by you in your judicial capacity, or by compromise, we can get finality.

Mr. WATKINS. That is right. This is the only loophole left. Under our procedure on compromise we won't have these cases back again. I do not like to prove President Roosevelt wrong. I did not always agree with him when he was President. But at the same time I think he made a point. And when I read that, it rang a bell with me—because I was raised in Indian country, and I know something about how they feel—that they have been misrepresented at times by their lawyers.

We had one case before us in which they—the Indians—admitted that they had asked the United States to sell certain property belonging

to these same Indians. The United States, through the Indian Bureau, sold the land. They found out afterward it was not a very good deal. So now they sue, because the United States should not have listened to them, shouldn't have done as they wanted. And so we have to determine that case. I do not know just what the decision will be. But here they are. The United States did what they wanted it to do.

But I think the courts will hold, because of their special background, lack of experience and so on, as a primitive people, that you have to use every precaution in dealing with them.

Senator BURDICK. I understand that.

Isn't there some way that you can use notice by publication, or give adequate notice to all parties that would buttress this—

Mr. WATKINS. That is exactly what we require them to do—put a notice of a meeting—they hold a tribal meeting under their rules and bylaws, they advertise over the radio, over television, run it in the papers, send out personal notices to every member of the tribe that they know anything about.

We want to show that these Indians really have had their day in court. And finally—when they get down to having the court make the decision—if their attorneys were going to make the decision on compromise alone, we say to it that the client had a right to say something about it.

As I say, in this *California* case I am sure Congress would have upset that settlement if their attorneys had just attached their names to the compromise stipulation and the Department of Justice had attached theirs, and let the settlement go through on that basis. That is what would have happened ordinarily. That is what some of the attorneys were kicking about, that we would not permit them to settle a case on a mere attorney's stipulation. But I think we all realize now it was necessary to be sure we had Indian approval. We want this job finished. It is one thing to do a job, and it is another thing to get it done finally. And if you don't get it done finally, you have not made any progress.

I became a member of the Commission in August of 1959. The following July 1 was appointed Chief Commissioner to fill the vacancy created by the resignation of Chief Commissioner Witt. Soon after I became a member I had a conversation with Commissioner Witt about the policy of the Commission. He inquired as to what the feeling was in Congress with respect to the work of the Commission. I told him that Members of the Congress who had large groups of Indians in their States and districts were very much concerned about the slow rate with which the Commission was disposing of these cases. They felt it was proceeding entirely too slow. He said in the beginning he had felt the same way about it and had talked to his sponsor, the late Senator Tom Connally of Texas, about the matter. He said the Senator told him not to worry about it, that if the judgments were speeded up it would mean the United States would have to borrow money to pay them and then pay interest on the borrowed money, so that it would be better to let nature take its course.

The hearing calendar showed a number of cases set for September and October of 1959, and I looked forward to an interesting experience in these hearings, but I soon learned that in most of the cases the hearings had been taken off the calendar.

I said, "Who takes them off?" Well, they just called up and said they could not be there. And they all disappeared. Upon checking the matter I found that cases were not set according to any program, but were set only when the Indian lawyers and the lawyers for the Justice Department could agree on a date. They would then notify the Commission they wanted a hearing set.

When I became Chief Commissioner—and the Chief Commissioner is responsible for many of these things, has almost the sole responsibility of initiating actions, except that on most of them he has to get the approval of his co-Commissioners—when I became Chief Commissioner, I immediately began planning a regular calendar which would be controlled by the Commission. Commissioner Holt, who was the holdover Commissioner, and Commissioner Scott, who was newly appointed, joined with me in planning a calendar conference in which all of the attorneys of record for the Indians and the attorneys for the United States would be invited to meet with the Commission and help set the calendar for a 3-year period. I had only been Chief Commissioner 3 months but at this conference I stated:

This conference is the first step in a program adopted by the Commission to accelerate the adjudication of claims now pending. It involves the setting of cases for trial over a period of three years, spaced, we hope, at intervals which will permit sufficient time to properly present the claims to the Commission and allow time for the Commission to prepare and enter Findings, Opinions, and Final Judgments.

Because of these and other time-consuming matters encountered in carrying out the unprecedented program of providing a day in court for the consideration of the long-standing claims of Indians for grievances against the United States, it becomes imperative that every effort should be made to expedite, within reason, the judicial process provided for the determination of these claims and grievances. If this is not done, the well intentioned purposes of the Indian Claims Commissioner Act will be seriously weakened if not entirely thwarted.

Our experience demonstrates that the long delay in the adoption of the act authorizing adjudication of Indian claims has made it extremely costly and difficult to carry out the program. More delay will add to the burden to be carried and will give new life to the oft quoted legal maxim, 'that justice delayed is often justice denied.'

As I read the committee's invitation, especially the letter sent by Senator Jackson to me, it looked like the Indian Commission was on trial. So I am just trying to point out some of the things we tried to do away ahead of what Congress is now suggesting.

To continue with quotes from my statement to the conference:

Our proposal for a program to try to meet and solve this situation within a reasonable period of time embraces the following:

1. A continuous three year schedule of hearings on the merits of the claims at the average rate of 30 per year; this means at the end of the first year period, another year's hearings will be scheduled and this will be followed until all cases have been disposed of.

2. No continuances will be granted except for extreme emergencies. To carry out this program a practice of having cases postponed for the convenience of witnesses, counsel or the parties, must necessarily be abandoned.

In one case I counted some 33 continuances or extensions of time.

Senator BURDICK. When the time for filing a claim expired—what year was that?

Mr. WATKINS. 1951. They had 5 years after the enactment of the act.

Senator BURDICK. How many claims were filed by the expiration date, in number?

Mr. WATKINS. I think it was 370 docket numbers. I mean overall claims. And then they were broken down later into additional docket numbers.

Senator BURDICK. How many docket numbers does 370 make?

Mr. WATKINS. Well, it comes to some 590.

Senator BURDICK. 590?

Mr. WATKINS. Don't hold me too closely to this.

(Following the hearing, Commissioner Watkins sent the following clarifying information:)

INDIAN CLAIMS COMMISSION,
Washington, D.C., February 27, 1967.

HON. HENRY M. JACKSON,
Chairman, Interior and Insular Affairs Committee,
Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: At the Senate Hearing on S. 307 held on February 15, I was asked the question with respect to the total number of Dockets filed with the Commission. I hesitated in answering because I couldn't remember the number which was arrived at by Commissioner Holt and the staff members who had been checking this item.

Just before I left for the hearing our files were being checked with those of the Indian Bureau. The Bureau is required to keep records of the Indian attorneys and the docket numbers they are prosecuting. After a thorough check into this matter I report that the total number of dockets filed is 583, subject to the following condition:

In Docket 326 it was ordered that the five claims alleged in that docket number be separately stated in 5 sub-dockets and sub-dockets were set up for this purpose. There was no date set when this should be done and the order has not been carried out by petitioners. However they claim they will eventually file these separate dockets when the GSA accountants finish their job on these claims.

Sub-dockets A, B, C, D, and G, were counted in the total of 583, but if it should be ruled that they should not be counted, then the total number of dockets filed would be 578.

Respectfully submitted.

ARTHUR V. WATKINS,
Chief Commissioner.

Senator BURDICK. How many of those 590 have been acted upon in some manner by the Commission?

Mr. WATKINS. We have answered a letter, Senator—

Senator BURDICK. I don't consider that acting upon it—letters.

Mr. WATKINS (continuing). Written by this committee.

Senator BURDICK. I mean parties that got in before the Commission, as we do in a lawsuit. How many of the 590 that came that way have been acted upon?

Mr. WATKINS. Well, I would have to take the schedules of the filings and the whole history of it.

Senator BURDICK. I know.

Mr. WATKINS. If you will let me go ahead just a moment, I will say that Senator Jackson asked five specific questions about our activities—about numbers and all that sort of thing. It is all set forth in my answer. And I don't pretend to remember all of it.

Senator BURDICK. All I am asking is how many of these cases have been acted upon judicially at some stage.

Mr. WATKINS. It will all be shown there.

Senator BURDICK. Would it be half of them?

Mr. WATKINS. Yes, more than half of them—at some stage.

Senator BURDICK. Would it be fair to say—

Mr. WATKINS. Three-fourths.

Senator BURDICK. That would leave 150 with no action at all. Would that be a fair statement?

Mr. WATKINS. I don't think that would be quite fair. Some of the 150 would be acted upon to some extent.

Senator BURDICK. I mean judicially, not answering letters of inquiry, but at least have had a hearing?

Mr. WATKINS. The answers I gave Senator Jackson were taken from our records.

Senator BURDICK. But I don't have the letter.

Senator MCGOVERN. Mr. Watkins, as you know, we did not get that report until late last evening, and I don't think any of the members of the committee have had a chance to read it.

Mr. WATKINS. We didn't have much time to get it up. We had an enormous job.

Senator BURDICK. You look at that and tell me the numbers.

Mr. WATKINS. I can read it to you.

Senator BURDICK. We have to decide whether we are going to continue the Commission and for how long we are going to continue it. It is important to know how much work is left.

Mr. WATKINS. I really would like to finish my statement, if I may, and then come back to this.

Senator BURDICK. I am sorry, but I have other commitments, too.

Mr. WATKINS. I just would not venture an estimate. Mr. Holt, would you please come up here.

Mr. HOLT. There are about 42 that show in our report there has been no action on at all.

Senator BURDICK. You mean to say that the balance of 550 have been judicially acted upon in some way?

Mr. HOLT. There has been something done.

Senator BURDICK. I don't mean something. It has been before the Commission in some way in a formal hearing of some kind?

Mr. HOLT. I would say some type. The 42 that I mentioned are ones that have been filed and no setting has been made.

Senator BURDICK. It is your testimony that approximately 550 have been before the Commission on a hearing of some kind.

Mr. WATKINS. That would sound about right.

The reason I don't like to trust my memory—I would be frank to admit my memory is not as good as it used to be. I used to remember too many things. But when you get around 80, Senator, you cannot always remember as easily as some of these other younger fellows.

Senator BURDICK. It is important to us, as to how long we are going to continue the Commission.

Mr. WATKINS. We have the answers right here as to nearly everything you are asking for.

Senator BURDICK. Which I saw now for the first time today.

Mr. WATKINS. I can't help that, sir.

Senator BURDICK. It got in here last night.

Mr. WATKINS. We didn't have enough time to get it ready.

Senator BURDICK. Maybe you ought to come back after we all have a chance to read it.

Mr. WATKINS. I did look it over.

Senator BURDICK. Based upon your projection now, you handle 30 cases a year, you have 42 left, then you should be able to close those out in 2 years.

Mr. WATKINS. That is too optimistic, sir.

Let me tell you something.

I thought when we held this calendar conference for setting cases, that standing room would be at a premium—the Indian attorneys would be there ready to have their cases put on the hearing calendar. That did not happen.

Senator BURDICK. Are the Indians at fault?

Mr. WATKINS. Well, their attorneys mostly.

Senator BURDICK. The Indian attorneys?

Mr. WATKINS. Indian attorneys to a certain extent.

Senator BURDICK. Have you set these 30 cases for trial?

Mr. WATKINS. This was our projection of what we said we would do. There were more than that actually set, but it was over a 3-year period. Then we had another 3-year period set at the end of the first 3 years, and still another 3-year period recently. The invitation went to every contract attorney for Indian tribes. They are the ones who have the initiative, it is up to them—they wanted their day in court. I am not blaming the Indians themselves.

Now, some of the attorneys are pushing to get their cases taken care of. But there is a group of attorneys who have not done much pushing.

Senator BURDICK. Getting back to my question—if you set 30 cases for trial this year, or in the calendar year, 12 months, and on the first of July you try one, the first of August you try one—what happens—don't you try it?

Mr. WATKINS. We try one stage of it, maybe. We hold a hearing. But they have to brief it, and we don't make a decision at the time we hold a hearing.

Senator BURDICK. I know. But can't you have 30 hearings in a calendar year?

Mr. WATKINS. Yes, we could have. And that is what I have insisted on. I think we are going too slowly.

Senator BURDICK. You are the Commission; why don't we do it?

Mr. WATKINS. There will be reasons shown here.

Senator BURDICK. I would like to know what it is.

Mr. WATKINS. I cannot make it all in one statement, sir.

Senator BURDICK. All right.

Mr. WATKINS. There are plenty of reasons. I agree. I think this adjudication ought to move faster. And I was doing my level best right there and then when I first came on the Commission to get it moving faster.

Senator MCGOVERN. Why don't we let Mr. Watkins finish his statement. I would like to pursue this line of questioning, to see if we can isolate what the factors are that are responsible for the delays.

I was talking with a very knowledgeable man here the other day who has worked in this field for a long time and I asked him what he thought were the principal reasons for the long period of time that it has taken to dispose of these claims and he said he thought there were three reasons: the Indian attorneys, the Government attorneys, and the Indian Commission. And after you finish your statement I think we ought to pursue each of those three possibilities and see if we can come to some conclusion as to where the principal problem is. Maybe those things can be corrected.

Mr. WATKINS. You don't want to leave out all the other Government agencies I mentioned, including the Congress.

Senator McGOVERN. No. These are the major ones. If Congress is at fault, we certainly want to know that most of all. If there is some action congress can take to speed action on these claims I think we will do it because we are primarily concerned about the welfare of the Indians.

So why don't you finish your statement.

Mr. WATKINS. That is what I would like to do.

When I mentioned I was 80 years of age—I want to mention, I did not set a precedent. My predecessor, Governor Witt, was 86 when he left. So we seem to be like the Indians—we have to live a long time, too.

I continue to read part of my statement to the first calendar conference:

3. Strict observance of Section 23 of the Commission's Rules of Procedure as amended, shall be strictly enforced. Violations of this rule would ordinarily result in the continuance of a Docket set for trial. The Commission will expect the full cooperation of the parties and their counsel in making this section effective.

Note: Since petitioners are the moving parties they should set the example of strict compliance in filing and serving of exhibits. Defendant, it is expected, will follow their example with strict compliance. We are sure our confidence will not be misplaced.

We also advised the attorneys there must be a shortening of the time between the submission of evidence (end of trial) and the presentation of proposed findings and briefs, and to help meet the situation the Commission would increase its facilities and staff. This would be necessary if we were to carry the increased load.

We did increase our facilities. We moved out of the place we were in. We got good hearing rooms. We got almost three times the space we had been occupying before, when we were working under situations that certainly handicapped every person working there. We got that taken care of in November, 1960. I wasn't losing any time in getting things fixed so we could move ahead.

Then we also put more lawyers on, and there were some lawyers who did not fit into the program too well, and they could do other things better, so they are not with us any more.

A 3-year calendar was set at that time. It soon developed that a practice had been indulged in by Indian attorneys of employing expert witnesses needed in the preparation and presentation of these claims to the Commission on what is popularly known as a contingent fee basis. This matter was brought to a head in the well-known Crow case in which the Commission made it plain that the witnesses would not be barred from testifying, but the Commission would be compelled to weigh their testimony in the light of the possible financial interest they might have in the outcome of the case. In other words the same principle would prevail in weighing the testimony of these witnesses as would be the rule in a jury case where the trial court instructs the jurors that they must weigh the evidence in the light of the interest, or lack of interest, the witness might have in the outcome of the case. We were not advised just how many Indian groups had employed witnesses on this basis but it appeared that there was a considerable number.

In light of this evidence it appeared to me that there was a serious handicap placed on the Indians in the preparation and presentation of their cases. Most of the Indian groups were without funds with

which to hire their historians, anthropologists, ethnologists, and expert appraisers and I felt something should be done about it.

I presented the matter to the Indian subcommittees of the Senate and the House and legislation was introduced which in the end provided for a fund of \$900,000 to be a basis for a revolving loan fund which could be repaid out of judgments the Indians might receive. The House passed the bill promptly, but the Senate for some reason got the wrong understanding of the purpose of the bill. It took some time to clear up the situation in one of the policy committees of the Senate, but when it was cleared the bill passed. However it was about a year later, if I recall correctly, before the money was appropriated for the program.

This was one instance where, by making appropriation, the Congress could have stepped up the program. It was a situation that I think demanded immediate action. I may be pardoned for saying something about Congress. I went through the mill here, and I know what sometimes happens—you just cannot get things done when you want to get them done.

All I expect you folks to do is use the same charity to us as you would to your own shortcomings.

I am happy to report now that the program has been very successful even though it got off to a shaky start.

The second \$900,000 has been authorized so the Interior Department has ample funds, it is believed to honor all worthy applications.

I expect the Department of Interior people will explain just what has been done, but I want to say they have done a very good job. It took a while to work out the regulations—and it took some time to convince the Indians to borrow the money and pay some interest on it in order to get their cases going. They were expecting the lawyers to handle all this for them. So it was not an easy matter to get the program going.

Because of the situation I have just described there was a decided slump in carrying out the 3-year trial program. In fact in all the loans that have been made, I have noticed that the law firms which have been more or less specializing in Indian litigation have been the ones most active in securing loans. There have been few applications from attorneys who have very few Indian claims.

I notice one of those loans for a group of attorneys associated together run as high as \$300,000. And this is a terrific load that these men had to carry earlier in other cases which had been adjudicated prior to the adoption of the revolving loan program.

The committee will note in the report made by the Indian Bureau that there are some very large loans to Indian claimants who have been active before the Commission prior to the loan program.

It was fully expected, once the loans were made that the attorneys for the Indians would soon be in a position to present their cases, but I have noticed that in setting the second 3-year calendar and also the third 3-year calendar (which was set in July of 1966) that there has not been a big demand for trial dates from Indian attorneys. I cannot explain the situation, but that seems to be the fact.

The Government comes in and says, "We are able to try so many cases." At the last two conferences there have been many more cases the Government has been ready to try and wants to try, than the Indians have requested trial dates for.

I cannot understand it, because the Indians are the ones who should be interested in having their cases disposed of at earliest possible moment. They have been wanting all this done for years. I cannot understand why they don't push more on their attorneys to get busy.

Senator BURDICK. Who determines this continuance, the Indians or the Commission?

Mr. WATKINS. The Commission.

Senator BURDICK. Do you grant every continuance?

Mr. WATKINS. No; not always. We have been cutting them down. We don't have any more 35 continuances, like we had in the case I was telling you about.

Senator BURDICK. Thirty-five—in one case.

Mr. WATKINS. In one case.

Senator BURDICK. The Commission granted 35?

Mr. WATKINS. That is before I got there.

Senator BURDICK. Before or after, this is unusual, it seems to me.

Mr. WATKINS. I agree with you, Senator. And I was very much against it. I think Mr. Holt will bear me out in saying that I have been insisting all the time to hold them down to a shorter time. It is in the interests of these Indians to get this done. I want to get it done. I don't want to be connected with something at this time of my life that is not going to succeed.

Senator BURDICK. My complaints from the Indians have been their cases are not adjudicated fast enough.

Mr. WATKINS. If you go through the whole process, considering what they submit and how it is submitted, and what we have had to work with, I think we have done fairly well. And I think anyone will agree to that. But you have to see these Indian cases, and live with them a while to really understand how complicated they are, and how long and drawn out they can be, and oftentimes there are good reasons for dragging them out.

Let me tell you about one. In 1935 the Congress passed a jurisdictional act giving the Tlinglit Indians in Alaska the right to sue the United States in the Court of Claims. That was 1935. I think they had to renew that act before they really got started to work on it.

In the Court of Claims, the trial Commissioner has made his report on evaluation. Previously they had finished the title stage. But this is some 32 years later, and they have not finally determined what the value is.

If you take a look at the well known *Ute* cases, Mr. Wilkinson started to work on those in the 1930's, it went on many, many years. They are all nearly finished now—incidentally, with a total of nearly \$60 million in award. Most of this occurred in the Court of Claims. The Court of Claims has had many cases that came by jurisdictional acts. They know the difficulties with these Indian cases.

I spoke to the chief judge of the Court of Claims about this matter, and he said: "You will have to convince the Congress that it takes a while to take care of these cases; they are not the ordinary type of case."

Senator BURDICK. The delays in the appellate procedure are not your fault. But I say getting these cases adjudicated in your Commission is your responsibility. The delays that happen in the appellate court are not your fault.

Mr. WATKINS. For instance, the Indians come in and say: "We can't get our briefs in now, we want another 6 months, or 60 days."

If we say, "No; you cannot have it," and if we decide the case without their briefs and they should be defeated—if they set that up before the Court of Claims on appeal, I am just as certain as I can be the Court of Claims will send the case back for further hearing by the Commission.

Senator BURDICK. Have they done so?

Mr. WATKINS. They haven't done so. It hasn't got to that point.

Senator BURDICK. Let's find out.

Mr. WATKINS. It takes 2 years to get one up there and back and get the appeal settled.

Senator BURDICK. I cannot speak for the court, but I think they are going to treat this with reason, too. They don't want to continue it unreasonably.

Mr. WATKINS. What would you say about the *Tlingit* case up there that I mentioned earlier in his statement. The jurisdictional act was enacted in 1935.

Senator BURDICK. I know nothing about the case.

Mr. WATKINS. Well, I am calling it to your attention. There are a lot of cases that have lasted a long time in the Court of Claims.

Going back to my statement: In connection with this fact it should be kept in mind by the committee that the Indians wanted their day in court. That was the reason for the enactment of the Indian Claims Commission Act. The burden is on the Indians, through their lawyers, to take the initiative in preparing these cases and getting them tried by the Commission. The Justice Department represents the United States in its defense against these claims. Ordinarily a defendant who has no possibility of recovering on a counterclaim might hope that the claims would never be tried, and possibly would be justified in using any legitimate means in seeing that they did not come to trial. But it must be said to the credit of the Justice Department that it has taken the position that it will cooperate and has, at least since I have been connected with the Commission, been willing and prepared to proceed with many more cases than have the Indians' attorneys.

What I am saying about Indians' attorneys does not apply to the major portion of Indian attorneys, because they have been proceeding in advancing their claims to final judgment; and the progress that has been made has been made mostly in those cases where they have counsel who have had some Indian claims experience. They have organized to handle these cases, and they have the financial resources to go through a long period of time without a payday.

The Commission did increase its housing facilities in November of 1960. Individual rooms for attorneys, two hearing rooms and other needed space was acquired and furnished largely from existing surplus used furniture and carpets from GSA. Our legal staff was increased from six to nine and also there were some changes in legal personnel.

We have planned for a heavy increase in hearings. The Bureau of the Budget has approved our request for additional lawyers to assist the Commission in reviewing the voluminous evidence presented and in writing reports which can be used as the basis for the decisions which will be entered by the Commission.

In conclusion, let me point out that every one of the programs we undertook which I have mentioned have made a substantial contri-

bution to a healthy increase in claims finally disposed of in the little over 6 years I have been Chief Commissioner.

The things we have done have made progress. We have not succeeded 100 percent, but I think we have made important progress. But we can and should make greater progress.

Let me again emphasize that we are only one small group which cannot succeed at all unless there is the fullest cooperation with all the Federal agencies which I have named earlier in this statement. And again let me repeat that the initiative lies with the Indian claimants and their lawyers. We cannot make much progress without their cooperation.

I want to say, gentlemen, I have not mentioned S. 307, except in the very beginning. I am not commenting on S. 307 and its amendments. It is exactly the same as S. 3068, except that one date has been changed from 1969 to 1970.

The Commission made voluminous comments on S. 3068 in the 89th Congress. We believe it would be useless repetition to restate our views on the same subject.

But we do have a suggestion for an amendment to the Claims Act we think will help accelerate our work. We hope you will give it serious and sympathetic consideration.

Our suggestion is that clause 3 of section 2 of the Claims Act be amended by striking out the word "unconscionable" as it appears before the word "consideration" in the fourth line of said clause 3, and substituting in lieu thereof the word "inadequate". We made the same suggestion 6 months ago. I ask permission at this point to insert in the record a statement of our reasons for this suggested amendment.

Senator McGOVERN. Without objection.
(The statement referred to follows:)

AMENDMENT PROPOSED BY THE INDIAN CLAIMS COMMISSION TO THE INDIAN CLAIMS COMMISSION ACT OF 1946

In conjunction with this Commission's efforts to seek further means and methods of speeding up the adjudication process relative to those tribal claims still pending before the Commission, we believe the Subcommittee should give serious consideration to the following suggestion:

Without a doubt a great many of the tribes who have filed claims before the Commission seek to recover a judgment against the United States under the following provision of Section 2 of the Indian Claims Commission Act.

"SEC. 2. The Commission shall hear and determine the following claims against the United States * * * (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, *unconscionable consideration*, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; * * *" (emphasis supplied).

The question that has been confounding the Commission as a result of recent decisions of the Court of Claims is where in simple justice to a particular claimant do you draw the line between unconscionable consideration and a mere inadequacy of consideration. In the case of *Sioux Tribe of Indians, et al v. United States*, Appeal No. 4-55, C. Cls. decided November 7, 1956, the Court of Claims stated that unconscionable consideration "is that consideration which is so much less than the actual value of the property sold that the disparity shocks the conscience."

The Court has also acknowledged the fact that there is no exact formula upon which to measure this "disparity" between price and value. The Court has indicated, however, that this "disparity" must be "very gross." The Commission has had no difficulty in those cases where the disparity is indeed "very gross."

For example: If the tribal land is valued by the Commission at \$1.00 per acre

at the time it was taken by the United States from the Indians by purchase, and the total consideration flowing to the tribe amounts to 20 cents per acre, the Indians are recovering only $\frac{1}{4}$ th the true value of the land. Such disparity between price and actual value indicates an unconscionable consideration was paid to the Indians for the release of their lands.

The real problem, however, arises when the consideration approaches the area of fifty percent of the fair market value of the tribal lands as found by the Commission. In one case the Court of Claims agreed with the Commission "that payment of less than half the true value is unconscionable." (*Miami Tribe of Oklahoma, et al v. United States*, 150 C. Cls. 725)

In three cases, this Commission has denied liability on the part of the United States because we found that the consideration flowing to the Indians under the treaty or agreement by which they ceded their tribal lands was not unconscionable when compared with the then fair market value of the said tribal lands. In each instance the tribal claimant successfully appealed to the United States Court of Claims and the Commission was reversed. In the first case, *The Miami Tribe of Oklahoma, et al v. United States*, supra, the Commission determined that the Miami Tribe ceded tribal lands found by this Commission to have a fair market value of \$217,697.93, for which they received \$200,000 from the United States. The consideration consisted of a \$50,000 cash payment with the \$150,000 balance being paid out in 20 year installments at the rate of \$7500.00 per annum. Since the Indians received consideration in an amount equivalent to about 60 percent of the then fair market value, the Commission concluded that the disparity between the price paid and the then fair market value was not so shocking as to entitle the claimants to recover on the grounds that they had been paid an unconscionable consideration. The Court of Claims sustained the Commission's ultimate finding relative to the fair market value of the Miami land but reversed the Commission's finding that the Miami Indians had in fact received \$200,000 for the cession of their lands. The Court reasoned that, since part of the consideration, namely the \$150,000, was to be paid out over a twenty year period ($\$7500 \times 20 = \$150,000$), it had an actual capitalized value at the time of the cession considerably less than as stated. The Court explained its action as follows:

"* * * The payment of \$50,000 to be held at interest had a treaty-date cash value of \$50,000. But \$150,000 payable in twenty yearly installments of \$7,500 commencing six years after the treaty date had a treaty-date value of only \$71,974.23, which was the then present value of the right to receive such payments, on standard annuity tables, computed at a 5% interest rate. The treaty-date value of the consideration which the Miami Tribe received was therefore \$50,000 plus \$71,974.23, or \$121,974.23." (150 C. Cls. 725, 735)

Having done this, the Court went on to say:

"The Miami received \$121,974.23 for land which the Commission found to be worth \$317,697.93. This is unconscionable consideration. It is only 38% of the value of the land. It is true that there is no exact dividing line between what is unconscionable and what is not. The disparity between the price paid and the fair market value of the land must be very great. We think that the Commission was correct when it said in this case that payment of less than half the true value is unconscionable." (Supra, p. 736)

Two years later in the case of the *Pawnee Indian Tribe of Oklahoma, et al v. United States*, 157 C. Cls. 134, the Court reversed itself with respect to the capitalization of the twenty year annuity in the Miami case, on the grounds that such action,

* * * is tantamount to charging the United States with interest—in face of the well established rule that the United States is not liable for interest, in the absence of a contractual or statutory requirement to pay interest. (P. 138)

However, by this time the Miami tribe had secured its judgment which was satisfied by the defendant, so the court's ruling in the Pawnee case was of no consequence to these Indians, nor did it benefit the defendant.

In the case of the *Sac and Fox Indians of Oklahoma, et al v. United States*, Docket No. 220, 11 Ind. Cl. Comm. 5, 78 (reversed 167 C. Cls. 710 (1964)), the Commission denied recovery to the Sac and Fox petitioners on their claim for additional compensation for their reservation lands in Oklahoma ceded to the United States under the 1890 Jerome agreement (agreement of June 12, 1890, ratified Feb. 13, 1891, 26 Stat. 749), wherein the United States purchased said lands for roughly \$1.23 per acre. The Commission valued these as of the effective

date of the Jerome agreement at \$1.75 per acre, and denied recovery on the grounds that the consideration paid for said lands was not unconscionable under our Act. On appeal to the Court of Claims the Commission's finding on value was reversed, the Court concluding that the Sac and Fox lands in Oklahoma were worth at least \$3.00 per acre; hence the payment of \$1.23 per acre for these lands was unconscionable.

The most recent decision from the Court of Claims and the most far reaching as far as practically rendering nugatory any basis for denying a tribal claim founded on unconscionable consideration, is the decision in the case of the *Nez Perce Tribe of Indians v. United States*, appeal No. 5-64, decided July 15, 1966 (Docket No. 175-B, 13 Ind. Cl. Comm. 184).

In the *Nez Perce* case, this Commission found that under the agreement of May 1, 1893, ratified April 15, 1895, 28 Stat. 286, the Nez Perce tribe ceded its surplus reservation lands to the United States for \$2.97 per acre. The Commission fixed the fair market value of these lands as of the effective date of the above agreement at \$4.00 per acre, and denied recovery to the Nez Perce on the grounds that the disparity between price paid and the then fair market value of the Nez Perce lands did not make out a case of unconscionable consideration. On appeal the Court of Claims found that the Commission's finding that the land was worth \$4.00 per acre was supported by substantial evidence, but injected the observation that this \$4.00 value was indeed a minimum value and that the evidence in fact would support a higher value. The Court stated that the Commission might look to some higher unstated value in resolving the "unconscionable consideration" issue. The Court further observed that the total difference involved (\$566,045.77) was a substantial sum of 1894 and further that if such an amount had been able to draw interest the percentage discrepancy would have been even larger.

While the court's reasoning obviously avoids any strict adherence to a simple mathematical determination of the disparity needed to resolve the unconscionable consideration question, it seemingly could penalize those tribal claimants who possessed relatively small areas of land upon which they claim payment of an unconscionable consideration.

In any event, based upon the court's past performances, the Commission sees little prospect in the future of being sustained on appeal in the event it should rule in similar fashion on any of the now pending claims. Be that as it may, the Commission cannot in good conscience take umbrage with the court in reversing the Commission, except for the fact that Congress took the position it did, and the Commission has sought faithfully to follow the legislative will. The Court of Claims has made it abundantly clear that it apparently favors, as a matter of simple justice, payment to the Indian tribes in all cases where the consideration paid to said tribes for their land does not measure up to the then fair market value. As a strict matter of equity and not taking into consideration the strict terms of the Act with respect to "unconscionable" consideration, the Commission cannot find fault with that position. With this in mind, and the practical situation facing us, we recommend that Congress consider taking a position that hereafter those tribal claimants now before the Commission seeking additional compensation for the loss of their tribal lands be allowed recovery against the United States when there is any disparity between the consideration paid to the tribe for said tribal lands and the then actual fair market value. If the Congress believes that a change in the present policy is warranted, then the Commission specifically recommends that Section 2(b) of the Indian Claims Commission Act be amended by striking out the phrase "unconscionable consideration" and inserting in lieu thereof "inadequate consideration." An inadequate consideration would be simply any valuable consideration paid by the United States for tribal lands that is less than the fair market value of said lands as of the effective date of acquisition.

If this proposal is adopted the Commission envisions a more compelling reason and willingness on the part of some reluctant claimants to go forward more rapidly with their "unconscionable consideration" claims that they now consider borderline and of doubtful recovery. The Commission believes that while this proposition may promote more recoveries it should lessen time-consuming appeals to the Court of Claims with respect to this particular cause of action. This amendment should also promote a more favorable attitude toward a compromise settlement of these claims. We believe also that there could be a shorter period of time needed to prepare a case founded on mere inadequacy of consideration, while at the same time we find that more realistic land appraisals would be forthcoming from both sides, with expert opinions being buttressed more on facts and less upon advocacy. At present any wide disparity in expert opinion renders highly

suspect the validity of the expert witness' entire work in a particular case. Frequently the Commission in such situations is forced to give little or no weight to such expert opinion in resolving the fair market value question in these cases.

Mr. WATKINS. Now, that, gentlemen, is a statement of the overall picture, and I hope it will be of some help in understanding the peculiar type of work the Commission has performed, and what it is trying to do, and what it wants to do.

Frankly, I am not satisfied with the progress we are making, and I think maybe my colleagues feel I am unfair in that, because they think we are making good progress. But considering all of the factors, and the fact that you have to have all of these other departments of Government work with you, or you don't get anywhere, any one of them can block you. That all has to be taken into consideration, but even so we should make greater progress.

Senator MCGOVERN. Thank you very much, Mr. Watkins, for your statement, and your efforts to be helpful to the committee.

You state in the opening page of your statement that very few Members of the Congress, even those of many years' standing, have a working knowledge of the Commission and its operations. Of course, I have been hopeful that one of the things that can come out of these hearings is a better understanding on the part of the Congress of some of the problems you have, and also a better insight into the procedures that are being used.

I have been impressed with the way our committee and other committees of the Congress keep their legislative calendars, so that busy Members of the Congress can see with comparative ease just what the status is of every bill and every action of the committee. I know as a former Member of the Senate you are familiar with that procedure.

This is our calendar, dated December 1, 1966. It contains almost as many bills and maybe more than you have dockets and pending claims before the Commission. Every one of those bills has a progress report that brings it up to date. It is prepared by our staff.

Here, for example, is the bill that Congressman Haley introduced, to which a companion bill was introduced in the Senate by Senator Jackson last year, legislation that we are now considering. It gives the date when the bill was introduced, and then a series of dates describing exactly what happened to that bill at each stage of the way: when it was reported from the House, when it was passed, when it was placed on the Senate calendar, what action the Senate took, and so on down through the legislative session.

Now, why wouldn't it be possible for the Commission staff, working in cooperation with the staff of our committee, and the appropriate House staff, to prepare a calendar like that on all these pending cases before the Commission, so that the answers to questions like Senator Burdick's could be readily available to any Member of the Congress or anyone that is interested in these procedures?

It would seem to me that this could be done without excessive effort on the part of the Commission's staff. I am sure the committee staffs here would be more than happy to work closely with you. Without too much effort, I would think that the numbers could be logged as to specific stages in the procedure so that we would know how many of these cases are tied up in the Court of Claims, how many are tied up in the Justice Department, how many are stalled by GSA, or some other agency. We would know how many were in the Offices

of Counsel for the various tribes. And then we would have some clear picture of where the various claims are, and what needs to be done to expedite this process.

It seems to me that would, at least, tell us who is doing the stalling.

Mr. WATKINS. I agree with what you are saying. I think it would be a wonderful thing, and we are working on it. As a matter of fact, I thought I had with me a schedule of the status of cases. It is not quite complete and that is the reason I did not bring it up here and offer it in evidence today. We are doing that very thing. And I insist that we do have on that each time an event takes place, like a final decision, hearings that have taken place, some interlocutory decisions made, a motion ruled, that it all show. It will show clear across the board when it was filed, the docket number originally filed, and then the extra dockets it has been broken down into. Sometimes they have as many as 25 come out of one single filing. I think it would be an excellent thing.

But I know it means we will have to put in the clerk's office probably a lawyer to get that prepared and keep it current.

Senator McGOVERN. Is there additional action that Congress needs to take? Do you have adequate staff?

Mr. WATKINS. Just give us the money. We have a request in now for five lawyers, and we had a request last year for two lawyers. The Bureau of the Budget said, "We approve it," and they sent it up, and I testified before both Appropriation Committees, and apparently everybody was in agreement, but nothing happened.

Senator McGOVERN. Would you have any idea of what would be needed in the way of additional staff to prepare a report like that and to keep it current?

Mr. WATKINS. I think a good lawyer in the clerk's office probably could do that.

Senator McGOVERN. It seems to me that is a small bottleneck. But in terms of the cost of taking care of it, in terms of the amount of labor involved, it is extremely important.

Mr. WATKINS. It would take quite a lot of labor. We would have to bring it up to date. You see, I came in 12 years after the program was underway, and I could not even read the writing much of the time that they put in the docket records. It was in a gentleman's handwriting. They had a lawyer then as a clerk of the commission and he wrote the record in longhand. We had to have all of that copied and proofread—every document entered in there—before we could trust the documents completely, because we might make a mistake in reading the writing.

Senator McGOVERN. Do I understand that you are trying to—

Mr. WATKINS. Yes; that is proceeding in that direction. We have that worked up.

Senator McGOVERN. But you do feel you need additional staff, at least one additional person, to do this?

Mr. WATKINS. We can take one of the men we have there who is skilled at that type of thing. He is a lawyer and somewhat of an auditor, and very careful and accurate. We can put him at that work.

Senator McGOVERN. I think, in view of your own statement that Congress is not informed on these procedures, and that we are operating somewhat in the dark as to what is going on in the Commission, and recognizing further that this Commission is a creature of the Con-

gress, that we have some responsibility for knowing what is going on. We should be able to find out with reasonable effort what is going on and this ought to have the highest priority, so that we can become informed, and that other citizens can know the status of the claims.

Mr. WATKINS. I agree with you fully, and I hope you will all help us to get the Appropriations Committees to approve our request for five extra attorneys. We have all this work to do, you know. We are going to have a stepped-up program.

You gentlemen are insisting. And even if you never get your views enacted into legislation, we know what you are thinking about and we know what you want. And as far as I am concerned, I am going to do my very best to see that you get that as soon as it is possible. And some of the things you may have insisted on possibly you could lessen your demands just a little bit. Because this is an extremely difficult task. We don't have anything like it anywhere else in the world.

Senator McGOVERN. Well, in that connection, Mr. Watkins, I think I understand what you have indicated here today are some of the reasons for these long delays. But just to get clear for the record now, what would you describe as the principal reasons for the long period of time it has taken to dispose of these cases? What are the major bottlenecks, as you see it, holding up this work?

Mr. WATKINS. Well, I have tried to describe it the best I could in the limited time I spent on this.

Senator McGOVERN. Maybe you can summarize that. Is the principal reason the Indian attorneys?

Mr. WATKINS. Not the only one, not by any means. But some Indian attorneys have not been active at all. We have 40 dockets now that are without Indian lawyers. And some of those dockets—I happen to remember about 12 of them, I think—are in a case filed by the eastern Cherokees. And the lawyer's contract expired in 1964. We have been trying every way to get them to be active, because we worked on the case two or three times.

Senator McGOVERN. The cases where there are no Indian attorneys, as I recall, represent a rather small part of the total. Are there not a considerable number of cases where attorneys are available, and have pressed their cases, and where other factors have entered in that have prevented action from being taken by the Commission? Are there not cases where the petitioners are ready for trial, the attorneys are ready to go, and yet where, for various reasons, the trial has been postponed where it has been no fault of the attorneys?

Mr. WATKINS. It has been no fault of the Commission. We have been ready to proceed with every case that has been set down for trial, as far as I know.

Senator McGOVERN. Well, my understanding—I would like to get your reaction to this—is that there are a number of cases where the Commission has had the matter under advisement for a long period of time, sometimes several years, where no decision has been reached. What is the reason for that, or the reasons for it?

Mr. WATKINS. If you want to check each individual case we could do that and probably point out the reason.

Senator McGOVERN. Is that information in the brief that you filed in answer to Senator Jackson's queries?

Mr. WATKINS. No. That is not all in that brief. But it is a complete answer, as far as we could work it up on the questions asked. We had the staff working on it for a week.

Senator McGOVERN. My understanding is that the chairman, Senator Jackson, asked for a list of those cases that were ready for trial, but where for some reason or other the Commission had taken the matter under advisement over a long period of time, sometimes running up to several years, but no final decisions have been reached. Could that information be made available to the committee?

Mr. WATKINS. Yes, it could.

Senator McGOVERN. But in those cases, certainly the attorneys are not at fault.

Mr. WATKINS. No. There are some cases where the Commission will have to take the responsibility, there is no doubt about that. But in some of those cases where you hear the Commission is not doing anything about it, the fact of the matter is, when you get right down to the actual facts in that particular case, you will find the Commission is not to blame at all.

Senator McGOVERN. I am not implying that the Commission is always to blame. What I was trying to draw out here is that there may be a number of factors involved. In some cases it may be the Commission, in some cases it might be the attorneys. I get the impression from your testimony here that you were putting the blame largely on the Indian attorney, and I am just trying to establish—

Mr. WATKINS. I say they are only one contributing factor. They may be a very important one.

Senator McGOVERN. Are there other cases where the petitioners are ready to go, where the Government—laying aside the matter of the Commission's role—where the Government has not been ready to move, or where the General Accounting Office has not completed its report, or where there were not adequate witnesses available, some other factor? Are those all significant factors?

Mr. WATKINS. They are. There has been a lot of criticism of the General Accounting Office. As I say, they had a big staff. Mr. Campbell told me they had between 60 and 80 people working there. They were independent of us, of course. And they were taking cases, working on those that they felt or had been advised would be cases that would need their information first. There were a whole lot of them. When you get as many docket numbers as we had and as many claims, it would be very unwise just to start out blindly. So they had to have some guidance. And I think the Justice Department has guided them. The Justice Department is not responsible, since I have been there, for very many of the delays. They have had resources. That is one thing you have to keep in mind: the Justice Department doesn't have to worry about how they are going to pay their witnesses or get them. They have the cash, and they have the lawyers.

Senator McGOVERN. Here again, does your brief—which I have not yet had a chance to read—reflect the number of cases where it is perhaps the Justice Department or some other Federal agency that may be holding up on the settlement of these claims? Is it broken down so that we have some indication of where the fault lies?

Mr. WATKINS. I will give you a list of what Senator Jackson asked us to furnish.

First, list all cases where final briefs have been filed as of January 1, 1967, on issues of liability, evaluation, and which the Commission has not rendered a decision. That is one of them.

Senator McGOVERN. Is that answered?

Mr. WATKINS. Yes, we have answered it.

And the next question: Furnish a complete list of all cases where the petitioner is represented by counsel, having an approved attorney contract, which is presently in effect, and where (a) no action has been taken to move the case forward to judgment, or (b) some preliminary action has been taken but the case has not yet been scheduled for trial. With respect to each case, describe its present status and then state whether the petitioner's attorney has been unready for trial or defendant's attorney or both, and the reasons given by the parties for not advancing to trial. Also describe what measures, if any, the Commission takes to prompt counsel to bring claims to trial.

Senator McGOVERN. That is answered in your brief?

Mr. WATKINS. Yes, that is answered. I don't know that it gives all the information that he wants, or that it is a complete answer, but it is the best we could do under the limited time we had to work it up.

Mr. Holt, who has been there from the very beginning, has an excellent memory, and he has kept an independent file and books on these cases as they have come along. And he has a staff of very able lawyers working with him to try to get that information. I did not work on that. I was busy with other things. We still had other matters that were set to be taken care of during this period of time, too. We disposed of one compromise case and an attorney fee case during the same period of time in which we were allotted to get this material together.

We could go on through with each one of his questions, and we have given answers. I hope the answers are complete.

Senator McGOVERN. Mr. Watkins, does the Commission play an active role; that is, do you play a positive role in encouraging settlements, trying to settle some of these cases in effect out of court?

Mr. WATKINS. Yes. We frequently say to them that "we think you ought to be able to settle this case." In fact, we had some attorneys come in from Iowa on three big value cases.

Senator McGOVERN. Are those settlement procedures in your judgment satisfactory?

Mr. WATKINS. You cannot do much about it. They either want to settle or they don't, and they don't like people, especially the judges, trying to put the bee on them, so to speak, about making settlements when they think they ought to go through and they will get a big judgment out of it.

Senator McGOVERN. There was one item early in your reply to Senator Jackson, the first few pages that I did reach, in which you make the statement:

The truth of the situation is that under established precedents, the Commission is presently without power to require diligence in the prosecution of claims.

What is the significance of that conclusion on your part?

Mr. WATKINS. Well, I think that is a fair reflection of the situation.

Senator McGOVERN. That you do not have the power to require expeditious procedures on the part of the various parties?

Mr. WATKINS. We may require it, but you want to know do we make it work.

Senator McGOVERN. What additional authority do you think is needed in order to give the Commission that power, to require diligence in the prosecution of claims?

It seems to me this is a rather serious confession of weakness on the part of the Commission—if there are not procedures open to you whereby you could require diligence in the prosecution of these claims.

Mr. WATKINS. Well, now, if, for instance, you arbitrarily denied the Government, there is nothing lost there. It doesn't affect them very much. But you deny the Indian, and it gets thrown out, because the attorneys did not get in to file his claim. We know what would happen. It would immediately go to the Court of Claims, and on the precedent established in the *Sioux* case I told you about, it would promptly be set aside and sent back, and tell us to let them file whatever they want to file and do what they should have done. Even though they have not done it, they are going to be given the right to do it.

You know as much as I do about how you are going to get a situation of that kind clarified.

Senator McGOVERN. Mr. Watkins, you have made several statements here about the heavy load on the Commissioners. And I think that is probably true.

Mr. WATKINS. It is gradually increasing.

Senator McGOVERN. And it is getting heavier. Do you think there is any reason to feel that additional Commissioners are needed to help carry this burden? Would one or two additional members of the Commission, with the authority to hear these cases in panels, be helpful in taking some of the burden off the existing Commissioners, and moving these cases along?

Mr. WATKINS. I know that has been proposed by Mr. Edmondson in one of his bills. It was last year, and it is again.

I personally doubt very much that it would help the situation, because, for instance, suppose you bring in two more Commissioners. In the first place, you have a practical situation, you have to give them equal facilities with the Commissioners now there. And then you have to have lawyers for them. Each Commissioner would have so many lawyers working with him. Now we are working under a new arrangement whereby the lawyers are all working for the whole Commission, except for three men who are assistants to each Commissioner.

Now, if you attempt to increase the size of it, it is going to take them 2 or 3 years to get to the point where they can do really effective work. I know from my own experience as I have been a district judge in a very active trial court, and have tried many cases as a lawyer, and sat on a bar commission, and regulate lawyers. I have been on the Judiciary Committee of the Senate, where we had many claims. That is the superduper court of claims—the Senate Judiciary Committee. We give them about 7 minutes apiece for a claim sometimes amounting to thousands of dollars, and run them through. You cannot do that type of thing with these people. You don't have the type or kind of evidence that we have in an ordinary case. It is an implication built on an implication at times. You have to do the best you can. If you cannot find evidence here, you have to go somewhere else. You have to make a search to find it.

So it is not the type and kind of work where you can bring men into it unless you happen to have men who have had experience in this particular work. And you cannot find them. They are not going to come in there for \$26,000 a year, when they are making hundreds of thousands outside working for the Indians.

Senator McGOVERN. Of course that is a problem you face with any kind of Government service, I think.

I have not reached any final judgment on this, but it would seem to me it would make sense if we could enlarge the Commission that is admittedly overworked, and add a few good men to the three Commissioners already working on these problems, and then permit them to sit in panels, let us say, of three. That would greatly increase the manpower and the ability that you could bring to bear on these problems. It ought to result in faster action.

Mr. WATKINS. If that had been done early in the history of this Commission, it would be fine. I personally urged this Senate committee and the Senate, too, to give us hearing examiners to do that. If you get a top-heavy commission that causes debates, and you don't get very far. But they turned us down on the examiners.

But we provided for lawyers to do that work. They could go in and go right to work. We would work with them and help train them. They don't have to have the same facilities as the Commissioners. We don't have to have a suite of rooms for them, or a special secretary. And we cannot get extra space where we are. The Federal Power Commission is now looking with envious eyes on the little space we have and trying to get us out of there. It is the first time we have had anything that has been good, where we could work effectively.

My own personal judgment is, it would be a bad thing to bring in new Commissioners at this stage. If you want to get the work done let us bring in some more lawyers, and we can divide them up—one Commissioner is enough to hear a case. We have two courtrooms and a library which can be used for a hearing room. We can have three hearings going at once. We can take care of the hearing end of it very nicely. That is what we did do for a little while.

Senator McGOVERN. And yet there are a number of cases under advisement, according to the records that you have given us.

Mr. WATKINS. Yes. And they would still be under advisement by some of the fellows we would bring in. I can process a case twice as fast now as when I first came on the Commission.

Senator McGOVERN. Just one more question.

In your response to Senator Jackson's letter you list the cases that are under advisement by the Commission where all the other procedures have been completed but I notice that you omit the big *Sioux Blackhills* case, the one that I have been familiar with, that the Commission has had under advisement since February of 1964. Without going into the merits of that case in any way, I am just curious as to what criteria you used in drawing up the list that eliminated some of the cases from your response.

Mr. WATKINS. Obviously, I could not answer Senator Jackson's letter, carry on the ordinary work of the Commission, and prepare my statement to the committee. Commissioner Holt answered the letter with the help of members of the staff.

Many times you think you see a case that looks like it should be taken care of, but they get combined with a set of cases that have

overlapping claims, and that sort of thing, and you cannot move on it, although maybe the briefs are in on that one. But you find out you cannot do anything about it until the others are taken care of. Then we have fights between Indians. We have a case on appeal now. It is not a fight between the United States and the Indians, it is a fight between the Indian tribes. They have some 55 sets of docket files tied up in the Court of Claims in that one case. And it wouldn't make any difference to the United States which way the cases are decided, because the Government would not have to pay any more money, no matter which group of Indians comes out victorious.

Senator MCGOVERN. Just one more question.

In your judgement, could the Commission clear its docket within the next 5 years, Mr. Watkins?

Mr. WATKINS. Well, we would have to if the bill the Senate has introduced is passed.

Senator MCGOVERN. Is that a reasonable time in your judgment?

Mr. WATKINS. I have said very frankly—and it is a matter of opinion—there are too many elements of human nature, and the failings and abilities of so many people involved so I would say that 7 years is more realistic. I have said that in my opinion we could finish this job in 7 years, and get it substantially finished, where we could turn it over to the Court of Claims and let them finish it, pick up the cases that had not been taken care of. And they would only be the very smaller cases, because nearly all the big cases, where it looks like there is a big fee in it, the lawyers are pushing right through to a decision.

Senator MCGOVERN. Thank you very much.

Senator BURDICK.

Senator BURDICK. Mr. Watkins, while Senator McGovern has been doing his questioning, I have been able to read your letter to the chairman, and it reveals this:

It reveals, first, that there are 39 cases here in which there has been no action, no answer filed, nothing has happened. That appears on pages 3 and 4.

On pages 10 and 11 there appears to be 41 cases which have been settled by way of compromise.

Then on pages 1 and 2, these are cases waiting for briefs, and they total 23.

Now, I assume that the report that you filed with this committee in September 1966 is correct about the number dismissed. So there would be 123 which were dismissed, where the Indians did not prevail, and 92 with final awards for Indians. And if you add that, you get 215.

Now, what about the rest of them?

Mr. WATKINS. You are citing a previous report.

Senator BURDICK. I am just taking your own report.

Mr. WATKINS. I don't think that report is accurate.

Senator BURDICK. You did not—

Mr. WATKINS. I did not make the survey of the files and the records like we have made in this particular one. This survey has been made under the direction of Mr. Holt. I think it is much more reliable than the other one.

Senator BURDICK. There are two figures on the total claims here. One shows the total claims, when you filed your report in 1961,

were 596. And now, today, in the report that we have before us, dated September 1966, the total amount of claims there are listed as 571.

Senator McGOVERN. I wonder if it would not be helpful to have Mr. Holt come up and join you.

Mr. WATKINS. I think it would. We have to divide up some of the responsibilities.

Mr. HOLT. On page 3, the cases listed there are ones in which either an answer has been filed or hasn't been filed. The other cases of course are not listed—cases in process, at various stages.

Senator BURDICK. That is my point. I want to know what process. I only have a report on 103 cases out of 596.

Mr. HOLT. There are cases that have been set for trial now.

Senator BURDICK. It is very cloudy as to what is going on here.

Mr. HOLT. Of course that question was not asked, as I recall. We have attempted to answer all the questions asked.

The first one was as to cases in which briefs had been filed as of January 1, 1967, final briefs.

Senator BURDICK. Yes.

Mr. HOLT. And of course the next one—the list of cases where they are represented by approved attorney's contract which is presently in effect, and formal action taken to move the case forward to judgment, or some preliminary action has been taken, but the case has not yet been scheduled for trial. And, of course, there are some 42 cases.

Senator BURDICK. I would like to have the status of the balance of them.

Mr. HOLT. Well, they are in various stages. Of course, that is the system that Senator McGovern was suggesting we have, that we have been working on.

Senator BURDICK. You know, many district courts have this many cases in one year, and I would think that a legal stenographer could keep track of this very simply. It is just a progress report—this case hasn't had an answer filed, this case has been briefed, this case has been tried.

Mr. HOLT. That is what we are attempting to set up now.

Senator BURDICK. Well, let's agree on one thing.

According to your 1966 report, you had 123 cases dismissed where the Indians did not prevail. You had 92 awards for Indians. That makes 215 cases that have been disposed of finally.

Now do we have 596 dockets in all, or 571?

Mr. HOLT. We have 571.

Senator BURDICK. All right. Then we have 356 cases still pending in some stage or another.

Mr. HOLT. At some stage.

Senator BURDICK. This Commission has been operating since 1959, which would be now 16 years.

Senator McGOVERN. They have been operating since 1947.

Mr. WATKINS. Twenty years.

Senator BURDICK. You have only disposed of 215, and you say you can conclude the rest of them in 7 years?

Mr. WATKINS. I think so; yes. If you let us work our plan. And I think we know more about it than people who have not worked at this. Without any reflection upon the Senator.

I have sat in the same kind of seat you have, and I have had some big ideas of what could be done with this Indian Claims Commission. I worked on it before I went down there. And I find many of my assumptions about it are not true. I ran a district court, and I could tell every one of the cases I had there. But one single case, an award in one single case, the work in one single case, would probably amount to more actual work than three-fourths of the cases that I tried in 4 years.

Mr. HOLT. May I just say something.

In a good many of these cases—356—they have been tried in the first go-round, and title has been determined.

Senator BURDICK. There are some 40 of those where the answer has only been filed.

Mr. HOLT. I will admit those are cases where nothing has been done. But in the others something has been done. As I mentioned, there has been a trial on title, brief, decided, and even some have been tried on the value. It has been pointed out—of course, there are two stages.

We had one set where 25 cases were consolidated. The title phase of it is still pending.

Senator BURDICK. We are averaging, over the last 20 years, 10 cases per year.

Mr. HOLT. Of course, the first 5 years was pretty slow, in working out the plan. This was entirely new. The first 5 years was kind of getting started on it.

Senator BURDICK. I have one more question.

Referring to the question that Senator McGovern asked you, do you feel you don't have enough power, and Congress should give you more?

Mr. WATKINS. We need more legal help.

Senator BURDICK. This refers to your powers.

Mr. WATKINS. Well, I think you could make it in your report—you would not have to write an amendment to it—but make it in your report that you expect us to use every power that ordinarily goes with a court, and maybe the appeals court would not be so drastic on our activity. They would probably pay a little attention to what we are deciding.

Senator BURDICK. Your letter says: "The truth of the situation is that under established precedents the Commission is presently without power to require diligent prosecution of claims."

Mr. WATKINS. And in the true sense of the work, that is correct.

Senator BURDICK. You have the power to affirm or decline a continuance.

Mr. WATKINS. Suppose, for instance, we ruled against the Indians because they had not properly handled their cases. I have already cited you a case where they threw it back right at us.

Senator BURDICK. It would not necessarily mean the appellate court is going to act the same in every state of facts.

Mr. WATKINS. I would think they would.

Senator BURDICK. Do you need more power? You have the power of subpoena.

Mr. WATKINS. I have just suggested to you I don't think you can write it into an amendment. I am just talking among friends here.

You could make it absolutely clear, so there would not be any doubt about it among the Indians, the Government attorneys, the Indians'

lawyers, and the Court of Claims, and everybody else down the line that has to pass on this work, that this is what you expect, and this is what you think the law meant, and what Congress intended it to mean. I think then we would have some power. But I think we lack it, because after we did all that, they threw it in our faces and said go ahead and do it all over again. I am not saying there were not some equities involved in that.

Maybe Mr. Case made some mistakes. But you cannot get any lawyers that are going to be free 100 percent from mistakes.

Senator BURDICK. You have the power to declare or not declare a continuance.

Mr. WATKINS. Yes.

Senator BURDICK. You really don't need more legal power.

Mr. HOLT. Well, to dismiss.

Mr. WATKINS. That is the question. That is where you get rid of them.

Mr. HOLT. There is nothing in the act, it would seem to me, particularly on Indian cases. If there was some indication by Congress that cases were not going to be prosecuted in a reasonable time, that it was intended that the Commission had a right to issue an order to show cause why they shouldn't be dismissed—and it was carried through.

Senator BURDICK. I think that was the basis of the Senate bill last year. Isn't that right?

Mr. WATKINS. You put too hard and fast conditions and requirements in there. I will be frank about this. I think what the Senate committee did had a very helpful effect. I think it spurred a lot of people to action that had not been acting very vigorously in the past, including the Commission and its employees. I am not going to except us from it. And from here on, knowing you mean business, that you are paying some attention to us, we will go ahead, and we will get somewhere. I think it is going to be a big help.

But we have given you our views on the amendments suggested. I am not repeating them, but we stand squarely on what we submitted to you before. We are favorable to the extension of time.

Senator BURDICK. Mr. Watkins, there is some uneasiness in the full committee on these claims problems. And I share some of them, of course.

But when you see a commission that has, over a period of 20 years, only disposed of a little over 10 and a fraction cases per year, there are some grounds for uneasiness and for wondering whether or not we can end this in 2 years, 5 years, 25 years or when.

Mr. WATKINS. Well, I have tried to give you an indication of the attitude of the Chief Commissioner when I first came there—just let nature take its course. He was assured he should not push these cases vigorously.

Senator BURDICK. Suppose we didn't do anything, and let the Claims Commission die. Then what would happen?

Mr. WATKINS. Then you can start off again, and get a good healthy one.

Senator BURDICK. And let the Claims Courts take care of it?

Mr. WATKINS. You already have the Court of Claims doing this. Are you going to say to them you cannot have 32 years to work on cases?

Senator BURDICK. What is your comment about letting the Commission die? Should we?

Mr. WATKINS. No, I don't think you should. I think you are under an obligation now to all these people who have spent hundreds of thousands if not millions of dollars of effort in getting their cases prepared. I think it would be one of the worst cases I know of breach of good faith.

Senator BURDICK. I just wanted your answer for the record.

Senator HATFIELD. I have no questions.

Senator McGOVERN. Well, thank you very much, Mr. Watkins.

Mr. WATKINS. Well, thank you.

I don't know whether the reporter has everything I have said. I speak rather rapidly. And sometime the record looks like there was an explosion.

Senator McGOVERN. At this point in the record we will print Senator Jackson's letter to you and the reply to the questions he asks.

(The data referred to follows:)

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
January 25, 1967.

Hon. ARTHUR V. WATKINS,
Chief Commissioner, Indian Claims Commission,
Washington, D.C.

MY DEAR MR. COMMISSIONER: Under date of January 19, I advised you that the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs has scheduled a hearing for Monday, February 6, 1967, on S.307, a bill that would extend the life of the Indian Claims Commission.

We are attempting to elicit as much information as possible concerning the causes for delay in the final disposition of cases pending before the Commission. Set forth below are several questions, or requests for material, which we would appreciate having answered:

1. Furnish a complete list of all cases (whether or not potential overlapping with another claim is involved) where final briefs have been filed by the parties on an issue of liability, evaluation, or offsets, and the Commission has not rendered a decision as of January 1, 1967, giving as to each case the name, docket number, and date when the last brief was filed.

2. Furnish a complete list of all cases where the petitioner is represented by counsel having an approved attorney contract which is presently in effect and where (a) no action has been taken to move the case forward to judgment or (b) some preliminary action has been taken but the case has not yet been scheduled for trial. With respect to each case, describe its current status and then state whether the petitioner's attorney has been unready for trial, or defendant's attorney, or both, and the reasons given by the parties for not advancing to trial. Also describe what measures, if any, the Commission takes to prompt counsel to bring claims to trial.

3. Describe (a) the procedure the Commission follows in considering and approving settlements, and whether any proposed settlement has been rejected; and

(b) Whether the Commission follows the same settlement procedure where a compromise of offsets is involved, regardless of the amount, as it does where the settlement covers the more significant issues of basic liability and valuation;

(c) In each case where a settlement was approved, how long a time passed between the date of final acceptance of petitioner's settlement offer by the Government and the date of final judgment;

(d) What has the Commission done to encourage settlements and include a list of cases in which the Commission has held a settlement conference, together with the results thereof.

4. Does the Commission use pre-trial procedures to eliminate issues from the cases, as contrasted with the clarification of issues, and if so, submit representative samples of pre-trial orders to such effect. Indicate whether the Commission has established an investigation division as provided in Section 13(b) of the 1946 Claims Commission Act and if so, what function this division performs.

5. Furnish a schedule showing with respect to each case in which a decision of the Commission was reversed by the Court of Claims, the date when the Court's

order on remand was received, the date when the Commission acted in accordance therewith, and the action taken.

In order that the information you have been asked to provide may be properly analyzed, it would be appreciated if it is submitted as far in advance of the hearing date as possible.

Sincerely yours,

HENRY M. JACKSON,
Chairman.

INDIAN CLAIMS COMMISSION,
Washington, D.C., February 14, 1967.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your letter of January 25, 1967, requesting certain information desired by your committee in connection with its consideration of S. 307, a bill that would extend the life of the Indian Claims Commission.

Our responses to the specific requests in your letter are set out below in the same numerical order as the related questions, or requests for material, appear in the numbered paragraphs of your letter. However, because of the amount of material involved in these answers, each question has been set out in a separate section, which we believe will make the report easier to follow.

SECTION I

1. List of cases where final briefs have been filed as of January 1, 1967 on issue of liability, valuation, or offsets, and in which the Commission has not yet rendered a decision.

Docket	Tribe	Date of last brief and remarks
18-E and 58	Chippewa and Ottawa	Oct. 21, 1966.
158, 209, and 231	Sac and Fox	Oct. 31, 1966.
167	The Creek Nation	Feb. 1, 1966, reply; argued Sept. 8, 1966. ¹
197	Nisqually	July 10, 1964; oral argument waived in 1966.
206	Squaxin	July 14, 1964; oral argument waived in 1966.
219	Sac and Fox	Apr. 1, 1966.
226	Caddo	Briefs waived Dec. 6, 1966.
258	Kiowa, Comanche, and Apache	June 7, 1966.
275 and 282-I	Creek Nation and Eastern Cherokee	Sept. 10, 1962. ²
279-A	Blackfoot	June 8, 1966.
288	Washo	Sept. 8, 1966.
320	Quechan Tribe	Apr. 26, 1965.
345	Papago	Dec. 17, 1965.
359	Lower Sioux	Mar. 7, 1966.
22-D	San Carlos Apache	Oct. 18, 1966. ³
22-J	Northern Tonto Apache	Do. ³
30-D and 48	Fort Sill Apache	June 15, 1965. ³
91	Havasupai	Aug. 28, 1964. ³
196	Hopi Tribe	Sept. 2, 1964; attorney contract expired. ³
227	Pueblo of Laguna	Apr. 16, 1964; decision about ready. ³
266	Pueblo of Acoma	Do. ³
27-A and 241	Absentee Delaware	Feb. 14, 1964. ⁴
75	Nez Perce	May 27, 1963; decision to be released soon.

¹ Docket 167—Creek Nation. The case was appealed to the Court of Claims and reversed and remanded on Dec. 11, 1964. The case was retried on Sept. 27, 1965. The final brief was filed on Feb. 1, 1966 and the case argued on Sept. 8, 1966.

² Docket 282-I was consolidated with docket 275 in September 1962. Hearings were held Jan. 15, 1964. Commission wrote to petitioners' attorney Oct. 5, 1964, requesting findings and briefs. No reply received to date. Petitioners' attorney contract in docket 282-I expired May 19, 1964.

³ Each of these 8 cases was involved with the overlapping claim of docket 229, Navajo Tribe; the plaintiff in docket 229 having to file requested findings of fact and brief in each of the 8 cases. All are now under consideration by the Commission except the main case in docket 229 in which plaintiff's findings were filed Feb. 3, 1967.

⁴ Dockets 27-A and 241 were tried under a legal theory which has been overruled by this Commission. A companion case tried under the same theory is now awaiting valuation of land in the same area at the same time and will undoubtedly control the valuation phase involved in the offsets now pending in dockets 27-A and 241. This case has been under consideration and is being held in abeyance pending determination of the value as stated above, at which time it can be finally determined and award made.

SECTION II

Question No. 2. Furnish a complete list of all cases where the petitioner is represented by counsel having an approved attorney contract which is presently in effect and where (a) no action has been taken to move the case forward to judgment or (b) some preliminary action has been taken but the case has not yet been scheduled for trial. With respect to each case, describe its current status and then state whether the petitioner's attorney has been unready for trial, or defendant's attorney, or both, and the reasons given by the parties for not advancing to trial. Also describe what measures, if any, the Commission takes to prompt counsel to bring claims to trial.

2. The following is a list of all cases where the petitioner is represented by counsel having an approved attorney contract which is presently in effect and where (a) no action has been taken to move the case forward to judgment or (b) some preliminary action has been taken but the case has not yet been scheduled for trial:

Docket No.	Petitioner	Current status
18-D	Bois Forte	Definite answer filed; no further action by petitioner; no trial set.
18-F	Bay Mills	Do.
18-R	do	Do.
19	Minnesota-Chippewa	Awaiting petitioner's findings.
22-F	Yavapai	Definite answer filed; no further action by petitioner; no trial set.
22-G	Mescalero	Do.
49	Fort Sill Apache	Do.
64-A	Shawnee	Do.
69	Navajo	Do.
73-A	Seminole	Do.
87-A	North Paiute	Do.
144	Pillager-Chippewa	Do.
160	Yakima	No trial set.
177	Colville	Definite answer filed; no further action by petitioner; no trial set.
178	do	USGAO report received; awaiting petitioners exceptions.
179	do	Definite answer filed; no further action by petitioner; no trial set.
181-A	do	Do.
181-C	do	Do.
180-B	Nez Perce	No amended petition filed.
184	Fort Peck	USGAO report filed June 15, 1966; awaiting petitioner's objections.
186	Colville	Defense answer filed; by stipulation trial stayed until docket 180-A is entirely completed.
189	Red Lake	Defense answer filed; no further action by petitioner; no trial set.
189-C	do	Do.
212	Wyandotte	No trial set.
213	do	Do.
221-A	Chippewa Creek	No action.
230	Cayuga	Defense answer filed; no further action by petitioner; no trial set.
236	Pima Maricopa	No answer filed by defense due to petitioner's failure to file answer to interrogatories as ordered.
236-A	Gila River Maricopa	Defense answer filed; no further action by petitioner; no trial set.
236-B	do	Do.
272	Creek	Do.
281	do	Do.
297	Cherokee	Do.
299	Navajo	Do.
326-A through D	Shoshone	No amended petition filed.
326-E	do	Defense answer filed; no further action by petitioner; no trial set.
326-F	do	Do.
326-G	do	No amended petition filed.
346	Choctaw Ridaught	Defense answer filed; no further action by petitioner; no trial set.
353	Navajo	Awaiting filing of amended petition; no answer by defense.
366	Bannock	Defense answer filed; no further action by petitioner; no trial set.

We regret that all of the additional information requested (in paragraph 2 of your letter) on the foregoing cases must be given in general terms. The limited time available for developing this information precludes us from furnishing it on an individual case basis.

It more commonly occurs that the trial of a case is delayed because the petitioner's attorney is unready than because the defendant's attorney is unready.

Although the Commission does not know with certainty the reasons of the parties for the nonadvancement of the individual cases to trial, we believe that in nearly all instances such reasons would be among the following:

Lack of funds with which to hire expert witnesses.—As the Committee knows, legislation, which this Commission supported, was enacted in 1963 under which a revolving fund was established from which the Secretary of the Interior may make loans to Indian tribes and bands and to other identifiable groups of American Indians for their use in obtaining expert assistance other than the assistance of counsel, for the preparation and trial of claims pending before the Commission. Although we think the standards that successful loan applicants must meet are reasonable, some of the petitioners involved in the foregoing cases are unable to qualify for loans. Some time, of course, is necessarily required for the processing of each loan that is approved.

Limited availability of expert witnesses.—Most of the expert witnesses in these cases, especially in the land title phases thereof, are eminent doctors of history, anthropology, ethnology and similar disciplines. Nearly all of them hold regular professional positions in universities and can only be available to testify during their vacation periods. They are also limited by the pressure of their academic duties as to the amount of time they can devote during any one year in the preparation of a case. Although their time limitations inevitably cause delays, the services of these experts are indispensable to the advancement of the cases and the proper determination of them.

Illness or death of an expert witness or the petitioner's attorney.—In a few instances cases may have been delayed because of the serious illness or death of an expert witness or the petitioner's attorney. When such deaths occur, considerable time is usually required for the replacement to become employed on the case and sufficiently familiar with it that it can be carried forward.

Further action dependent upon the outcome of a related case.—Some of the cases are in the nature of suits for damages on account of trespasses upon and mismanagement of properties with respect to which the petitioner's title claims are being litigated in another docket. Such cases cannot be advanced until it is determined, in the related title case, that the petitioner has a compensable interest in the properties involved. Such matters as intervening petitions and appeals from rulings of the Commission have delayed the determination of some of the related title cases for extended periods of time.

The attorney's occupation with other cases.—In each of the cases the attorney's contract with the petitioner provides that his compensation shall depend upon a recovery for the tribal group. Even though the attorney is successful in obtaining such recovery, there is normally a long wait between the time when his legal services are performed and the date he is paid for them. These circumstances are undoubtedly responsible for a tendency of the attorneys to work intermittently on their Indian cases as permitted by breaks in the demands on their time of other clients.

The Commission has endeavored to prompt counsel to bring claims to trial by limiting the availability of extensions of time and by direct correspondence with petitioners' counsel urging them to file the necessary papers for the carrying on of their cases. Such efforts, however, in the absence of effective legal sanctions are largely futile. The truth of the situation is that under established precedents the Commission is practically without power to require diligence in the prosecution of claims.

SECTION III

Question No. 3. Describe (a) the procedure the Commission follows in considering and approving settlements, and whether any proposed settlement has been rejected; and

(b) Whether the Commission follows the same settlement procedure where a compromise of offsets is involved, regardless of the amount, as it does where the settlement covers the more significant issues of basic liability and valuation;

(c) In each case where a settlement was approved, how long a time passed

between the date of final acceptance of petitioner's settlement offer by the Government and the date of final judgment;

(d) What has the Commission done to encourage settlements and include a list of cases in which the Commission has held a settlement conference, together with the results thereof.

3. (a) The Commission has a definite procedure which it follows in considering and approving compromise settlements. The first step of this procedure requires the filing of a joint motion of the parties praying for approval of the compromise settlement and the setting of a date for hearing the motion. The original compromise agreement must be filed with the Commission along with the joint motion. However, signed duplicates of the original agreements by individual petitioners and attorneys, and officials of the organized tribes may be substituted as evidence of approval.

The original compromise agreement is to be signed by the Tribal Council Chairman or other officials properly designated to do so, by individual petitioners who are acting in a representative capacity, by all attorneys whose contracts of representation with petitioners have been approved by the Secretary of the Interior and who have a contingent interest for attorney fees in the compromise settlement, and by the Attorney General or someone acting in his behalf. In the event that petitioners who are individuals acting in a representative capacity become unable to act either by death or for other reasons, new petitioners who have been properly nominated by the Indian Tribe involved can be substituted. Deceased attorneys of record should be represented by their duly appointed legal representatives.

After the filing of the joint motion and the original compromise agreement, a date is set for an open hearing before the Commission at which both oral and documentary evidence pertaining to the settlement is received. The hearing is then held and organized tribes appearing as petitioners are required to present as witnesses, the Tribal Chairman, the Secretary of the Tribe or Tribal Council, and any other tribal members who desire to testify. If the petitioners are individual tribal members who appear on behalf of the tribe, at least two should attend as witnesses. The Commission requires from these witnesses' evidence of what has been done by them or the attorneys for petitioners to acquaint tribal members with the provisions of the compromise agreement, as well as other information which may be appropriate. The attorneys for petitioners and the defendant are also required to make appropriate statements with respect to the settlement.

The documentary evidence required to be submitted at the hearing consists of resolutions from both the tribe and the Tribal Council approving the proposed compromise settlement and authorizing their Chairman or other officials to sign and execute the compromise on their behalf, and a letter of approval of the compromise agreement signed by the Secretary of the Interior or by someone duly authorized to act for him. All proceedings connected with the calling and holding of the meetings of the tribe and Tribal Council shall be fully authenticated, as shall be the signatures of the necessary officials signing the resolutions and the compromise agreement. Every care is taken to make sure that the compromise settlement is fair and agreeable to all parties. In the California case we required further hearings to make sure that the Indians involved understood the terms of the settlement and approved them.

In the event that the above procedures may cause undue hardship if rigidly enforced, the Commission will hear counsel for the parties with respect to any modifications that may properly be allowed. These procedures are fully set out in *Omaha Tribe of Nebraska v. United States*, 8 Ind. Cl. Comm. 392, pp. 416-419.

3. (b) The same procedures described in 3(a) above are followed with respect to the compromise settlement of offsets where the amounts involved are substantial. However, the Commission is less rigid in its procedural requirements where the amounts involved are small.

(c) Following is a list of cases giving the date of approval by the Bureau of Indian Affairs of the compromise and the date on which the Commission approved it.

Cases on compromise settlement

Docket No.	Tribe	Date approved by Bureau of Indian Affairs	Date approved by Indian Claims Commission
31	California	May 7, 1964	July 20, 1964
37	do	do	Do.
80	Mission of California	do	Do.
80-D	do	do	Do.
347	Pitt River	do	Do.
176	Yakiah	do	Do.
215	Yana	do	Do.
333	Shasta	do	Do.
44	Ute	May 24, 1960	June 13, 1960
45	do	do	Do.
46	Nooksack	Jan. 30, 1962	Feb. 9, 1962
61	Kootenai	June 16, 1966	Aug. 5, 1966
88	Southern Paiute	Dec. 16, 1964	Jan. 18, 1965
330	do	do	Do.
330-A	do	do	Do.
94	Kalispel	Jan. 12, 1963	Mar. 3, 1963
98	Muckleshoot	Aug. 25, 1961	¹ Oct. 18, 1963
138	Iowa, Sac and Fox, Omaha	Jan. 11, 1965	Mar. 22, 1965
339	Iowa	do	Do.
232	Sac and Fox	do	Do.
11-A	Otoe and Missouria	Mar. 9, 1964	Mar. 4, 1964
138	Omaha Tribe	do	Do.
155	Quileute	June 25, 1962	July 9, 1962
157	Shoshone	Jan. 22, 1965	Feb. 24, 1965
161	Yakima	Mar. 3, 1965	Apr. 5, 1965
222	Colville	do	Do.
224	do	do	Do.
162	Yakima	June 15, 1965	Aug. 31, 1965
173	Cherokee	Sept. 6, 1961	Sept. 14, 1961
225-A	Omaha	January 1960	Feb. 11, 1960.
225-B	do	do	Do.
225-C	do	do	Do.
237	Chehalis	Dec 13, 1962	² Oct. 17, 1963
242	Quinalt	June 25, 1962	Jul. 9, 1962
327	Confederated Ute	Jan. 18, 1965	Feb. 18, 1965
329-A	Cheyenne-Arapaho	Sept. 30, 1965	Oct. 18, 1965
329-B	do	do	Do.
329-C	Cheyenne Arapaho	Nov. 5, 1963	Nov. 27, 1963
329-D	Cheyenne Arapaho	Apr. 23, 1963	June 27, 1963
351	Chemehuevi	Dec. 16, 1964	Jan. 18, 1965
351-A	do	do	Do.
296	Skokomish	Apr. 10, 1963	May 24, 1963

¹ The Bureau of Indian Affairs approved this settlement on Aug. 25, 1961, but a motion for approval of the settlement was not submitted to the Commission until June 13, 1963.

² The Commission determined, after hearings had been held on the compromise settlement, that insufficient notice had been given to the tribes and requested the attorneys to hold further hearings with the Indian tribes. This was done and that accounts for the long period of time between Government approval of the settlement and Commission approval.

3. (d) In order to encourage and facilitate compromise settlements, the Commission has set up a definite and clear procedure, holds settlement conferences, and has given priority of consideration to them so that the time involved in making a final determination by the Commission is comparatively short. Thus far the Commission has held settlement conferences in the following cases and in each case where such conference has been held a compromise settlement has been reached.

<i>Dockets</i>	<i>Tribe</i>
264, 264-A, 264-B.....	Umatilla.
329-A, 329-B.....	Cheyenne Arapaho.
329-C.....	Northern Cheyenne.
329-D.....	Northern Arapaho.
349.....	Ute.
155.....	Quileute.
242.....	Quinault.
351, 351-A.....	Chemehuevi.
44, 45.....	Ute.
88, 330, 331.....	Southern Paiute.
46.....	Nooksack.
173-A.....	Cherokee.
94.....	Pend d'Oreille.
327.....	Confederated Utes.
157.....	Shoshone.
161, 162.....	Yakima.
61.....	Kootenai.
225-A.....	Omaha.
237.....	Chehalis.
98.....	Muckleshoot.
11-A, 138.....	Otoe Missouri Iowa, Sac, and Fox.
California Case:	
31, 37.....	Indians of California.
80, 80-D.....	Mission Indians.
333.....	Shasta.
347.....	Pitt.
215.....	Yana.

SECTION IV

Question No. 4. Does the Commission use pre-trial procedures to eliminate issues from the cases, as contrasted with the clarification issues, and if so submit representative samples of pre-trial orders to such effect. Indicate whether the Commission has established an investigation division as provided in Section 13(b) of the 1946 Claims Commission Act and if so what function this division performs.

4. The Commission has attempted in part to utilize within the context of our rules, the pre-trial conference for the purpose of eliminating issues from the cases.

The following is Rule 22(e) of the General Rules of Procedure of this Commission:

(e) *Pretrial procedure*; formulating issues. In any proceeding the Commission may in its discretion direct the attorneys for the parties to appear before it or a Commissioner designated for that purpose for a conference to consider:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) Such other matters as may aid in the disposition of the action.

If the proceeding has been assigned to a Commissioner or examiner he shall be present. The Commissioner shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

Within the context of the above rule and its sub-divisions this Commission has in the past in many cases had occasion to encourage the use of stipulations in order to simplify the proceedings. See exhibits Nos. 1 and 2.

Exhibits Nos. 3 and 4 are illustrations of the use of amendments to the petitions and of consolidations of cases wherein the facts or the claims appear to lend themselves to more expeditious settlement as a result of such amendments or consolidations.

Exhibits Nos. 5 and 6 are amendments to the rules of pleading in an effort to insure the exclusion of cumulative or duplicate evidence as well as to speed the hearings by causing the documentary evidence of each party to be served upon the other, thus insuring familiarity of the parties therewith. In this sense it

has obviated the necessity of pre-trial conferences for the purpose of eliminating unnecessary or cumulative evidence.

There has never been a problem with the matter of the number of expert witnesses and this has always been left to the discretion of counsel.

This Commission has always encouraged the use of pre-trial conferences for the purpose of eliminating any matters which would expedite the disposition of these cases. Wherever possible agreements during hearings have been encouraged from the bench.

There are several situations which mitigate against the same effective use of pre-trial conferences for elimination of issues before trial as is made by a district court or state court.

The nature of the cases themselves preclude the existence of any great area of possible agreement, unless it be a document such as a treaty whose existence and validity is beyond dispute. In a situation where the same facts have been found previously it is possible to get an agreement between counsel, but where matters have not been before this Commission, the difficulty of agreement is compounded by the lack of final authority on the part of defense counsel actually trying the case to enter into binding stipulations or agreements.

Another fact which discourages the use of the pre-trial conference is the great distance of many of petitioners' counsel from the Washington area. If it were entirely a local bar practice, as is most regular court practice, the use of the pre-trial conference perhaps could be more effective, as a result of better communication between counsel and the Commission.

With regard to the establishment and function of the investigation division as provided in Section 13(b) of the Indian Claims Commission Act, the statement attached as exhibit No. 7 covers the matter thoroughly.

[Exhibit No. 1 to question No. 4]

BEFORE THE INDIAN CLAIMS COMMISSION

Docket No. 54

THE CROW TRIBE OF INDIANS, *Petitioner*

v.

THE UNITED STATES, *Defendant.*

Order Approving Stipulation

Upon consideration of the stipulation of the parties, this day filed herein,

IT IS HEREBY ORDERED That such stipulation be and the same is hereby approved, and in accordance therewith

IT IS HEREBY ORDERED That the initial hearing before this Commission shall be limited to the issues raised by the defendant in its answer, filed herein on the 23rd day of February, 1951, being the issues raised by the 2nd, 3rd, and 4th affirmative defenses set forth in said answer.

Dated at Washington, D.C., this 13th day of March, 1953.

EDGAR E. WITT,
Chief Commissioner.
LOUIS J. O'MARR,
Associate Commissioner.
WM. M. HOLT,
Associate Commissioner.

[Exhibit No. 2 to question No. 4.]

BEFORE THE INDIAN CLAIMS COMMISSION

Docket No. 54

THE CROW TRIBE OF INDIANS, *Petitioner,*

v.

THE UNITED STATES OF AMERICA, *Defendant.*

Order overruling second, third, and fourth defenses of answer

Upon the findings of fact this day filed herein, the evidence in support thereof (Exhibits Nos. 1 to 43, inclusive, on file herein as part of the record in this case), the Commission concludes as a matter of law that the affirmative defenses designat-

ed as the Second, Third, and Fourth in the answer do not under the facts and law constitute defenses to the claim set forth in the petition herein and should be denied.

IT IS THEREFORE ORDERED AND ADJUDGED, That said defenses of defendant be and the same are hereby denied and are stricken from the answer.

Dated at Washington, D.C., this 11th day of June, 1954.

EDGAR E. WITT,
Chief Commissioner.
LOUIS J. O'MARR,
Associate Commissioner.
WM. M. HOLT,
Associate Commissioner.

[Exhibit No. 3 to question No. 4.]

BEFORE THE INDIAN CLAIMS COMMISSION

Docket No. 29

HANNAHVILLE INDIAN COMMUNITY, Wilson, Mich., and FOREST COUNTY
POTTAWATOMI COMMUNITY, Crandon, Wis., *Petitioners,*

v.

UNITED STATES OF AMERICA, *Defendant.*

Order Directing Separation of Causes of Action

The Commission finds that it will be impossible to properly adjudicate the several claims set forth in the petition in the above-entitled causes without a separation thereof as to subject matter and parties claimant.

IT IS THEREFORE ORDERED, That within sixty days from the date of this order the causes of action set forth in the original petition and petition of intervention herein shall be separated and made the subject of separate petitions, as follows:

Causes of Action numbered second, third, fourth and sixth shall be set forth in separate petitions, and the following numbered Causes of Action shall be grouped in single petitions with separate counts or causes of action for the separate claims included in each group, which groups are as follows: first, fifth, eighth and tenth; seventh, ninth, eleventh, twelfth and thirteenth.

That the order dated January 25, 1949 requiring the petitioners to make their petition more definite and certain shall apply, insofar as applicable, to the separate petitions herein required to be filed.

That each of such separate petitions shall be complete in itself as to subject matter, and pleading by reference to allegations in the original petition is not permitted; that the party or parties plaintiff shall be the real parties in interest or the claim shall be on behalf of the real party or parties in interest.

That each of the separate petitions required above shall retain the Docket No. 29 but there shall be added to such docket number a parenthesis containing a capital letter (commencing with the letter A), so that each petition shall have a different letter.

(c) The third claim (paragraphs 66 through 73) of the petition in said Docket No. 18-H is hereby stricken from such petition and the claimant therein shall prepare and file herein as Docket No. 18-I a separate petition for the claim so stricken;

(d) The second cause of action (pages 10, 11 and 12) of the petition in said Docket No. 29-A is hereby stricken from such petition and the claimant therein shall prepare and file herein as Docket No. 29-J a separate petition for the claim so stricken;

(e) The third claim (paragraph 18) of the petition in said Docket No. 40-B is hereby stricken from such petition and the claimant therein shall prepare and file herein as Docket No. 40-J a separate petition for the claim so stricken.

IT IS FURTHER ORDERED that each of the respective separate petitions shall be complete within itself and allegations by reference to the original petition is not permitted, and they shall be printed and served upon defendant, in accordance with the rules of the Commission, within thirty days from the date of this order and the defendant shall file its answers thereto within forty-five days from the date of service thereof. No claimant shall be in anywise prejudiced by the provisions of this order.

IT IS FURTHER ORDERED that such separated petitions and the petition in said Docket No. 217 be, and the same are hereby consolidated for trial on the merits, in accordance with the rules of the Commission.

AND IT IS FURTHER ORDERED that an original copy of this order shall be filed in each of the respective original dockets and in said Docket No. 217, and a copy thereof in each of the separated dockets.

Dated at Washington, D.C. this 30th day of September, 1953.

LOUIS J. O'MARR,
Associate Commissioner.
WM. M. HOLT,
Associate Commissioner.

IT IS FURTHER ORDERED, That the evidence heretofore offered by either of the parties hereto, and admitted by the Commission, shall be considered by the Commission in so far as it may be material or relevant, in the determination of any of the causes of action included in the separate petitions hereafter to be filed.

IT IS FURTHER ORDERED, That the defendant shall have sixty days from the day of service of such separate petitions upon it within which to answer or otherwise plead to them or either of them.

Dated at Washington, D.C. this 13th day of July, 1949.

EDGAR E. WITT,
Chief Commissioner.
LOUIS J. O'MARR,
Associate Commissioner.
WM. M. HOLT,
Associate Commissioner.

[Exhibit No. 4 to question No. 4.]

BEFORE THE INDIAN CLAIMS COMMISSION

Docket No. 13-C

JAMES STRONG, ET AL., as the representatives and on behalf of all members by blood of THE CHIPPEWA TRIBE OF INDIANS, *Plaintiffs,*

v.

UNITED STATES OF AMERICA, *Defendant.*

Docket No. 15-C

THE POTTAWATOMIE TRIBE OF INDIANS, THE PRAIRIE BAND OF POTTAWATOMIE TRIBE OF INDIANS, AND WILLIAM EVANS, ET AL., as individuals, *Plaintiff, Plaintiffs,*

v.

THE UNITED STATES OF AMERICA, *Defendant.*

Docket No. 18-H

RED LAKE BAND, ET AL., *Plaintiffs,*

v.

UNITED STATES OF AMERICA, *Defendant.*

Docket No. 29-A

HANNAHVILLE INDIAN COMMUNITY, ET AL., *Plaintiffs,*

v.

THE UNITED STATES OF AMERICA, *Defendant.*

Docket No. 40-B

ROBERT DOMINIC, WAUNETTA DOMINIC, LEVI McCLELLAN, AND GRACE MULLOY, as the representatives and on behalf of all members by blood of THE OTTAWA TRIBE OF INDIANS, *Plaintiffs,*

v.

UNITED STATES OF AMERICA, *Defendant.*

Docket No. 217

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, ET AL., *Petitioners,**v.*THE UNITED STATES OF AMERICA, *Defendant.**Order of Consolidation*

It appearing to the Commission that the claimants in each of the above-entitled causes and numbered dockets have made claim for the value of the land ceded by the treaty of July 29, 1829, 7 Stat. 320, it is considered by the Commission that such claims and the rights of the respective claimants can best be determined by a consolidation of such claims for trial.

IT IS THEREFORE ORDERED as to each of the above named claimants:

(a) The second claim (paragraphs 15, 16 and 17) of the petition in said Docket No. 13-C is hereby stricken from such petition and the claimant therein shall prepare and file herein as Docket No. 13-L a separate petition for the claim so stricken;

(b) The third cause of action (first three paragraphs on page 10) of the petition in said Docket No. 15-C is hereby stricken from such petition and the claimant therein shall prepare and file herein as Docket No. 15-K a separate petition for the claim so stricken;

[Exhibit No. 5 to question No. 4.]

ORDER CONCERNING DOCUMENTARY EVIDENCE

IT IS HEREBY ORDERED by the Indian Claims Commission that the General Rules of Procedure of the Commission, promulgated July 4, 1947, be, and the same are hereby amended by adding to Section 23 thereof the following provisions, hereby designated as (f)(1), (2), (3), and (4), to wit:

Sec. 23(f)(1). All documentary evidence (including excerpts from documents) which is to be offered on any question before the Commission shall be filed with the Clerk and copies thereof delivered by mail, or otherwise, to the opposing parties at least 30 days in advance of the day on which such evidence is to be used in order to permit study, cross-examination and rebuttal evidence. Each party shall have 20 days after the filing of such documentary evidence with the Clerk within which to file with the Clerk and deliver to the opposing parties counter-weighing or rebuttal evidence.

(2) *Excerpts from documents.* When portions only of a document are to be relied upon, the offering party shall prepare, file and deliver, as provided in Sec. 23(f)(1), the pertinent excerpts, adequately identified as to source and place where source is located, and only such excerpts will be received in the record. When excerpts from a document not available within the District of Columbia are relied upon the entire document shall be filed with the excerpt for examination by the opposing party.

(3) Accompanying the documents and excerpts of documents filed with the Clerk shall be a list thereof identifying the same and showing the title of the cause in which they are filed.

Such documents shall be, by the Clerk, kept separate from the other files and shall not become part of the record in any case until admitted therein by the Commission. Documents not offered in evidence by any party shall at the close of the evidence be returned to the party filing the same, unless the Commission shall order their retention by the Clerk. The Clerk shall stamp on such list the date the documents were received and also note thereon the documents which were returned.

(4) Documentary evidence not filed and delivered in advance in accordance with rules (1) and (2) shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner.

(5) That the authenticity of all documents filed in advance in a proceeding in which such filing is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

IT IS FURTHER ORDERED That the foregoing additional rules shall become effective as of the date of this Order.

[Exhibit No. 6 to question No. 4.]

ORDER OF NOVEMBER 25, 1959

That the provisions of Sec. 23(f) (1), (2) and (4) of the Commission's Rules (being 25 C.F.R. Sec. 503. 23(e) (2), (3) and (5)) will be enforced after January 1, 1960, as they now read; and that the terms 'countervailing or rebuttal' evidence shall be held to mean evidence in rebuttal of specific evidence previously filed.

That the Commission will continue to adhere to its previous rulings that reports of experts shall not be subject to the aforesaid rule but that documentary evidence in the way of exhibits on which said report or portions thereof may be based shall be evidence to which said rules apply and shall be filed 30 days in advance of the date set for hearing.

You are also advised that from and after January 1, 1960, copies of reports in the nature of expert testimony shall be served upon all parties to the proceedings, or their attorneys of record, and filed with the Commission at least 2 days in advance of the oral testimony of the expert, unless all parties agree that such prior services be waived.

[Exhibit No. 7 to question No. 4.]

June 11, 1965.

JAMES A. HALEY,
Chairman, Subcommittee on Indian Affairs,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN HALEY: Reference is made to your letter of May 25 in which you make certain comments with respect to the Investigation Division of the Commission and request certain specific information about its operation and its personnel.

Before entering into a discussion such as is called for by your letter, I call attention to the fact that the Commission was organized on April 10, 1947, and that I became an Associate Commissioner on August 15, 1959, and on July 1, 1960, I was appointed Chief Commissioner. By reason of my late arrival on the Commission I must rely on the records of the Commission and on information furnished by Commissioner Holt in answering the questions raised by you and the implications growing out of them.

Soon after the Commission was organized it established an *Investigation Division* consisting of a Chief Investigator and an attorney as a staff member. Later another attorney was added. Judge McLaughlin, Chief of the Division left the Commission some two years later when he accepted a Federal Judgeship. The record discloses that no one was appointed to succeed him. However, each attorney who was engaged to help with the work of the Commission was named as an attorney-investigator. There were six attorneys in this category.

With reference to its operation I have made a search of our files to discover whether or not any reports had been made by it to the Commission. I found that in five early cases reports had been made. These reports were very limited in scope. They consisted largely of legal discussions of the cases, with some copies of treaties and minutes of the meetings where treaties were negotiated, included. As the activities of the Commission increased beyond the early stage, I cannot find evidence of any specific activity of the Investigation Division.

I was advised that the investigation activities had practically ceased because the attorneys for the Indians and the attorneys for the defendant, the United States, insisted on having their own expert researchers and investigators carry on this work so they could direct them and be responsible for their work, and could know that the work was being done properly, and in the interest of their clients.

At this point I believe it would be helpful to this discussion to quote the language of the Act authorizing the Investigation Division.

Sec. 13 . . .

(b) The Commission shall establish an Investigation Division to investigate all claims referred to it by the Commission for the purpose of discovering the facts relating thereto. The Division shall make a complete and thorough search for all evidence affecting each claim, utilizing all documents and records in the possession of the Court of Claims and the several Government departments, and shall submit such evidence to the Commission. The Division shall make available to the Indians concerned and to any interested Federal agency any data in its possession relating to the rights and claims of any Indian.

It should also be noted here that only such investigation as attorneys would be qualified to make was carried on by this Division of the Commission. Ordinarily the attorneys employed by the Commission and those hired by the Indians and the defendant were not qualified to make all the necessary investigations covering all the problems involved in proving a claim. Both the Indian petitioners and the defendant followed the practice, which had been developed in the Jurisdictional Act cases brought before the Court of Claims, of employing anthropologists, ethnologists, historians, etc., and expert appraisers to give advice and testimony. For this type of assistance most attorneys cannot qualify.

Also, petitioners had to have their claims filed within a 5-year period after the Indian Claims Commission Act became effective. In order to state and file these claims it was necessary to have expert help to gather evidence and give them advice in specific fields. By the time the Commission was organized and ready to do business most of the outstanding experts in these various limited fields, except appraisers, had already been engaged by the Indians or by the defendant. This left very few experts in these fields available to the Commission. This was definitely demonstrated in the *Indians of California* case in which 15 expert witnesses in the fields of anthropology, ethnology, history, etc., testified either in behalf of the Indians or the defendant. This list of experts just about exhausted all qualified witnesses for the land areas involved. The fact of the matter is that in order for the Commission to carry out a program such as is suggested in Section 13(b) it would have been necessary to hire a large number of these specially trained experts just mentioned. It has been estimated that as the work of the Commission increased it would have been necessary to hire at least 100 additional people to carry on the suggested investigations as the law directs. It would have also been necessary to have a large number of secretaries, accountants, typists, and others to assist the experts.

In making these investigations the Commission would also have been duplicating to some extent the activities of the Indian Claims Section of the General Accounting Office which has been investigating Indian accounting claims, treaty obligations, etc., for many years prior to the creation of the Claims Commission. It is continuing these investigations at the present time. I have been advised by the Comptroller General's office that the overall cost of this division approaches a million dollars a year. The results of the GAO investigations are available to the Indians, to the Justice Department, and to the Claims Commission.

In some aspects the Claims Act creates somewhat of a paradoxical situation. In Section 2 in the second paragraph it provides:

"All claims hereunder may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States."

And in the last paragraph of Section 15 it provides in part:

"The Attorney General or his assistants shall represent the United States in all claims presented to the Commission, and shall have the authority with the approval of the Commission to compromise any claim presented to the Commission."

Undoubtedly the above provisions provide for an adversary adjudication much after the manner of all proceedings in the Court of Claims in which there is only one defendant, to wit: the United States. But, as already pointed out, the Commission is also authorized to investigate, or develop evidence on its own initiative, and use it in making its decisions. This unusual and paradoxical evidence-gathering duty makes possible—inevitable, if literally carried out—three independent investigations of the same facts or evidence relative to Indian claims:

1. The Indians through their counsel and expert witnesses investigate and gather evidence to support their claims. This is the duty of their attorney according to their contracts.

2. The defendant, the United States, through its Attorney General investigates the same facts, the same set of circumstances for the purpose of defending the United States.

3. The Indian Claims Commission is directed through its Investigation Division to make "a complete and thorough search for all evidence affecting each claim * * *" and the Division is to submit such evidence to the Commission and also make it available to the Indians and various Government agencies including the Department of Justice. All this investigating is to be done by the Commission's employees in this special division and under the direction of the Commission.

Thus we have three different entities searching for, and preparing the same evidence to be submitted to the Commission, plus the specialized work of the Indian Claims Section of the General Accounting Office.

Our experience establishes that by and large the Indian attorneys and the Attorney General's assistants and staff do an excellent job in representing their respective client or clients. Naturally some lapses occur, some evidence is overlooked or undiscovered, but not often.

As our work went forward the Commission became fully aware of what seemed to be an unnecessary waste of effort and money in carrying out literally the provisions of Section 13(b), and it tried to do something about this situation. The legislative history of the Claims Act revealed that the Secretary of the Interior, Harold Ickes, and the Legal Counsel for the Indian Bureau, the late Felix Cohen, were the authors of this section of the Act. So Mr. Cohen, who was still working in Government at that time, was consulted. He agreed that the processing of Indian claims had demonstrated that Section 13(b) was probably not needed or practical for a successful Indian claims adjudication program.

But practical or impractical, and expensive as it might be, the Claims Act required the establishment and continued operation of an Investigation Division. Fortunately, at this juncture, the Court of Claims interpreted the Claims Act to some extent with respect to the functions of the Investigation Division and when and how it should operate. In 1953 in the case of *Pawnee Indians v. United States*, which was on appeal, the Court held that the Commission would have been justified in searching for additional evidence to support its findings in that case, and especially so since the Claims Act required it to establish an investigation division to search for all available evidence. In that case the Court said:

"The Indian Claims Commission Act reflects the intent of Congress that the cases arising under that Act should be decided on a complete and full record concerning all the ascertainable facts. Realizing that many of the claims would be based on facts and circumstances concerning which there would be no possibility of testimony from living witnesses, and concerning which no accurate determinations could be made without reference to historical facts and ancient documents, Congress assigned an unusual and broad function to the Commission with respect to its investigatory powers wherever such an investigation was necessary to a proper determination of an Indian claim.

"We understand that the Commission has followed the Congressional direction and has established a Division of Investigation. Section 13(b) of the Act does not make mandatory the referral of every claim to the Division for investigation, but the clear intent and purpose of the Act would, we think, indicate the desirability of referring a case such as the present one, if not prior to the holding of hearings, then certainly after the far from adequate record was placed before the Commission by the parties. Congress contemplated the final settlement of these Indian claims on the basis of *all* the available facts, most of which are to be found in official government records or are matters of national history. Such an investigation can be, and was intended to be, as valuable to the Government in its defense of such claims as to the claimants in their prosecution thereof. The record on which the Commission bases its final determination of any Indian claim may well be not only the record made by the parties, but that record supplemented, whenever necessary, by the results of the Commission's own investigation into the facts of the case. Whether that investigation is made prior to, during, or after the hearing, in a particular case, or whether it is made at all, is left to the discretion of the Commission. While it is undoubtedly true that it is not every case that will require much in the way of an independent investigation by the Commission, this case appears to us to be one peculiarly in need of the application of Section 13(b) of the Act." (124 C. Cls. 334, Feb. 1953)

Judge Whitaker in a concurring opinion also briefly discussed the duty of the Commission to set up an Investigation Division and the part it should take in the Commission's processes:

"The majority opinion calls attention to section 13(b) of the Indian Claims Commission Act requiring the Commission to set up an Investigation Division to investigate claims referred to it by the Commission, and to make the result of its findings available to the parties, and it says that this section should have been invoked in this case. This section does not require all claims to be referred to this Investigation Division. I take it that it is within the discretion of the Commission to refer a claim to it or not to do so. It is the primary duty of the parties to gather the evidence and present it to the Commission. If the Commission feels that the parties have been diligent and have apparently presented all available evidence to it, I see no necessity for the Com-

mission to refer the claim to its Investigation Division. Apparently the Commission thought that had been done in this case.

"However, it seems that considerable evidence was not presented to the Commission. Where this appears, or where the Commission has reason to doubt that all the evidence has been presented to it, it should either decline to decide the case until all the facts have been presented, or refer the case to its Investigation Division for inquiry and report. The latter course should be followed, I think, only where this is the only way to secure all the facts. It is the duty of the plaintiff to prove its case, and of the defendant to present any countervailing testimony. They have no right to shift this burden to the Commission. Its investigating division is set up to act as an *amicus curiae*, not as a guardian *ad litem* for an infant or a *non-compos mentis*."

Obviously, the Commission is in full agreement with the Court of Claims whose decision is controlling in its construction of our duty with respect to an Investigation Division. The Court has ruled that *we can use it, and the evidence it discovers at our discretion*. This we are doing. We require the petitioners to prove their cases; the defendant is required to present evidence it had discovered which may be contrary to the petitioner's case. The parties appearing before us understand our requirements, and in good faith act accordingly. When we believe there is evidence which has not been presented which bears on the case, and is necessary to its proper consideration, the Commissioners either secure such evidence themselves, which they have every right to do (see Court of Claims statement on our general powers in *Pawnee* case (supra) pp. 340, 342), or assign an assistant to get the evidence, or direct that the Investigation Division take on the task.

The Division at the present time has one investigator. He is an attorney and his name is Garth Stephenson. He also serves as an assistant to the Commission.

As a matter of actual operation and for the reasons heretofore stated, there is very little demand, if any, for the services of the Investigation Division by the parties to the proceedings. If independent research is indicated to get all facts necessary to make a proper decision, we, at our discretion, can take judicial notice of official documents and proceedings that are pertinent, or we may assign a staff member to get the information, or have the Investigation Division undertake the search.

In two cases in which no progress was apparent, and in which attorneys had signed contracts to represent the Indians, and also where the attorneys contracts had expired by operation of time, we sent a staff member to Florida and to Mississippi to investigate these situations. Our record is not entirely clear whether or not this staff member was also a member of the Investigation Division. We also had a staff member investigate the legal status of Eskimo Bands in Alaska who were litigants before us.

In view of the Court of Claims construction of our duties relating to the Investigation Division, we feel our present course is the right one. It seems to be the only practical way in consideration of all the circumstances under which we carry on the adjudication process. We also have a strong belief that a large investigation division staff such as would be required if we carried out literally the provisions of Section 13(b) would cost more than a million dollars a year and actually would slow down substantially our output of final decisions for this reason: (1) As described above we would have difficulty in recruiting enough trained scientists and historians to staff the division. If and when they were secured, it would take years for them to investigate the specific Indian groups they were assigned to. Some of these specialists who testify in cases have spent a good part of their lifetime studying the very Indians who retain them as witnesses. When our investigator's work was completed we would have to send to the Indian litigants and the Justice Department copies of the reports compiled. In the meantime these parties would have had their own experts at work. They would want these experts to study and pass judgment on the reports of the Commission's experts. Our experience is that the parties would take exception to whatever was reported unless it was in their favor. If they didn't approve of the investigation reports they undoubtedly would move to strike them from the record. All of these items would be time consuming and could easily add another five to ten years to the life of the Commission.

(2) In the foregoing number I have dealt with specialists such as anthropologists, ethnologists, archaeologists, historians, and appraisers, but there is another group of investigators, namely lawyers, to be considered.

Indian attorneys are under contract to investigate the claims. They must perform under their contracts and do all the legal work necessary to prosecute the claims. If they do not do so, but rely on the Commission's investigators,

they would rightfully feel that their work was being interfered with, with the result that their fees, in the event of success, could be fixed at a lower percentage by the Commission. There might also be a strong suspicion that the Commission investigators were not careful in their work; that they could not rely on them, and consequently they would spend much time checking them. All this takes more time.

I could go on at length on this matter, but this should not be necessary to convince anyone that an investigation as envisioned in the Claims Act would be very costly, impractical, time consuming, and in many instances useless.

One remaining inquiry should be answered. There is little, if any, demand from Indians or their counsel for information from our very limited investigations. A few Indians have mentioned it to us recently, but when we have explained the situation to them they seemed to be satisfied. Such information as we gather is furnished gratuitously to the Indian litigants appearing before us as well as to the Department of Justice.

Sincerely,

ARTHUR V. WATKINS,
Chief Commissioner.

SECTION V

In question No. 5 you have requested a schedule showing with respect to each case in which a decision of the Commission was reversed by the Court of Claims, the date when the Court's order on remand was received, the date when the Commission acted in accordance therewith, and the action taken.

Since you have indicated a desire to analyze the information which is being supplied, I have undertaken to furnish a summary of the proceedings undertaken following each remanded case. The schedule includes the twenty-one most recently remanded cases. In only a relatively few cases is it possible to point to a single action of the Commission which can be said to be in full accordance with a particular remand. However, by including a summary of the actions taken in these cases, it is possible to appreciate the many diverse proceedings which may follow a remanded case from the Court of Claims.

The Confederated Tribes of the Warm Springs Reservation of Oregon v. The United States, Docket No. 198; Appeal No. 2-64

October 14, 1966—Court of Claims decision—Reversed and remanded.

1. Not substantial evidence to support Commission's eastern boundary—remand determination to Commission for a redrawing of boundary.

2. Not substantial evidence for finding with regard to common usage—remand this question for any adjustment necessary to make the southern boundary determination consistent with Court of Claims decision.

November 14, 1966—Appellant's motion for rehearing and clarification.

November 28, 1966—Appellee's response to appellant's motion.

January 20, 1967—Order denying motion for rehearing and clarification.

Nez Perce Tribe of Indians v. The United States, Docket No. 175-B; Appeal No. 5-64

July 15, 1966—Court of Claims decision—reversed and remanded.

Reversed and the case is remanded for further proceedings in conformity with opinion.

August 10, 1966—Time extended to September 14, 1966 for appellant to file motion for rehearing.

September 15, 1966—Time extended to September 16, 1966, to file motion for rehearing.

September 16, 1966—Appellant's motion for rehearing filed.

October 3, 1966—Appellee's motion for extension of time to October 18, 1966 to file response. Allowed October 4, 1966.

October 12, 1966—Appellee's response to motion for rehearing.

November 10, 1966—Court of Claims order denying appellant's motion for rehearing.

January 30, 1967—Appellant's motion for leave to file designation of record out of time. Allowed February 3, 1967.

February 6, 1967—Record in re certiorari to appellant.

The Yankton Sioux Tribe or Band of Indians v. the United States, Otoe and Missouri Tribe of Indians and the Iowa Tribe of the Iowa Reservation in Kansas and Nebraska, et al., Dockets Nos. 332-A; 11-A, 138, 332-A; Appeal No. 8-64

May 13, 1966—Court of Claims Opinion—Commission's order of January 12, 1962, is reversed. Commission's order of November 25, 1959, is affirmed.

Order of January 12, 1962, held Commission had no jurisdiction over claim to certain ceded lands.

Order of November 25, 1959, fixed location of part of Article 2 line in Treaty of August 19, 1825.

February 20, 1967—Set for hearing.

Confederated Tribes of the Umatilla Indian Reservation v. the United States, Docket No. 264; Appeal No. 1-65

January 21, 1966—Court of Claims Order.

Appeal dismissed and cause is remanded for entry of Final Judgment consistent with stipulation of parties.

January 20, 1966—Hearing on compromise settlement.

February 11, 1966—Final Judgment.

February 14, 1966—Reported to Congress.

The Cherokee Nation and its Attorneys, et al. v. the United States, Docket No. 173; Appeal No. 6-64

January 21, 1966—Court of Claims decision—Reversed.

Reversed and case remanded to the Commission for further proceedings to determine the fee-award in accordance with opinion and sec. 15 of the Act.

February 21, 1966—Time extended to March 1, 1966 for appellee to file motion for rehearing.

March 14, 1966—Time extended to March 21, 1966 to file motion for rehearing.

March 21, 1966—Appellee's motion for rehearing.

March 23, 1966—Appellant's reply to motion for rehearing.

April 18, 1966—Order overruling motion for rehearing.

February 3, 1967—Attorneys' motion for supplemental award of attorneys' fee.

Seneca Nation of Indians v. The United States, Docket No. 342-A, 368-A, Appeal No. 14-63

December 17, 1965—Court of Claims decision—Affirmed in part; reversed in part.

Remanded to decide whether or not the purchasers in three post-1790 sales paid a proper, conseionable consideration.

November 12, 1968—Set for hearing.

Red Lake, Pembina, Turtle Mountain, Little Shell Band, et al., v. The United States, Dockets Nos. 18-A, 113, 191, Appeal No. 7-64

December 17, 1965—Court of Claims decision.

Reversed as to attorneys' fees; affirmed as to the appeal by the Little Shell Band.

Reversed the Commission's fee-order insofar as it included Mr. Mills. Also overturned the inclusion of the attorneys for the Turtle Mountain Band. The fee-order should be modified to delete these names.

March 24, 1966—Order modifying order of August 13, 1964, allowing attorney fees.

The Peoria Tribe of Oklahoma, et al., v. The United States, Docket No. 314; Appeal No. 12-63

March 12, 1965—Court of Claims decision—modified and affirmed.

Final order of the Indian Claims Commission is modified to eliminate the phrase "as constituted at the time of the October 2, 1818 treaty," and as so modified is affirmed.

May 7, 1965—Order amending Commission's final order of July 29, 1963.

December 3, 1965—Reported to Congress.

The Creek Nation v. The United States, Docket No. 167; Appeal No. 9-63

December 11, 1964—Court of Claims decision—Reversed and remanded.

Reversed decision granting defendant's motion for summary judgment (on ground that claim was res judicata).

September 27, 1965—Hearing on liability.

Sac and Fox Tribe of Indians of Oklahoma, et al. v. United States, Docket No. 220; Appeal No. 3-63

October 16, 1964—Court of Claims decision—Reversed and remanded.

Commission's ultimate conclusion is based on findings which are not sustained by substantial evidence. Reversed and remanded for further proceedings.

November 12, 1964—Appellee granted extension of time to December 31, 1964, to file motion for rehearing.

December 30, 1964—Appellee granted extension of time to January 15, 1965, to file motion for rehearing.

December 31, 1964—Appellee's motion for rehearing.

January 15, 1965—Appellant's objection to motion for rehearing.

February 19, 1965—Order dismissing motion for rehearing.

August 9, 1965—Petitioners' motion for modification of certain findings of fact.

August 13, 1965—Petitioners' brief in support of motion.

October 4, 1965—Defendant's response to motion for modification.

November 15, 1965—Petitioners' reply brief.

November 16, 1966—Oral argument.

February 14, 1967—Commission's amended findings of fact and entry of final judgment on remanded issues.

The Ottawa Tribe, et al. v. the United States, Docket No. 303; Appeal No. 2-63

June 12, 1964—Court of Claims decision—Affirmed in part and reversed in part.

Appellant entitled to judgment of \$115,372.68 with respect to townsite (item 7). As thus modified, the Commission's decision is affirmed and case remanded for the entry of an appropriate order.

August 20, 1964—Appellant's request for record in re certiorari. Allowed August 25, 1964.

September 10, 1964—Petition for certiorari filed in Supreme Court.

December 7, 1964—Order of Supreme Court denying certiorari.

February 11, 1965—Amended final award.

November 23, 1965—Reported to Congress.

Pueblo de Zia, Pueblo de Jemez, and Pueblo de Santa Ana v. the United States, Docket No. 137; Appeal No. 9-62

April 17, 1964—Court of Claims decision—Reversed and remanded.

Remanded solely for a determination of value in 1848.

October 16, 1964—Court of Claims order.

Amended opinion and judgment of Court that time of taking was Treaty of Guadalupe Hidalgo.

January 22, 1965—Court of Claims order.

Remanded to receive evidence as to the time of taking and for determination of value as of time fixed for date of taking.

November 21, 1966—Hearing on time of taking.

December 20, 1966—Petitioner's proposed findings of fact and brief filed.

The Absentee Shawnee Tribe of Oklahoma, et al. v. The United States, Docket No. 344-B; Appeal No. 7-63

April 17, 1964—Court of Claims decision—Reversed and remanded.

Commission erred in dismissing, without consideration, that part of appellant's claim in which it sues on behalf of the entire Shawnee Nation. Commission should permit the parties, if they desire, to reopen the record to present further evidence.

Parties have informally advised the Commission that they engaged in negotiations leading to a possible settlement.

Red Lake, Pembina and White Earth Bands, et al. v. The United States, Docket No. 18-A; Appeal No. 7-62

January 24, 1964—Court of Claims decision—Affirmed in part, reversed in part.

Affirmed as to all title determinations, affirmed as to value, affirmed as to offsets, reversed as to wording of judgment (i.e., to go equal to tribal entities) and division of award.

February 20, 1964—Petitioner's motion for entry of final judgment.

March 2, 1964—Defendant's response to motion for entry of final judgment.

April 24, 1964—Amended final award.

Lower Sioux Indian Community in Minnesota, et al. v. The United States, Docket No. 360; Appeal No. 6-62

December 13, 1963—Court of Claims decision—Reversed and remanded.

Remanded to amend its interlocutory order to include Black River area as part of country ceded.

January 17, 1964—Time extended 20 days from January 13, 1964, for appellee to file motion for rehearing.

January 31, 1964—Appellee's motion for rehearing.

February 5, 1964—Appellant's response to motion for rehearing.

March 13, 1964—Order denying motion for rehearing.

May 22, 1964—Defendant's request for record in re certiorari filed. Allowed May 28, 1964.

June 11, 1964—Order amending Commission's interlocutory order of January 12, 1962, pursuant to instructions of Court of Claims.

The Spokane Tribe, et al. v. the United States, Docket No. 331; Appeal No. 5-62

October 11, 1963—Court of Claims decision—Affirmed in part, reversed in part.

Southeast, northeast and southern and central portion of western boundary line not supported by substantial evidence. Remanded to the Commission for further proceedings.

September 3, 1964—Petitioner's motion to remove case from trial calendar. Order accordingly September 3, 1964.

December 12, 1964—Petitioner's motion to remove case from trial calendar and order accordingly (pending discussions toward possible settlement).

February 3, 1967—Settlement hearing. Settlement announced and approved. Formal papers now being prepared for final entry.

Blackfeet and Gros Ventre et al. v. the United States, Docket No. 279-A; Appeal No. 1-58

June 7, 1963—Court of Claims decision—Reversed and remanded for further proceedings.

Commission's order denying motion of Assiniboine Tribes of Indians to intervene in Docket 279-A is reversed, with directions to grant the motion and permit the appellants to intervene as parties petitioner therein.

June 25, 1963—Assiniboine Tribe motion for entry of order granting leave to intervene.

August 15, 1963—Defendant's request for record in re certiorari filed. Allowed August 16, 1963.

August 30, 1963—Record in re certiorari delivered to defendant.

September 13, 1963—Order allowing intervention of Assiniboine Tribe.

Cherokee Freedmen and Cherokee Freedmen's Association v. The United States, Docket No. 123; Appeal No. 2-62

May 10, 1963—Court of Claims decision—Affirmed in part, Remanded in part for further proceedings.

Affirmed dismissal of petition that relief be granted for failure of Dawes Commission to enroll Cherokee Freedmen. Remand so that Commission can deal with contention that Freedmen are a group entitled to share in Cherokee awards. Commission might consolidate this case with Docket No. 173 or permit appellants to intervene in that case.

June 6, 1963—Appellee's motion for rehearing.

June 10, 1963—Appellee's motion to amend points and authority.

June 24, 1963—Appellant's reply to motion for rehearing.

July 12, 1963—Order denying motion for rehearing.

November 1, 1963—Petitioners' motion for leave to intervene in Docket No. 173.

November 27, 1963—Defendant's response to motion to intervene.

December 16, 1963—Petitioners' reply to defendant's response.

January 6, 1964—Order denying petitioners' motion to intervene in Docket 173 as case was closed.

March 30, 1964—Petitioners' motion for permission to intervene in Docket No. 173-A.

April 20, 1964—Defendant's response to petitioners' motion for permission to intervene.

May 5, 1964—Special appearance of petitioners in Docket No. 173-A and motion to file objection amicus curiae.

October 12, 1964—Order granting petitioners' motion to intervene.

March 22, 1966—Motion of petitioners in Docket No. 173-A to dismiss the intervening petition.

August 2, 1966—Petitioners' (Dkt. 123) reply to motion to dismiss.

October 5, 1966—Order denying motion to dismiss.

June 5, 1967—Set for hearings.

Minnesota Chippewa Tribe, Docket No. 18-B; Appeal No. 11-61

April 5, 1963—Court of Claims decision—Remanded.

Reversed insofar as Commission determined Indians did not have sufficient ownership and title to two excluded segments. Modified with respect to those on whose behalf Minnesota Chippewas appeared. Vacated without prejudice with respect to determination that Mississippi bands and Pillager and Lake Winnibigoshish bands held title to separate and distinct areas of land.

July 26, 1963—Hearing on remanded issues.

February 5, 1964—Amended interlocutory order and amended findings of fact in accordance with Court of Claims decision.

The Yakima Tribe of Indians v. the United States, Docket No. 47; Appeal No. 4-61

October 3, 1962—Court of Claims decision.

Affirmed as to all issues except those relating to Tracts B and D.

Revised as to determination with respect to tracts B and D.

Remanded for further proceedings.

September 17, 1964—Hearing on remanded issues.

December 24, 1964—Petitioner's brief on remand from Court of Claims.

June 18, 1965—Order separating claim for Tract C and entering final judgment thereon. To be docketed as 47-A.

June 21, 1965—Defendant's findings and brief.

September 9, 1965—Petitioner's reply brief.

February 25, 1966—Commission findings and opinion on remanded issues.

Pawnee Tribe of Oklahoma v. the United States, Docket No. 10; Appeal No. 7-61

April 4, 1962—Court of Claims decision—Remanded.

Valuation affirmed, credit for permanent annuity affirmed, reversed as commutation of payments on claim, affirmed as to denial of interest.

April 20, 1962—Appellant's request for record in re certiorari. Allowed April 20, 1962.

April 27, 1962—Petition for certiorari filed in Supreme Court.

June 11, 1962—Order of Supreme Court denying certiorari.

July 5, 1962—Joint motion for entry of final judgment.

July 6, 1962—Amended conclusions of law and final award.

August 2, 1963—Reported to Congress.

Respectfully submitted.

ARTHUR V. WATKINS,
Chief Commissioner.

Senator McGOVERN. We have a number of other witnesses that still are to be heard.

I wonder if we could meet again at 2 o'clock this afternoon. We will try to complete the witness list at that time, if that is agreeable.

(Whereupon, at 12:10 p.m., the subcommittee recessed to be reconvened at 2 p.m. this same day.)

AFTERNOON SESSION

Senator McGOVERN. We are now going to hear from Mr. Edwin Weisl, Assistant Attorney General of the Land and Resources Division of the Department of Justice.

**STATEMENT OF EDWIN L. WEISL, ASSISTANT ATTORNEY GENERAL,
LAND AND RESOURCES DIVISION, DEPARTMENT OF JUSTICE,
ACCOMPANIED BY J. EDWARD WILLIAMS, FIRST ASSISTANT
DIRECTOR; AND RALPH BARNEY, CHIEF, INDIAN CLAIMS
SECTION**

Mr. WEISL. Thank you.

I am accompanied here today by J. Edward Williams, and Mr. Ralph Barney, Chief of our Indian Claims Section.

I am pleased to have this opportunity to participate with this committee in exploring means by which consideration and determination of claims under the Indian Claims Commission Act of 1946, as amended, may be expedited. The process for determining these claims, envisioned by the Congress as no more than a 10-year task in the original legislation establishing the Commission, is now in its 21st year. Twice the Congress has extended the life of the Commission by 5 years. Its existence will terminate now after April 10, 1967, its work unfinished and chaos our legacy, unless the Congress legislates a solution to the problem.

A solution which readily comes to mind is the extension of the life of the Commission by 5 additional years. Subsection (b) of the bill would do this, providing that the existence of the Commission shall terminate at the end of 5 years from and after April 10, 1967, or at such earlier time as the Commission shall have made its final report to the Congress on all claims filed with it. The Department of Justice concurs in this proposal. We know of no reasonable means by which final determination of all the claims now on file with the Commission could be had in a much sooner time.

Subsection (a) of the bill contains certain provisions intended to insure that all pending claims are settled by the new termination date:

1. Each claims not previously set for trial would be set by the Commission for trial on a date not later than January 1, 1970.

2. If the claimant is unable or unwilling to proceed with the trial on that day the Commission is to enter an order dismissing the claim with prejudice, except that on motion of the claimant the Commission may grant a continuance for not more than 6 months for good cause shown and may stay dismissal if it finds that a final compromise is being negotiated in good faith.

The purpose of subsection (a) is one of which all concerned can heartily approve. But the effect of the subsection in its present form would inevitably be the return to the status of 21 years ago of a very substantial number of claims which the Congress hoped finally to settle through enactment of the Indian Claims Commission Act. It can be assumed that the claimants in most of the claims dismissed would resort again to petitioning the Congress for a redress of the grievances which now are being processed, although much too slowly, to what we can hope will be final solution.

Although the disposition of these cases appears to have been slow it should be remembered that these are large and complicated cases. The 94 cases in which final money judgments have been rendered aggregated \$190,757,504.73. The largest were suing for the value of the whole State of California.

Incidentally, that was the result of a settlement negotiated by my predecessor, Mr. Clark, and the Indian attorneys.

But there have been other very large judgments such as the \$14,364,476.15 to the Cherokee Indians, the \$7,315,985.70 to the Pawnee Indians, \$7,253,165.19 to the Southern Paiutes, \$15 million to the Cheyenne and Arapahoes, and so forth. Quite naturally, cases of this magnitude and complexity take time.

I should point out that the Department has tried to expedite the final disposal of these claims by making settlements where we could do so on a reasonable basis. Of the 94 final judgments, 38 of these were settled in their entirety by the Department for \$86,836,180.92. In numerous other cases we have agreed on the amount of offsets or the amount of the consideration.

The Attorney General has approved settlements in eight cases which are awaiting approval by the tribes, the Commissioner of Indian Affairs or the Commission. One of these is in the amount of \$6,700,000.

It is clear to the Department of Justice at least that the general delay in disposition of Indian Claims Commission litigation is not of its making. The Department is prepared to proceed with the trial of more cases than are called for by the present calendar. It is delaying the trial of none. It could prepare itself to try more. But I must confess that it would be hard pressed to give to the people of the United States the legal representation which they deserve in the determination of the very substantial claims against them here involved on the schedule which would be set by this bill.

The Department is now committed to proceed before the Commission in approximately 100 cases in the period to July of 1969. The preparation of these cases for trial is a time-consuming task. Actual trials can extend over a period of several weeks for preparation. Supporting briefs take more time. And we can never ignore the cases on appeal to the Court of Claims or pending in the Supreme Court, all of which must be briefed and argued.

The matters I have mentioned are all part of the process of trying these claims, and compete for the time of our limited trial staff. A large increase in the number of trials such as would be possible under this bill would tend to have the same effect as does a run on a bank. The problem cannot be immediately resolved by adding to the staff. This is unusual litigation. What might be termed the "Indian claims bar" is already involved in these cases in positions adverse to the Government, and lawyers unfamiliar with the work would not be in a position to make much progress for a considerable time after their employment. Nevertheless, the Department will endeavor to meet any requirement put upon it by the Congress.

An even more serious impediment to this bill in its present form is that a number of tribes do not have lawyers to represent them. While evolving a means to require these tribes to embark earnestly upon the preparation of their cases can hardly be said to be premature, we question the desirability of setting any date for the trial of these

complex cases which would leave insufficient time for their adequate preparation. The less than 3 years remaining until the January 1, 1970, date specified in the bill, could at least in some instances prove inadequate. Mandatory dismissal with prejudice in such circumstances, even with the 6-month extension provided for by the bill, would simply delay the problem of final resolution of these claims. It cannot be doubted that the Indians will not be satisfied in the great majority of these cases with less than a decision after trial and on the merits.

May I interject in my statement at this point that one of the things that does motivate the Department of Justice in these cases is not the desire to win or frustrate Indian claims. I think our statement makes clear that Congress' action, and I think every citizen, is to right these ancient wrongs done to the Indians. And we are here with you, Senator McGovern, and your committee in an effort merely to bring these claims to trial someday, that these wrongs can be righted in time so that living Indians will enjoy their benefits.

Returning to my statement: Lack of funds for the employment of expert witnesses, as this committee knows, has been a further problem for Indians which has delayed the preparation of their cases. While we hope that the solution to this problem is being reached through recent legislation providing Federal loans for the purpose, adequate time must be allowed for the preparation of the expert testimony. We do not know whether the January 1, 1970, date which is provided by the bill will in all cases allow sufficient time for this purpose. Nor are we certain that the Government can by that date complete its examination of the voluminous records and prepare the necessary reports in a number of accounting cases.

In short, the Department of Justice feels that the dismissal penalty which is provided in subsection (a) of S. 307 unavoidably would be too drastic for too many cases as the bill is now written. We believe that the section 27 proposed for addition to the Indian Claims Commission Act should be modified to require the Commission to prepare a trial calendar by a date certain—1 year after enactment of the amendment should provide adequate time for the necessary correspondence—which would include all cases whether or not they had previously been calendared for trial. The legislation might then further provide, generally as it now does, that if on the date calendared or any reasonable extensions thereof granted only for good cause shown the claimant is unwilling to proceed, the claim is to be dismissed with prejudice.

Such an amendment would not work a forfeiture upon claimants unable to proceed to trial for reasons beyond their control. It would enable call of cases for trial in orderly manner to the fullest extent to which the machinery provided for their adjudication is capable of handling them, permitting reasonable adjustments in the order of cases called. Indeed, as we see it, it would serve the desirable purpose of the present provisions of the bill, but with a flexibility that is necessary if it is hoped to bring about a conclusive end to these Indian claims.

Thank you for this opportunity, sir.

Senator McGOVERN. Thank you very much, Mr. Weisl.

As you know, on January 25 the chairman of the Interior Committee, Senator Jackson, sent a letter requesting certain information

from the Department of Justice. My understanding is that this answer has come in in some detail today, but none of us has had a chance to look at that.

Mr. WEISL. May I offer my apologies for not having sent it sooner, sir.

Senator McGOVERN. Thank you.

I just want to determine whether or not the information that the chairman has requested has been supplied.

First, he asked for a list of all pending cases in which a settlement effort has been initiated by counsel for the petitioner.

Do you have such a list in the answer?

Mr. WEISL. No, sir. We were unable to give you that information simply because we do not keep this information in a statistical sense. We can represent that settlement discussions of varying natures have been had in a very large number of cases. But we simply do not keep these records in a form accessible to supply this information.

Senator McGOVERN. Well, would you say there have been a significant number, a sizable number of settlement offers that are pending before you at the present time?

Mr. WEISL. Yes, sir, there are quite a number.

Senator McGOVERN. Would you have any idea how long these offers have been pending? Has it been a few weeks, a few months, a few years?

Mr. WEISL. Some, I understand, have been pending for a period of months, which is longer than we would like.

Senator McGOVERN. What is the reason for that? Why can't a reasonable period of time be set down, either to reject or to accept these offers of settlement?

Mr. WEISL. The reasons, I think, are twofold.

In some of the instances, it is my understanding that we do not have sufficient confidence in the information presently available for ourselves to make the adequate evaluation we would like, and therefore we require further information.

In others, the attorney involved in the particular case is also involved in other cases which are demanding his attention full time for the moment.

Let's not say that we have in all cases been as prompt as we should.

Senator McGOVERN. You recognize that problem as a significant reason for some of the delay that we have experienced.

Mr. WEISL. Yes, sir. That is something we do desire to expedite, and I am trying to.

Senator McGOVERN. You think it is going to be possible to take care of that?

Mr. WEISL. Yes, sir.

Senator McGOVERN. At least that one aspect of it.

The second question that the chairman directed to you was to furnish a list of all cases where the Government has filed an appeal or a cross-appeal in the Court of Claims on one or more issues, together with a statement as to the eventual decision by the Court of Claims on those issues.

Has that been supplied?

Mr. WEISL. Yes, sir, it has—Table 2 annexed to our letter.

Senator McGOVERN. Does it indicate any sizable amount or number of appeals where the decision of the Commission has been reversed?

Mr. WEISL. Yes, it does. On the other hand, I would say that reversals are far in the minority.

Senator MCGOVERN. There is a comparatively small percentage of the number of appeals that have actually resulted in a reversal of the Commission's findings?

Mr. WEISL. I would say yes, that is true.

Senator MCGOVERN. Does that matter of appeal from the decision of the Commission involve a considerable amount of time and effort and the use of personnel, attorneys' time?

Mr. WEISL. Yes, sir. Although let me add that trial briefs have generally been written before the Commission, and writing the appellate brief often merely involves an adaptation of the trial brief.

Senator MCGOVERN. Would you have any idea of the average length of time involved in one of those appeals before they are decided?

Mr. WEISL. If I may turn to Mr. Barney, I think he has that information.

Mr. BARNEY. From the time that an appeal is noted until the case is briefed, argued, and decided, I would say on the average 2 years, sir.

Senator MCGOVERN. Is it your judgment that the returns—that is, judged by the number of cases that have been handled with a reversal—that that result has justified the amount of effort and the delays and the other investments and resources that have gone into these appeals? Did the results justify the effort and the delay?

Mr. WEISL. Let me give you my philosophy on the number of appeals taken by the Government as opposed to the Indian tribes. I do believe that it would be wrong for us to appeal on what are purely factual issues that the Indian Claims Commission has determined. But often there are important issues of law that are common, not only to the case on appeal, but to subsequent cases, that we feel should be determined by the highest Court prior to going forward in these other cases.

Let me give you an example without naming the case, because I don't like to discuss pending litigation as such, in which a tremendous issue is presented as to the Indians' ownership of minerals underneath the land areas that had originally been ceded to the United States by Spain.

I could have said not to appeal the case as the Commission decided that the Indians did own the minerals. Sixteen other cases, however, could well depend on this particular issue of law. And I did not feel that I, as a member of the executive branch, so unilaterally could make the final legal determination that the Commission's view on this important issue of law was correct.

If the Court of Claims either affirms or reverses, we will know how to proceed in some 16 other cases. Perhaps we can make settlement. At least it will dispose of the liability question of these minerals and save a lot of court time trying that issue subsequently.

So in some instances appeals are desirable. But lawyers on the other side of the appeal do not feel that way. I cannot say I blame them.

Senator MCGOVERN. Does your statement filed today with the chairman give an answer to his question with reference to the docketing of these cases and their disposition in the Court of Claims?

Mr. WEISL. Yes, sir.

Mr. BARNEY. May I supplement just one thing Mr. Weisl said.

On page 3 of the reply to Senator Jackson, Senator McGovern, we had set out the fact that in a total of 122 appeals to the Court of Claims, the Government has appealed only 15 and cross appealed seven others. So out of the 122 the Government has not appealed most of them.

I say that merely to illustrate what Mr. Weisl has said—that we just do not appeal just for the sake of appealing.

Senator McGOVERN. Now, this fourth question in the chairman's letter, in which he asks you to describe the instructions of your Department to GSA for making work assignments in the preparation of accounting reports. Is that contained in this answer?

Mr. WEISL. Yes, sir.

Senator McGOVERN. Let me just ask you in a general way, Mr. Weisl, what you regard as the major cause, the most significant causes for delays. You heard the discussion this morning with members of the Commission. What is your view as to the major bottleneck in the processing of these claims?

Mr. WEISL. Without casting aspersions on anyone or any institution, I would say that one of the principal difficulties we have had is the fact that many of the Indian tribal claims have not been adequately prepared by certain of their lawyers. That is to say, they are simply not ready to go to trial within a reasonable time after the docketing of their claim.

At the last calendar call we answered ready, I believe, in some 100 cases. The petitioners' lawyers, I believe, were ready in some 35. This illustrates one of the difficulties in going forward with these cases.

I must say one of the really grave difficulties is inherent in the nature of the cases—the tremendous amount of preparation, the tremendous expense involved in preparing for trial. These tend to discourage, in a perfectly normal and understandable way, most advance preparation until one is actually under the gun. So I do not in any way attack the Indian bar generally, or even certain members of it by so saying.

The Commissioners are very busy. The Commission has a tremendous number of matters before it. The exhibits, the testimony in individual cases are of unbelievable length and complexity. Therefore often adjudicated cases, that is, cases that have been tried, take some time for the final decision to be rendered by the Commission.

Senator McGOVERN. Are there not, though, a sizable number of cases where the Indian attorneys have been ready for trial, but where the Government has asked for additional time, and where the delay has come from that side?

Mr. WEISEL. To my knowledge there have not been any such cases in recent days.

Senator McGOVERN. You see this as a past practice that has been corrected?

Mr. WEISL. Yes, sir.

I might add at this point that we will inevitably see some increase in the pace of the disposition of these cases, simply because at this stage we now have a substantial corpus of legal precedents on valuations of various sections of the country which can be used as a basis of comparison for areas that have not yet been valued, so that the task with each subsequent case, with each new part of the United States that comes to be adjudicated in value, becomes easier for the others.

The other day in a settlement where virtually all of the land involved in the case we were trying to settle adjoined land that had been valued at practically the same date in another case makes our task in settling and evaluating the case much simpler, and it makes the Commission's task much simpler.

Senator McGOVERN. Do you ever initiate actions designed to reach a settlement, or do you wait and simply react to an offer from the claimants?

Mr. WEISL. Well, it is the long-standing policy of the Department of Justice in all cases in which money judgments are involved not to make settlement offers on its own, but to await them from the other side. This policy is not of our division's making—it is departmental. And I am not able to go into detail as to the reasons for it. That is not to say that on an informal basis contacts are not made.

I would like to use this forum, Senator, if you would give me that privilege, to announce—I know many of the lawyers for the Indian tribes—that we are anxious to have settlement offers, anxious to have someone take the initiative, so that the talks can be commenced.

Senator McGOVERN. There are such settlement offers now pending, are there not, that have been under consideration?

Mr. WEISL. Yes, sir.

Senator McGOVERN. Do you think you have procedures now where you can expedite this whole process and move them along?

Mr. WEISL. The only real procedure that will succeed is the will to do it, and I think we have that will, yes, sir.

Senator McGOVERN. Do you think, from what you know of the operation of the whole claims procedure, that the Commission should be able to complete its work within 5 years and be terminated at that time?

Mr. WEISL. Given the determination of all parties to go forward, yes, they could finish up a substantial part of their work in 5 years—perhaps, let us say, 7 if not 5. If things were to go on as they have in the 1950's, the answer is clearly "No." However, I don't think any of the parties—the Commission, the petitioner at bar, or the Government—are willing to sit back and wait any longer. There is a determination, I know, among all of us to get to work and get these cases disposed of. It is the only fair thing to the Indians, after all, who are the people we should be worried about.

Senator McGOVERN. Senator Hatfield, do you have any questions?

Senator HATFIELD. No.

Mr. WEISL. Let me say one thing in defense of all of us.

I don't think that the picture is quite as dismal as some people may think from the discussion that we have had today.

I was looking over some figures. I want to report to this committee we have had significant progress in a majority of the cases on the Commission's docket. For example, final judgments have been already rendered in 95 of these cases. Also, 130 of these cases—five of which incidentally are on appeal to the Court of Claims—have actually been dismissed and have thus been finally eliminated from the Commission's docket.

In 80 of the cases the initial stage of trial has been completed—that stage of trial in which the fact that the Government is liable to the Indians for something, an amount later to be determined—this stage of the trial has been passed. So that in a total 305 of the

dockets of some 570 cases, either final disposition has been had or the most significant part of the case is over.

In many of the other cases, at least preliminary matters have been disposed of, and they are further along than a cursory examination of the record might indicate.

Senator McGOVERN. Do you think that in the next couple of years that those remaining cases on which the first stage has not been reached could be processed at least that far?

Mr. WEISL. Let me turn to Mr. Barney.

Senator McGOVERN. As you know, that is a major part of the legislation we have before us.

Mr. WEISL. Let me turn to Mr. Barney.

Mr. BARNEY. I don't think they could all be completed in the first stage within 2 years. I think many of them could be. But I doubt if all of them could be.

Senator McGOVERN. You think there is enough protection in the additional time that is allowed under the bill, where an extension of 6 months can be given in some cases, and even beyond that, under certain circumstances—a further delay put into effect—do you think that provides sufficient protection to take care of these cases that cannot be met under the 2-year cutoff?

Mr. BARNEY. If you would eliminate the word "unable" from the bill then; yes.

Senator McGOVERN. Leave in the word "willing."

What would be some of the circumstances under which claimant might be unable to meet that deadline?

Mr. BARNEY. I can tell you from my own experience which is best.

We have had, to my personal knowledge, three expert witnesses die, which meant we had to go out and start all over again. These all happened to be appraisal witnesses. So it meant we had to go out and get brand new witnesses.

Many of the anthropological witnesses are full teachers, professors usually Ph. D.'s. They can do their work only if they happen to have a sabbatical, or do it on the side, so to speak. And I happen to know, for example, Dr. Ermine Wheeler Vogelin has been working on one case, docket No. 11, for over 3 years. She took her whole sabbatical. And she is a hard worker.

Those are the types of things that arise.

It would not be fair to dismiss the cases because they are unable. Sometimes the lawyers are.

Senator McGOVERN. What are the reasons that you observe in your experience why the claimants are sometimes unwilling to move ahead on preparing cases for trial?

Mr. BARNEY. I have often wondered that. If you will pardon the personal expression, I have been practicing law for 40 years, and it is the first time in my life I ever knew a plaintiff who was not anxious to go forward with his case. I always thought it was the defendant's lawyer who did the holding back. I have never known in the years I have been practicing law, from before a justice of the peace to the Supreme Court, the plaintiff being unwilling to go forward.

Senator McGOVERN. Is it because they have too many cases concentrated in too few firms?

Mr. BARNEY. Some of them, just as it is true of the Department. We have a staff of 17 lawyers, including myself and the Chief. And

while I do not handle a full complement of cases—not that I don't want to, because I would love to practice law—but occasionally a lawyer will, for the Department, and I am sure for the Indians, get himself to the point where he is trying—too many cases are set on that particular lawyer at that particular time. And the one request that we have ever made of the Commission in setting cases is that they merely watch to see that they do not set too many cases for one Department of Justice lawyer—more than he can handle.

I think it is quite true that they sometimes get piled up.

Senator McGOVERN. You don't think of any other reason that might make the claimants unwilling to move ahead as expeditiously as possible?

Mr. BARNEY. I don't know why they would not be willing to, sir.

Mr. WEISL. I think there is a certain class of claims where the attorneys keep them off the docket in the hope of someday achieving some kind of adjustment with the Government.

Mr. BARNEY. There is one other classification, Senator.

These lawyers, under their contracts, usually are required to file all the claims they can think of, and they do a conscientious job, sometimes too conscientious, in the sense that they file a claim which they discover has no merit, but you cannot get rid of it.

Senator McGOVERN. The cases that seem marginal, or doubtful on the surface, do you take initiative in asking that they be dismissed?

Mr. WEISL. Yes, sir. We have done that, particularly with certain classes of cases which on their face cannot prevail. For example, it was done in some of the Alaska cases, where non-Indians, Aleuts, and Eskimos had filed claims and the law simply says only American Indians are eligible under the Act. That is not to say that Congress sometimes should not grant relief to these other classes of native Americans.

But otherwise, I must say I feel a reluctance to try to dismiss one of these cases when there is even the slightest possibility of seeing it prevailing. I think here the Congressional mandate is to see that these wrongs are righted, and we have a duty to afford every opportunity. Our real job is to make sure when the Indians are paid that they are paid the true value of their claim and no more for the true amount of land taken from them, and no more, but not to defeat their claim in its entirety.

Senator McGOVERN. I take it from what you have said your only suggestion as to any changes in the legislation that is pending here is to strike the word "unable" in that one sentence of the bill.

Mr. WEISL. In essence; yes. But that is not to say that we do not look to the Commission itself for institutional changes in its own procedures. I think Chief Commissioner Watkins has outlined to you some of the procedural reform that he has undertaken with his fellow Commissioners.

I see no reason why the U.S. representative of the Indian Bar, so-called, and members of the Commission could not sit down at some reasonably near date and time and discuss further procedural institutional changes to be made.

I, for example, would like to see the Commission take a very strong hand in attempting to bring parties together by way of settlement. It is tried by courts of many States now. And it might be very useful.

Senator McGOVERN. Is not that a role, though, that your Department could play also, as well as the Commission, by taking the lead in trying to get settlements?

Mr. WEISL. In the course of our discussion today, Senator, I have come to agree with you. I think perhaps we should take the initiative, not in proposing actual dollar amounts, which would be contrary to our Department policy, but in proposing the petitioners get to work and come to us with an offer.

Senator McGOVERN. You heard the question this morning which was raised with reference to the desirability of adding new members to the Commission.

What is your feeling about that as a means of expediting the work of the Commission and taking some of the burden off the existing Commissioners?

Mr. WEISL. Well, I am very much guided by the views of the Commissioners themselves who evaluate their own workload, and they have doubts as to whether this would solve many of their problems. A principal problem is getting the cases actually tried. And that would not be solved by the addition of other Commissioners. Perhaps if we see a great flock of cases coming to trial in the near future, we should reexamine that question.

Senator McGOVERN. Why wouldn't it expedite the trial process?

Mr. WEISL. The problem is that not enough cases appear to be ready for trial to go forward, and one of the efforts is to bring this about.

I think perhaps the Commission could handle an increased number of trials with the present personnel—so they seem to feel—and I think their views are entitled to great weight.

Senator HATFIELD. If I could just pursue that point.

Do I understand you are speaking now that it is a question of staff work to get the cases in line for hearing? There isn't present staff work sufficiently in line, or enough staff to make it possible?

Mr. WEISL. Well, I gather the Commission feels it could use additional staff. Again, I would give their judgment great weight. And I urge that this committee consider their requests for additional staff.

My office could, of course, always use more lawyers. I will say in all candor that I do not regard it as very possible to get the caliber of lawyer that I feel is required for this type of case to come to work for the Indian Claims section. It is a section that is phasing out. It is the section that requires at least a couple of years before the lawyer really understands the nature of these cases well enough to try one of the difficult ones and by that time we hope the Commission's work will be well down the road.

Younger lawyers, again, in all candor I say to you, simply do not regard this kind of work as sufficiently broad to fit in with their career plans. They won't learn enough techniques for their future practice in this highly specialized work—but also very interesting work. You learn the whole history of our country in the Indian Claims section.

Senator HATFIELD. Did you ask for more staff?

Mr. WEISL. No, sir.

I would like to say that the 17 lawyers and 12 clerical people are hard working; they are all in the higher grades of the Federal Service,

they are an amazing group of people. They have gained a knowledge of this country that few people have.

We have what is the oldest employee on active Federal Service working, a Mr. Kenny, who was formerly Chief Forester for the Indian Bureau many years ago. He is 92 years old. Here we have a living witness to many of the issues before the Commission, and we simply draw on him, not to look up documents, but to tell us how it actually was. He works harder than most of us, including me, I might add.

Senator McGOVERN. Thank you very much, Mr. Weisl, for your testimony. Senator Jackson's letter to the Acting Attorney General and his reply will be printed at this point.

(The data referred to follows:)

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
January 25, 1967.

Hon. RAMSEY CLARK,
Acting Attorney General, Department of Justice, Washington, D.C.

MY DEAR MR. ATTORNEY GENERAL: Under date of January 19, I advised you that the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs has scheduled a hearing for Monday, February 6, 1967, on S. 307, a bill that would extend the life of the Indian Claims Commission.

We are attempting to elicit as much information as possible concerning the causes for delay in the final disposition of cases pending before the Commission. Set forth below are several questions, or requests for material, which we would appreciate having answered:

1. (a) Furnish a complete list of all pending cases in which settlement discussions have been initiated by counsel for the petitioner, giving as to each case—
 - (1) the date when such discussions commenced;
 - (2) the date when informal negotiations terminated, if such discussions did not result in a formal settlement offer, together with the reasons for such termination;
 - (3) the date when petitioner's counsel submitted a formal settlement offer;
 - (4) the date when the Department acted upon such settlement offer, and the nature of the action taken; and
 - (5) whether settlement discussions are continuing or a formal settlement offer still is outstanding; and
- (b) A complete list of all pending cases in which settlement discussions have been initiated by counsel for the defendant, together with a report on the present status of any such discussions.
2. Furnish a complete list of all cases where the Government has filed an appeal or a cross appeal in the Court of Claims on one or more issues, together with a statement as to the eventual decision by the Court of Claims on each such issue.
3. Furnish a complete list of all Indian Claims Commission cases appealed to the Court of Claims within the past five years, showing as to each case the date when the record was docketed, the date when the last brief was filed, the date of oral argument, and the date of the Court of Claims decision.
4. Describe the instructions of your Department to the General Services Administration for making work assignments in the preparation of accounting reports for cases before the Indian Claims Commission.

In order that the information you have been asked to provide may be properly analyzed, it would be appreciated if it is submitted as far in advance of the hearing date as possible.

Sincerely yours,

HENRY M. JACKSON,
Chairman.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
February 15, 1967.

Hon. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR: In response to your letter of January 25, 1967, we are enclosing tables giving to the extent we are able to do so the information which you requested relating to Indian Claims litigation initiated before the Indian Claims Commission.

It is not possible to supply you with detailed information relating to "negotiations" for settlement in Indian Claims cases. In many instances the "discussions" are so general in nature that they cannot be considered as "negotiations." However our attitude is that we will and do give serious consideration to suggestions of settlement whenever there is some adequate basis for such discussions. Before seriously considering settlements in "Original Indian title" cases we usually require a decision by the Commission as to the area for which the Indians are entitled to compensation because the areas *claimed* are generally much greater in extent than we believe justified. Moreover, these areas often overlap with claimed territory of other tribes, thereby exposing the United States to the danger of having to pay twice. Once the area has been determined the Department then is in a position to consider the question of the "value."

The value of an area is quite difficult to estimate in the absence of valuations by the Commission in nearby or surrounding areas as of comparable dates. This is so for a number of reasons such as the very early dates of valuation (1797 for the *Seneca* case in New York, for example) and the immense areas involved (40,000,000 acres in the *Crow* case).

However, as the Commission determines values in more and more areas so that we can have some idea of the amount of our potential liability the possibilities of settlement increase.

It is not the policy of the Department to refuse to make settlements. Attached is Table 1 showing by years the number of cases in which settlements have been negotiated. This table discloses that out of the aggregate amount of \$190,757,504.73 in 94 final judgments we have negotiated full and complete settlements in 38 cases aggregating \$86,836,180.92, and the Attorney General has approved full settlements in 3 additional cases aggregating \$6,786,832.92 which are awaiting approval by the tribes and the Commission. In addition we have agreed with the tribes on the amount of consideration and offsets to which the Government is entitled to credit in 30 cases, thereby making possible the entry of final judgments much sooner than would otherwise be the case. Settlements of consideration and offsets have been approved by the Attorney General in 5 cases which are awaiting approval by the tribe and the Commission.

Under Section 15 of the Indian Claims Commission Act the Attorney General is required to "represent the United States." As pointed out in the preceding paragraph the Attorney General has made settlements when, in his judgment, the circumstances warranted such action, and a settlement could be made in an amount which we considered fair both to the tribes and to the United States. There are, however, a large number of cases in which settlements should not be made either because it is our opinion that the United States is not liable, or the amount suggested is, in our opinion, too much. We think that our conclusion in this regard is justified by the fact that the Commission has dismissed as being without merit 97 cases, of which 3 are presently pending on appeal in the Court of Claims.

It has not been our practice to originate negotiations for settlements. Our experience has been that if a case has any substantial settlement possibilities the attorneys for the tribe will initiate them.

In answer to your inquiries regarding appeals, Table 2 attached shows all appeals and cross-appeals filed by the Government, the issues raised and the decision of the Court of Claims on each issue. In connection with the latter table it should be noted that a total of 122 appeals have been filed in the Court of Claims. The Government appealed in only 15 of these cases and cross-appealed in 7 others which were appealed by the tribes. The Committee may also be interested in knowing that of the cases appealed or cross-appealed by the tribes, the Commission was affirmed on all issues in 40 cases and reversed on one or more issues in 39; the tribes voluntarily withdrew 6 appeals, 11 appeals were dismissed on motion of the Government or another party and 7 as a result of settlement. The remaining 12 Indian appeals are still pending.

Table 3 attached shows the list of cases appealed to the Court of Claims during the past five years with the information requested. It is, we believe, self-explanatory.

In requesting the General Services Administration to prepare reports we have attempted to anticipate the order in which such reports will be needed, and have asked the General Services Administration to proceed with those cases. There have been times when it has been necessary to ask General Services Administration to give special precedence to a particular case. This happened in connection with the consideration of a settlement in the *California* cases. It was necessary to know the amount and purposes of gratuitous expenditures in order to arrive at a final settlement figure. In order to compile this information as quickly as possible the Tribal Claims Unit took a number of people off other cases in order to expedite the settlement of the *California* cases. Over the past 20 years this has been done on several occasions, but it is not common. The Indian Tribal Unit of General Services Administration has a copy of the Commission's Calendar which gives them an idea of when the accounting report will probably be needed.

Sincerely,

RAMSEY CLARK,
Acting Attorney General.

TABLE 1.—Settlements in Indian claims cases, 1950-66

[Judgments, 63 cases; pending, approved by Attorney General, 8 cases]

Year	Principal		Consideration		Offsets		Net judgment	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
1950					2	\$455,287.42	2	\$3,489,843.58
1957					1	100,000.00	1	433,013.64
1958					2	101,555.55	2	4,759,018.88
1959					1	12,722.00	1	567,000.00
1960	7	\$11,025,000.00			3	1,058,552.23	10	26,425,589.96
1961	1	3,650,000.00			2	458,860.32	3	19,283,814.17
1962			1	\$21,000	7	285,135.00	7	11,830,694.80
1963	2	3,754,380.00			4	2,913,100.40	6	11,799,220.19
1964	15	43,350,000.00					15	43,350,000.00
1965	10	22,606,800.92	3	593,000	7	564,457.07	12	33,696,292.27
1966	3	2,450,000.00			1	275,000.00	4	6,831,622.51
Total	38	86,836,180.92	4	614,000	30	6,224,669.99	63	162,516,108.00

¹ Number of cases do not tally because some settlements included specific settlements of "consideration" and "offsets." The number shown in the "Net judgment" column is the correct number of cases affected.

TABLE 2.—Cases in which Government has appealed or cross-appealed to Court of Claims—Continued

Name of case	Appeal No.	Issues	Ruling by Court of Claims
<i>Pawnee Tribe</i> , 157 Ct. Cl. 134 (1962), certiorari denied 370 U.S. 918.	7-61 (C)	Findings on value not supported by evidence. Error in computing amount of credit for limited annuities.	Commission affirmed. Commission reversed and 3 prior cases overruled. Commission affirmed.
<i>Miami Tribe</i> , 159 Ct. Cl. 583 (1962)	9-61	Error in computing amount of credit for perpetual annuities.	Do.
<i>Stoux Tribe (Lower Brule)</i> , 161 Ct. Cl. 413 (1963), certiorari denied 375 U.S. 826.	3-62 (C)	Findings of value not in accordance with mandate of Court of Claims and not supported by the evidence.	Do.
<i>Peoria Tribe</i> , 169 Ct. Cl. 1009 (1965)	12-63 (C)	Error in allowing interest. Error in disallowing counterclaim. No showing of present-day identifiable group entitled to assert claim.	Do. Do. Do.
<i>Kickapoo Tribe</i> , 174 Ct. Cl. 550 (1966)	4-64	Commission erred in holding that petitioners had recognized title to the land claimed.	Do.
<i>Emigrant New York Indians</i> (not yet reported; decided Oct. 14, 1966).	2-65	Error in determining liability of United States.	Do.
<i>Seminole</i> .	11-65	Error in determining area held by Indian title.	Pending (last brief filed Sept. 2, 1966).
<i>Kickapoo</i> .	13-65 (C)	Error in determining liability of United States on basis that tribe had compensable interest in lands claimed prior to 1893.	Pending (argued and submitted Nov. 22, 1966).
<i>Northern Paiute</i>	3-66	Error in disallowing offsets. Error in holding United States liable for mineral values.	Pending (awaiting brief of appellee and cross-appellant).
<i>Southern Ute</i>	7-66	Error in valuing minerals. No showing that group filing suit is same as group to whom 1 of claims accrued. Whether the claims asserted were covered by settlement in prior suit. Error in basing liability of United States on "taking" under 5th amendment. Miscellaneous errors. Briefs not filed.	Last brief to be filed by Feb. 10, 1967.
<i>Stoux (Sisseton and Wahpeton)</i>	8-66		Pending.

NOTE.—Cross-appeals are indicated by (C).

TABLE 3.—*Appeals to Court of Claims, 1962-66*

Case and No.	Appeal		Cross		Docket date	Last brief date	Argument date	Decision date
	Indians	Government	Indians	Government				
Nooksack, 1-62 (No. 46)	X				Apr. 2, 1962	Sept. 25, 1962	June 7, 1963	July 12, 1963
Cherokee Freedmen, 2-62 (No. 123)	X				Apr. 12, 1962	Aug. 15, 1962	Apr. 4, 1963	May 10, 1963
Lower Brule Sioux, 3-62 (No. 78)	X			X	Apr. 20, 1962	Oct. 5, 1962	Feb. 6, 1963	Apr. 6, 1963
Crow, 4-62 (No. 64)	X				May 14, 1962	May 22, 1962	May 9, 1963	Oct. 11, 1963
Spokane, 5-62 (No. 331)	X			X ²	May 22, 1962	Dec. 27, 1962	Oct. 11, 1963	Dec. 13, 1963
Lower Sioux, 6-62 (No. 360)	X				July 10, 1962	Mar. 27, 1963	Nov. 8, 1963	Jan. 24, 1964
Red Lake Chippewa, 7-62 (No. 18-A)	X				Aug. 10, 1962	Aug. 2, 1963	Dec. 5, 1963	Apr. 17, 1964
Duwamish, 8-62 (No. 109)	X			X ²	Oct. 17, 1962	Aug. 9, 1963	Apr. 17, 1964	Apr. 17, 1964
Pueblo de Zia, 9-62 (No. 137)	X				Mar. 22, 1963	Aug. 1, 1963	June 12, 1964	June 12, 1964
Ometla, 1-63 (No. 159)	X			X ²	Feb. 27, 1963	Nov. 1, 1963	Apr. 7, 1964	Apr. 16, 1964
Suc & Fox, 3-63 (No. 303)	X			X	Apr. 9, 1963	Sept. 18, 1963	Jan. 15, 1964	Apr. 17, 1964
Creek, 4-63 (No. 21)	X				June 5, 1963	Oct. 10, 1963	Mar. 6, 1964	Apr. 17, 1964
Ft. Belknap, 5-63 (No. 250)	X				June 20, 1963	Oct. 30, 1964	Oct. 8, 1965	Dec. 17, 1964
Absentee Shawnee, 6-63 (No. 334-A)	X				June 18, 1963	Jan. 13, 1964	Oct. 9, 1964	Dec. 11, 1964
Absentee Shawnee, 7-63 (No. 334-B)	X				Nov. 19, 1963	Dec. 18, 1964	Oct. 8, 1965	Dec. 17, 1965
Six Nations, 8-63 (No. 344)	X				Nov. 19, 1963	Mar. 30, 1964	Feb. 4, 1965	Mar. 12, 1965
Creek, 10-63 (No. 167)	X			X	Nov. 19, 1963	Mar. 30, 1964	Feb. 4, 1965	Mar. 12, 1965
Seneca, 11-63 (No. 342-H)	X				Dec. 17, 1963	Feb. 10, 1965	Oct. 8, 1965	Dec. 17, 1965
Pooria, 12-63 (No. 314, amended)	X				Feb. 10, 1964	Aug. 5, 1964	Apr. 8, 1965	June 11, 1965
Absentee Delaware, 13-63 (No. 337)	X				Apr. 17, 1964	Dec. 13, 1965	May 2, 1966	Oct. 14, 1966
Seneca, 14-63 (No. 342-A, No. 368-A)	X				Apr. 17, 1964	June 18, 1965	Feb. 11, 1966	Feb. 23, 1966
Seminole, 1-64 (No. 205)	X				Apr. 28, 1964	Feb. 11, 1965	Jan. 14, 1966	Feb. 18, 1966
Warm Springs, 2-64 (No. 198)	X				July 22, 1964	Sept. 11, 1965	Apr. 14, 1966	July 15, 1966
Muckleshoot, 3-64 (No. 98)	X			X	July 22, 1964	Sept. 28, 1965	Nov. 5, 1965	Jan. 21, 1966
Kickapoo, 4-64 (No. 317, No. 314-C)	X				Sept. 30, 1964	Mar. 2, 1965	Nov. 5, 1965	Jan. 21, 1966
Naz Perce, 5-64 (No. 175-B)	X				Nov. 17, 1964	June 14, 1965	Mar. 7, 1966	Dec. 17, 1965
Cherokee, 6-64 (No. 179)	X				Jan. 13, 1965	Jan. 3, 1966	May 31, 1966	Oct. 14, 1966
Little Shell Chipp., 7-64 (No. 18-A, No. 113)	X				Jan. 13, 1965	Jan. 3, 1966	May 31, 1966	Oct. 14, 1966
Yankton Sioux, 8-64 (No. 11-A, No. 138)	X				Feb. 17, 1965	Jan. 3, 1966	May 31, 1966	Oct. 14, 1966
Umatilla, 1-65 (No. 264)	X				May 24, 1965	May 24, 1966	Feb. 6, 1967	Oct. 31, 1966
Emigrant New York, 2-65 (No. 75)	X				July 27, 1965	May 13, 1966	Oct. 3, 1966	Dec. 16, 1966
Minn. Chippewa, 3-65, 4-65 (No. 18-B, No. 18-N)	X				Aug. 27, 1965	July 18, 1966	Oct. 3, 1966	Dec. 16, 1966
Hannabille, et al., 5-65 (No. 28, No. 29-D)	X				Aug. 13, 1965	May 13, 1966	Jan. 9, 1967	Dec. 16, 1966
Ch. Potawatomi, et al., 6-65 (No. 217, 15-K)	X				Oct. 6, 1965	Oct. 26, 1966	Jan. 9, 1967	Dec. 16, 1966
Snoqualmie, 7-65 (No. 93)	X				Nov. 20, 1965	Oct. 26, 1966	Jan. 9, 1967	Dec. 16, 1966
Pooria, 8-65 (No. 65)	X							
Iowa, 9-65 (No. 135)	X							
Lippan Apache, 10-65 (No. 22-C)	X							

See footnotes at end of table, p. 78.

TABLE 3.—*Appeals to Court of Claims, 1962-66*—Continued

Case and No.	Appeal		Cross		Docket date	Last brief date	Argument date	Decision date
	Indians	Government	Indians	Government				
<i>Seminole</i> , 11-65 (No. 73, No. 151)		X			Dec. 7, 1965	Sept. 2, 1966		
<i>Blackfeet</i> , 12-65 (No. 279-B)	X				Dec. 12, 1965	Mar. 31, 1966		
<i>Kickapoo</i> , 13-65 (No. 316)	X			X	Dec. 13, 1965	May 18, 1966	Dec. (1)	May 2, 1966 A
<i>Salish & Kootenai</i> , 1-66 (No. 61)	X			X	Jan. 25, 1966	(1)		(1)
<i>Ft. Berthoud</i> , 2-66 (No. 350-F)	X			X ²	Feb. 14, 1966	Jan. 26, 1967		
<i>Northern Paiute</i> , 3-66 (No. 87)		X		X	Mar. 4, 1966	Jan. 26, 1967		
<i>Lummi</i> , 4-66 (No. 110)	X				May 26, 1966	Jan. 26, 1967		
<i>Cherokee</i> , 5-66 (No. 190)	X				June 6, 1966	Dec. 20, 1966		
<i>Winnébago</i> , 6-66 (No. 244)	X				June 24, 1966			
<i>Southern Ute</i> , 7-66 (No. 328)		X			Aug. 26, 1966			
<i>Sisseton et al. Sioux</i> , 8-66 (No. 142, No. 362)		X		X	Nov. 7, 1966			
<i>Ponca</i> , 9-66 (No. 323)	X				Nov. 18, 1966			

¹ Appeal withdrawn.² Dismissed.

None filed.

⁴ Case settled, appeal dismissed.⁵ Cases settled, appeal dismissed.⁶ Waived.

Senator MCGOVERN. Our next witness is Mr. Harry Anderson, Assistant Secretary for Public Land Management, Department of the Interior.

STATEMENT OF HARRY ANDERSON, ASSISTANT SECRETARY FOR PUBLIC LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JAMES OFFICER, ASSOCIATE COMMISSIONER, BUREAU OF INDIAN AFFAIRS

Mr. ANDERSON. Thank you, Mr. Chairman. I am accompanied by Mr. James Officer, Associate Commissioner of the Bureau of Indian Affairs.

The Department of the Interior strongly favors legislation to extend the life of the Indian Claims Commission. However, we believe that S. 307 should not be enacted in its present form.

The Indian Claims Commission Act was passed by the Congress in 1946 to recognize the claims of the Indian people against the United States. At the time of its enactment, I doubt that many members anticipated that 20 years later over half of the Commission's docketed cases would be undecided. We can thus readily understand the concern for the expeditious disposal of pending claims which prompted Chairman Jackson to introduce this bill. Nonetheless, we do not feel that S. 307 contains adequate safeguards to protect the rights of the Indian people.

Frankly, since we are not involved in the proceedings before the Commission, we are not in a position to comment on the reasons for the delays that have been encountered in the handling of pending claims. We believe that before acting on this bill the committee should explore this matter fully with the Commission, the Department of Justice, and the claims attorneys for the Indians. Hopefully, the result of the committee's deliberations will be legislation that will facilitate the orderly and timely disposal of claims and afford just treatment to the Indian claimants.

The Department of the Interior's primary concern, as exemplified by the Bureau of Indian Affairs' involvement in approving compromise settlements, is to see that the Indians are treated fairly. It is our opinion that S. 307 would deprive some of them of their day in court.

In this regard we are particularly concerned with two provisions of the bill. First, we do not think it is equitable to provide, as does S. 307, for the dismissal of a claim with prejudice, if the claimant is unable or unwilling to proceed with trial after it has received one 6-month extension for good cause shown. This provision is unduly harsh and could result in the unjust dismissal of cases. As an alternative, we have suggested an amendment providing that "the Commission may grant further continuance when justified by facts that are beyond the control of the claimant."

Secondly, we are opposed to the provision that an order of the Commission dismissing a claim under the above section shall be final and not subject to review by any court. This provision would preclude the correction of arbitrary and capricious action and is inconsistent with our normal judicial processes, which provide for at least one appellate review. In addition, we have a number of technical amendments which are enumerated in the Department's report.

Finally, we would like to call the committee's attention to the fact that some tribes with pending claims are not represented by attorneys. Before dismissal of claims in these dockets, the Commission should consider carefully the reasonableness of the efforts made by the tribe to obtain an attorney. It might even use the authority granted it by section 13 of the act. That section requires the Commission to establish an Investigation Division to make a complete and thorough search for all evidence affecting each claim referred to it by the Commission. In the event the Investigation Division finds a claim has sufficient merit to warrant a continuance of the trial date, the Commission should be authorized to do so for a reasonable time to enable the claimant to hire an attorney and prepare for trial.

At the present time, there are six groups or tribes which have never had an attorney. These are all in Alaska. Recently two Alaskan tribes who formerly did not have counsel have now engaged such services. There are also 13 tribes in which attorney contracts have expired. The BIA has been active over the years in attempting to have tribes engage attorneys. In some cases, the potential claims appear small, and others apparently don't appear to be well supported and minimum interest has resulted. However, in a number of cases active negotiation is underway by the tribes to secure new contract attorneys.

I would also like to mention that as to funding or providing loans to tribes for expert assistance for the preparation and trial of claims, the BIA has made a number of loans and have approved applications where needed. Providing the \$450,000 item included in the 1968 budget is approved, we believe sufficient funds will be available for this phase of claims processing.

Senator MCGOVERN. Mr. Anderson, first of all, there are two points here on which I just want to comment briefly.

On your first page you suggest the committee should explore these matters under consideration with the Indian Claims Commission, with the Department of Justice, and with the claims attorneys for the Indians. That, of course, is the purpose for these hearings and other investigations that the committee will certainly hold. I can assure you that those things will be done.

You also make the point that the Department is opposing the bill in its present form, largely because of your concern that the Indians be treated fairly. I think it goes without saying that the major purpose of this legislation and the purpose of these hearings is to try to protect the interests of the Indians in getting more expeditious handling of these claims.

They, after all, more than any other group, have a major interest in seeing that the claims are processed and handled as quickly as possible. As I understand it, that is the basic thrust behind this legislation. I am sure the members of this committee share the concern of the Department that the welfare of the Indians and their affairs be properly protected.

I noticed in your statement that you make reference to the Investigation Division. You have suggested that the Commission might make use of that authority. Do I understand that has never been done—they have not used the authority in the act to set up and operate an Investigation Division?

Mr. ANDERSON. That is my understanding, Mr. Chairman.

Senator McGOVERN. Do you know why that authority has not been used?

Mr. ANDERSON. No, I do not.

Senator McGOVERN. It would seem to me that might be one way to expedite the work of the Commission and bring some of these cases up for consideration.

Mr. ANDERSON. I recognize, Mr. Chairman, this has budgetary implications. I don't know if the Commission has the funds to carry out such work or not. But it appears to me that this would be one way to attack or get action on some of these claims that now are not serviced by attorneys—one way to have an evaluation as to the substance of these claims.

Senator McGOVERN. You have suggested an amendment reading: "The Commission may grant further continuance when justified by facts that are beyond the control of the claimant."

I was under the impression that there was language of that kind in the bill. Am I mistaken about that?

Mr. ANDERSON. There is provision for one continuance, as I understand it.

Senator McGOVERN. Isn't there a provision in the legislation that even after a 6-month extension, there are circumstances under which further extension can be granted?

Mr. ANDERSON. Mr. Chairman, I believe it is only in the case of a final compromise.

Senator McGOVERN. I see. That is limited to a compromise settlement.

Mr. ANDERSON. The thought there, Mr. Chairman, would be that possibly an Indian attorney might be sick or may die, or there could be some other valid reason why there should be a continuance. It appears this would be left with good cause to the Commission to grant an additional extension.

Senator McGOVERN. Does the Department of the Interior, more specifically the Indian Bureau, ever take any responsibility for encouraging tribes to secure counsel and to move ahead on these claims? Is that within your jurisdiction?

Mr. ANDERSON. Senator, what we have here is a client-attorney relationship, and the Department and the Bureau of Indian Affairs does not get in between the two. However, the Bureau does attempt to negotiate or assist the tribes in securing counsel. Once the contract is approved, then it is between the tribe and the counsel as far as the processing of the claim.

Senator McGOVERN. In the case of the claims where there is no counsel, do you take steps to get the tribes to engage counsel?

Mr. ANDERSON. Yes, we do. This goes on constantly. In fact, I mentioned 13, but I was informed this morning that one of the 13, we feel, has engaged counsel. These are the 13 where contracts have expired. A short time ago, two tribes in Alaska secured counsel.

Senator McGOVERN. Through some leadership on the part of the Bureau?

Mr. ANDERSON. Mr. Officer, from the Bureau of Indian Affairs, has worked closely with this program for a number of years, and he might be able to fill us in more on the details of just what the Bureau's activities are in this area.

Mr. OFFICER. Well, Senator, there are two things that we have been consistently doing, at least over the time I have been in the Bureau of Indian Affairs, which is the last 6 years.

Prior to the time that a claims attorney contract is due to expire, we inform the Indians and the attorney so that they can make a timely submission of the request for an extension of that contract.

Now even though we do this, sometimes they do not always get it in in time. And we will have to approve an extension retroactively.

But we do follow that procedure.

In the instance of those groups who at the present time do not have attorneys as I think has been mentioned, we are dealing with several small Alaskan groups, some of whom are Eskimos as a matter of fact, who have never had attorneys and never really been completely certain of their authority to push a claims case forward.

In other instances we are dealing with contracts that have expired in fairly recent times, and renegotiation of those contracts is in progress with respect to a majority of them. There are I believe, about four or five cases involving small groups in the Pacific Northwest where the attorney who served them previously simply has not been retained by the Indians.

In these cases they have been attempting to get new counsel and we have been working with them to do that.

We do not feel that we have the authority or the responsibility to actually go out and hunt for an attorney for them and approve the contract whether they like it or not.

So we have been trying to encourage them to go forward with it. But there are a number of problems involved.

Some of the settlements that have come in adjacent areas and in similar cases have been relatively small, and while the amounts of money involved may be very important to the Indians, the potential of 10 percent recovery for the attorney may not be enough to really attract the attorney that they are trying to get. So we do have a delay of some kind because of this. But it is part of our procedure both to advise the tribe and the attorneys prior to the expiration of a contract and to attempt to work with them once a contract has expired, or in the event one is canceled, or in the event none has ever been negotiated. We try to get them some legal representation.

Senator McGOVERN. Senator Hatfield.

Senator HATFIELD. No questions.

Senator McGOVERN. Let me just ask one question about the loan fund, Mr. Anderson.

Could you fill us in on just what the status of the loan fund is, and whether that has anything to do with the logjam on the handling of the claims?

Mr. ANDERSON. Yes, Mr. Chairman.

To date applications for funds to the extent of \$1,025,610 have been approved. Funds have actually been advanced to the extent of \$253,744. That is where they have the funds in hand, where they have entered into contracts. But the bulk of them are in application forms yet. They are attempting to line up their expert witnesses. And this should move more rapidly now.

Here again, this is something that we leave to the attorneys, working with the tribes, to negotiate, and to hire and contract for these expert witnesses.

Senator McGOVERN. Thank you very much. I think that takes care of our questions.

Is Dr. Edward Campbell in the room?

Dr. Campbell is the regional director, National Archives and Records Service, region 3, General Services Administration. He is accompanied by John B. Nix, Indian Tribal Claims Branch Chief, region 3.

STATEMENT OF EDWARD G. CAMPBELL, REGIONAL DIRECTOR, NATIONAL ARCHIVES AND RECORDS SERVICE, REGION 3, GENERAL SERVICES ADMINISTRATION; PRESENTED BY ROBERT DAVIS, DIRECTOR OF LEGISLATION, GENERAL SERVICES ADMINISTRATION, OFFICE OF THE ADMINISTRATOR, ACCOMPANIED BY JOHN B. NIX, CHIEF, INDIAN TRIBAL CLAIMS BRANCH

Mr. DAVIS. Mr. Chairman, my name is Robert Davis, Director of Legislation, General Services Administration, Office of the Administrator. Dr. Campbell is unable to be here this afternoon. I would like to read his statement.

Senator McGOVERN. Thank you, Mr. Davis. You may proceed.

Mr. DAVIS. On behalf of the Administrator of General Services, Lawson B. Knott, Jr., who asked me to represent him at this hearing, I wish to thank you for the opportunity of appearing before your committee for the purpose of expressing the views of GSA on S. 307, a bill designed to expedite consideration and final disposition of all claims which have been filed against the United States under the Indian Claims Commission Act of 1946 and which have not yet been acted upon by the Indian Claims Commission.

The interest of the General Services Administration in this proposed legislation, Mr. Chairman, stems from the fact that most of the material relied upon by the Department of Justice and the Indian tribes in proceedings before the Indian Claims Commission is based on certain original documents held in the National Archives.

Since creation of the Indian Claims Commission by the act of August 13, 1946, letters have been received from the Attorney General of the United States enclosing copies of a total of 578 petitions which have been filed with the Commission and requesting that the Department of Justice be furnished accounting reports in response to the allegations set out in the petitions. Generally these reports include an accounting showing the extent to which various treaty obligations have been fulfilled by the United States, an accounting of investments and trust funds, and in most cases a statement of gratuitous expenditures for consideration as possible offsets against any judgment which may be rendered against the United States. These accounting reports are presently prepared for the Department of Justice by the Indian Tribal Claims Branch of GSA's region 3, National Archives and Records Service. Prior to February 28, 1965, the reports were prepared by the General Accounting Office.

Over the years some of these 578 petitions have been dismissed by the Indian Claims Commission but accounting reports on all the other petitions have been furnished the Department of Justice with the exception of 64 which are in the process of being prepared by GSA's

Indian Tribal Claims Branch. The preparation of such reports is time consuming and involves extensive research. The information required is compiled from reports of the Bureau of Ethnology, documents of the Senate and House of Representatives, records of the former Department of War, the Departments of Treasury and the Interior, the General Accounting Office, and the National Archives and Records Service dating back to the year 1795. Assembling this information and compiling it into a finished report involves a comprehensive analysis of the claims recited in each case, preparation of a history of the particular tribe of Indians, its migrations and unions with other tribes, and an analysis of all treaties made with the tribe and the acts of Congress affecting such tribe. As an example of these accounting reports, Mr. Chairman, with your permission I submit for the record a copy of the report prepared by the General Services Administration for the Department of Justice involving petitions of the Winnebago Tribe and Nation of Indians, Indian Claims Commission dockets Nos. 243, 244, and 245.

Senator McGOVERN. The material will be made a part of the files.

Mr. DAVIS. With respect to the remaining 64 petitions mentioned above we expect to furnish the Department of Justice with the requested accounting reports responding to the allegations made in such petition not later than June 30, 1970. Our tentative schedule, copy of which is available for the record, if desired, calls for completion of the work on accounting reports involving 13 of the petitions by the end of fiscal year 1967; completion of the work on accounting reports involving 22 of the petitions during fiscal year 1968; completion of the work on accounting reports involving 23 of the petitions in fiscal year 1969; and completion of the work on the remaining six petitions in fiscal year 1970.

In addition to furnishing the Department of Justice accounting reports in response to petitions filed with the Indian Claims Commission, occasionally the appropriate officials of our Indian Tribal Claims Branch are called upon to testify before the Commission as expert witnesses with respect to those accounting reports which such officials were responsible for preparing.

Having discussed the activities of the General Services Administration in the adjudication of Indian claims I turn now to S. 307 and offer the following comments on behalf of the General Services Administration.

Section (a) of the bill would, as you know, amend the Indian Claims Commission Act of 1946 by adding a new section 27 thereto so as to provide that (1) each claim not previously set for trial would be set by the Indian Claims Commission for trial on a day not later than January 1, 1970, and (2) if the claimant is unable or unwilling to proceed with the trial on that day the Commission shall enter an order dismissing the claim with prejudice, except that on motion of the claimant and for good cause shown the Commission may grant a continuance of the trial for not more than 6 months and may stay the dismissal if the Commission finds that a final compromise of the claims is being negotiated in good faith by the parties. As to the adequacy of the time element as well as the merits of the other provisions of this proposed new section 27, Mr. Chairman, GSA defers to the views of the Department of Justice and the Indian Claims Commission.

Section (b) of S. 307 would amend section 23 of the Indian Claims Commission Act of 1946 so as to provide that (1) the existence of the Indian Claims Commission shall terminate at the end of 5 years from and after April 10, 1967, or at such earlier time as the Commission shall have made its final report to the Congress on all claims which have been filed with the Commission, and (2) upon its dissolution the records of the Commission shall be delivered to the Archivist of the United States. The General Services Administration concurs in this proposed extension of the existence of the Indian Claims Commission as well as the delivery of its records to the Archivist of the United States upon dissolution of the Commission.

In view of the foregoing and insofar as the responsibilities and functions of the General Services Administration are concerned GSA has no objection to the enactment of S. 307.

That concludes our statement, Mr. Chairman.

Senator McGOVERN. Thank you, Mr. Davis.

Now, just to make certain I understand the thrust of your statement: you have completed action on all of the petitions that have been referred to except for 64.

Mr. DAVIS. Right, sir.

Senator McGOVERN. Do you think you can take care of those 64 and wind up your part of this operation within 5 years?

Mr. DAVIS. Within the framework of this legislation, we will have completed our work, Mr. Chairman. And if so desired, I have our scheduled workload here on the remaining 64 if you would like it for the record.

Senator McGOVERN. You see no bottlenecks in your Department that are going to cause any particular difficulty if we move on the schedule projected in the bill.

Mr. DAVIS. We see no difficulty.

Mr. Nix, who is in charge of preparing these accounting reports, has concurred in the statement—you foresee no difficulty, Mr. Nix?

Mr. NIX. No, sir. I feel, Mr. Chairman, that we can meet the projected schedule that we have mentioned in our statement. I have before me a copy of the present Indian Claims Commission calendar for the next 3 years and see no problem with that. By that I mean the 125 specific dockets listed here for hearings in this 3-year calendar. We have already reported out reports of 101 of those, and 21 are presently in process. But we feel that we can meet this 5-year program without difficulty.

Senator McGOVERN. Senator Hatfield, do you have any questions?

Senator HATFIELD. Mr. Chairman, were hearings of this type held on the previous extensions of this act of 1946?

Senator McGOVERN. I believe they were.

Senator HATFIELD. Were any of these same people present?

Mr. DAVIS. We were not asked to—

Senator HATFIELD. Do you know if the answers today compare with the ones given then?

Mr. DAVIS. We were not asked to comment then.

Senator McGOVERN. Thank you very much, Mr. Davis.

Mr. DAVIS. Would you like this work schedule, Mr. Chairman?

Senator McGOVERN. Yes; I think it would be helpful to the committee.

The letter of Senator Jackson to the General Services Administration and their reply will be included at this point.

(The data referred to follows:)

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
January 25, 1967.

Hon. LAWSON B. KNOTT, Jr.,
Administrator,
General Services Administration,
Washington, D.C.

MY DEAR MR. ADMINISTRATOR: Under date of January 19, I advised you that the Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs has scheduled a hearing for Monday, February 6, 1967, on S. 307, a bill that would extend the life of the Indian Claims Commission.

In connection therewith, would you please furnish us the following information: Describe instructions you receive from the Justice Department in preparation of accounting reports for cases before the Indian Claims Commission, and describe the procedures used by your organization in establishing priorities to accomplish the preparation of these reports in relationship to the readiness of the petitioner in the claims case to go to trial.

In order that the information you have been asked to provide may be properly analyzed, it would be appreciated if it is submitted as far in advance of the hearing date as possible.

Sincerely yours,

HENRY M. JACKSON,
Chairman.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., February 6, 1967.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In reply to your letter of January 25 in further reference to the hearing your Committee has scheduled on S. 307, a bill that would extend the life of the Indian Claims Commission, the following information is submitted as requested:

Letters are received from the Attorney General enclosing two copies of petitions which have been filed against the United States before the Indian Claims Commission and requesting that the Department of Justice be furnished accounting reports in response to the allegations set out in the petitions, and statements of gratuity payments made under section 2 of the Indian Claims Commission Act of 1946.

The order in which these requested accounting reports are prepared in response to the allegations made in the petitions is determined primarily by the Department of Justice. Subsequent to receipt of the letters from the Attorney General requesting the reports, the Chief of the Indian Claims Section of the Department of Justice advises the Chief of the Indian Tribal Claims Branch of our Region 3 National Archives and Records Service by telephone which of the accounting reports need expeditious processing on our part. On a few occasions the Department of Justice has requested that as much effort as possible be concentrated on a particular case. As soon as one of the examining groups of our Indian Tribal Claims Branch has completed a requested accounting report the Department of Justice is contacted by telephone to ascertain which report in response to a petition filed before the Indian Claims Commission should be prepared next.

In addition, the Indian Claims Commission furnishes our Indian Tribal Claims Branch a copy of the Commission's latest Trial Calendar. This calendar is helpful in that it serves as a guide in determining which accounting reports should have priority over others that are in the process of being prepared.

We trust that this information will be of help to you and your Committee and if we may be of further assistance or furnish any additional information please let us know.

Sincerely yours,

LAWSON B. KNOTT, Jr.,
Administrator.

Senator McGOVERN. Mr. Flickinger is the chairman of the Indian Law Committee of the National Bar Association. He is our next witness.

STATEMENT OF SAM J. FLICKINGER, CHAIRMAN, INDIAN LAW COMMITTEE, FEDERAL BAR ASSOCIATION

Mr. FLICKINGER. Mr. Chairman, members of the committee, I assume you know about the Federal Bar Association. We have some 13,000 members throughout the United States. Among the larger and more active committees is the Indian law committee, of which I am chairman. It was organized about 8 years ago for the purpose of aiding and to a certain degree protecting the interests of the Indians.

In respect to this particular proposed legislation, the Federal Bar Association, Indian Law Committee, at a duly called and held meeting, considered the pending proposal concerning the extension of the life of the Indian Claims Commission, including S. 307, H.R. 537, and H.R. 2536.

It is the view of the Indian Law Committee of the Federal Bar Association that the best interests of the United States and the Indian tribes, bands, and other identifiable groups concerned, would be served by, (1) a simple extension of the life of the Commission for 7 years to April 10, 1974, without other amendments; (2) making an appropriate legislative history in the committee report, but no statutory provision that it is the intent and desire of the Congress that the claims pending before the Indian Claims Commission be judiciously disposed of with reasonable dispatch, and that the Indian Claims Commission, if necessary, amend its rules of practice and exercise all of the usual powers and practice of a judicial tribunal to control its docket and facilitate the proceedings by appropriate sanction, for example, Federal Rules of Civil Procedure 16, 37, 41(b), and 55.

Senator McGOVERN. Mr. Flickinger, in that connection do you really think simply an expression of the wish of Congress that these matters be handled expeditiously would carry enough force to change the present pattern of operation in the Commission?

Mr. FLICKINGER. I think it certainly would be a very definite suggestion, coming from a committee of the Congress—committee setting that forth. I would hate to be in the shoes of any official who failed to pay attention to it.

It is important that the work of the Commission and the adjudication of the pending claims be completed as soon and as sufficiently and judiciously as practicable, considering the complicated nature of the litigation before the Commission.

For the most efficient and judicial disposition of the work of the Commission, it is important that the Commission retain its most competent staff personnel—for example, legal advisers—and be able to interest other competent persons in employment.

This would permit the Commission to operate with optimum production.

It can be accomplished only if the qualified personnel have some reasonable assurance of tenure in their work. Otherwise, undoubtedly the personnel will continue their search which, as understood, has been begun because of the Commission's short or uncertain tenure, for other suitable employment.

To extend the life of the Commission for only 2 years or less, in the judgment of the Indian Law Committee of the Federal Bar Association, would cause the Commission to limp along with inadequate staff and unsatisfactory productivity.

Senator McGOVERN. In that connection, you know that the legislation proposes a 5-year extension, not a 2-year extension.

Mr. FLICKINGER. Your proposed legislation does. The House, I believe, has a 2-year. And that is the reason—while it does not really belong here before your committee—we took action on both.

A reasonable estimate of the time required to dispose of the pending cases, if handled with reasonable dispatch, is 7 years. We accordingly suggest that this additional term be given the Commission.

Courts have inherent power to control and supervise their docket. For example, in *Wink v. Wabash Railroad Company*, 370 U.S. 626, 1962, the Supreme Court upheld the right of the district court to dismiss an action for failure of the plaintiff's counsel to appear at a pretrial hearing after repeated delays. The Commission, as a judicial tribunal, can, without further legislation, establish and enforce appropriate rules for dispatch of its business. We urge the Congress to make clear that this is intended.

However, we suggest that it is very unwise and would lead to inevitable hardship for legislative mandate of dismissal to be provided by the Senate amendment, S. 3068, and H.R. 5392, 89th Congress, adding a new section 27 to the Indian Claims Commission Act.

We can visualize many situations where, under statutory mandate, the Commission would be required to dismiss a claim for failure or inability of the Indians to proceed due to matters clearly beyond their control. This would create severe hardship and inequity. It would undoubtedly lead to innumerable requests for new special jurisdictional legislation similar to those happenings prior to the enactment of the Indian Claims Commission Act. Examples may illustrate the problem.

1. Plaintiffs cannot proceed due to failure of the U.S. General Services Administration to prepare its report in a General Accounting claim.

2. Last-minute illness of counsel, witnesses, or destruction of exhibits or other evidence.

3. Unavailability of the Commission or the Government counsel or witnesses.

In any of these instances, it would be undesirable for the Commission to be under a compulsory mandate to dismiss a case because plaintiff was unable or unwilling to proceed on a set date. In other words, judicial discretion should be vested in the Commission subject to the usual judicial review. Moreover, many delays have been due to the defendants, the plaintiffs, and the Commission. Accordingly, the sanctions should not be all against the Indians, but should be evenly applied against the parties.

It is our hope that these views of the Federal Bar Association and the law committee may be of help to the committee.

Senator McGOVERN. Well, thank you ever so much, Mr. Flickinger. Your views will certainly be considered. Thank you very much.

Is Mr. Wilkinson in the room? Mr. Wilkinson, would you like to be heard now?

Mr. Wilkinson is treasurer and chairman of the Claims Committee, Three Affiliated Tribes of the Fort Berthold Reservation, New Town, N. Dak.

We would be happy to have your statement now.

**STATEMENT OF JOHN WILKINSON, TREASURER AND CHAIRMAN
OF THE CLAIMS COMMITTEE, THREE AFFILIATED TRIBES OF
THE FORT BERTHOLD RESERVATION, NEW TOWN, N. DAK.**

Mr. WILKINSON. My name is John Wilkinson, Sr., and I am the treasurer of the Three Affiliated Tribes of the Fort Berthold Reservation, New Town, N. Dak. I am also chairman of the tribes' claims committee.

Our tribes presently have eight claims pending before the Indian Claims Commission.

We strongly support the proposal to extend the life of the Indian Claims Commission. Our claims have been pending for many years, but several of our claims are now advanced to the point where a final decision will be handed down in the relatively near future. If the Congress fails to extend the life of the Commission now, the people of our reservation would feel betrayed; they would feel that they had been unfairly discriminated against and denied their day in court.

We believe the life of the Commission should be extended for at least 8 more years. While most of our claims will probably be completed within the next 5 years, we have at least one claim, involving a question of title which overlaps claims of other tribes, and it sometimes takes many years to clear up overlap problems because of all the parties involved. We know that many other tribes have claims that could not be completed within the 5-year period specified in S. 307.

We are very much in favor of expediting the claims, but we do not believe that any legislation is needed to do this. The Commission has adequate authority under existing law to keep the cases moving in an orderly manner. We certainly oppose any legislation that would forfeit our claims just because the Department of Justice, or for that matter our own attorneys, were slow in processing them.

Senator McGOVERN. Thank you for your statement.

Is Mr. Adams in the room? Mr. Hank Adams, of the National Indian Youth Council?

We would be happy to have your statement.

**STATEMENT OF HANK ADAMS, MEMBER, BOARD OF DIRECTORS,
NATIONAL INDIAN YOUTH COUNCIL**

Mr. ADAMS. Mr. Chairman, my name is Hank Adams. I am a member of the board of directors of the National Indian Youth Council.

I respectfully request permission to offer this statement into the record of these hearings in behalf of the National Indian Youth Council (NIYC) and in support of extension of the life of the Indian Claims Commission for an indefinite period, but with qualification relating to need for change in its operations and need for change in the policies which have applied to the disposition of awards.

Much has been said and written about the Claims Commission since its inception almost 20 years ago, which tend either to support or oppose it in nature and in purpose. Most have agreed that the Commission is preferable to individual authorizations by Congress to Indian tribes for bringing such suits against the United States.

But others, such as Reader's Digest's Blake Clark in the latter 1950's have maintained, in effect, that if the Indians should have material need, this Nation should respond to its own sense of morality and meet such need. But in no case should this Nation subject itself to the humiliation of bringing forth the remnants of a defeated people to make judicial demand upon the public for wrongs inflicted by one's ancestors upon the other's. In this line, humiliation becomes a one-way street.

Others assert that the Indian is entitled to his day in court in any case, win or lose, because that is the American way. America sustained in principle, interest does not extend beyond expression. Whether America may die in process or resulting action is of little concern to the expressor.

Some are even surprised in learning that the Commission exists, such surprise having extended even to a former U.S. Attorney General in learning that the Justice Department at that time had 23 lawyers hidden away in its bureaus, arduously working in defense of the United States in denying the skeletons in the country's closet.

Then come forth the lawyers and law firms, asserting that no money can be had by working with the Indians, but that money is less scarce in working with the Government. Nominal retainers from tribes for incidental advices may be tolerated, if, at the end of the rainbow, lies the pot of gold. Not many make a million dollars in a single whack—but some do, and some several times over—but 10 percent is a slim price for the expense of waiting, and smaller yet in having been the ones to tolerate the clients for the duration.

Additional are those who humorously note that "we're buying it back from the Indians." They become alarmed, however, in learning that if all judgments were sustained in the claimed amount, it would approach in total the several billions spent in all the years since 1813 on the contingencies of this Nation's "Indian policy."

The Commission has demonstrated the fallacy of such notion, however, and it sometimes becomes confusing as to who is paying whom. The United States trying to regain any portion of those past several billion that it might, the Indians find themselves paying for such items as education they did not receive, schools they do not then own, or lands they did not surrender.

The public should be aware that claims are no great boon to the Indians, and that the approximately \$200 million awarded thus far has been of benefit to a limited number of Indians. The public should be aware that an excessive percent of these awards go to a selected band of lawyers and law firms; in amount, equaling almost double the \$12 million for which this Nation saw fit to spend on community action programs (OEO) nationally this year on Indian reservations.

On the other hand, many tribes will benefit more each year, financially, under the Nation's war on poverty, than they shall ever benefit from awards made through the Indian Claims Commission.

Perhaps the central issue involved in considering termination or extension of the life of the Commission is consideration of how Indians shall benefit from such awards and what these benefits shall be.

For some tribes claims judgments perhaps aren't too meaningful in amount. Yet, for some of them, as well as others, these awards can provide the only gleam of hope in a bleak future, as created and sustained by a bitter past.

But in practice, this hope has gone the way of prior hopes and previous destroyed dreams. Tribes have found too often that the award is there in name only—at best a bookkeeping device and at worst the price of what remains theirs in the way of resources, community life, land base, and Federal services.

The Kalispels of eastern Washington State and Idaho may well have continued to survive on an average per capita income of \$96 per year, had they not received a \$2.7 million judgment. The Bureau of Indian Affairs then discovered there were Kalispel Indians, and a new tribal name began appearing in proceedings of this Senate committee. No program has been or was offered previously for these people from either source. The Bureau learned that the Kalispels could now afford to benefit, and the Senate subcommittee learned then that the Kalispels could now afford to be free.

Few people in America would permit themselves to be bought out with their own resources, but for the Indian it has come to be expected as a matter of course. And should the awards of the Indian Claims Commission continue to be used as the Government's money, merely as supplemental appropriations to the BIA's budget, or even displacement, to sustain the proven failures, or failure-ridden programs, then perhaps the Commission should be terminated.

Indians have been programed through a poverty program for the past 130 years, and the most obvious manifestation of this Nation's efforts is that they have failed. Permit the Indian communities to now stand as Indian communities, in large part to plan for themselves, but also to take advantage of the genius this Nation could bring to bear on the many problems confronting us in a mutual-help effort at finding solutions. Utilize the Claims Commission that the Indian may benefit from this Nation's strengths, and not forever be the lasting victim of its unwitting weaknesses.

Mr. Chairman, I would like to make a couple of statements on specific issues of the legislation.

Senator McGOVERN. We would appreciate having your statement.

Mr. ADAMS. First of all, we feel that if there was any justification for having these claims entered against the United States in the first place, or that the United States agreed to consider them, they should not be dismissed without appropriate hearing and without some definite conclusion on an arbitrary date.

We see on the other hand, a need to expedite the action before the Claims Commission. We feel that it has been too slow perhaps, for understandable reasons in many cases, and in some cases not.

Senator McGOVERN. I am sure the members of this committee share your concern about protecting fully the interests of the Indian claimants. That is really the purpose, as I understand it, of this legislation. It is to see that these claims are not delayed interminably, that they are brought to trial and a judgment made, so that the Indians are not left waiting forever on claims that may have real validity.

Mr. ADAMS. Well, we think that there perhaps is need for some modification in functioning of the Claims Commission.

In consideration of them, we feel it is a very tough burden on a few men on the Commission, and that other means could be employed to perhaps speed this up; perhaps a lower level of consideration as a clearinghouse to bring them before the Commission in final form, or in a more final form, so that the Commission itself is not involved with so many of the things that are not necessarily a part of the final decision.

We feel that for the most part Indians are not being kept informed on their claims cases; that, in fact, frequently lawyers employed by the tribe or retained by the tribe lead tribes and Indian people on perhaps with undue optimism, and in fact sometimes false information as to time and amount of claims they might expect, and the working processes that are involved.

Secondly, we would think that there is a need for the Indians themselves to know the status of these claims. In listening to the testimony here today, I get the impression that few people know the status of all the claims at any given moment. I think in just a common course that the plaintiff would generally know what action is being carried on in his claim or court action—in this case the Commission action—and whether it is dormant, or whether it is in some stage or process.

We think there is then a poor, very poor, lack of communication, and this is perhaps largely on the part of the lawyers, but if others, such as even the Commissioner, perhaps, himself, is not fully aware at any given moment of what the status of all claims are, it might be difficult for the lawyers to know also.

Relative to the element of needed additional power, I think it is a general feeling among many Indian organizations and Indian tribes that perhaps too much power has been consolidated in the hands of one or three men, the Commissioner and his Associate Commissioners, and that to have all determinations made at that level or through that point has created some animosity toward the Commission on the part of the the Indians, generally speaking, I would say.

Additionally—relative to dismissing these claims—we do not think that should be done. We are aware also of continuing causes for claims that are evolving today. Although we would hope that there should not be such cases evolving—because when such cases evolve, it means that we are losing something—it appears at the present time, on the present basis that every once in a while you are going to have to set up one of these Claims Commissions for Indians: Washington State fishing rights, Alaskan claims, land claims. And in the Indian's mind, for the most part, just compensation is a poor device for taking what is theirs.

Senator McGOVERN. Well, thank you very much, Mr. Adams. We appreciate your prepared statement and also your additional observations, and they are now all a part of the record.

Mr. ADAMS. Thank you.

Senator McGOVERN. Is Mr. James Ely here, and Mr. Morigeau?

If you gentlemen would like to come to the table now, we would be happy to have you.

Also, Mr. Alex Chasing Hawk. Would you like to come up, Mr. Ely and Mr. Morigeau?

I want to repeat what I told Mr. Adams. I know Senator Hatfield feels this way, as do other members of the committee.

We certainly do not see this legislation, or any other proposal that comes before this committee, as a device for members of the committee to deprive the Indians of any legitimate rights. Quite the contrary, I am hopeful that the legislation in its final form, if not in the form in which it now stands, will be welcomed by the Indian tribes as a means of moving these claims along so that they can get the funds that they are justified in receiving. It is really a device to do a better job, not to in any way complicate the problems of the tribes.

STATEMENT OF E. W. MORIGEAU, MEMBER OF FLATHEAD COUNCIL

Senator McGOVERN. Mr. Morigeau, if you wish to file your statement and paraphrase it, we will be glad to see that the whole statement is made a part of the record. But you proceed in any way you wish. If you prefer to read the statement, that is fine.

Mr. MORIGEAU. Mr. Chairman, I have already turned in 25 copies of the statement to your executive director.

Senator McGOVERN. All right. We will see that a copy of that is made a part of the record.

(The statement referred to follows:)

JOINT STATEMENT BY E. W. MORIGEAU AND JAMES ELY, MEMBERS OF THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA

The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, presently have pending one claim before the Indian Claims Commission, Docket No. 156.

The Tribal Council of the Confederated Tribes supports 100% the proposal to extend the life of the Indian Claims Commission. Our remaining claim in the Indian Claims Commission has been pending for some period of time; during that time our available funds and resources were committed to funding the prosecution of our aboriginal title claim in the Indian Claims Commission, Docket No. 61. This resulted after 15 years of diligent litigation (not counting time spent in seeking jurisdictional legislation and in preparing our petition to the Commission), in a net judgment entered in 1966 in favor of the Tribes, in the amount of \$4,431,622.18. To illustrate the need for continued time in order to permit orderly prosecution of our remaining claim, and the claims of others, we point out that our aboriginal title claim involved three phases or aspects. The first was a title question which was in itself a separate lawsuit; after collecting the evidence, organizing it and presenting it, it was necessary for both sides to brief the issues to the Commission with proposed findings of fact and a memorandum of law; thereafter, the Commission determined how much land we owned and for which we were entitled to compensation and the date of valuation.

Thereafter, a second trial was held to value the lands. This in effect was a completely new trial requiring a historical appraisal, the preparation and submission of expert witnesses and documents in support, further briefings before the Commission and another decision by the Commission.

After the Commission rendered its decision on valuation we entered a third phase of the case, negotiations with the Department of Justice to settle the question of offsets. Fortunately, in our case, we were able to reach a mutual satisfactory figure, resulting in the entry of final judgment. Had we not been able to do so, it would have been necessary to go before the Commission on a third trial on the question of offsets. Each trial or phase was distinct and none could be concluded until the preceding one was concluded.

In our aboriginal title claim, it was not necessary to go through an appeal to the Court of Claims, thus in effect reducing the time that many of these cases require.

If Congress fails to extend the life of the Commission, the people of our reservation and the Indians on all the reservations throughout the United States would feel betrayed and would believe they had been unfairly discriminated against and denied their day in court. We are confident the Congress will decide to extend the Act.

We support an extension of the Indian Claims Commission for at least eight more years. While our remaining claim will probably be able to be concluded within the next five years, it cannot be concluded now while other claims of ours are pending in the Court of Claims under one of the last special jurisdictional acts passed by Congress. We know there are other tribes which have claims that cannot be concluded fairly to either the Tribes or the United States within a lesser period of time.

Certainly we are in favor of expediting the conclusion of the claims, but we do not feel legislation is needed for this. We understand that as a judicial tribunal the Commission, under its present act, can adopt rules like the courts to speed up the cases. We believe that all that is needed is for Congress to make clear in its reports that the cases should be speeded up and that the bill should be a straight extension of the life of the Commission.

Mr. MORIGEAU. Mr. Chairman, we represent the Confederated Salish and Kootenai Tribes. They call us the Flathead Indians. Actually this is the Flathead Indian Reservation in Montana. It is pretty hard to explain why most people refer to us as the Flathead Indians. But this is named for the famous river. And, of course, our reservation is called the Flathead Indian Reservation. So if I refer to the Flathead Indians, pardon me also.

I am quite new at this, Mr. Chairman. And so is Mr. Ely. We are here to present our statement of facts. We mainly are here to listen to the heads of the different departments testify why the Claims Commission should be extended.

We had one claim, aboriginal land claim, that had a history of about 15 years. It went into two and almost three court cases before it was finally settled. One of the reasons why we believe it takes so much time in these cases is that we have to hire historians to come up with facts of ownership and things such as that. As we understand, it takes maybe testimony back 100, 150 years to get the facts.

Senator MCGOVERN. It sometimes involves employing anthropologists.

Mr. MORIGEAU. Yes. We have done that also.

We have had progress in some of our other cases. We have had cases of boundary—our southwest boundary case on the reservation. We have had good progress on that. We have had other cases of boundary—a boundary case on the north end of the reservation. We have had very good progress on that. Then we had one claim based on our treaty, the survey of the reservation. Of course, after the survey was made I guess the Government dipped into the private treasury to pay the bills, and this was the result of one of our cases. And, of course, that case went all the way to the Supreme Court, and that is where it is at the present time, because of the interest factor in the case.

I am not going to take too much time. As a matter of fact, that is all the time I need. Thank you.

Senator MCGOVERN. Before we raise any questions with you, Mr. Morigeau, why don't we give Mr. Chasing Hawk a chance to make any observations that he might care to make.

Mr. Chasing Hawk is the vice chairman of the Cheyenne River Tribal Council in my State, the northwestern side of South Dakota. We are happy to have him here.

**STATEMENT OF ALEX CHASING HAWK, VICE CHAIRMAN,
CHEYENNE RIVER TRIBAL COUNCIL**

Mr. CHASING HAWK. The first thing I want to say is I appreciate the opportunity that you give us as Americans. You see in the room one of the first Americans. My complexion is dark. I represent a tribe of Indians in the State of South Dakota.

Now, this bill, S. 307, as I read it—I want to say to you gentlemen that I only have a seventh grade education. I have served on the tribal council 30 years in 1968.

Now, I know Mr. Gamble fairly well. He is the attorney for the committee. Every time they give us a chance as American Indians.

The bill merely extends the life of the Indian Claims Commission. I agree with the bill with some exceptions.

On item 1, page 2, of the proposed legislation it says "If a claimant is unable or unwilling to proceed." Sometimes we are financially unable to prosecute a claim and "unwilling" means negligence to me.

Senator MCGOVERN. Did you hear some of the Government witnesses earlier today recommend that the word "unable" be struck from the bill? I take it you would support that change in the bill.

Mr. CHASING HAWK. Yes.

Senator MCGOVERN. So that if the claimants are in fact willing to move but are unable to do so because of some circumstance that they cannot control, you feel they ought to have a chance to be heard.

Mr. CHASING HAWK. Yes.

And then going down here on No. 7:

If at the expiration of such period of continuance the claimant is unable or unwilling to proceed with the trial * * * the Claims Commission shall enter an order dismissing the claim with prejudice.

Now, when they impose a prejudice against the plaintiff—I don't believe the word is proper for us common people. Whenever you use "prejudice," the word itself, I don't believe in that language.

Senator MCGOVERN. I think this is a lawyer's word. I am not a lawyer. Some of this language is strange to me. But I think this is a legal term. We can take care of the first part of that sentence—the "unable" part. I think maybe the rest of it may not cause any problem.

Mr. CHASING HAWK. OK.

Going down to item 13:

An order of the Commission dismissing the claim under the section shall be final, and not subject to review by any court. The Court of Claims shall not have jurisdiction to hear or determine any action upon any claim which has been dismissed by the Commission under this section.

Then there would be no choice. Now we have claims that are governed by the act of June 18, 1934. Beyond that we have Public Law 776. Under the terms of the laws that we live under, there is a possibility we are going to make a further claim against the United States. Now if there is a limitation imposed—I would say this before you gentlemen—you might as well wipe out the Indian claims entirely if that is the wish of Congress.

We have a right to file claims for those things which legally we are entitled to. There should not be a limitation imposed on any tribe.

Going down here section 23 of this bill says the existence of the Commission should terminate at the end of 5 years. I would recom-

mend 10 years, because 5 years is a very short time. So I would recommend 10 years so people will have a chance, people will be informed what we are trying to do. Five years is a very short time. So I would recommend 10 years instead of 5 years.

As I read the report, the Indian Claims Commission is making considerable progress. You know, as an American Indian we hold the aboriginal title to this land. I may be wrong, but I think it is correct. We have a legal claim somewhere. I hope the Congress will understand and will have a little sympathy with us in order to get these things settled, and we can go from there.

I thank you gentlemen.

Senator MCGOVERN. Thank you very much, Mr. Chasing Hawk and Mr. Morigeau. We appreciate your testimony.

Mr. MORIGEAU. I would just like to say this one thing. I agree with the gentleman on the extension of time. I believe in order to prosecute the remaining claim on the Flathead, we will have to have about 5 years. But I agree that we should have 10 in order to prosecute the claims of all the Indians.

Senator MCGOVERN. We appreciate hearing your point of view.

I just want to say if there is anyone here in the room who wants to be heard on this that we will keep the committee record open for several days. We have had a number of telegrams and letters and statements with requests that they be made a part of the hearing record, and they will all be included in an appendix to this hearing.

Any of the Indian attorneys particularly who want to be heard, to file a statement, they will have a chance to make those statements a part our our record. We will keep this record open until at least some time early next week, and we will be happy to have your statements made a part of the committee's record.

Mr. SCOTT. Mr. Chairman, I just want to make one suggestion.

Having spent 19 years with the Federal Trade Commission, in the large antitrust cases, before I went on the Indian Claims Commission, I learned from personal experience the benefit which that Commission had from the Administrative Procedure Act. So I would recommend to the committee that they look into the various provisions of the act because those provisions are in full response to the tenor of the chairman's request to the committee for information.

For example, pretrial conference, hearing examiners—the various segments of your request have been fully considered by the Congress before it enacted the Administrative Procedures Act. That is all I wanted to say. I do think it would be well for you to think some along that line.

Senator MCGOVERN. Are you speaking now, Commissioner Scott, in your capacity as a Commissioner or is this a private view?

Mr. SCOTT. I had not expected to say anything. But I will say that I have two very fine colleagues, I enjoy working with them, and they are good, hard working men. They are honest and sincere. And I also want to say that although I can retire today if I want to, I find this work very stimulating, interesting, and I know I won't see the end of it. My wife already wants me to retire.

Senator MCGOVERN. Thank you ever so much, Commissioner Scott. We thank the various witnesses that have spoken today.

Mr. CHASING HAWK. Senator, will you let my attorney file a brief statement?

Senator MCGOVERN. Yes; he certainly has that right. We will be happy to have his statement.

(Whereupon, at 3:55 p.m., the subcommittee was recessed, subject to the call of the Chair.)

APPENDIX

(Under authority previously given the following statements and communications were ordered printed:)

STATEMENT OF JOHNSON HOLY ROCK, PRESIDENT, OGLALA SIOUX TRIBE

On behalf of the Oglala Sioux Tribe of the Pine Ridge Reservation, I respectfully submit to the Committee on Interior and Insular Affairs of the United States Senate the enclosed Resolution of the Oglala Sioux Tribal Council relating to proposals for extension of the Indian Claims Commission.

I have also been authorized by the Oglala Sioux Tribal Council to submit to the Committee the following statement in connection with S. 307.

The Oglala Sioux Tribe urges the Committee to extend the life of the Indian Claims Commission for ten years and to make certain further changes in S. 307 in order to speed the disposition of Indian claims.

At least two new Commissioners should be added to the Commission. This step would enable it to render decisions on claims more quickly, but, unlike certain provisions of S. 307, it would not sacrifice the right and opportunity of each Indian tribe for adequate pre-trial preparation.

Section 27(b) should be deleted from S. 307. The dismissal of claims in cases in which a tribe is "unable" to proceed with the trial of its claim harshly discriminates against many tribes which may find it difficult to complete their preparation prior to an arbitrary deadline, either because of lack of legal counsel or of expert witnesses or because of the difficulty of securing essential evidence. In addition, an Indian tribe may be "unable" to proceed because the Government is not ready or because the Commission has not rendered an essential decision in a related case.

May I also respectfully point out to the Committee that in one case (Docket No. 74) in which my tribe is involved, as a claimant, the claimant's brief on liability was filed with the Commission over three years ago, but the Commission has still not rendered a decision. Indian tribes have no desire to see these claims drag out over many years. They wish to see the rapid and efficient disposition of Indian claims, with full regard for due process and in accordance with the spirit of doing justice to American Indian people in which the Indian Claims Commission Act was originally passed.

It is my belief that two additional able Commissioners would do more to speed this process than the dangerous procedural changes proposed in S. 307 would do.

I have confidence in your Committee, and I am sure you will approach this matter in the same spirit of justice for Indian people which motivated the Congress when the Indian Claims Commission was created.

A ten year extension and two new Commissioners will permit the Commission to give the claims of Indian people the full, fair and impartial hearing which they deserve. In this era when so much attention is directed to righting wrongs abroad, I feel it would be unworthy of the United States Congress to flag in its zeal to right these long standing wrongs at home.

LUMMI INDIAN BUSINESS COUNCIL,
Marietta, Wash., February 2, 1967.

Hon. HENRY M. JACKSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: Reference our night letter January 31, 1967, regarding Indian claims.

We attached a Title X Indian Claims to the Omnibus Bill which was revised by the Lummi Tribal Council and mailed to Washington January 28. A copy is attached.

We believe Title X proposed by the Lummis explains the innovative thinking which is necessary to bring justice to the Indians.

We also direct your attention to the attached copy of a resolution from the February 1965 issue of Indian Voices published by the Department of Anthropology, University of Chicago. Page 10-11 requests the removal of ex-Senator Watkins from the Claims Commission. He was one of the foremost proponents of extinction of Indian tribes in the 1950's. After being voted out of office he was appointed to the Claims Commission.

We firmly believe he should be removed from the Commission because of his bias and prejudice against Indians and Indian progress. We do not wish to suggest at this time any support whatsoever for the National Indian Youth Council, implied or otherwise. But in this one specific instance we agree with the general concepts of a resolution made public by them and printed for public information. We feel you will appreciate knowing our sentiments in order to better represent us.

We strongly urge that in the interests of justice and elimination of poverty that a claims bill favorable to Indian interests be passed.

Sincerely,

VERNON A. LANE,
Chairman, Lummi Business Council.

FEBRUARY 2, 1967.

TITLE X

INDIAN CLAIMS

Section 1001.—The Indian Claims Commission shall be expanded to include seven members, four of which must be on tribal membership rolls as Indians, and be reservation residents. All members of the Commission will be elected in a national election by tribal councils one vote per council member. Terms will be three years with staggered terms to start the process, with one non-Indian and one Indian going out each year. The Commission will select its own chairman from among its members.

Section 1002.—The life of the Indian Claims Commission will extend until all Indian claims cases are settled.

Section 1003.—No offsets for government expenses at any time will be allowed against Indian claims. All previously charged will be paid to the tribes whose claims have been adjudicated. Offsets were for the benefit and advantage of the U.S. Government and not the tribes since they were independent before conquest, hence are not proper claims on Indian assets.

NATIONAL INDIAN YOUTH COUNCIL, POST OFFICE BOX 892, GALLUP, N. MEX.

Whereas the National Indian Youth Council is a nonprofit organization established under the corporate laws of the state of New Mexico, and

Whereas the National Indian Youth Council has charged itself with the responsibility of protecting Indian rights and working in the best interests of Indian welfare, and

Whereas the Indian Claims Commission was established to provide means for Indian tribes to gain compensation for lost lands and for abrogated treaties, and the Congress of the United States did acknowledge that Indian tribes were entitled to just payment for aboriginal land title and for deprivation of treaty rights, and the Claims Commission was welcomed by Indian tribes since it removed the necessity of Congress to authorize claim cases to be considered, and

Whereas the National Indian Youth Council, through careful study and observation of particular claims cases, has determined the actions of the Chief Commissioner of the Indian Claims Commission, Honorable Arthur V. Watkins, in claims cases involving Indian tribes throughout the United States against the United States for compensation of lands and interests lost during initial Indian and white contact, has not been in the best interests of the Indian people nor in the interests of the original purposes of the Indian Claims Commission Act of 1946, and

Whereas Chief Commissioner Watkins has a background of advocating termination of Federal protection and supervision over Indian tribes, and his preconceived termination policies have been reflected in his actions and decisions, and

Whereas Chief Commissioner Watkins has displayed bias towards Indian people who did not conform to his thinking of what the Indians' future should

be, and Chief Commissioner Watkins has vocally made this known in several cases, and

Whereas Chief Commissioner Watkins has displayed senility in his irresponsible statements concerning Indians' special relationship with the Federal Government, and Chief Commissioner Watkins' statements have offended the American public as well as American Indians, and

Whereas Chief Commissioner Watkins has shown a poor example of public service in his capacity as head of the Indian Claims Commission, and

Whereas it is apparent that Chief Commissioner Watkins' personal prejudice towards tribal status and Federal services for Indian people have been detrimental to the socio-economic standing of the American Indian in the general American society, and

Whereas the consensus of opinion of Indian leadership throughout the United States supports the view of the National Indian Youth Council, and

Whereas a Commissioner in Indian Claims Commission can be removed only by resignation or impeachment: Now, therefore, be it

Resolved, That the National Indian Youth Council approves of this resolution calling for the resignation of Chief Commissioner Watkins of the Indian Claims Commission; be it further

Resolved, That should Chief Commissioner Watkins not resign from the Indian Claims Commission, the National Indian Youth Council hereby, by authority of this resolution, petitions for the impeachment of Chief Commissioner Watkins of the Indian Claims Commission; be it further

Resolved and set forth, That a copy of this resolution be sent to the President of the United States, the Attorney General, members of the United States Congress, and all representatives of American Indians for their information and/or endorsement.

MELVIN D. THOM, *President.*

LUMMI INDIAN BUSINESS COUNCIL,
Marietta, Wash., January 24, 1967.

President LYNDON B. JOHNSON,
*The White House,
Washington, D.C.*

MR. PRESIDENT: The Nooksack tribe of Indians situated in Whatcom County, State of Washington, are being denied the right to organize as an Indian tribe and receive services of the Western Washington Indian Agency. They have had a constitution and by laws since 1929, at least, and accepted the Indian Reorganization Act of 1934. They have an active tribal council.

Since they are included under the Point Elliot Treaty and live on trust lands administered by the Bureau of Indian Affairs, there seems to be no valid reason for denying recognition. The weak bureaucratic excuse given is that they have no reservation in common. Yet other tribes with little tribal land are recognized. Tribal members have offered to donate to the tribe if that is what the Federal government requires to recognize them.

Historically the Nooksack tribe was large. After the treaty was signed, they were forced onto the nearby Lummi Reservation by the U.S. Army. Relations between the tribes were not peaceful and most Nooksacks returned to their homeland. After this happened several times the government let them live in their aboriginal area on homestead allotments, held in trust under the Bureau of Indian Affairs.

We know it has been the will of Congress to (HCR-108) obliterate all Indian tribes, customs and culture as soon as possible, without Indian request or consent. Now presumably there is a change toward economic development first. We realize that a great deal of Indian policy originates from a hand full of unthinking or unscrupulous men, and not from the general public nor from the large body of hard working and sincere congressmen. We firmly believe honest and sincere persons, once aware of the Nooksacks' desires, will help them help themselves.

The Nooksack people suffer all the disadvantages of poverty and from the neglect of the government for decades. Their tiny voice has not been heard!

Although they can scarce afford to, they are sending delegates to all the Indian affairs meetings they can. They want to be a recognized tribe and share in the war on poverty. They want electricity for their homes on the trust lands, better education, better jobs and a better future.

They feel they have been grossly wronged, since the treaty when their aboriginal lands, homes and livelihood were stolen under the gravest duress. The state of Washington is carrying on an unceasingly strong campaign against their ancient

source of livelihood, the Salmon Fishery. So called "sportsmen" have cut their nets and destroyed other private property in efforts to deny them a source of food. Obviously such a situation in the space age 1960's in the United States is absolutely pathetic and intolerable.

To protect themselves the Nooksacks respectfully and simply, request that their governing body be recognized and that they be entitled to all benefits from the Bureau of Indian Affairs, including protection of their treaty rights on their fisheries. They want to advance their economic well being. The Whatcom County Opportunity Council has done little for them the past year, but a neighborhood center is being planned. Vista workers have been requested.

The Nooksack tribe has requested support from other Washington tribes in their quest for recognition. The Lummi tribe is in complete sympathy with their cause, and request that an immediate study be instigated as soon as possible, be this administrative memorandum or new legislation.

As neighbors of the Nooksacks we want to see them progress and unite with us in our common purpose—eliminating the suffering of poverty and consequently standing organized before the world as proud and responsible groups of First Americans living successfully by their own efforts in the age of space.

This letter is a request for action, and we will appreciate being kept informed periodically as to development until the Nooksacks' request is granted.

Sincerely,

VERNON A. LANE,
Chairman, Lummi Business Council.

THE SENECA NATION OF INDIANS,
Salamanca, N.Y., February 1, 1967.

HON. GEORGE S. MCGOVERN,
U.S. Senate,

*Chairman, Subcommittee on Indian Affairs,
Committee on Interior and Insular Affairs, Washington, D.C.*

MY DEAR SENATOR MCGOVERN: You will please find enclosed a copy of a Resolution acted on and approved by the Council of the Seneca Nation of Indians at their regular session meeting held on January 14, 1967, requesting extension of the life of the Indian Claims Commission.

We are hopeful, therefore, that you act in our behalf in endorsing our Resolution. The Seneca Nation is most grateful for your time and consideration in this important matter. Thank you.

Sincerely yours,

CALVIN JOHN, *President.*

RESOLUTION

Whereas the Indian Claims Commission was established under the Act of August 13, 1946, 60 Stat. 1049, 25 U.S.C. 70 *et seq.*, to hear and determine all existing claims of Indian tribes against the United States; and

Whereas the Seneca Nation has filed with the Commission and is diligently prosecuting in its own name or as part of the Six (Iroquois) Nations a number of claims arising out of wrongs done to our people by the Federal Government in past years, which cases have been assigned Docket Nos. 89 and 342-B, C, D, E, F, G, and I; and

Whereas unless promptly extended by Congress, the life of the Indian Claims Commission will expire on April 10, 1967, even though over 350 cases, including the above-mentioned Seneca claims, remain to be decided; and

Whereas the intent of the Indian Claims Commission Act was to give every tribe its day in court, and to allow the Commission to go out of existence before that job has been completed and after the tribal claimants have invested so much time, money and hope in the prosecution of their claims would be an additional wrong; and

Whereas experience over the past twenty years has shown that the administration of the Indian Claims Commission Act could be improved: Now, therefore, be it

Resolved by the Council of the Seneca Nation of Indians meeting in regular session this 14th day of January, 1967, That the Congress of the United States be and hereby is petitioned (1) immediately to approve legislation extending the life of the Indian Claims Commission for a period of five (5) years, and (2) to hold separate hearings on the reasons why proceedings started in the Commission take so long before a case is finally decided and, on the basis of such hearings, to take

whatever remedial action seems necessary and desirable to improve the administration of the law, such as an increase in the size of the Commission and/or the employment of additional staff by the Commission and the Department of Justice.

TUSCARORA INDIAN NATION,
January 31, 1967.

Re Extension of Indian Claims Commission Act.

Senator GEORGE S. MCGOVERN,
Chairman, Subcommittee on Indian Affairs of the Senate Committee on Interior and Insular Affairs.

DEAR SIR: In regards to the extension of the Indian Claims Commission Act you will find enclosed a resolution adopted by the Tuscarora Chiefs in Council. We only hope that you and your colleague's in Washington will give our request your kind and careful consideration.

Such action to extend the life of the Commission will enable all Indian tribes and nations with claims cases the opportunity to have such cases heard and settled in a just and due manner.

With regards,
Sincerely yours,

LEO R. HENRY.

RESOLUTION

Whereas the Indian Claims Commission was established under the Act of August 13, 1946, 60 Stat. 1049, 25 U.S.C. 70 *et seq.*, to hear and determine all existing claims of Indian tribes against the United States; and

Whereas the Tuscarora Indian Nation has filed with the Commission and is diligently prosecuting in its own name or as part of the Six (Iroquois) Nations a number of claims arising out of wrongs done to our people by the Federal Government in past years, which cases have been assigned Docket Nos. 89 and 321; and

Whereas, unless promptly extended by Congress, the life of the Indian Claims Commission will expire on April 10, 1967, even though over 350 cases, including the above-mentioned Tuscarora claims, remain to be decided; and

Whereas the intent of the Indian Claims Commission Act was to give every tribe its day in court, and to allow the Commission to go out of existence before that job has been completed and after the tribal claimants have invested so much time, money and hope in the prosecution of their claims would be an additional wrong; and

Whereas experience over the past twenty years has shown that the administration of the Indian Claims Commission Act could be improved: Now, therefore, be it

Resolved by the Chiefs Council of the Tuscarora Nation of Indians meeting in regular session this 24th day of January, 1967, That the Congress of the United States be and hereby is petitioned (1) immediately to approve legislation extending the life of the Indian Claims Commission for a period of five (5) years, and (2) to hold separate hearings on the reasons why proceedings started in the Commission take so long before a case is finally decided, and on the basis of such hearings, to take whatever remedial action seems necessary and desirable to improve the administration of the law, such as an increase in the size of the Commission and/or the employment of additional staff by the Commission and the Department of Justice.

COX AND COX,
Phoenix, Ariz., February 3, 1967.

Senator CARL HAYDEN,
Senate Office Building, Washington, D.C.

DEAR SENATOR HAYDEN: Unless extended by Congress, the Indian Claims Commission will expire by operation of law April 10, 1967. I believe it is essential that the life of the Commission be extended.

The House of Representatives passed H.R. 5392 in the 89th Session. The Senate amended the measure in a manner unacceptable to the House and passed the amended Bill. The amendments to the Act are opposed by every Indian group and every attorney for Indians with whom I am acquainted.

I earnestly recommend that the life of the Indian Claims Commission be extended at least five (5) years from April 10, 1969 because:

1. Many Indian claims remain undecided.
2. All Indian claimants should "have their day in Court".

3. Meritorious claims should be determined and paid; others should be heard and determined to be without merit.

4. Legislation providing for summarily dismissing claims will injure Indians, create a public image of injustice and will not materially affect those it is intended to pressure—attorneys and Indian Claims Commission personnel. Acceleration of procedure is needed, but sanctions should not be against claimants.

Very truly yours,

Z. SIMPSON COX.

No. 1-67

RESOLUTION

Whereas the Black Hills Sioux Nation Council is a recognized organization of the Cheyenne River, Crow Creek, Fort Peck, Lower Brule, Pine Ridge, Rosebud, Santee and Standing Rock Tribes of the Sioux Nation involved in a claim against the United States in Docket No. 74 now pending before the Indian Claims Commission, and

Whereas the taking of the lands of the Sioux Nation without just compensation is a moral obligation of the United States to the members of the tribes represented by this Council, and

Whereas the United States Congress recognized this moral obligation in enacting the Indian Claims Commission Act of August 13, 1946, in order that all tribes including the Sioux Nation might have their day in court, and

Whereas the Indian Claims Commission Act provided that the Indian Claims Commission shall exist for a ten-year period ending April 10, 1957 and has periodically extended its life since that time, the latest extension expiring on April 10, 1967, and

Whereas no formal action has been taken by the United States Congress to further extend the Indian Claims Commission's existence thus placing Docket No. 74 in jeopardy of not receiving the benefit of full judicial review in light of the moral obligation of the United States, and

Whereas several of the member tribes, as well as Indian tribes across the Nation, would be deprived of full review of their tribal or reservation claims against the United States if the existence of the Indian Claims Commission is allowed to expire by the United States Congress, and

Whereas the tremendous volume of cases, and the complexity which surrounds the handling of Indian claims cases is above the limited ability of the Indian Claims Commission as now organized to expeditiously and promptly process our claim: Now, therefore, be it

Resolved, That the Black Hills Sioux Nation Council *strongly* urges the Committees of and both Houses of the United States Congress to take immediate action to extend the life of the Indian Claims Commission; and further, the existence of the Indian Claims Commission should be extended for a sufficient period (not less than two years) of time as to permit a thorough study of its operations looking toward complete reorganization to permit prompt and fair handling of all pending claims, including Docket No. 74.

CERTIFICATION

I, David Frazier, Secretary of the Black Hills Sioux Nation Council hereby certify that the above resolution was duly adopted by 9 votes for; and none opposed at a meeting duly noticed and convened at Aberdeen, South Dakota, February 1, 1967, with 5 reservations present, 5 reservations constituting a quorum.

DAVID FRAZIER, *Secretary*.

Attest:

EDWIN J. REDDOOR, *Chairman*.

No. 2-67

RESOLUTION

Whereas the Black Hills Sioux Nation Council is a recognized organization of the Cheyenne River, Crow Creek, Fort Peck, Lower Brule, Pine Ridge, Rosebud, Santee and Standing Rock Tribes of the Sioux Nation involved in a claim against

the United States in Docket No. 74 now pending before the Indian Claims Commission, and

Whereas the Black Hills Sioux Nation Council is deeply concerned that Docket No. 74 is not being given the expeditious and proper handling that the Council feels it deserves because of the various limitations upon the Indian Claims Commission, the representatives of the United States and the tribes through their claims attorneys, and

Whereas the Council feels that, with the help of the United States Congress, the Indian Claims Commission and the Department of Justice possesses the capability to handle claims cases, and most particularly Docket No. 74, more rapidly, and

Whereas the Council recognizes that the tribal claims attorneys have been most instrumental in bringing Docket No. 74 to the stage now reached, it would appear that more rapid progress could be achieved in Docket No. 74 if a more united and cooperative effort were made by them, and

Whereas the Council itself is willing to play a more active role including whatever assistance the Indian Claims Commission, the Departments of Justice and Interior or tribal attorneys may require to bring about the early settlement of Docket No. 74: Now, therefore, be it

Resolved, That the Black Hills Sioux Nation Council strongly urges the United States Congress to emphasize the early settlement of tribal claims against the United States and provide sufficient funds and facilities to the Indian Claims Commission and the Department of Justice in order that Docket No. 74, as well as other cases, may be given the fair hearing promised in the Indian Claims Commission Act of 1946 and settlement provided in the very near future, and

That the Black Hills Sioux Nation Council strongly urges all tribal claims attorneys to cooperatively seek out and take whatever steps are possible, with the assurance of this Council of any and all assistance, to also bring about a settlement in Docket No. 74 at a very early date.

CERTIFICATION

I, David Frazier, Secretary of the Black Hills Sioux Nation Council, hereby certify that the above resolution was adopted by unanimous vote at a meeting duly noticed and convened at Aberdeen, South Dakota, February 1, 1967, with 5 reservations present, 5 reservations constituting a quorum.

DAVID FRAZIER, *Secretary*.

Attest:

EDWIN J. REDDOOR, *Chairman*.

WILKINSON, CRAGUN & BARKER,
Washington, D.C., February 13, 1967.

Re extension of the Indian Claims Commission Act (S. 307).

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: It has been necessary for me to advise Mr. James Gamble that I would be unable to appear at the hearings which your Subcommittee on Indian Affairs will hold on the above-mentioned legislation. However, Mr. Gamble has suggested I write you this letter for inclusion in the record.

Many of those concerned with the work of the Indian Claims Commission have, over a period of many years, given considerable thought to ways that the work of the Commission could be speeded up so that cases could be disposed of in an orderly and judicious manner and at the same time be concluded within a reasonable period. We understand that your Committee and the House Committee are now concerned with seeing that the life of the Commission is extended for the necessary period to complete the cases and that the work of the Commission is facilitated.

OBVIATING DELAYS

Admittedly, there have been too many delays in the handling of matters before the Commission. It has long been recognized that these delays occur because of deficiencies on the part of both the Commission and the parties, both the claimant Indians and the United States. Those acquainted with the Commission's practice have frequently made suggestions for overcoming delays and improving the practice.

In 1959, at an annual convention of the Federal Bar Association, I was invited to talk to the Indian Law Committee on the subject of the Indian Claims Commission. A portion of my talk, which was later published in the *Federal Bar Journal*, Volume 20, Number 3, Summer, 1960, dealt with suggestions for overcoming delays and improving the practice. I enclose herewith for your information a Xerox copy of Part VI of my talk, dealing with that subject.

Most of the suggestions made in 1959 are equally applicable today. We feel that there is little need for additional legislation to facilitate the work of the Commission, unless your Committee should feel that provision should be made for additional Commissioners or that legislative authority is required for Trial Examiners. As suggested in the enclosure, assignment of each pending case to a Commissioner or Trial Examiner for personal supervision of pretrial conferences, narrowing issues, stipulations of fact, possible settlement, and scheduling of trial preparation, and actual trial may be the key to faster disposition of pending cases. The Congress may want to examine whether the Commission now has adequate personnel in trial officer positions to do this kind of work.

We believe that experience in all judicial tribunals has proven that cases are moved with greater dispatch by affirmative leadership, by individual judicial officers assigned to various cases for pretrial purposes and proceeding in the cases with affirmative pretrial practice. This has been the key to federal courts clearing their dockets. It is our view that if all of the cases on the Commission's docket were apportioned among Commissioners or Trial Examiners and those Commissioners and Trial Examiners affirmatively moved out to clarify issues, limit the area of contention, and formulate definite schedules for trials and dispositions of the various issues, the cases could be brought to conclusion much faster. No legislation is required for this type of leadership, only a change in practice.

We specifically caution against legislation which would make it mandatory that cases be dismissed after a stated time lag, without allowing judicial discretion on the part of the Commission based upon the particular facts and circumstances of the case and the cause for delay. Otherwise, it is very probable that cases would be required to be dismissed due to no fault of the Indian tribe itself and possibly due to no fault of its counsel. For example, if the General Services Administration has not prepared and filed the required General Accounting Report in accounting cases, there is no practical way that a claimant could proceed. We are confident this was never intended by you as author of S. 307. Likewise, in the event of serious illness or death of counsel, it would be unfair and improper to require a case to be dismissed with prejudice because the claimant *could not proceed*. Nevertheless, under S. 307, if the specified time had elapsed, the case would have to be dismissed, under the circumstances. The Commission would have no discretion.

It is also our view that while rules should be established by the Commission and affirmative action taken to require cases to be moved along on the calendar, the usual judicial review should be retained so that there would be complete assurance that there would be no arbitrary and capricious action taken at the trial level. In our judgment, this would do much to assure that there would be no need for new special jurisdictional acts, because if a case has been dismissed by the Commission for failure to prosecute or some other good reason, after adequate opportunity, and the Court of Claims concurs in that action, there can be no meritorious pressure put on the Congress to give the Tribe another chance. However, if the Tribe can come to Congress and say that the trial tribunal (the Commission) was arbitrary and capricious, did not listen to its showing of why it should have more time, and there was no possible review outside of Congress, the Congress may well be prompted to give the Tribe another chance and enact special jurisdictional legislation. We are sure that you agree that the Indian Claims Commission Act is intended to conclude cases finally.

While it is our own view that further legislation is not required to permit the Commission to adopt a practice which would expedite cases (it now has adequate judicial power), if legislation is to be adopted to make your intention clear that cases be expedited to conclusion, we suggest the following.

ALTERNATE SUGGESTION

To avoid the unintended inequities which might result from mandatory provisions of the proposed Section 27, we propose the following substitute:

27(a) The Commission shall, as expeditiously as practical following the enactment of this section, but no later than January 1, 1968, prepare and issue a calendar setting a date for the initial hearing of each claim pending

before the Commission on which no hearing has been held, and where the Commission determines there is no valid reason for not setting the case for hearing.

(b) If a claimant, without cause, fails to proceed with the hearing of its claim on the date set for that purpose, or any extension thereof, the Commission for cause, may dismiss for lack of prosecution. No extension shall be granted except for good cause shown.

This language would make the Congressional intent unmistakably clear that the Commission is to proceed with dispatch and firmness, but would permit usual judicial discretion to avoid inequities.

SETTLEMENTS

The Commission has disposed of many claims. The Court of Claims has reviewed the Commission on many issues. A large body of precedents has been established, including valuation of lands in various localities and at various dates. These should serve as an ever increasing basis for settlements. The pretrial activity of the Commission and the parties should include thorough exploration of settlement possibilities, as generally fair settlements are to be favored. Much of the Commission's time can be saved by a timely settlement. The Department of Justice might profitably review its policy and practice on settlements and consider assigning more personnel to considering proposals for fair settlements. If all pending cases must be tried through the various phases: (1) title or liability, (2) value, (3) offsets and consideration, and (4) possible appeals, it will take years to finish the Commission's work on all cases. In most courts, only a small part of the cases on the docket are tried to conclusion because of bona fide settlement efforts by the parties and the Court. Similarly, the Commission's case load should be reduced by such efforts.

EXTENSION FOR 5 YEARS

Section 1(b), of S. 307, would extend the life of the Commission for five (5) years, until April 10, 1972, or such earlier time as the Commission shall have made its final report to Congress.

We favor the extension for at least five (5) years. All concerned with the Indian claims litigation are anxious that the claims be disposed of without undue delay and that the work of the Commission be concluded. Nevertheless, considering the several stages or phases necessary for most of the complex litigation before the Commission, the appeals that may occur in some cases, proceedings on cases which may be remanded for further consideration, and all related factors, it is reasonable to state that at least five (5) years, and probably longer, will be required to conclude all of the cases pending before the Commission. The extension for any lesser period would have a negative effect on the ability of the Commission and the Department of Justice, Indian Claims Section, to employ and retain qualified staff personnel. We point out that it is only human nature that competent professional staff people (especially lawyers) would seek employment with tenure and tend to leave the Commission and the Indian Claims Section of Justice, if the extended tenure of the Commission is unreasonably short. This would lead to inefficiency of the Commission and the Department of Justice. It should be avoided by an extension for the period necessary to conclude the Commission's work. This is probably nearer ten (10) years than five (5), considering that there are various stages in each of these cases and that some related cases must be disposed of in sequence because issues in one are dependent upon resolution of issues in others.

We hope these observations will be helpful to your Committee.

Sincerely yours,

ROBERT W. BARKER.

[From The Federal Bar Journal]

The Commission has adopted many rules which have facilitated disposition of cases. Counsel are required to exchange documentary evidence at least 30 days prior to trial to allow study or cross-examination and preparation of rebuttal evidence. Rebuttal documents are to be filed within 20 days of the exchange.¹³ Recent progress has been made in getting stipulations and agreements between the Department of Justice and the tribal attorney. However, some improvements must be made in settlements and pre-trial activity. The Commission must exert

¹³ 25 CFR 503.23, as amended by order of the Indian Claims Commission November 25, 1959.

proper leadership through the employment of appropriate methods to dispose of more cases.

VI. SUGGESTIONS FOR OVERCOMING DELAYS AND IMPROVING PRACTICE

A. Department of Justice

1. The Indian Claims Section of the Lands Division of the Department of Justice should be given an increased staff. In general, cases move no faster than the attorneys for the Department of Justice can prepare their defense. Therefore, prompt resolution of pending claims before the Commission cannot be realized until more attorneys are assigned to the Indian Claims Section to reduce the heavy caseload on the individual trial attorney.

2. As precedents are established by decisions, the Department of Justice should make increased effort to stipulate facts, settle issue, compromise cases, and otherwise clear the docket of matters which do not require and justify trial and consideration and decision by the Commission. For example, where land to be valued is surrounded by other similar areas which have been valued at substantially the same valuation date by the Commission or the Court of Claims, a basis for compromise is afforded and compromise would usually save many thousands of dollars of trial expense, witness fees, and perhaps two years in time.

B. Counsel for petitioners

1. Counsel for the Indians should organize their schedules in such a way that extensions of time and postponement of hearings and trials may be avoided. This, of course, should be matched by counsel for defendant and rewarded by the Commission by demanding the same of the Government.

2. Counsel for the Indians, as well as counsel for the Government, should be diligent in preparation for trial, narrowing issues, presentation of proposals for stipulation and settlement and enlisting aid of the Commission and counsel for the Government to avoid unnecessary delays.

3. Counsel should examine cases in light of decided precedents and dismiss, compromise or stipulate cases and issues which can be disposed of by precedent, clearing the way for genuine disputes. Dismissal and compromise, of course, must be done only after consent of the client, where such consent is appropriate or necessary.

C. The Commission

1. The Commission should use the pre-trial conference effectively to eliminate issues, to dispose of proof on matters not really in controversy, and secure admission and stipulations of fact or law, together with agreement on trial dates, dates for exchange of documents, etc. Possibilities of settlement should be developed at the various stages of the cases. Pre-trial conference should be held immediately after answer and throughout the course of the case, from time to time, especially prior to and after trial of each stage of the case.

2. The Indian Claims Commission, as an agency within the scope of the Administrative Procedure Act,¹⁴ should use trial examiners provided by section 11 of that act to conduct pre-trial and trial proceedings, and to make initial findings of fact and decisions, reserving to the Commission time for review of initial decisions and findings of fact and disposition of legal questions requiring *en banc* consideration. Obviously, several qualified trial examiners could more effectively keep up with day by day developments and push counsel for orderly development of the many cases and would enable the busy Commission to move forward on a broader front than at present. Trial Examiners attempting to keep a full and orderly agenda would probably be more effective in precluding continuances and following up to see that counsel meet deadlines.

3. The Commission should prohibit piecemeal trial. In the past, defendant has in several cases waited until the tribe has put on its evidence, only to ask for a long continuance to prepare and present its case-in-chief on the same issue. This not only departs from due process, but breeds delay and irresponsibility in the extreme.

4. The Commission should exercise aggressive leadership in requiring counsel to get cases prepared, heard and concluded. It should summon counsel for conferences on need for extensions, particularly when the extensions are requested by the Department of Justice. In addition, the Commission should insist on compliance with its rule on exchange of documentary evidence thirty days in advance of trial. This rule should be interpreted to embrace appraisal reports and similar

¹⁴ 5 USC 1001, *et seq.*

written documents filed in connection with testimony of expert witnesses.¹⁵ This would result in more orderly and expeditious examination at trial, and serve as a practical basis for stipulation of facts and issues, and possible compromise.

5. The Commission should use its investigation division, provided by section 13(b) of the act, now seldom used, in any manner which will make more effective the work of the Commission and its examiners, including the following:

a. To review the facts and posture of a particular case in comparison with other cases so that the Commission can conduct more effective pre-trial and avoid expenditure of time, funds and effort on consideration of questions or issues which have been disposed of in other cases.

b. To prepare bases for suggested settlements or stipulations so that the Commission can take an effective part.

c. To consider valuation problems for the sake of reaching effective stipulations.

STRASSER, SPIEGELBERG, FRIED, FRANK & KAMPELMAN,
Washington, D.C., February 13, 1967.

Re extension of Indian Claims Commission Act.

Hon. HENRY M. JACKSON,
*Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.*

DEAR SENATOR JACKSON: We are enclosing copies of Resolution No. 34-66, adopted by the Hualapai Tribe of Indians, and Resolution No. 66-41, adopted by the San Carlos Apache Tribe of Indians, both of which respectfully petition Congress "to provide such extension of the life of the Indian Claims Commission to the end that a just completion may be had of its tribal claims as well as all other Indian tribal claims pending before the Indian Claims Commission."

We would appreciate your making these resolutions a part of the record of the hearing scheduled by your Committee on Wednesday, February 15, 1967.

Sincerely yours,

ARTHUR LAZARUS, Jr.

RESOLUTION NO. 34-66 OF THE GOVERNING BODY OF THE HUALAPAI TRIBE OF THE HUALAPAI RESERVATION (A FEDERALLY CHARTERED INDIAN CORPORATION), PEACH SPRINGS, ARIZ.

Whereas the Indian Claims Commission was created by Act of Congress of August 13, 1946, 60 Stat. 1049 (25 USC 70) to adjudicate Indian claims which came into existence between July 4, 1776, and August 13, 1946, and

Whereas under the terms of said act the existence of the Commission was to terminate not later than ten years after its first meeting which date of termination would have been April 10, 1957, and

Whereas the life of the Indian Claims Commission has been extended on two different occasions and the Second Session of the 89th Congress also had before it bills to extend the life of the Commission, however, due to differences, no action was taken, and

Whereas the life of the said Indian Claims Commission will expire on April 10, 1967, unless an additional extension is granted by the 90th Congress, and

Whereas the Hualapai Tribe has pending before the Indian Claims Commission Dockets Number 90 and 122, and

Whereas the Hualapai Tribe acting through its Claims Attorneys, has done everything possible to expedite the adjudication of its claims, and

Whereas by statements made by the Indian Claims Commission and the Department of Justice, it will be impossible to finally dispose of all the pending cases by even April of 1969, and

Whereas it was the intention of the Congress that Indian tribes should have their day in court by the establishment of the Indian Claims Commission so that they may once and for all have their claims against the government adjudicated: Now, therefore, be it

Resolved by the Hualapai Tribal Council in regular meeting this 3rd day of December, 1966, That it respectfully requests and urges the 90th Congress to provide

¹⁵ The Commission has recently ruled that reports of expert witnesses should be exchanged at least two days in advance of oral testimony of that expert. Order of November 25, 1959. This seems to the author to be an unwise restriction on advance preparation and continues the old fashioned practice of "surprising the opponent" instead of encouraging the parties to lay their case on the table and to attempt to arrive at a settlement before protracted trial.

such extension of the life of the Indian Claims Commission to the end that a just completion may be had of its tribal claims as well as all other Indian tribal claims pending before the Indian Claims Commission; and be it further

Resolved, That copies of this Resolution be forwarded to the Arizona Congressional Delegation and to the Committee of Congress that might be considering legislation extending the life of the Indian Claims Commission, and that its Tribal Attorneys, Royal D. Marks and Arthur T. Lazarus are authorized to appear before the Congressional Committee that may be considering said legislation and testify on behalf of the Hualapai Tribe in connection with the extension of the life of the Indian Claims Commission.

CERTIFICATION

I, the undersigned, as Acting Secretary of the Hualapai Tribal Council, hereby certify that the Hualapai Tribal Council of the Hualapai Tribe is composed of 9 members of whom 7 constituting a quorum were present at Regular Meeting this 3rd day of December, 1966; and that the foregoing resolution was duly adopted by the affirmative vote of six (6) members, pursuant to authority of Article VI Section 1 (a) and (b) of the Revised Constitution and Bylaws of the Hualapai Tribe approved October 22, 1966.

[SEAL]

MRS. EDNA BENDER,
Acting Secretary.

RESOLUTION No. 66-41

Whereas the Indian Claims Commission was created by the Act of Congress of August 13, 1946, 60 Stat. 1049 (25 USC 70) to adjudicate Indian claims which came into existence between July 4, 1776, and August 13, 1946, and

Whereas under the terms of said act the existence of the Commission was to terminate not later than ten years after its first meeting which date of termination would have been April 10, 1957, and

Whereas the life of the Indian Claims Commission has been extended on two different occasions and the Second Session of the 89th Congress also had before it bills to extend the life of the Commission, however, due to differences, no action was taken, and

Whereas the life of the said Indian Claims Commission will expire on April 10, 1967, unless an additional extension is granted by the 90th Congress, and

Whereas the San Carlos Apache Tribe has pending before the Indian Claims Commission Dockets No. 22D, 22H, 22J, and

Whereas the San Carlos Apache Tribe acting through its Claims Attorneys, has done everything possible to expedite the adjudication of its claims, and

Whereas by statements made by the Indian Claims Commission and the Department of Justice, it will be impossible to finally dispose of all the pending cases by even April of 1969, and

Whereas it was the intention of the Congress that Indian tribes should have their day in court by the establishment of the Indian Claims Commission so that they may once and for all have their claims against the government adjudicated: Now, therefore, be it

Resolved by the San Carlos Apache Tribe in regular meeting this 6th day of December, 1966, That it respectfully requests and urges the 90th Congress to provide such extension of the life of the Indian Claims Commission to the end that a just completion may be had of its tribal claims as well as all other Indian tribal claims pending before the Indian Claims Commission; and be it further

Resolved, That copies of this Resolution be forwarded to the Arizona Congressional Delegation and to the Committees of Congress that might be considering legislation extending the life of the Indian Claims Commission.

CERTIFICATION

I, the undersigned, Secretary of the San Carlos Council, hereby certify that the San Carlos Council is composed of 11 members, of whom 10, constituting a quorum were present at a regular meeting thereto held on this 6th day of December, 1966; and that the foregoing Resolution No. 66-41 was duly adopted by a unanimous vote of the Council, pursuant to the provisions of Section 1, (a) Article V, amended Constitution and Bylaws of the San Carlos Apache Tribe, effective February 24, 1954.

JANIE B. FERREIRA, *Secretary.*

STRASSER, SPIEGELBERG, FRIED, FRANK, & KAMPELMAN,
February 14, 1967.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: Supplementing our letter to you of February 13, 1967 on the same subject, we are enclosing a copy of Resolution No. SR-570-67, in which the Salt River Pima-Maricopa Indian Community in Arizona petitions Congress for an extension of the Indian Claims Commission Act, of sufficient duration to ensure that all outstanding claims can be finally determined. We would appreciate your making this resolution also a part of the record of the hearing on S. 307 tomorrow morning.

Respectfully submitted.

ARTHUR LAZARUS, Jr.

RESOLUTION NO. SR-570-67 OF THE SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY TRIBAL COUNCIL

Whereas the Indian Claims Commission was created by the Act of Congress of August 13, 1946, 60 Stat. 1049, (25 USC 70) to adjudicate Indian claims which came into existence between July 4, 1776, and August 13, 1946; and

Whereas under the terms of said act the existence of the Commission was to terminate not later than ten years after its first meeting which date of termination would have been April 10, 1957; and

Whereas the life of the Indian Claims Commission has been extended on two different occasions and the Second Session of the 89th Congress also had before it bills to extend the life of the Commission, however, due to differences, no action was taken; and,

Whereas the life of the said Indian Claims Commission will expire on April 10, 1967, unless an additional extension is granted by the 90th Congress; and,

Whereas the Salt River Pima-Maricopa Community has pending before the Indian Claims Commission Docket No. 228; and,

Whereas the Salt River Pima-Maricopa Community acting through its Claims' Attorneys, has done everything possible to expedite the adjudication of its claims; and,

Whereas by statements made by the Indian Claims Commission and the Department of Justice, it will be impossible to finally dispose of all the pending cases by even April of 1969; and,

Whereas it was the intention of the Congress that Indian tribes should have their day in court by the establishment of the Indian Claims Commission so that they may once and for all have their claims against the government adjudicated: Now, therefore, be it

Resolved by the Salt River Pima-Maricopa Community in regular meeting this 8th day of December, 1966, That it respectfully requests and urges the 90th Congress to provide such extension of the life of the Indian Claims Commission to the end that a just completion may be had of its tribal claims as well as all other Indian tribal claims pending before the Indian Claims Commission; be it further

Resolved, That copies of this Resolution be forwarded to the Arizona Congressional Delegation and to the Committee of Congress that might be considering legislation extending the life of the Indian Claims Commission.

CERTIFICATION

Pursuant to authority contained in Article V, Section 1 (d) (g) and (k) of the Constitution and By-laws of the Salt River Pima-Maricopa Indian Community ratified by the tribe May 17, 1940 and approved by the Secretary of the Interior June 11, 1940, the foregoing resolution was adopted this 8th day of December, 1966 at a duly called meeting called by the Community Council at Salt River, Arizona, at which a quorum of 7 members were present by a vote of 6 for; 0 against; 0 member absent; and 1 present not voting.

Attest:

FILMORE CARLOS, *President.*

BETTY PABLO, *Secretary.*

NEW YORK, N.Y. February 14, 1967.

Senator HENRY M. JACKSON,
*Chairman, Senate Committee on Interior and Insular Affairs,
 New Senate Office Building, Washington, D.C.:*

The National Council of Churches has stood for the achievement of justice for the American Indian, stating that Indian tribes or bands should be protected "against unilateral Government abrogation of contracts or treaties which exist between the tribe or band and the Federal Government."

In keeping with this principle, we have always considered the Indian Claims Commission as essential part of Government's responsibility to adjudicate Indians' claims. In light of tremendous backlog of such claims and the Indians trust in Government's good faith, we are convinced it is highly essential that life of Claims Commission be extended to enable it to continue vital work. Appropriate inclusion of this message in record of hearing.

DR. TRUMAN B. DOUGLASS,
Chairman, Division of Christian Life and Mission, National Council of Churches.

DR. JON L. REGIER,
*Associate General Secretary for the Division of Christian Life and Mission,
 National Council of Churches.*

Senator HENRY M. JACKSON,
*Chairman, Senate Interior and Insular Affairs Committee,
 Senate Office Building, Washington, D.C.*

The Yakima Indian Nation, State of Washington, favors an extension of the life of the Indians Claims Commission for ten years to permit the Commission to complete its work. Yakima Nation not—not in favor of the amendment proposed in S. 307 90th 1st session section 27. Yakima Nation as well as other tribes have many cases on file with Commission but due to lack of government attorney process is slow and many cases on the file. No trial date. We pray your committee will give serious consideration to our request.

ROBERT B. JIM,
Chairman.
 JOE MENNANICK,
Secretary.

FORT KLAMATH, OREG., February 2, 1967.

Senator HENRY M. JACKSON,
*U.S. Senate Building,
 Washington, D.C.:*

The Klamath Indian Tribe of Oregon strongly urges an extension of the Indian Claims Commission Act for a term sufficient to permit orderly conclusion of cases and hold qualifying and competent staff. We suggest an eight year extension without other amendments. The Klamath Indian Tribe has two cases now pending before the Commission.

Eva Beiberle, Maryetta Wright, Paul Wilson, Myona Wilson, for minor children; Nora Hawk, Fannie Jackson, Barbara Unive, Vernon Unive, Alice Hood, Julia Head, Lawrence Head, Osborne Lee Gallagher, Norma Rackson, Theodona Wright, Ruth Kirk, Ella Wilson, Mary Hill, Harold Hill, James Wright, Sr., Harold Wright, Gerald Hill, Verle Nelson, Amy Jackson, Alice Jackson, Fred Merritt, Nolton Merritt, Jettie Heims, Ora Summers, Martha Summers, Marilyn Jackson, Bettie Effman, Martha Nelson, Mary Youngblood, Victoria Nelson, Cathie Case, Marjorie Sandoval, May Wright, Francis Kirk, Leroy Kirk, William Kirk, Edison Chiloquin, Melvin Chiloquin, Eveland Chiloquin, Gordon David, Enid Shortwell, Carol Shortwell, Virgil Wilson, Jr., Darrell Wilson, John Wright, Jr., Leon Weeks, Elwood Miller, Orland Miller, Patty Dumont, Robert Dumont, Beverly David, Diane Dumont, Linda David, Linda Merritt, Harry Clarkson, Pricella Bettles, Freidman Kirk, James Hicks, Leon Hicks, Christine Dawson, Darlene Merritt, Evelyn Shiraldo.

KLAMATH FALLS, OREG., February 1, 1967.

Senator HENRY M. JACKSON,
U.S. Senate Building, Washington, D.C.:

The Klamath Tribe of Oregon strongly urges an extension of the Indian Claims Commission Act for a term sufficient to permit orderly conclusion of cases and hold qualified and competent staff. We suggest an eight year extension without other amendments. The Klamath tribe has two cases now pending before the commission.

Marie Norris, Marlene Norris, Lynell Pridemore, Carmelita Wright,
Randall Tupper, Russell White, Gene Gentry, Mary Louise Wong,
Ramona Wong, Flava Yates, Lola Harrington.

PAWHUSKA, OKLA., February 1, 1967.

Hon. HENRY JACKSON,
Chairman, Committee of Interior and Insular Affairs,
U.S. Senate, Senate Office Building,
Washington, D.C.:

Suggest Indian Claims Commission be extended at least seven years due to many cases yet to be tried.

PAUL PITTS,
Principal Chief,
Osage Tribe of Indians.

PHILADELPHIA, PA., February 14, 1967.

Senator HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
Old Senate Office Building, Washington, D.C.:

We urge the Senate Committee on Interior and Insular Affairs to take prompt action to extend the life of the Indian Claims Commission. Anything other than simple extension would unduly delay an action which is imperative before April if Indian tribes not yet heard before the Commission are to have equal justice with those tribes whose cases have been heard.

PAMELIA COE,
National Indian Program Representative,
American Friends Service Committee.

PHILADELPHIA, PA., February 13, 1967.

Hon. HENRY M. JACKSON,
U.S. Senate, Washington, D.C.:

Indian Rights Association urges simple extension of the life of Indian Claims Commission for at least five years, justice demands that those Indian groups not yet heard have their day in court.

LEO T. CONNOR,
President, Indian Rights Association.

FORT HALL, IDAHO, February 13, 1967.

Hon. HENRY JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.:

We sincerely hope that you will take immediate action to see that the Indian Claims Commission Act is continued for a period which will permit efficient conclusion of the pending cases. We have eight cases still pending. Some of these are claims for general accounting, as to which the Government has not even prepared its general accounting office report. We think at least seven more years are required for the commission to complete its work and urge such a bill. We do not think that other amendments to the act are necessary.

SHOSHONE BANNOCK TRIBE.

KLAMATH FALLS, OREG., *February 10, 1967.*

Sen. HENRY M. JACKSON,
U.S. Senate Building,
Washington, D.C.:

The Klamath Tribe of Oregon strongly urges an extension of the Indians Claims Commission Act for a term sufficient to permit order conclusion of cases and hold qualified and competent staff. We suggest an eight year extension without other amendments the Klamath Tribe has two cases now pending before the commission.

EDNA DILLSTROM.
JANE HATFIELD.
MOLLY LEWIS.
JAMES HATFIELD.

CHILOQUIN, OREG., *February 1, 1967.*

HON. HENRY M. JACKSON,
U.S. Senator, Senate Office Building, Washington, D.C.:

The Klamath Tribe of Oregon strongly urges an extension of the Indian Claims Commission Act for a term sufficient to permit orderly conclusion of cases and hold qualified and competent staff. We suggest an eight year extension without other amendments. The Klamath Tribe has two cases now pending before Commission.

Sincerely,

Pricella Bettles, Yvonne Gentry, Lawrence Head, Julia Head, Neva H. Moses, Blanche Jones, Amy Jackson, Nancy Gentry.

CHILOQUIN, OREG., *February 1, 1967.*

Senator HENRY M. JACKSON,
Senate Office Building,
Washington, D.C.

The Klamath Tribe of Oregon strongly urges extension of the Indian Claims Commission Act for a term sufficient to permit orderly conclusion of cases and hold qualified and competent staff. We suggest an eight year extension without other amendments. The Klamath Tribe has two cases now pending before the Commission.

Clarence Gentry, Jr., Leroy A. Hicks, Corrine Hicks, Hildegard O. Hicks, Roland J. Hicks, Nancy Ridenour, Clarence M. Gentry, Stephen L. Lang, Beverly A. Lang, Roland J. Hicks, Jr., Videll A. Hicks, Donald L. Gentry, Yvonne Gentry.

KLAMATH FALLS, OREG., *February 1, 1967.*

Senator HENRY M. JACKSON,
Senate Office Building,
Washington, D.C.:

The Klamath Tribe of Oregon strongly urges an extension of the Indian Claims Commission Act for a term sufficient to permit orderly conclusion of cases and hold qualified and competent staff. We suggest an 8-year extension without other amendments. The Klamath Tribe has two cases now pending before the Commission.

LILA AMOS.
MARJORIE SUSAN ERICKSON.
DANIEL ERICKSON.
ERBERT RODNEY AMOS.

KLAMATH FALLS, OREG., *February 1, 1967.*

Senator HENRY M. JACKSON,
U.S. Senate Building,
Washington, D.C.:

I am a member of the Klamath Indian Tribe of Oregon. Strongly urge an extension of the Indian Claims Commission Act for a term sufficient to permit orderly

conclusion of cases. We suggest an 8-year extension without other amendments which now the Klamath Tribe has two cases pending.

HELEN MERRITT.
CYNTHIA M. BIGBY.

LANDER, WYO., February 1, 1967.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate,
Washington, D.C.:

We are most concerned that action be taken to continue the Indian Claims Commission for at least another 7 years. This is necessary to assure conclusion of pending cases and retention of competent staff at the Commission and the Department of Justice section handling Indian claims. A shorter extension would encourage these staff members to seek other jobs and would not allow all claims to be concluded. No other amendments to the act are necessary. The Commission can speed up its work without further legislation.

ROBERT N. HARRIS, Sr.,
Chairman, Shoshone Business Council.
JESSE MILLER,
Chairman, Arapaho Business Council.

OKLAHOMA CITY, OKLA., February 6, 1967.

JAMES GAMBLE,
Committee State Interior and Insular Affairs Committee,
Senate Office Building,
Washington, D.C.:

In behalf of the Caddo Tribe, Oklahoma, we oppose the act S. 307 pertaining to Claims Commission. In behalf of the tribe we suggest that this Commission be continued for 5 more years.

MELFORD WILLIAMS,
Chairman, Caddo Indian Tribe of Oklahoma.

SPRAGUE RIVER, OREG., February 4, 1967.

Senator HENRY M. JACKSON,
Chairman, Senate Interior Committee,
U.S. Senate Building, Washington, D.C.

HONORABLE SENATOR: As a member of the Klamath Tribe of Oregon I strongly urge you to support an extension of the Indian Claims Commission Act for a term sufficient to permit orderly conclusion of cases now pending and hold qualified and competent staff.

DONALD CAMPAGNA.

SPRAGUE RIVER, OREG., February 4, 1967.

Senator HENRY M. JACKSON,
Chairman, Senate Interior Committee,
U.S. Senate Office Building, Washington, D.C.

HON. HENRY M. JACKSON: The Klamath Tribe of Oregon strongly urges you to support an extension of the Indian Claims Commission Act for a term sufficient to permit orderly conclusions of cases now pending and hold qualified and competent staff.

DIBBON COOK, *Secretary.*

BARTLESVILLE, OKLA., February 3, 1967.

Senator HENRY JACKSON,
U.S. Senate, Chairman, Indian Interior and Insular Committee, Washington, D.C.:

The Cherokee Tribe of Oklahoma recommends the passage of the seven-year extension of the Indian Claims Commission bill but without the proposed Senate amendment.

W. W. KEELER,
Principal Chief.

RICHLAND, WASH., *February 7, 1967.*

Senator HENRY JACKSON,
Senate Office Building, Washington, D.C.:

It is our belief that the best interests of Washington State Indians and all citizens would be served by maintaining an active and fair minded Indian claims commission. Appropriate legislation should be appended to the omnibus bill as suggested by Mr. Lane of the Lummi Business Council.

SONNI COOPER,
Executive Secretary,
Northwestern Association on Indian Affairs.

BELLINGHAM, WASH., D.C., *January 31, 1967.*

Hon. HENRY M. JACKSON,
U.S. Senate Office Building, Washington, D.C.:

Request extension of Claims Commission until work finished, increase to 7 members. Letter follows air mail.

VERNON LANE,
Lummi Tribal Council.

RESOLUTION No. II-67 OF THE MONTANA INTER-TRIBAL POLICY BOARD,
INDIAN CLAIMS COMMISSION

Whereas the American Indian Tribes waited 150 years before the courts were opened so that Tribes could present their grievances; and

Whereas the life of the Indian Claims Commission will expire on April 10, 1967:
Now, therefore, be it

Resolved, That Congress should immediately act to continue the life of the Commission pending consideration of legislation to move before a judicial tribunal to dispose of all pending Indian Tribal claims.

CERTIFICATION

The foregoing resolution was duly adopted on the 22nd day of December, 1966, by a vote of 6 for, 0 opposed, at a meeting of the Montana Inter-Tribal Policy Board in Great Falls, Montana, December 22, 1966.

MONTANA INTER-TRIBAL BOARD.

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